

Case Examiner Decision
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FTPS-21642

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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

If the case examiners find a realistic prospect of impairment, they consider whether there is a public interest in referring the case to a hearing. If there is no public interest in a hearing, the case examiners can propose an outcome to the social worker. We call this accepted disposal and a case can only be resolved in this way if the social worker agrees with the case examiners' proposal.

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	16 December 2024
	Accepted disposal proposed - warning order (1 year)
Final outcome	9 January 2025
	Accepted disposal - warning order (1 year)

Executive summary

The case examiners have reached the following conclusions:

1. There is a realistic prospect of regulatory concerns 1 and ■ being found proven by the adjudicators.
2. There is a realistic prospect of regulatory concern 1 being found to amount to the statutory ground of misconduct. ■
■
3. For regulatory concern 1, there is a realistic prospect of adjudicators determining 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 that the case can be concluded by way of accepted disposal.

As such, the case examiners requested that the social worker was notified of their intention to resolve the case with a warning order of 1 year. The social worker accepted the case examiners' proposal 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, Kent County Council.
Date the complaint was received	11 January 2023
Complaint summary	The social worker's previous employer informed the regulator that they had suspended the social worker pending investigation into allegations that they had accessed records of a 21-year-old case leaver, for whom they were no longer the allocated social worker. 

Regulatory concerns and concerns recommended for closure

1: On or around 25th October 2022, you accessed the record of Person A, for whom you were no longer the allocated social worker for.

Grounds of impairment:

The matters outlined in regulatory concern 1 amounts to the statutory ground of misconduct.

Your fitness to practise is impaired as outlined at regulatory concern 1 by reason of misconduct.

Concerns being recommended for closure:

Concerns being recommended for closure are concerns raised by the complainant, for which no evidence has been found during the investigative process or where the

evidence obtained negates the concern(s). Decisions regarding concerns being recommended for closure remains the remit of the case examiners.



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	☐

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 and ■ being found proven, that concern 1 could amount to the statutory ground of misconduct, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

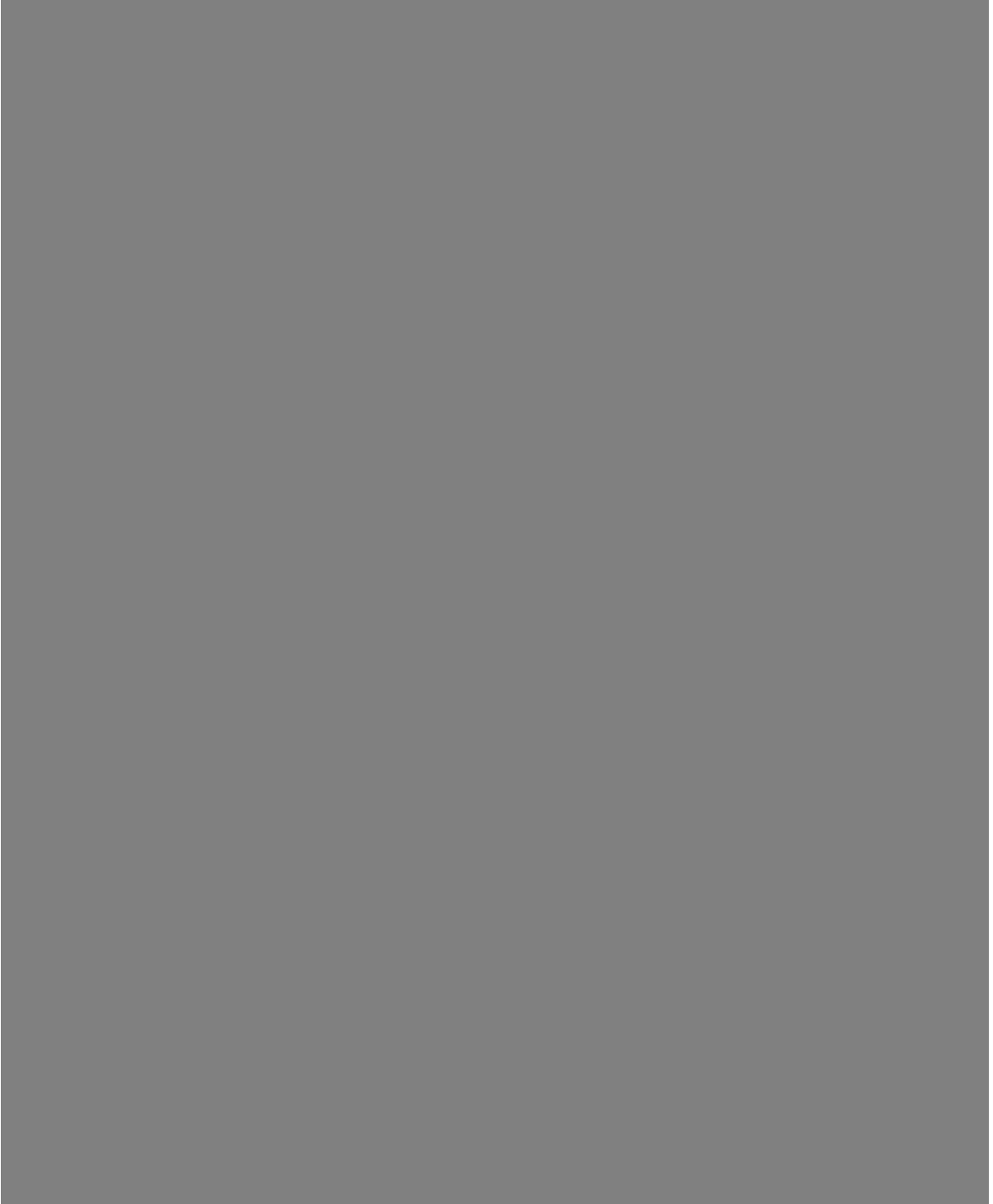
- 1. On or around 25 October 2022, you accessed the record of Person A, for whom you were no longer the allocated social worker for.**

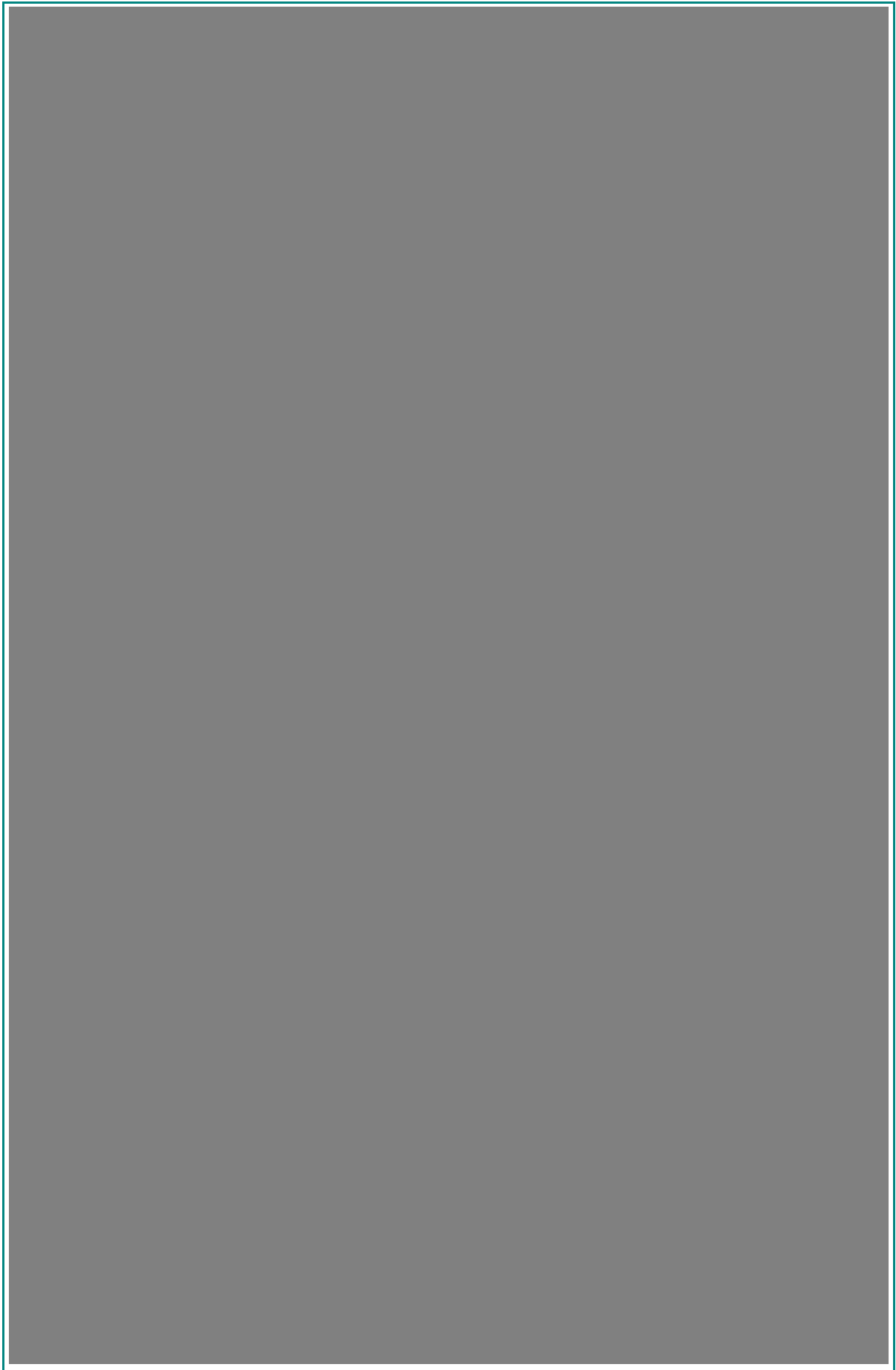
The case examiners have seen the employer's investigation report into the alleged conduct. Within this they have seen that the social worker was allocated to work with Person A until 30 January 2020. Within the same report, the case examiners have seen an audit document that shows the social worker accessed records for Person A on 25 October 2022, for a duration of nine minutes and viewed a number of different elements including the home page within this time.

The case examiners have seen within the employer's investigation, the social worker has admitted that they accessed the record and that they were aware that they should not have done this.

The social worker within their submissions has accepted that they accessed the records with no professional reason to do so.

The case examiners are satisfied there is a realistic prospect of adjudicators finding this concern proven.







Grounds

Misconduct

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.

To help them decide if the evidence suggests a significant departure from what would be expected in the circumstances, the case examiners have considered the following standards, which were applicable at the time of the concerns, namely Social Work England professional standards (2019):

As a social worker, I will:



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

As a social worker, I will not:

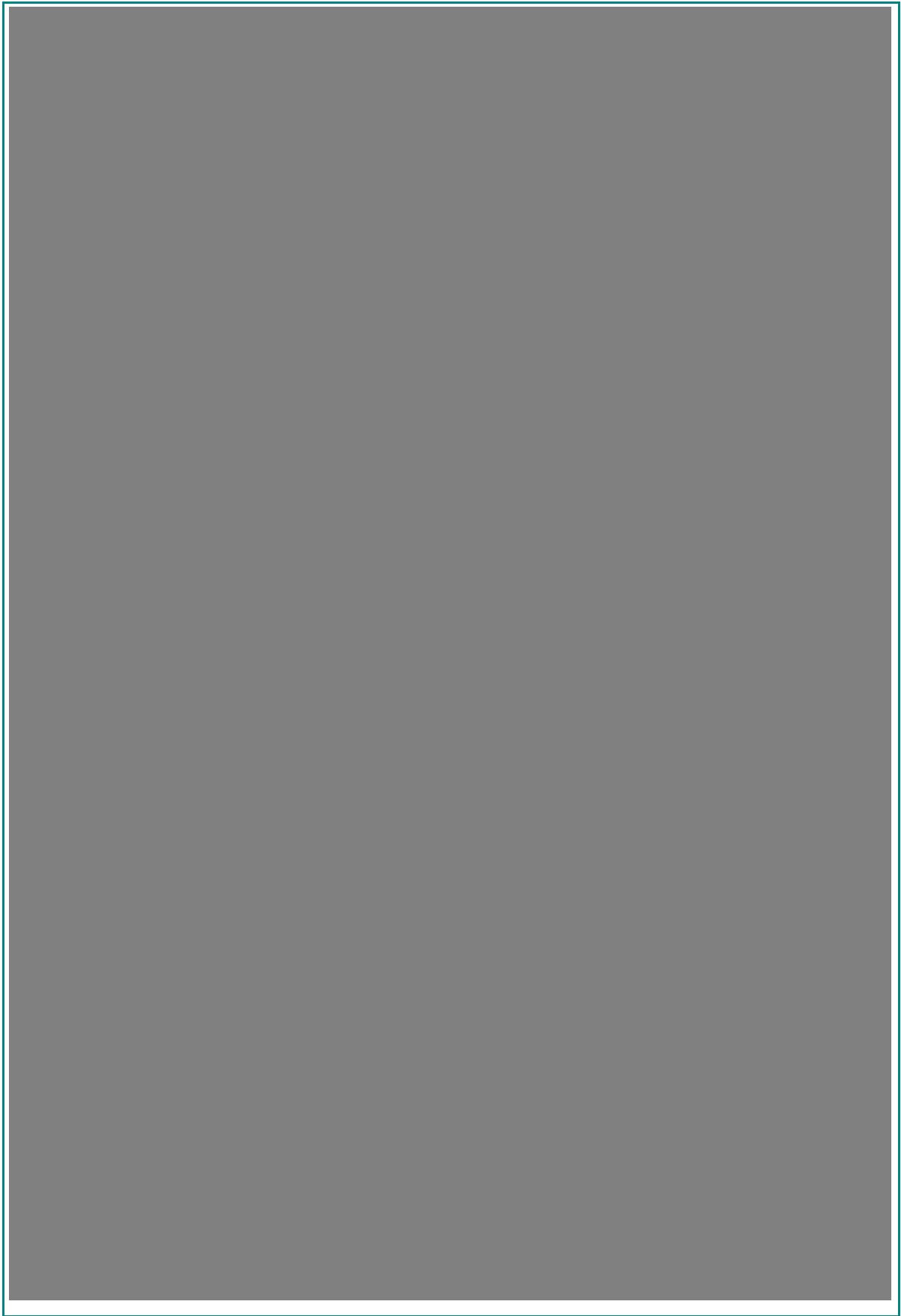
5.2 Behave in a way that would bring into question my suitability to work as a social worker while at work, or outside of work.

In respect of concern 1, the case examiners are aware that falling short of the standards may not always amount to misconduct. However, adjudicators in this instance may determine that the social worker has significantly departed from the standards expected. Social workers in their roles, have access to a large amount of confidential and sensitive information about people. Therefore, members of the public need to be confident that when social workers access records, they do so in an appropriate way and for legitimate purposes. The case examiners have set out that the social worker in this instance was no longer involved professionally with Person A and therefore there was no legitimate reason for them to access the records. The social worker in their submissions has stated that they understand the policy and guidance around this and that they should not have accessed records for people they were not working with. The case examiners consider that members of the public and adjudicators would view this alleged conduct as serious.

Accessing records without a legitimate reason to do so would not align with standard 2.6 and 5.2.

If the matters were to be found proven, the case examiners conclude the alleged conduct is serious and is likely to suggest a significant departure from the professional standards detailed above.

The case examiners are satisfied there is a realistic prospect of adjudicators finding concern 1 amounts to the statutory ground of misconduct.





Impairment

Personal element

In considering the personal element of impairment, the case examiners have considered the test for personal impairment as set out in the case examiner guidance (2022), namely whether the conduct is remediable; whether the social worker has undergone remediation and demonstrated insight; and whether there is a likelihood the matters alleged will be repeated. The case examiners should also look at whether the social worker has admitted the allegations, any relevant previous history and any testimonials that have been provided.

The case examiners note there is no previous history in respect of this social worker.

The social worker has accepted the concern and has shown insight into their accessing of Person A's case records.

They have expressed remorse and explained the context which led to this. The social worker stated that, *'I have fully and openly admitted that my actions in accessing such records was an error of judgement for which I am truly sorry and for which I have apologised'*.

The social worker has considered how they would address things differently in the future. They state, *'upon reflection, I should have sought guidance from my manager, and I accept that I was in error in not seeking guidance before accessing the records'*.

The former employer confirmed that there were no other concerns of this nature during the social worker's employment.

In terms of remediation, the social worker has completed a reflective piece around data protection and the importance of this. They state, *'trust is particularly important in fields like social worker where vulnerable service users and their families often disclose sensitive information during assessment....by reassuring clients that their*

personal information will be handled responsibly....practitioners enhance service user engagement...’.

Taking all of the above into consideration, the case examiners are satisfied that there is a low risk of repetition.

Public element of impairment

The case examiners next considered whether the social worker’s alleged actions have the potential to undermine public confidence in social workers and whether this is a case where adjudicators may determine that public interest requires a finding of impairment. Public interest includes the need to uphold proper standards of conduct and behaviour and the need to maintain the public’s trust and confidence in the profession.

A social worker who is found to have accessed records without a legitimate reason to do so has the potential to undermine public confidence. As stated in the social worker’s reflection, trust is vital in social work and by accessing records inappropriately, there is the potential to undermine this and impact on people’s engagement. Such conduct is certainly a significant departure from professional standards.

The case examiners are of the view that in these circumstances, members of the public would expect a finding of impairment if the concerns were found proven.

Accordingly, the case examiners are satisfied that there is a realistic prospect of adjudicators making a finding of current impairment.

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	☒
Is a hearing necessary to maintain public confidence in the profession, and/or to uphold the professional standards of social workers?	Yes	☐
	No	☒

Additional reasoning

The case examiners have considered whether a referral to a hearing may be necessary in the public interest. It is unclear whether the social worker accepts that their conduct is impaired.

Where a social worker does not accept impairment, case examiner guidance suggests that a referral to a hearing may be necessary in the public interest.

However, the case examiners note that the guidance states the social worker must accept the matter of impairment at the point of *concluding* the case and are of the view that this does not prevent them offering accepted disposal prior to this. The case examiners consider that it is reasonable to offer accepted disposal in this case because:

- There is no conflict in evidence in this case and the social worker has accepted all the key facts.

- The case examiners have already concluded that there is a low risk of repetition as the social worker has demonstrated insight into their alleged conduct.
- The case examiners recognise that not all professionals will have an innate understanding of how and when 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 the social worker an opportunity to review the case examiner's reasoning on impairment and reflect on whether they do 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.

Accepted disposal

Case outcome

Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☒
	Conditions of practice order	☐
	Suspension order	☐
	Removal order	☐
Proposed duration	1 year	

Reasoning

In considering the appropriate outcome in this case, the case examiners had regard to Social Work England's sanctions guidance (December 2022) and reminded themselves that the purpose of sanction is not to punish the social worker but 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 options in ascending order of seriousness.

The case examiners determined that taking no further action was not appropriate in a case where a social worker has (if found proven) accessed confidential information inappropriately. Taking no further action is not sufficient to mark the seriousness with which the case examiners view the social worker's alleged conduct and fails to safeguard the wider public interest.

The case examiners next considered whether offering advice would be sufficient in this case. 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 note that the social worker has completed a reflective piece which demonstrates their understanding of the importance of confidentiality and only accessing data for which you have a legitimate purpose. However, the case examiners consider that advice would not be sufficient to mark the seriousness with which they view the social worker's alleged conduct.

The case examiners next considered whether a warning order might be suitable, given that it would show clear disapproval of the social worker's conduct. The case examiners concluded there is a low risk of repetition in this case, and their guidance suggests that warnings may be appropriate in such circumstances. The case examiners determined that a warning was the most appropriate and proportionate response in this case and was the minimum necessary to protect the public and the wider public interest. A warning will serve as a signal that any repetition of the behaviour that led to the concerns is highly likely to result in a more severe sanction.

In considering the duration of the warning, the case examiners have had regard to the sanctions' guidance which states, *'1 year may be appropriate for an isolated incident of relatively low seriousness. In these cases, the primary objective of the warning is to highlight the professional standards expected of social workers. 3 years may be appropriate for more serious concerns. This helps to maintain public confidence and highlight the professional standards. The period also allows more time for the social worker to show that they have addressed any risk of repetition.'*

The case examiners are of the view that the alleged conduct was an isolated incident and whilst serious, the case examiners do not consider that this is an instance where the social worker needs more time to develop further insight as they have concluded that the risk of repetition is low. The case examiners therefore consider that a period of one year is appropriate in these circumstances and is the minimum necessary to maintain public confidence and to send a message to the public, the profession and the social worker about the standards expected from social workers. The case examiners considered that a three or five-year duration would be disproportionate and hence would be punitive.

The case examiners did go on to consider whether the next sanctions, conditions of practice and suspension, were more appropriate in this case. As the case examiners consider the risk of repetition is low, a conditions of practice order would not be necessary in this case and are more commonly suited to cases relating to health, competence or capability. The case examiners considered that suspension from the register would also be a disproportionate and punitive outcome.

To conclude, the case examiners have decided to propose to the social worker a warning order of one-year 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 **21 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.

Content of the warning

The case examiners consider that to close this matter without action would fail to take into account the public interest requirements of the fitness to practise process, which include the need to declare and uphold proper standards of conduct, and the need to maintain public confidence in the social work profession. Accessing records without a legitimate reason risks undermining trust in both the social worker and the wider profession.

The case examiners therefore formally warn the social worker that they must ensure they comply with Social Work England Professional Standards and in particular the following:

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,

The case examiners warn the social worker that the conduct alleged in this case should not be repeated. Any further matters of similar conduct brought to the attention of the case examiners will be viewed dimly and will likely result in a more serious outcome.

Response from the social worker

The social worker responded on 6 January 2025 and confirmed that they had read and understood the terms of the proposed disposal. They confirmed that, *'I have read the case examiners' decision and the accepted disposal guide. I admit the key facts 22 set out in the case examiner decision, and that my fitness to practise is impaired. I understand the terms of the proposed disposal of my fitness to practise case and accept them in full'*.

Case examiners' response and final decision

The case examiners are satisfied that the social worker has read and accepted the proposed disposal of a one year warning order. The case examiners have

again considered the public interest in this matter and, as they have not been presented with any new evidence that might change their previous assessment, they are satisfied that it remains to be the case that the public interest in this case can be fulfilled through the accepted disposal process. The case examiners therefore direct that Social Work England implement a warning order of one year duration.