



Case Examiner Decision

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FTPS-20382

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The role of the case examiners

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

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

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

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

Decision summary

Decision summary	
Preliminary outcome(s)	Accepted disposal proposed - warning order (3 years)
Date of the preliminary decision	1 June 2023
Final outcome	Accepted disposal – warning order (3 years)
Date of the final decision	26.6.23

Executive summary

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

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

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

As such, the case examiners proposed to resolve the case with a warning order of 3 years. The social worker accepted this proposal and the terms 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.
Date the complaint was received	02 February 2022
Complaint summary	The complainant raised concern that the social worker did not manage confidential information sensitively and/or in line with the law.

Regulatory concerns

Whilst registered as a social worker on the 06/10/2021 and 05/01/2022 you:

1. Did not handle confidential information sensitively and/or in line with the law in that you:
 - 1.1. Emailed service users' personal information to your personal email address and new work email address.
 - 1.2. Email personal information relating to colleagues to your personal email address and new work email address.

The actions outlined at regulatory concern 1 amounts to misconduct.

By reason of your misconduct your fitness to practice 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 the concern 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 on the 06/10/2021 and 05/01/2022 you:

- 1. Did not handle confidential information sensitively and/or in line with the law in that you:***
 - 1.1. Emailed service users' personal information to your personal email address and new work email address.***
 - 1.2. Email personal information relating to colleagues to your personal email address and new work email address.***

The case examiners have had sight of a computer-generated audit provided by the social worker's former employer. The audit details dates and times emails were sent from the social worker's work-based email address. The audit shows documents sent to both the social worker's new employment email and personal email address.

The dates documented on the computer-generated audit correlate with the dates detailed in the regulatory concern. The documents contained within the emails have been screened by the former employer and confirm they contain both service user and colleague confidential information.

The social worker's former employer referred the incident to the Information Commissioners Office (ICO) and an investigation was completed with regards the alleged data breach. The ICO upheld the data breach and on 18 January 2023 the ICO confirmed the social worker was issued with an ICO caution for S.170 of the data protection act.

The social worker accepts the regulatory concern within their correspondence with Social Work England.

Having considered the evidence, the case examiners are satisfied there is a realistic prospect of regulatory concern 1 being found proven by adjudicators.

Grounds

The case examiners note there are considered to be two types of misconduct. These are (either of the following):

- misconduct which takes place in the exercise of professional practice
- misconduct which occurs outside the exercise of professional practice but calls into question the suitability of the person to work as a social worker.

In this case, the alleged misconduct appears to have taken place in the exercise of professional practice.

To help them decide if the evidence suggests a significant departure from professional standards, the case examiners have considered the following standards, which were applicable at the time of the concerns.

Social Work England – Professional Standards (2019)

Establish and maintain the trust and confidence of people.

As a social worker, I will:

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

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

Be accountable for the quality of my practice and the decisions I make.

As a social worker, I will:

3.1. Work within legal and ethical frameworks, using my professional authority and judgement appropriately.

Social workers are entrusted with access to highly sensitive data about the people in their community and, when in senior positions, personal data relating to colleagues. It is essential that the public can trust that this information will be kept safe and secure in line with local policy and legal frameworks to protect data. Accordingly, it is a serious departure from the standards for a social worker to share such data without professional reason or authorisation, particularly where it is alleged that the data relates to a number of individuals, both service users and colleagues.

Having considered the evidence the case examiners are satisfied there is a realistic prospect of adjudicators determining that the ground of misconduct is engaged.

Impairment

The personal element of impairment

In considering the personal element of impairment, the case examiners have considered the test 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 do consider that the alleged conduct is remediable by the social worker, for example through training in relation to data protection and insight and reflection on their conduct, together with a consideration of how they might respond differently in future.

With regards to remediation, the case examiners have noted that the social worker's current employer has confirmed the completion of an online GDPR course and that there have been no further concerns raised regarding the social worker's handling of data.

However, the case examiners note that the social worker has previously completed a GDPR course with their former employer prior to their alleged conduct, and within the ICO investigation the social worker is reported to have said they were aware from the training that sending the documents was not okay, but appeared to not comprehend the gravity of their actions.

The social worker is documented as saying within the ICO investigation that they shared files they felt would be useful to them in their new role, for example evidencing work and utilising pre-populated report layouts, assisting them in their new role. The case examiners note that the social worker appears, from the investigation documentation, to have been open with the ICO investigation and accepted they did not have permission to send the documents.

The case examiners are satisfied, from the social worker's submissions that they do appear to have developed a degree of insight with regards to their conduct: *"(The social worker) accepts that service users and their families are likely to lose confidence in the social work profession if they cannot trust that confidential information will be protected and only disclosed with consent or in accordance with a legal requirement. Furthermore, he acknowledges that local authorities and employers must be able to rely on the professionalism of registered social workers as they are trusted to make assessments based on highly personal and sensitive information."*

In addition, the case examiners note the social worker has provided a lengthy reflection directly related to the regulatory concern, where they set out their insight, learning from training and the potential impact of their actions.

Having considered the evidence available the case examiners are satisfied that the risk of repetition is low.

The 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.

A social worker who breaches data protection, sharing insecurely, and without authorisation, service user and colleague information, undoubtedly has the potential to undermine public confidence. The social worker's conduct, in this case, impacted both service users and colleagues and resulted in them being sanctioned by the ICO. The case examiners consider that such conduct, if subsequently found proven, would amount to a significant departure from the professional standards required.

Regulatory concerns regarding breaching confidentiality go to the heart of public confidence in the social work profession. They have the potential to undermine the public's trust in social workers. As such, it is likely the public would expect that a finding of current impairment is made by adjudicators to maintain public confidence in regulation of the profession.

Having considered both the personal and public elements, the case examiners have concluded there is a realistic prospect that adjudicators would find the social worker 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	☒
Could a removal order be required?	Yes	☐
	No	☒
Would not holding a public hearing carry a real risk of damaging public confidence in Social Work England's regulation of the profession?	Yes	☐
	No	☒
Is a hearing necessary to maintain public confidence in the profession, and to uphold the professional standards of social workers?	Yes	☐
	No	☒

Additional reasoning

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

- There is no conflict in the evidence in this case and the social worker has accepted the key facts.
- Whilst the social worker's legal representative submits that the social worker's conduct is not impaired, the accepted disposal process will provide the social worker an opportunity to review the case examiners' 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 disagree that they are currently impaired.

- The case examiners are of the view that there remains a low risk of repetition and they consider that this can be managed through other sanctions available to them.
- 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	☐
Proposed duration	3 years	

Reasoning
In considering the appropriate outcome in this case, case examiners have had regard to Social Work England's sanctions guidance (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. Furthermore, the guidance requires that decision makers select the least severe sanction necessary to protect the public and the wider public interest. In determining the most appropriate and proportionate outcome in this case, the case examiners considered the available sanctions in ascending order of seriousness. The case examiners first considered taking no further action but considered that this would not be appropriate in a case where a social worker did not handle information sensitively and/or

in line with the law. Taking no further action would not provide the necessary level of public protection and would not satisfy 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 decided that issuing advice was not sufficient to mark the seriousness with which they view the social worker's conduct.

The case examiners next considered whether a warning order would be appropriate in this case. The case examiners are aware that where a social worker's fitness to practise is potentially impaired, they will usually need to ensure the public is protected through some action by the regulator. The case examiners are of the view it is necessary to preserve public confidence in the profession and as such have decided to suggest a warning order, which implies a clear expression of disapproval of the social worker's conduct. The case examiners have considered the length of time for the published warning and consider 3 years to be proportionate in this case. The case examiners have referred to Social Work England impairment and sanctions guidance (2022) in making this decision; they do not consider 1 year to be proportionate as they do not view the matter as an isolated incident of relatively low seriousness. They went on to consider 3 years and considered this to be appropriate, as they view the conduct as more serious as the social worker shared a number of documents relating to multiple service users and colleagues. 3 years would allow the social worker to show that they have addressed any risk of repetition. The case examiners considered a warning order of 5-years' duration to be excessive, as this case has not fallen marginally short of requiring restriction of practice.

The case examiners went on to consider whether more severe sanctions, e.g., conditions of practice or suspension were appropriate in this case. They were mindful of their guidance, which states that where there is a risk of repetition, a sanction requiring restriction of practice will normally be necessary. On this occasion, the case examiners consider that conditions of practice or suspension are not warranted. The case examiners are of the view that the social worker has demonstrated insight into their conduct, provided a reflective account and undertaken appropriate training, therefore, oversight by the regulator would be disproportionate, and a warning will achieve the primary goal of protecting the public and safeguarding public confidence. The case examiners considered that suspension from the register would be a disproportionate and punitive outcome in this case.

The case examiners will notify the social worker of their intention to suggest a published warning 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:

It is imperative that confidential information is handled sensitively and in line with the law. Should there be any doubt over data protection, then legal or information governance advice should be sought, and that advice adhered to, ensuring confidential information remains as such.

The case examiners would draw the social worker's attention to the following professional standards:

Establish and maintain the trust and confidence of people

As a social worker, I will:

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

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

Be accountable for the quality of my practice and the decisions I make

As a social worker, I will:

3.1. Work within legal and ethical frameworks, using my professional authority and judgement appropriately.

You must ensure that any future practice meets the professional standards. It is essential that you do this to ensure that service users receive the support and protection they require.

In relation to your ongoing practice, any further issues of a similar nature brought to the attention of the regulator are likely to be dealt with more seriously.

Response from the social worker

The social worker accepted the decision and proposed disposal in full via email dated 15 June 2023.

Case examiners' response and final decision

The case examiners concluded that the social worker's fitness to practise was likely to be found impaired but that the public interest could be met through a prompt conclusion, published decision and warning, rather than through a public hearing. They proposed a warning with a duration of three years and on 15 June 2023, the social worker accepted this proposal.

In light of the social worker's acceptance of the warning, the case examiners have considered again whether there would be a public interest in referring this matter to a public hearing. They remain of the view that this is unnecessary for the reasons set out earlier in the decision.

Having been advised of the social worker's response, the case examiners have again turned their minds as to whether a warning remains 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 is a fair and proportionate disposal and is the minimum necessary to protect the public and the wider public interest.