

Case Examiner Decision
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FTPS-21318

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The role of the case examiners

The case examiners perform a filtering function in the fitness to practise process, and their primary role is to determine whether the case ought to be considered by adjudicators at a formal hearing. The wider purpose of the fitness to practise process is not to discipline the social worker for past conduct, but rather to consider whether the social worker's current fitness to practise might be impaired because of the issues highlighted. In reaching their decisions, case examiners are mindful that Social Work England's primary objective is to protect the public.

Case examiners apply the 'realistic prospect' test. As part of their role, the case examiners will consider whether there is a realistic prospect:

- the facts alleged could be found proven by adjudicators
- adjudicators could find that one of the statutory grounds for impairment is engaged
- adjudicators could find the social worker's fitness to practise is currently impaired

Case examiners review cases on the papers only. The case examiners are limited, in that, they are unable to hear and test live evidence, and therefore they are unable to make findings of fact.

Decision summary

Decision summary

Preliminary outcome	Accepted disposal proposed - warning order 3 years
Final outcome	Accepted disposal proposed - warning order 3 years
Date of the final decision	6 February 2024

Executive summary

The case examiners are satisfied that there is a realistic prospect that:

1. The factual concerns could be found proven by the adjudicators.
2. Those concerns could amount to the statutory ground of misconduct.
3. The adjudicators could conclude that the social worker's fitness to practise is currently impaired.

The case examiners do not consider it to be in the public interest for the matter to be referred to a final hearing and have determined the case can be concluded by way of accepted disposal.

As such, the case examiners notified the social worker of their intention to resolve the case by way of accepted disposal, warning order of 3 years duration. The social worker responded to their proposal on 31 January 2024, confirming that they understood the terms of the accepted disposal and accepted them in full.

The case examiners have considered all of the documents made available within the evidence bundle. Key evidence is referred to throughout their decision and the case examiners' full reasoning is set out below.

The complaint and our regulatory concerns

The initial complaint

The complainant	The complaint was raised by the social worker's former employer, Solihull Metropolitan Borough Council, hereafter referred to as 'the council.'
Date the complaint was received	5 July 2022
Complaint summary	The concern relates to allegations that the social worker accessed information about a person known to them, from the council's secure case management system when they had no professional reason to access this information.

Regulatory concerns

Regulatory concerns are clearly identified issues that are a concern to the regulator. The regulatory concerns for this case are as follows:

1. On or around 9 May 2022, and whilst registered a social worker, you failed to handle confidential information in line with the law in that you accessed service users case records without a legitimate or professional reason to do so.

The matters outlined in the regulatory concern amount to the statutory ground of misconduct.

Your fitness to practise is impaired by reason of misconduct.

Preliminary issues

Investigation		
Are the case examiners satisfied that the social worker has been notified of the grounds for investigation?	Yes	☒
	No	☐
Are the case examiners satisfied that the social worker has had reasonable opportunity to make written representations to the investigators?	Yes	☒
	No	☐
Are the case examiners satisfied that they have all relevant evidence available to them, or that adequate attempts have been made to obtain evidence that is not available?	Yes	☒
	No	☐
Are the case examiners satisfied that it was not proportionate or necessary to offer the complainant the opportunity to provide final written representations; or that they were provided a reasonable opportunity to do so where required.	Yes	☒
	No	☐

Requests for further information or submissions, or any other preliminary issues that have arisen



The realistic prospect test

Fitness to practise history

The case examiners have been informed that there is no previous fitness to practise history.

Decision summary

Is there a realistic prospect of the adjudicators finding the social worker's fitness to practise is impaired?

Yes ☒

No ☐

The case examiners have determined that there is a realistic prospect of regulatory concern 1 being found proven, that this concern could amount to the statutory ground of misconduct, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

1. On or around 9 May 2022, and whilst registered a social worker, you failed to handle confidential information in line with the law in that you accessed service users case records without a legitimate or professional reason to do so

The case examiners have seen a 'data breach report and risk assessment' completed by the council. This report explains that concerns came to light when a member of the public known to the social worker, told their allocated social worker that they had reason to believe the social worker subject to these concerns had accessed their confidential information. The member of the public said that information they had shared exclusively with their allocated social worker had been repeated back to them by others in the community; they believed that this information had been accessed and shared by the social worker subject to these concerns. The council state that the case file that was accessed contained '*sensitive information about the family, in particular criminal activity and safeguarding matters relating to the children in the home.*'

The council looked into the allegations by auditing access to the relevant files. The social worker subject to these concerns was found to have accessed records of the person known to them, on 9 May 2022. The case examiners have seen the social worker's data access logs which confirm that they accessed data the records in question on 9 May 2022.

A discussion then took place (13 June 2022) between the social worker subject to these concerns, their line manager and the assistant team manager. During this discussion, the social worker accepted that they had accessed an '*old friend's*' sons' file '*to be nosey*.' The social worker denied that they had shared information contained within the council's records with anyone else in the wider community. The social worker was asked how their old friend might have known that their son's file had been accessed, and their reply was to say that they did not know, but thought it was malicious. The evidence suggests the social worker had no legitimate or professional reason to access the case records in question. It is a basic requirement, in line with GDPR and with Social Work England's professional standards, that social workers will handle confidential information in line with the law. As the evidence suggests the social worker did not do this, this is likely to be considered a failure.

In submissions (Dec 2022) the social worker accepts that they accessed records, they say they did so '*from a place of concern and curiosity*,' they accept that they knew the mother of the child's file they accessed. The social worker continues to deny that they shared the information they accessed with anyone.

In submissions and interviews the individual who raised the concern, is described by the social worker as an '*ex-friend*' and then later, as a neighbour to friends. The social worker initially said they accessed the record to '*be nosey*' but then in later submissions says that the records they accessed were not that of an '*ex-friend*' as they were '*never friends*' but that they accessed the record as they believed the family were growing cannabis and having reported them for this, they then accessed the record to see if their report had been responded to.

The case examiners consider there is a realistic prospect if this concern being found proven by adjudicators.

Grounds

The case examiners are aware that there is no legal definition of misconduct, but it generally would consist of serious acts or omissions, which suggest a significant departure from what would be expected of the social worker in the circumstances. This can include conduct that takes place in the exercise of professional practice, and also conduct which occurs outside the exercise of professional practice but calls into question the suitability of the person to work as a social worker.

In this instance, the case examiners have found a realistic prospect that adjudicators would conclude the social worker accessed sensitive information which they had no professional reason to access.

The case examiners have considered whether this may represent a departure from Social Work England professional standards, and highlight those they consider may be relevant:

I will:

2.2: Respect and maintain people's dignity and privacy.

2.6: Treat information about people with sensitivity and handle confidential information in line with the law.

I will not:

5.2: Behave in a way that would bring into question my suitability to work as a social worker while at work or outside of work.

The case examiners consider it is an expectation that social workers should maintain the confidentiality of service users, this is a key element of social work and is the personal responsibility of the individual social worker.

The case examiners note that a single negligent act, unless it is particularly grave, is unlikely to meet the threshold for misconduct. The evidence suggests the social worker breached confidentiality on one occasion, so this may be considered an isolated matter.

The case examiners consider that breaching confidentiality creates a risk of harm for service users, in that their privacy and dignity could be affected, which could cause emotional harm.

Maintaining service user confidentiality is a vitally important part of social work and a requisite by law. Failing to adhere to this has real potential to harm public confidence in the profession and would bring into question the social worker's suitability to carry out their role. It is likely that other social work professionals would view the social worker's alleged conduct as improper.

The case examiners consider the matter is serious and, if proven would represent a significant departure from the Social Work England professional standards. Further, that the matter, though an isolated incident, would be considered particularly grave.

Given the above the case examiners are satisfied that there is a realistic prospect that adjudicators would find the grounds of misconduct are proved.

Impairment

Assessment of impairment consists of two elements:

1. The personal element, established via an assessment of the risk of repetition.
2. The public element, established through consideration of whether a finding of impairment might be required to maintain public confidence in the social work profession, or in the maintenance of proper standards for social workers.

Personal element

With regards to the concerns before the regulator, the case examiners have given thought to their guidance, and they note that they should give consideration to whether the matters before the regulator are easily remediable, and whether the social worker has demonstrated insight and/or conducted remediation to the effect that the risk of repetition is highly unlikely.

Whether the conduct can be easily remedied

The case examiners consider that the conduct as outlined at regulatory concern one, is remediable. The social worker has completed data protection training since the incident and held discussions with their manager focusing on the importance of adhering to policies and procedures.

Insight and remediation

The social worker says in submissions (Dec 2022) that they have reflected on their actions and understand the severity of these, they say that their actions were not malicious. The social worker says that they understand the impact their actions may have had on the family. The social worker appears to accept that social workers engage with families when they are vulnerable, and individuals should be able to trust that the local authority can keep their information confidential. The social worker says that they understand that acting as they did was wrong, and they should have approached their manager regarding their concerns and asked them to follow these up with the family concerned. They go on to say that it was unprofessional to take matters into their own hands and check whether the referral to Crime Stoppers had been responded to.

The social worker says that they regret their actions and take full responsibility for what went wrong in this instance. The social worker speaks of being more cautious and mindful when managing sensitive data and if they have any concerns they would discuss with their manager.

The social worker has a positive reference from their current manager, it is a approaching two years since the matter arose and there is no evidence of any recurrence of the alleged conduct.

The social worker does demonstrate some insight into the issues of concern, they have a positive reference from a current manager, and they have completed some training directly relevant to the regulatory concerns under consideration, for which the case examiners have seen certification. There is some evidence to suggest that the social worker has learned from these events, however, their reflections at this stage lean towards focussing on the impact on themselves rather than the potential impact on the service user or the profession more broadly. Nonetheless the case examiners consider that there is sufficient information, as outlined above, to conclude that the risk of repetition is low.

Public element

The case examiners have next considered whether the social worker's actions have the potential to undermine public confidence in the social work profession, or the maintenance of proper standards for social workers.

The case examiners have considered whether anyone was harmed as a result of the social worker's actions. Whilst there is no indication that service users were directly harmed as a result of the social worker's actions, there is a potential risk of harm to service users should their personal information become known in the wider community. We are told that the file that may have been accessed by the social worker contained sensitive information about criminal behaviour and safeguarding issues which could increase vulnerability and risk of exploitation in the wrong hands.

The case examiners have addressed the potential departure from the professional standards. Service users must be able to trust that social worker's will only access information when they have a professional reason to do so and that they will treat personal data with respect and in line with data protection policies and procedures.

The case examiners have determined that the social worker's actions could have the potential to undermine trust and confidence in the profession as respecting and maintaining people's dignity and privacy and handling confidential information in line with the law are key to offering a professional social work service.

The case examiners have determined that there is a realistic prospect that adjudicators would consider the social worker impaired by reason of misconduct.

The public interest

Decision summary

Is there a public interest in referring the case to a hearing?	Yes	☐
	No	☒

Referral criteria

Is there a conflict in the evidence that must be resolved at a hearing?	Yes	☐
	No	☒
Does the social worker dispute any or all of the key facts of the case?	Yes	☐
	No	☒
Could a removal order be required?	Yes	☐
	No	☒
Would not holding a public hearing carry a real risk of damaging public confidence in Social Work England's regulation of the profession?	Yes	☐
	No	☒
Is a hearing necessary to maintain public confidence in the profession, and to uphold the professional standards of social workers?	Yes	☐
	No	☒

Additional reasoning

The case examiners must now turn their minds to whether it is in the public interest for this matter to be referred to a final hearing to be considered by adjudicators. Whilst the case examiners have determined there is a realistic prospect that adjudicators would find the public interest is engaged in this case, they are of the view that the public interest can be satisfied by their decision, and the reasons for that decision, being published on Social Work England's public register which can be found on its website.

The case examiners have noted that the social worker has indicated to the regulator that they do not consider their fitness to practise to be currently impaired. The case examiner guidance (December 2022) paragraph 184 suggests that the social worker must accept current impairment for this matter to conclude by way of an accepted disposal outcome.

The case examiners consider it is appropriate to depart from that guidance in this instance. In reaching this conclusion, they noted the following:

- There is no conflict in evidence in this case and the social worker accepts all of the key facts.
- The case examiners are of the view that the social worker's insight is developing, and they have completed some remediation through engaging in further training. Therefore, any finding of impairment would be primarily made in the public interest, to safeguard public confidence and to protect the public.
- The case examiners recognise that not all professionals will have an innate understanding of how and when impairment and the public interest may be engaged, or how exactly this might impact upon findings concerning current fitness to practise.
- The accepted disposal process will provide to the social worker an opportunity to review the case examiners' reasoning on impairment and reflect on whether they are able to accept a finding of impairment. It is open to the social worker to reject any accepted disposal proposal and request a hearing if they wish to explore the question of impairment in more detail.
- The case examiners are also of the view that the public would be satisfied to see the regulator take prompt, firm action in this case, with the publication of an accepted disposal decision providing a steer to the public and the profession on the importance of adhering to the professional standards expected of social workers in England.

The social worker is therefore invited to review this decision and the case examiner's reasoning on impairment, before deciding if they wish to conclude the case by way of accepted disposal.

Accepted disposal

Case outcome		
Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☒
	Conditions of practice order	☐
	Suspension order	☐
Proposed duration	3 years	

Reasoning

In considering the appropriate outcome in this case, the case examiners had regard to Social Work England's sanctions guidance and reminded themselves that the purpose of a sanction is not to punish the social worker but to protect the public and the wider public interest. Furthermore, the guidance requires that decision makers select the least severe sanction necessary to protect the public and the wider public interest.

In determining the most appropriate and proportionate outcome in this case, the case examiners considered the available sanctions in ascending order of seriousness. The case examiners considered taking no further action but considered that this would not be appropriate in this instance as it would not satisfy the wider public interest.

The case examiners next considered whether offering advice would be sufficient. An advice order will normally set out the steps a social worker should take to address the behaviour that led to the regulatory proceedings. The case examiners believe that issuing advice is not sufficient to mark the seriousness with which they view the social worker's conduct.

The case examiners then considered a warning order. A warning order implies a clearer expression of disapproval of the social worker's conduct than an advice order, and the case examiners concluded that a warning order is the appropriate and proportionate outcome in this case; and represents the minimum sanction necessary to uphold the public's confidence. When considering a warning order, case examiners can direct that a warning order will stay on the social worker's register entry for periods of one, three or five years. According to case examiner guidance, 1 year might be appropriate for an isolated incident of relatively low seriousness where the primary objective is to send a message about the professional standards expected of social workers; 3 years might be

appropriate for more serious concerns to maintain public confidence and to send a message about the professional standards expected of social workers; and 5 years might be appropriate for serious cases that have fallen only marginally short of requiring restriction of registration, to maintain confidence in the profession and where it is necessary to send a clear signal about the standards expected.

The case examiners consider that any failure to handle sensitive, confidential data in line with the law, if proven, would amount to a serious departure from the standards and has the potential to undermine trust and confidence in the profession. The case examiners have therefore determined that a three-year warning order represents the minimum sanction necessary to maintain confidence in the profession and send a message to the social worker about the standards that are expected of registered professionals. A three-year period would allow the social worker additional time to develop further insight and demonstrate that they have addressed any risk of repetition that may be present, despite the overall risk being low.

The case examiners have tested their proposed sanction by considering whether conditions of practice, or suspension would be more suitable. Given that the case examiners have concluded the risk of repetition is low, conditions of practice are not necessary or proportionate. The case examiners consider that suspension would be a disproportionate outcome that would be punitive.

The case examiners have decided to propose to the social worker a warning order of three years duration. They will now notify the social worker of their intention and seek the social worker's agreement to dispose of the matter accordingly. The social worker will be offered 28 days to respond. If the social worker does not agree, or if the case examiners revise their decision regarding the public interest in this case, the matter will proceed to a final hearing.

On 31 January 2024 the social worker responded to the case examiners proposal to deal with this matter by way of an accepted disposal warning order of three years duration. They confirmed via email that they accepted the offer made to them, understood the terms of the proposed disposal and accepted them in full. The case examiners have reviewed their decision and are satisfied that an accepted disposal warning order of three years duration, remains a fair and proportionate disposal, and is the minimum necessary to protect the public and the wider public interest.

Content of the warning

The case examiners remind the social worker of the following professional standards:

1. It is imperative that social workers treat service users' data with respect and that access to this data maintains individuals' privacy and dignity (2.2).
2. It is also an expectation that social workers will treat information about people with sensitivity and handle confidential information in line with the law (2.6).
3. Finally, it is essential that social workers do not behave in a way that brings into question their suitability to work as a social worker (5.2).

The case examiners formally warn the social worker that any subsequent departure from any of the professional standards may be likely to result in a more severe sanction.

The case examiners would also suggest, but cannot mandate, that the social worker complete some further reflection on the issues of concern and how they will ensure there is no repetition. The social worker may wish to do this as part of their continuing professional development.

Response from the social worker

On 31 January 2024 the social worker signed an accepted disposal response form to say that they had read the case examiners decision and the accepted disposal guide. The social worker confirmed that they understood and accepted the terms of the proposal to deal with this matter by way of accepted disposal warning order of 3 years duration.

Case examiners' response and final decision

The case examiners have reviewed their decision, paying particular regard to the overarching objective of Social Work England: protection of the public, the maintenance of public confidence in the social work profession and upholding professional standards. The case examiners are satisfied that an accepted disposal (warning -3 years) is a fair and proportionate way to address the concerns and is the minimum necessary to protect the public and satisfy the wider public interest.