

Case Examiner Decision
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FTPS-22709

Contents

The role of the case examiners	3
Decision summary	4
The complaint and our regulatory concerns	6
Preliminary issues.....	7
The realistic prospect test	8
The public interest	14
Accepted disposal	16

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	3 October 2024
	Accepted disposal proposed - warning order (1 year)
Preliminary outcome 2	10 October 2024
	Accepted disposal proposed - warning order (1 year)
Final outcome	22 October 2022
	Accepted disposal -warning order (1 year)

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 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 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 warning order of 1 year. The social worker requested amendments to this proposal. The case examiners considered and agreed to these amendments. The social worker has now accepted the proposal.

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, Polaris Community / Foster Care Associates
Date the complaint was received	11 September 2023
Complaint summary	Concerns were raised that foster carer A allegedly informed the social worker of a disclosure of historical sexual abuse made by Child A and that the social worker did not raise this with their manager, but instead asked foster carer A to take action in respect of the disclosure. The social worker allegedly did not follow up and check that the foster carer had taken the recommended actions.

Regulatory concerns

1: While registered as a social worker and employed by Foster Care Associates, you failed to adequately safeguard a child in that you failed to take appropriate action after being made aware by Foster Carer A on or around 20 June 2023 of a disclosure of sexual abuse made by Child A.

Grounds of impairment: Regulatory Concern 1 amounts to the statutory ground of misconduct.

Your fitness to practise is impaired by reason of your 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: While registered as a social worker and employed by Foster Care Associates, you failed to adequately safeguard a child in that you failed to take appropriate action after being made aware by Foster Carer A on or around 20 June 2023 of a disclosure of sexual abuse made by Child A.

The case examiners have seen a copy of a supervision note dated on 20 June 2023 between the foster carer and the social worker, in which the social worker has recorded that the foster carer A shared information from Child A in respect of sexual abuse that they had experienced. The social worker has recorded, '*foster carer to let Child A's social worker know and gain some advice*'.

The case examiners have also seen the meeting minutes and associated paperwork of the employer's investigation into the alleged conduct, including written statements from the social worker. Within these documents, the social worker stated that they

take full responsibility, and they placed the onus on the foster carer to speak with the local authority and recognise that this was not the correct procedure. Furthermore, they stated that they did not follow up with the foster carer afterwards to check the foster carer had taken the recommended action.

The case examiners have seen an email from the foster carer to the regulator in which they state that the social worker advised them to speak with Child A's social worker and that the social worker did not mention this again.

In considering whether the social worker has failed to take appropriate action, the case examiners have looked at what would have been expected in the circumstances. The case examiners have seen a copy of the company safeguarding children procedure along with a management oversight decision from the social worker's manager. This procedure and the manager's note state that the child would need to be protected and the staff member should liaise with the local authority social worker and all disclosures, whether recent or historic, would need to be immediately reported to a manager. The evidence suggests that the social worker did not take this action and as such failed to take the appropriate action.

The social worker in their comments accepts this concern and has provided some further context, which will be considered at later stages of this determination.

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:

3.4 Recognise the risk indicators of different forms of abuse and neglect and their impact on people, their families and their support networks.

3.9 Make sure that relevant colleagues and agencies are informed about identified risks and the outcomes and implications of assessments and decisions I make.

3.12 Use my assessment skills to respond quickly to dangerous situations and take any necessary protective action.

6.1 Report allegations of harm and challenge and report exploitation and any dangerous, abusive or discriminatory behaviour or practice.

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 threshold for misconduct has been reached. The case examiners note the adjudicators may be concerned that the social worker made a number of assumptions in relation to Child A and the information the child shared with their foster carer. Further, the social worker left the responsibility for managing this with the foster carer. For instance, the social worker stated that they believed this to be historical abuse that the local authority was already aware of.

Safeguarding is a fundamental tenet of the social work profession and when the safety of children is in question, then there can be no assumptions made. The manager and the procedures in place make clear that it is the social worker's responsibility to manage any information that is shared. The case examiners acknowledge that after further exploration was carried out, the information was not new and had been fully dealt with by the local authority and there was no risk of harm to Child A. However, the social worker at the point of receiving this information would not have been fully aware of this and needed to take the necessary action. The public may be concerned that the social worker did not undertake of a fundamental aspect of social work. Accordingly, adjudicators may view the alleged conduct as very serious.

The social worker has put forward some mitigation in that they were struggling with the pressures of work and had a high workload. Nevertheless, the case examiners consider that safeguarding is at the core of social work and adjudicators would consider despite the mitigation, the failure to take appropriate action in these circumstances is very serious.

Where it is alleged that a social worker has not taken the necessary action in respect of a disclosure of abuse from a child, this would not align with Social Work England standards 3.4, 3.9, 3.12 and 6.1.

If the matters were to be found proven, the case examiners conclude the conduct described 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 these matters amount to the statutory ground of misconduct.

Impairment

Personal element of impairment

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 case examiners are of the view that the conduct did not arise from a character flaw such as dishonesty, and as such it is possible to remediate in a variety of ways such as additional training and reflection. The social worker has shown some insight into the alleged conduct and recognised early in their employer's investigation that they had made assumptions and placed the onus on the foster carer, when this was their responsibility. They state, *'I take full responsibility that I made an error of judgement and did not follow the correct safeguarding procedure. Upon reflection I accept I should have also followed this up due to the severity of the allegation made'*.

The social worker has considered what they should have done differently and recognised that work pressures and their reactions to this may have influenced their decision making at the time. The case examiners would have liked to see deeper insight into how this may impact on public confidence and also the potential impact on both Child A and the foster carer, who was given the responsibility of managing this. The case examiners would encourage the social worker to consider further reflection on this as part of their continuing professional practice.

In terms of remediation, the case examiners note that the social worker has undertaken further training on safeguarding, they stepped away from work and have engaged in some therapeutic work to assist them with strategies to manage their time and wellbeing. The social worker advised that they have also altered their work and now work independently, which allows them to manage their workload effectively.

Whilst the case examiners have no independent verification of this, they are satisfied the social worker's submissions suggest they have reflected and taken action to strengthen their knowledge in this area as well as better ways to manage their workload, which the social worker stated may have impacted on their judgement at the time.

The case examiners have seen an email from the social worker's current employer, who raises no concerns about the social worker's fitness to practise.

The case examiners have concluded that whilst the alleged conduct was serious, the social worker has demonstrated some reflection and taken steps to strengthen their knowledge and skills to assist them if they were faced with a similar situation in the future. Therefore, the case examiners are of the view that the risk of repetition is low.

Public element of impairment

The case examiners 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. 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.

The case examiners have reminded themselves that the public interest includes responding proportionately to regulatory concerns. However, they consider that the adjudicators may determine that a member of the public would be concerned where a social worker is alleged to have not taken the correct action when they have been made aware of sexual abuse against a child. Safeguarding is central to the role of a social worker and a social worker's inability to act appropriately has the potential to seriously undermine public trust in social workers and to damage the reputation of the profession.

The case examiners accept that no harm was caused as a result of the social worker's actions. However, they are mindful of the case examiners guidance (December 2022) which states that potential harm should be considered as serious as actual harm. In this instance, the social worker was not fully aware of all the facts of the case and acknowledges that they made a number of assumptions. Therefore, the risk of potential harm was present, as the social worker could not be confident that Child A was fully safeguarded.

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

Accordingly, given the element of public interest, the case examiners are satisfied that there is a realistic prospect of the 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 noted that the social worker has not indicated whether or not they consider their fitness to practise to be currently impaired.

The case examiners have therefore considered whether a referral to a hearing may be necessary in the public interest. The case examiners have noted the following:

- There is no conflict in evidence in this case and the social worker accepts the facts of the concern.
- The social worker is clear that they accept that their practice fell short of the standards expected of them. Within their comments to the regulator, the social worker stated that. *'I accept the concern raised above.'* In their written statement to the employer's investigation, the social worker stated, *'I accept that I made a serious error in my handling of the situation and that I should have made my manager aware'.*

- The case examiners are of the view that the risk of repetition is low, therefore the main purpose of any sanction would be to set out the expectations of social workers and to satisfy the public interest in this case.
- 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 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.

Interim order

An interim order may be necessary for protection of members of the public	Yes	☐
	No	☒
An interim order may be necessary in the best interests of the social worker	Yes	☐
	No	☒

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 been found to have not taken appropriate action to safeguard a vulnerable child. 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 advice is not required as the social worker has reflected and considered what may have contributed to their decision making that day and that have undertaken training and amended their working arrangements to better manage their work life. 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 gave careful consideration to 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 note that the social worker has demonstrated some insight, and they have undertaken remediation to strengthen their practice. Whilst the case examiners, as set out in the impairment section of their decision, consider the social worker may benefit from further reflection, they consider the social worker's insight and remediation is sufficient. The case examiners do not consider that this is an instance where the social worker needs more time to develop further insight as the case examiners 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 **14 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 formally warn the social worker as follows:

Safeguarding is a core aspect of social work and should be at the forefront of any discussions, decisions or assessments that you undertake. It is a social worker's responsibility to take appropriate action to safeguard vulnerable children and adults. Failure to take action has the potential to cause harm to vulnerable children and adults. In addition, failure to demonstrate these core skills and knowledge could have an adverse effect on the public's confidence in you as a social worker. It may also damage the reputation of the social work profession.

The case examiners remind you of the following Social Work England professional standards (2019):

As a social worker I will:

3.4 Recognise the risk indicators of different forms of abuse and neglect and their impact on people, their families and their support networks.

3.9 Make sure that relevant colleagues and agencies are informed about identified risks and the outcomes and implications of assessments and decisions I make.

3.12 Use my assessment skills to respond quickly to dangerous situations and take any necessary protective action.

6.1 Report allegations of harm and challenge and report exploitation and any dangerous, abusive or discriminatory behaviour or practice.

You should demonstrate and practice these standards at all times. Any further matters brought to the attention of the regulator may lead to a more serious outcome.

Response from the social worker

The social worker responded on 4 October and confirmed that they had read and understood the terms of the proposed disposal, however, the social worker requested amendments.

The social worker pointed out a clerical error in the original determination, where there was a singular reference to the proposed duration of the warning order being three years.

Case examiners' response

The case examiners have reviewed their decision. The case examiners confirm this was an error, and that the proposed duration of the warning was one year, as referenced at all other points in the determination. The case examiners have made the amendment to correct the clerical error so that it does not remain in the determination.

The case examiners request the social worker is now presented with the correct proposal in order to consider if they are in agreement with this proposal. The social worker will be offered **14 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.

Second response from the social worker

The social worker responded on 21 October 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 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

The case examiners are satisfied that the social worker has read and accepted the proposed accepted 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.