

Case Examiner Decision

Naomi Glenny

SW6835

FTPS-21651

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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	25 March 2024
	Accepted disposal proposed - warning order (3 years)
Final outcome	15 April 2024
	Accepted disposal - warning order (3 years)

Executive summary

The case examiners have reached the following conclusions:

1. There is a realistic prospect of regulatory concerns 1 and 2 being found proven by the adjudicators.
2. There is a realistic prospect of regulatory concerns 1 and 2 being found to amount to the statutory grounds of misconduct.
3. For regulatory concerns 1 and 2, 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 determined 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 3 years duration.

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

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.

Professional A	
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The complaint and our regulatory concerns

The initial complaint	
The complainant	The complaint was raised by the social worker's former employer, Kent and Medway NHS and Social Care Partnership Trust (the Trust).
Date the complaint was received	16 January 2023
Complaint summary	Naomi Glenny (hereafter referred to as the 'social worker') reported sick due to COVID on 20 July 2022 and was absent from 3 shifts on 20, 21 and 22 July 2022. On 21 July 2022, the social worker sent their service manager a picture of a COVID-19 lateral flow test, purporting to show a positive result. It was noted by the manager that whilst a positive covid test would show lines that were straight and red in colour, the lines on the lateral flow test sent in by the social worker appeared jagged and black, suggesting that the lines were drawn on with a pen. The Trust [REDACTED] [REDACTED] conducted investigations, and both concluded that the social worker had falsified the COVID-19 lateral flow test result in order to support their sickness absence and get paid time off. The social worker was dismissed from their employment on 13 January 2023 for gross misconduct and referred to Social Work England.

Regulatory concerns

Whilst registered as a social worker, between 20th July 2022 and 22nd July 2022:

1. You falsified a COVID-19 lateral flow test in order to have paid time off work.
2. Your actions at regulatory concern 1 were dishonest.

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

On 9 January 2024, the case examiners paused their consideration of the case and requested an up to date reference from the social worker's current employer. This has now been received.

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 concerns 1 and 2 being found proven, that those concerns could amount to the statutory grounds of misconduct and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

Whilst registered as a social worker, between 20th July 2022 and 22nd July 2022:

1. You falsified a COVID-19 lateral flow test in order to have paid time off work.

The case examiners have had sight of evidence which would indicate to adjudicators that the social worker had falsified a COVID-19 lateral flow test. This includes:

- (i) a screenshot of a lateral flow test sent at 08.29 on 21 July 2022 by the social worker to Professional A, showing two lines drawn on in black ink, the lines appearing jagged
- (ii) a transcript of a text message accompanying the lateral flow test stating: *"Hi [Professional A], not sure what time you start work as didn't want to call to (sic) early. I did lateral flow test which came out positive. Still in bed feeling rough. I*

have a shift today and tomorrow then I have a few days off to allow me to recover. [REDACTED]

- (iii) An extract from the [REDACTED] Fraud Investigation Report from October 2022, in respect of the lateral flow test submitted by the social worker, which states: *"The result was manipulated by adding two jagged black lines that appeared to have been drawn on with a pen. It should be noted that a genuine positive lateral flow test would show 2 straight red lines"*.
- (iv) An extract from the [REDACTED] report stating: *"There is Prima Facie evidence of fraudulent conduct perpetrated by the subject, contrary to Section 2 of the Fraud Act 2006, fraud by false representation and Section 7, making or supplying articles for use in fraud"*.

The case examiners note that after initially answering *"no comment"* to all questions put to them during the employer's investigation, the social worker, in their submissions to the regulator, dated 12 November 2023, admitted regulatory concern 1.

Taking all the evidence into account, the case examiners are of the view that there is a realistic prospect of adjudicators finding regulatory concern proven.

2. Your actions at regulatory concern 1 were dishonest.

When considering dishonesty, the case examiners have applied two tests, in line with relevant case law. Firstly, they have assessed the evidence to establish what adjudicators may determine the social worker's actual state of knowledge or belief was at the relevant time (the subjective test). Secondly, they have considered whether the social worker's conduct could be deemed as dishonest by the standards of ordinary, decent people (the objective test).

The case examiners are of the view that when submitting the lateral flow test to their employer, the social worker would have known that this was not a genuine test result and that they had drawn in the lines, in an attempt to show a positive result. They would have known, therefore, that they were being dishonest. (subjective test)

In respect of how ordinary, decent members of the public may view this conduct (the objective test), the case examiners are confident that falsifying a lateral flow test in order to have paid time off work would be considered dishonest.

Accordingly, the case examiners are satisfied there is a realistic prospect of adjudicators finding regulatory concern 2 proven.

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.

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:

Social Work England – Professional Standards - 2019

As a social worker, I will:

2.1 Be open, honest, reliable and fair.

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.

The case examiners consider that adjudicators are likely to conclude that the actions of the social worker breached the above standards. Whilst accepting that not all breaches of professional standards reach the threshold of misconduct, the case examiners are satisfied that acting dishonestly by falsifying a lateral flow test in order to get paid time off work would amount to a significant departure from what would be expected from a social worker.

Integrity and trustworthiness are core values within social work and any fraudulent or deceptive conduct by a social worker is likely to be viewed as particularly serious by adjudicators since it has the potential to undermine the profession's credibility and reputation. Social workers are relied upon to act with honesty and integrity when working with vulnerable service users, their relatives and carers. Other professionals, including the police, courts and health authorities rely on information provided by social workers when assessing and managing risks. Any suggestion that a social worker's integrity cannot be relied upon, has the potential to jeopardise the trust which needs to exist about members of the social work profession.

Accordingly, the case examiners are satisfied that if the facts of this case were found proven, there is a realistic prospect of adjudicators making a finding of misconduct.

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 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 dishonesty is difficult to remediate as it may be a demonstration of an individual's character and may point to deep-seated attitudinal flaws; however, a social worker may attempt to demonstrate remediation through evidence of reflection and insight.

Insight and remediation

The case examiners note that in their submissions to Social Work England, the social worker ticked the box marked Yes to questions about regulatory concerns 1 and 2.

In respect of regulatory concern 1, they provide some commentary about how they were *"unable to source the original positive test"* when requested to submit it via text by their employer and *"made a bad decision and submitted a false test"*. They put this action down to the fact they were *"feverish, medicated and panicked and felt pressured to respond"*.

The case examiners note that the social worker does not explain why they did not undertake a further lateral flow test to forward to their employer if the original had been discarded; nor do they explain why they did not inform the employer that the original test had been discarded and they would carry out another one, if required to do so. Furthermore, the social worker does not explain the reason for feeling *"panicked"* and *"pressured"*. The adjudicators may draw an inference that these feelings arose because there was no genuine lateral flow test to submit. Furthermore, the social worker initially answered 'no comment' to all of the questions put to them in the employer led

investigative interviews, which may suggest that their acceptance of the facts and insight into the issues of concern did not develop immediately.

The case examiners are of the view that adjudicators may consider the social worker's submissions to be superficial and lacking credibility.

In respect of regulatory concern 2, the social worker states that they *"take full responsibility for the decision to send in a false test result"*. They make no reference to the alleged dishonesty and their commentary offers no indication as to any insights about the impact of dishonest conduct on service users, other professionals, the reputation of the profession or the wider public. It is, therefore, difficult for case examiners to assess the level of insight the social worker has in respect of dishonesty.

The social worker refers to their actions as a *"one-off incident"* and state that they *"wholly regret and are remorseful"* for their action. Because of the brevity of the submissions, it is difficult for the case examiners to gauge the authenticity of this statement of regret and remorse. The social worker also submits that their decision *"impacted on the trust of my employer and could have damaged the confidence of the public"*. This statement is not accompanied by any evidence of proper reflection and does not provide any sense of genuine insight about the significant departure from professional standards and the potential damage to the reputation of the profession.

The social worker has submitted that they have completed an e-learning course *"for fraud awareness for ongoing professional development"* which evidences remediation. The case examiners note that no evidence of this (for example, certificate of completion) is included in the evidence bundle.

Risk of repetition

Having considered the submissions made by the social worker, the case examiners are not satisfied that genuine and full insight has been demonstrated; it is their view that remediation remains incomplete. As such, they are of the view that there remains the risk of repetition.

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.

When considering the wider public interest, the case examiners are required to determine:

- Does the conduct put the public at risk?

- Is the conduct a significant departure from the Standards?
- Does the conduct have the potential to undermine the trust and confidence in the profession?

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. Social workers are expected to behave in a manner that adheres to professional standards of conduct, which includes being open, honest and acting with integrity. Dishonesty is highly damaging to public confidence and is likely to be viewed particularly seriously given the access social workers have to people's homes and lives; it is essential to the effective delivery of social work that the public can trust social workers implicitly.

The case examiners are satisfied that the alleged conduct has the potential to undermine trust and confidence in the social work profession. The case examiners consider that public confidence could be seriously undermined if a finding of impairment was not made, in order to emphasise to the social worker and the wider profession, the importance of demonstrating adherence to the professional standards and always acting with integrity and honesty. It, therefore, follows that adjudicators may consider a finding of impairment to be necessary in order to maintain public confidence in the social work profession, and in the maintenance of standards for social workers.

Accordingly, the case examiners have concluded there is a realistic prospect that adjudicators would find the social worker's fitness to practise to be currently 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

With reference to the case examiner guidance (2022), the case examiners have given careful consideration to whether there is a public interest in these matters proceeding to a hearing.

The case examiners note that the social worker accepts the alleged facts but does not accept that their fitness to practise is currently impaired, on the basis that they are *“in current employment with no current concerns or issues around [their] fitness to practise”*.

In considering whether a referral to a hearing may be necessary in the public interest, the case examiners have been guided by the following:

- There is no conflict of evidence
- Whilst they are of the view that there is a risk of repetition, the case examiners consider this can be managed through the sanctions available to them
- The accepted disposal process will provide the social worker with 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 proposed by the case examiners and request a hearing if they wish to explore the question of impairment in more detail.

The case examiners are of the view that the public would be satisfied to see the regulator take prompt and firm action in this case, with the publication of an accepted disposal decision that provides a steer to the social worker and the wider 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	3 years	

Reasoning
The case examiners have noted that the social worker does not consider their fitness to practise to be currently 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 <i>concluding</i> the case and are of the view that this does not prevent them offering accepted disposal prior to this. The case examiners are satisfied there is a realistic prospect of the regulatory concerns being found proven by adjudicators. Furthermore, they have found a realistic prospect that the alleged facts, if found proven, would amount to the statutory ground of misconduct. The case examiners have also found a realistic prospect of adjudicators finding the social worker's fitness to practise to be currently impaired. The case examiners have decided, however, that it is not in the public interest to refer this matter to a hearing. In considering the appropriate outcome in this case, the case examiners have had regard to Social Work England's sanctions guidance (2022) 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 case examiners select the least severe sanction necessary to protect the public and the wider public interest. In determining the most

appropriate outcome in this case, the case examiners have therefore considered the available sanctions in ascending order of seriousness.

First, the case examiners considered taking no further action but concluded this would not be appropriate in a case involving alleged fraud and dishonesty.

Next the case examiners considered whether offering advice would be appropriate. An advice order will normally set out the steps a social worker should take to address the behaviour that led to the regulatory concerns. The case examiners concluded that issuing advice is not sufficient to mark the seriousness with which they view the alleged conduct in this case.

The case examiners then considered a warning order. A warning order indicates a clearer expression of disapproval of the social worker's alleged conduct than an advice order. The case examiners are of the view that a warning order is appropriate and proportionate in this case and the minimum necessary to protect the public and the wider public interest. A warning will serve as a clear signal to the social worker that any repetition of the behaviour that led to the current regulatory concerns is highly likely to result in a more severe sanction.

The case examiners did turn their minds to the next two available sanctions – conditions of practice and suspension.

They note that conditions of practice orders are usually issued in cases where there are concerns about practice. In this case, the social worker's current employer has confirmed, in an email dated 7 February 2024, that the social worker has been working *"within our hospital discharge team since October 2023 and to date there have been no concerns about [their] practice"*. The case examiners are also mindful that conditions of practice orders are less likely to be appropriate in cases of character, attitude or behavioural failings, including alleged dishonesty.

In respect of suspension from the register, the case examiners concluded that this would be disproportionate and punitive, as a warning order would sufficiently mark the seriousness with which the regulator views the social worker's conduct.

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"*. The case examiners consider that the alleged misconduct in this case is serious and an order of 1 year duration does not sufficiently reflect the seriousness with which they view the social worker's conduct.

A 3 year warning order is appropriate for *"more serious concerns...helps 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 consider a 3 year warning order to be appropriate in this case; they are of the view that this marks the seriousness of the alleged conduct, involving fraudulent behaviour leading to dishonesty, and is the minimum necessary to maintain public confidence and to send a clear message to the social worker, the public and the profession about the standards expected from social workers. Furthermore, a warning order of 3 years allows the social worker sufficient time to reflect on their actions, develop full insight and address any risk of repetition.

The case examiners note that an order of 5 years duration may be appropriate for serious misconduct and cases where the social worker has fallen only marginally short of requiring restriction of practice. They consider that a 5-year warning order would be disproportionate in all the circumstances of this case and unnecessarily punitive since the social worker's alleged conduct, in their view, did not fall marginally short of requiring restrictions.

To conclude, the case examiners have decided to propose to the social worker a warning order of 3-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 to the proposed outcome, 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:

The case examiners have determined that there is a realistic prospect of adjudicators finding that you have acted dishonestly and that your fitness to practise is, consequently, impaired.

The case examiners remind you that you are required to adhere to Social Work England's professional standards (2019). In particular, your attention is drawn to the following standards:

As a social worker, I will:

2.1 – Be open, honest and fair.

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.

You are warned that the conduct that resulted in the referral to Social Work England must not be repeated. Any further matters brought to the attention of the regulator are likely to result in a more serious outcome.

Response from the social worker

The social worker returned a completed response form on 11 April 2024. The form includes confirmation that it is the social worker's formal response, and a declaration as follows:

"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 concluded that the social worker's fitness to practise was likely to be found impaired and that the public interest could be met through a published decision and a warning, rather than through a public hearing.

They proposed a warning order of 3 years duration and the social worker accepted this proposal.

Having been advised of the social worker's response, the case examiners again turned their minds as to whether a warning was the most appropriate means of disposal for this case. They have reviewed their decision, paying particular regard to the overarching objectives of Social Work England, i.e. protection of the public, the maintenance of public confidence in the social work profession, and the maintenance of proper standards. Having done so, they remain of the view that an accepted disposal by way of a warning order of 3 years duration is a fair and proportionate disposal of this matter and is the minimum necessary to protect the public and the wider public interest.