

Case Examiner Decision

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FTPS-23353

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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	2 September 2024
	Accepted disposal proposed - conditions of practice order (3 years)
Preliminary outcome	1 October 2024
	Accepted disposal proposed (with agreed amendments) - conditions of practice order (3 years)
Final outcome	7 October 2024
	Accepted disposal - conditions of practice order (3 years)

Executive summary

The case examiners have reached the following conclusions:

1. There is a realistic prospect of regulatory concern 1 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 lack of competence or capability.
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 did not consider it to be in the public interest for the matter to be referred to a final hearing and that the case could be concluded by way of accepted disposal.

As such, the case examiners requested that the social worker be notified of their intention to resolve the case with a conditions of practice order of 3 years duration. The social worker initially requested amendments, which were agreed by the case

examiners. The social worker subsequently accepted the case examiners' amended proposal, and the case has been concluded with a conditions of practice order.

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.

Anonymity and redaction

Elements of this decision have been marked for redaction in line with our Fitness to Practise Publications Policy. Text in [REDACTED] will be redacted from the published copy of the decision.

In accordance with Social Work England's fitness to practise proceedings and registration appeals publications policy, the case examiners have anonymised the names of individuals to maintain privacy. A schedule of anonymity is provided below for the social worker and complainant, and will be redacted if this decision is published.

Service User A	[REDACTED]	
Service User B		
Service User C		
Service User D		
Service User E		

The complaint and our regulatory concerns

The initial complaint	
The complainant	The complaint was raised by way of a self-referral by the social worker.
Date the complaint was received	26 February 2024
Complaint summary	The social worker reported that they have been a qualified and registered social worker since 2001, but did not practise as a social worker until January 2022. The social worker was employed as a social worker by Essex County Council for two years, working within the Adult Social Care, Learning Disability and Autism Team. In June 2023, the social worker was placed on an informal performance plan, which was amended to a formal performance plan in September 2023. The plans covered a number of areas of practice, but focused on the quality of mental capacity assessments, the use of relevant information to make evidence based decisions, and effective communication with service users and their families. In February 2024, the social worker was offered redeployment and, when this offer was declined, the social worker was dismissed as a result of continued poor performance.

Regulatory concerns

Whilst registered as a social worker you:

1. Did not demonstrate the required skills and/or knowledge on key aspects of social work practice in or around June 2023 to December 2023 in that:
 - 1.1. Your Mental capacity assessment for service users A, B, C, D and E did not meet the required standard.
 - 1.2. You did not use relevant information from service users and/or their families to make evidence based decisions.
 - 1.3. You did not communicate effectively with one or more service users and/or their families to gather evidence that was required.

The matters outlined at regulatory concern 1 amount to the statutory grounds of misconduct and/or lack of competence or capability.

By reason of your misconduct and/or lack of competence or capability your fitness to practise is impaired.

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 being found proven, that it amounts to the statutory ground of lack of competence or capability, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

Whilst registered as a social worker you:

- 1. Did not demonstrate the required skills and/or knowledge on key aspects of social work practice in or around June 2023 to December 2023 in that:**
 - 1.1. Your Mental capacity assessment for service users A, B, C, D and E did not meet the required standard.**
 - 1.2. You did not use relevant information from service users and/or their families to make evidence based decisions.**
 - 1.3. You did not communicate effectively with one or more service users and/or their families to gather evidence that was required.**

The case examiners have considered regulatory concern 1 and its sub particulars collectively, as there is substantial crossover in the evidence relevant to each constituent part.

The case examiners have had sight of informal and formal performance plans, implemented in June and September 2023 respectively. The case examiners have also reviewed records of professional and personal supervision, along with records of meetings held with the social worker. A sample of the social worker's mental capacity assessments has also been provided by the local authority, though it was noted that these were final versions produced with "intensive support".

Having reviewed the documentation in full, the case examiners are satisfied that there is evidence to suggest the social worker did not demonstrate the necessary skills and/or knowledge in respect of the standard needed for mental capacity assessments; the use of relevant information to make evidence based decisions; and effective communication to gather required evidence. In reaching this conclusion, the case examiners noted the following in particular:

- A summary of feedback provided to the social worker in respect of the five cited mental capacity assessments suggests that these had not been produced to the required standard. Feedback highlighted a limited amount of detail on some key issues, a lack of clear reasoning, and a lack of evidenced analysis and decision making.
- Wider feedback on other mental capacity assessments, which were observed by a deputy team manager, highlighted concerns about the social worker's ability to have meaningful conversations with service users, and around the asking of salient questions relevant to the decisions that needed to be made.
- Informal and formal performance plans highlighted concerns about the social worker's ability to demonstrate an appropriate level of performance in respect of each of the three areas highlighted in the regulatory concern.
- Throughout performance planning documentation, there is evidence of the social worker having worked hard to improve, with some improvements highlighted and praised. However, a local hearing outcome letter, dated February 2024, explains that the social worker had not been able to meet the standards expected of them to carry out their role.
- Records of meetings with the social worker, along with records of supervision, demonstrate that the social worker was considered to have genuinely put in

significant effort to improve the standard of their practice, but concerns had persisted throughout the second half of 2023 and into early 2024.

In light of the above, there is a realistic prospect of regulatory concern 1 being found proven.

Grounds

This case has been presented on the grounds of misconduct and/or a lack of competence or capability. The case examiners' guidance encourages them to (where possible) identify the appropriate statutory ground to proceed on, as this provides clarity as to the basis of Social Work England's case against the social worker. The case examiners are reminded, however, that in some cases they may not always be in the best position to identify one ground over another.

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.

Competence

The case examiners' guidance explains that lack of competence or capability suggests a standard of professional performance which is unacceptably low. It means a social worker has demonstrated that they may lack the knowledge and skills to do their work in a safe and effective manner. This must usually be demonstrated over a fair sample of a social worker's work. There is no set definition of 'fair sample', but it suggests a sample sufficient to show the social worker's usual standard of work over a period of time.

The guidance also explains that single episodes or incidents do not normally suggest a social worker lacks the knowledge or skills to be competent. However, in exceptional circumstances, a single episode or incident could happen because of a lack of knowledge or competence in a fundamental principle of social work. This may raise concerns for public safety.

Conclusions

The case examiners have carefully considered what adjudicators view might be in respect of the cited statutory grounds. Having done so, the case examiners are likely

to consider the matters before the regulator to be indicative of lack of competence or capability, as opposed to misconduct.

In reaching this conclusion, the case examiners were mindful that the social worker received their social work qualification 20 years before they commenced their first social work role. Although the social worker had maintained their registration, and engaged with continuous professional development, the case examiners consider it natural that the social worker's level of skill, knowledge and expertise would have deteriorated over time without access to social work practice.

From a review of performance planning documentation, supervisions, and records of meetings with the social worker, the case examiners are satisfied that the social worker was committed to improving the standard of their practice. It is evident that the social worker engaged with training and a significant depth of reflection, and made some improvement over time. Unfortunately, the social worker was unable to demonstrate the level of improvement required within an allocated time period, but the case examiners are satisfied that this was not for lack of genuine effort. In the case examiners' view, adjudicators would therefore be unlikely to suggest the social worker had significantly departed from the standards expected of them.

In considering the grounds of lack of competence or capability, the case examiners are satisfied that the available evidence is a fair sample, given it addresses the social worker's work as a whole over a six to seven month period. As set out in this decision, the case examiners are satisfied that the sample demonstrates a lack of necessary skills, knowledge and expertise in fundamental areas of social work.

In light of the above, there is a realistic prospect of adjudicators determining that the statutory grounds of lack of competence or capability are engaged. There is no realistic prospect of adjudicators determining that the statutory grounds of misconduct are engaged.

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 matters can be easily remedied

The case examiners are satisfied that the matters before the regulator can be remedied. The case examiners would hope to see evidence of further training and, importantly, evidence of improvements to knowledge, skill and experience within a social work role.

Insight and remediation

The case examiners have carefully reviewed the social worker's submissions to the regulator, and have taken into consideration the social worker's level of engagement with local performance processes.

Having done so, the case examiners consider the social worker to have demonstrated an exceptional level of insight, for which they are commended. It is evident that the social worker has consistently reflected on the standard of their practice, and has highlighted and agreed with areas of poor performance.

The available evidence suggests that it was recognised by the social worker's former employer that the social worker had genuinely worked hard to improve their practice, and had diligently engaged with training, mentoring and support. The case examiners are satisfied, with reference to the social worker's submissions, that the social worker would continue to do so into the future in order to ensure they are able to practise safely and effectively.

With regards to remediation, the case examiners are mindful that when the social worker was dismissed from their role with Essex County Council, concerns about the standard of their practice remained. The social worker has not yet undertaken further social work employment, and has outlined to the regulator their intention to consider social work adjacent roles, in order to take the opportunity to observe and learn from social work professionals. The case examiners consider this to be a pragmatic and sensible approach.

However, at this time, because the social worker is not in practice, there is a lack of evidence of the standard of their practice since leaving Essex County Council. Accordingly, the case examiners cannot yet consider the social worker to have remedied the matters before the regulator.

Risk of repetition

As outlined above, the case examiners consider the social worker's level of insight to be commendable, but would require further evidence of the social worker's standard of practice in order to consider the concerns in this case remedied. Accordingly, the case examiners can only conclude that there is a risk of repetition at this time.

Public element

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

The case examiners are mindful of the importance of the public having trust in the skills, knowledge and experience of social workers, who are tasked with making critical decisions that affect people's lives. In the case examiners' view, the public would rightly expect the regulator to ensure it has oversight of social workers who may lack competence or capability, and therefore a failure to find impairment could seriously undermine public confidence in both the social work profession, and the maintenance of proper professional standards for social workers.

In light of the above, there is a realistic prospect of adjudicators determining that the social worker's fitness to practise is impaired.

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 are satisfied that there is no conflict in the evidence in this case and, within their submissions, the social worker has indicated that they accept the key facts and that their fitness to practise is impaired.

The case examiners consider that the public would be assured to see the regulator take prompt action in this case, with the publication of an accepted disposal outcome on the regulator's website, and the implementation of an appropriate outcome ensuring oversight of the social worker's continued development. Accordingly, a failure to refer this case to a hearing is unlikely to undermine public confidence in the profession, or the maintenance of proper professional standards for social workers.

Accepted disposal

Case outcome

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

Reasoning

Having found that a realistic prospect the social worker's fitness to practise is currently impaired, the case examiners then considered what, if any, sanction they should propose in this case. The case examiners have taken into account the sanctions guidance published by Social Work England. They are reminded that a sanction is not intended to be punitive but may have a punitive effect and have borne in mind the principle of proportionality and fairness in determining the appropriate sanction.

The case examiners are also mindful that the purpose of any sanction is to protect the public which includes maintaining public confidence in the profession and Social Work England as its regulator, and upholding proper standards of conduct and behaviour.

The case examiners have taken into account the principle of proportionality by weighing the social worker's interests with the public interest when considering each available sanction in ascending order of severity.

In determining the most appropriate and proportionate outcome in this case, the case examiners have considered the available options in ascending order of seriousness.

No further action, advice and warning

The case examiners consider that the outcomes of no further action, advice, and warning order would be insufficient in this case. In reaching this conclusion, they reminded themselves that the regulator's sanctions guidance is clear that all three outcomes, which offer no restriction to a social worker's practice, are not appropriate where there is a risk of repetition.

Conditions of practice order

With reference to the regulator's sanctions guidance, the case examiners note the following:

Conditions of practice may be appropriate in cases where (all of the following):

- *the social worker has demonstrated insight*
- *the failure or deficiency in practice is capable of being remedied*
- *appropriate, proportionate, and workable conditions can be put in place*
- *decision makers are confident the social worker can and will comply with the conditions*
- *the social worker does not pose a risk of harm to the public by being in restricted practice*

The case examiners are satisfied that all five criteria apply in this case. The social worker has demonstrated insight, and the case examiners consider the matters before the regulator to be capable of remedy through appropriate training, development and oversight. There are appropriate conditions of practice that the case examiners could propose in order to satisfy this goal and the case examiners are confident that the social worker could and would comply with any such conditions.

In order to test their thinking, the case examiners considered whether a suspension order might be necessary, in order to protect the public from harm (i.e. the final criterion). In the case examiners' view, a suspension order would be disproportionate and would simply exacerbate the central issue in this case, which is that the social worker has already had a substantial period of time out of practice. A suspension order would risk further deskilling the social worker.

The case examiners are also satisfied that a conditions of practice order would provide sufficient oversight of the social worker's practice, in order to ensure that the public is protected from harm.

Length of the conditions of practice order

Having determined that a conditions of practice order is the minimum necessary outcome to protect the public, the case examiners have gone on to consider the length of the order.

The regulator's sanctions guidance is clear that case examiners can impose conditions of practice on a social worker's registration for up to 3 years at a time. The guidance asks that case examiners consider all information available and decide on an appropriate and proportionate length of the order. The length of time conditions of practice orders are in place should be long enough for the social worker to complete any necessary remediation.

The case examiners consider that, if the social worker were currently in a social work role, a conditions of practice order of 2 years might be sufficient to allow time for both development of knowledge and skill, and a demonstration of improved practice. However, given the social worker has considered first applying for social work adjacent positions, in order to observe and learn from social work practitioners, the case examiners consider that a 2 year order could place the social worker at a disadvantage.

The case examiners therefore consider that it would be reasonable and proportionate to propose a 3 year order, in order to allow the social worker space and time to build their knowledge base and skill, to obtain social work employment, and to demonstrate an improvement in practice over time.

The case examiners have decided to propose to the social worker a conditions of practice order of 3 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 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 conditions of practice

Conditions 1-15 (inclusive) should be in place for a 3 year period. In accordance with paragraph 15 of Schedule 2 of The Social Workers Regulations 2018, the regulator must review the conditions of practice order before its expiry. The social worker and/or Social Work England can seek early review if new evidence

becomes available to suggest the current order needs to varied, replaced or removed.

1. You must notify Social Work England within 7 days of any professional appointment you accept or are currently undertaking and provide the contact details of your employer, agency or any organisation with which you have a contract or arrangement to provide social work services, whether paid or voluntary.
2. You must allow Social Work England to exchange information with your employer, agency or any organisation with which you have a contract or arrangement to provide social work or educational services, and any reporter or workplace supervisor referred to in these conditions.
3.
 - a. At any time you are providing social work services, which require you to be registered with Social Work England, you must agree to the appointment of a reporter nominated by you and approved by Social Work England. The reporter must be on Social Work England's register.
 - b. You must not start or continue to work until these arrangements have been approved by Social Work England.
4. You must provide reports from your reporter to Social Work England every 6 months and at least 14 days prior to any review and Social Work England will make these reports available to any workplace supervisor referred to in these conditions on request.
5. You must inform Social Work England within 7 days of receiving notice of any formal disciplinary proceedings taken against you from the date these conditions take effect.
6. You must inform Social Work England within 7 days of receiving notice of any investigations or complaints made against you from the date these conditions take effect.
7. You must inform Social Work England if you apply for social work employment / self-employment (paid or voluntary) outside England within 7 days of the date of application.
8. You must inform Social Work England if you are registered or subsequently apply for registration with any other UK regulator, overseas regulator or relevant authority within 7 days of the date of application [for future registration] or 7 days from the date these conditions take effect [for existing registration].

9. a. You must formulate a personal development plan, specifically designed to address the shortfalls in the following areas of your practice:
- Effective communication
 - Assessment skills including professional curiosity and gathering relevant information
 - Providing rationale for evidence based decisions
- b. Your personal development plan must be signed off by your employer.
10. You must provide a copy of your personal development plan to Social Work England within 12 weeks from the date these conditions take effect and an updated copy every 6 months and at least 1 month prior to any review.
11. You must only work as a social worker in premises where at least 2 other social workers are employed at any one time.
12. a. You must make arrangements for an audit to be carried out by your reporter in relation to social work assessments. The audit must be signed by your reporter.
- b. You must provide a copy of this audit to Social Work England every 6 months and at least 14 days prior to any review or, alternatively, confirm that there have been no such cases.
13. a. You must undertake 3 hours of CPD in relation to evidence based decision making, and 3 hours of CPD in relation to effective assessment writing.
- b. You must provide evidence of CPD undertaken to Social Work England within 6 months of these conditions taking effect.
14. You must provide a written copy of your conditions, within 7 days from the date these conditions take effect, to the following parties confirming that your registration is subject to the conditions listed at 1 to 13, above:
- Any organisation or person employing or contracting with you to undertake social work services whether paid or voluntary.
 - Any locum, agency or out-of-hours service you are registered with or apply to be registered with in order to secure employment or contracts to undertake social work services whether paid or voluntary (at the time of application).

- Any prospective employer who would be employing or contracting with you to undertake social work services whether paid or voluntary (at the time of application).
- Any organisation, agency or employer where you are using your social work qualification/knowledge/skills in a non-qualified social work role, whether paid or voluntary.

You must forward written evidence of your compliance with this condition to Social Work England within 14 days from the date these conditions take effect.

15. You must permit Social Work England to disclose the above conditions, 1 to 14, to any person requesting information about your registration status.

First response from the social worker

The case examiners have received copies of email correspondence sent by the social worker, dated 25 and 26 September 2024. Within the social worker's emails, the social worker has indicated that they wish to accept the accepted disposal proposal, but would also wish to request a few amendments.

The amendments requested by the social worker can be summarised as follows:

- For additional information to be included the complaint summary, in order to offer further context
- For condition 11 to be amended on the basis that "on the premises daily" would substantially affect the workability of the condition

A third amendment was initially requested by the social worker, in respect of one of the standard conditions, but this amendment request was subsequently withdrawn.

Case examiners' response

The case examiners have carefully considered the social worker's two requested amendments, and are in agreement with both changes. The case examiners' key reasoning is as follows:

- With regards to the complaint summary, the case examiners consider the social worker's request to be fair and reasonable, and they agree that the inclusion of a small amount of further information would better reflect the evidence that is available to them.
- With regards to the workability of condition 11, the case examiners reflected on their primary reasoning for inclusion of the condition, which was to ensure that the social worker has access to the support of other social workers, and to ensure that the social worker is not the sole social work practitioner in a workplace. The case examiners considered that requirement for two other social workers to be on the premises daily is not strictly necessary in the circumstances. They consider the function of the condition in protecting the public would not be substantially changed if it were simply the case that two other social workers were employed at the premises at any one time.

In light of the above, amendments to the case examiners' proposal have been made, and the social worker will be offered a period of 14 days to provide a response.

Second response from the social worker

The social worker submitted a completed accepted disposal response form on 4 October 2024, which included the following declaration:

I have read the case examiners' decision and the accepted disposal guide. I admit the key facts 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 have 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 instance may be fulfilled through the accepted disposal process.

The case examiners therefore direct that the regulator enact a conditions of practice order, with a duration of 3 years.