

Case Examiner Decision
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SW5081
FTPS-19769

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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	04 December 2023
	Accepted disposal proposed - removal order
Final outcome	21 March 2024
	Accepted disposal - removal order

Executive summary

The case examiners have reached the following conclusions:

1. There is a realistic prospect of regulatory concerns 1a, b and c being found proven by the adjudicators;
2. There is a realistic prospect of regulatory concerns 1a, b and c being found to amount to the statutory grounds of misconduct;
3. For regulatory concerns 1a, b and c, 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 they 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 removal order. The social worker accepted this 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, Liverpool City Council
Date the complaint was received	13 October 2021
Complaint summary	The council informed the regulator that they were investigating the social worker's practice in relation to Service User A. The regulatory concerns below accurately capture the alleged omissions.

Regulatory concerns

Whilst registered as a social worker:

1. On or around June 2021 to September 2021 you failed to appropriately address safeguarding concerns relating to Service User A in that you:
 - a. Did not complete a Care Act Assessment, Risk Assessment and/or Mental Capacity Assessment.
 - b. Did not organise a social care review in a timely manner.
 - c. Did not recognise or appropriately respond to concerns raised by Service User A's family, an occupational therapist and/or their care provider.

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

Your fitness to practise is impaired by reason of 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	☐

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 1a, b and c 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

1. On or around June 2021 to September 2021 you failed to appropriately address safeguarding concerns relating to Service User A in that you:

- a. Did not complete a Care Act Assessment, Risk Assessment and/or Mental Capacity Assessment.
- c. Did not recognise or appropriately respond to concerns raised by Service User A's family, an occupational therapist and/or their care provider.

The case examiners have decided to consider regulatory concerns 1a and 1c together as they consider they are intrinsically linked and rely upon the same evidence.

The case examiners have been provided with evidence from the employer that the social worker did not complete a Care Act Assessment (CAA), Risk Assessment (RA) nor a Mental Capacity Assessment (MCA). The social worker does not dispute this. The primary

consideration for the case examiners is whether these assessments were required to safeguard Service User A and whether not completing them constitutes a failure to appropriately address safeguarding concerns.

The case examiners are aware that several concerns were raised about Service User A by the Occupational Therapist (OT). These included;

- Service User A had been observed during an OT kitchen assessment and was struggling with what to do, relying on the smoke detector to know that the cooker needs turning off, forgetting to put water in the kettle, and it was described that they could not weigh up risks.
- Service User A was reported to be outside their home eating raw bacon and asking passers by how to cook it.
- During an assessment by the OT around road safety, Service User A was observed walking into the road, cars beeping them and having to brake, but refusing to use pedestrian crossings.
- The OT records that they believe Service User A will not take advice around road safety, wearing high visibility clothing, and cooking food, as they have no insight into the risks they are taking and have very poor short term memory.

The case examiners have been provided with evidence that the care provider also raised some of these concerns about Service User A and also highlighted that;

- Service User A was not accepting help with personal care when carers attended and was neglecting their health and hygiene needs
- The manager of the agency had to go and buy food for Service User A as they had no food and no money.
- The owner of the local shop has been giving Service User A food as they come in several times a day and often don't have money for their purchases.

The case examiners have been provided with evidence that Service User A's family directly raised similar concerns with the social worker and there is also a suggestion from the correspondence with both the OT and the care agency manager, that the family had raised similar concerns with them about safety outside and self neglect.

The case examiners have been provided with evidence that the social worker was instructed by their team manager to complete a CAA on 29 July 2021. The social worker submits they were completing a re-assessment as there had been an assessment completed earlier that year. The social worker's former employer has confirmed that if someone's circumstances had changed, as was the case for Service User A, then a new

assessment would be required. The case examiners are of the view that the evidence suggests a CAA was required, in order to fully consider all of the information and make plans which would balance Service User A's desire for autonomy whilst keeping them safe.

The social worker submits that they did not complete a Mental Capacity Assessment as they did not feel one was necessary, they were confident that Service User A had capacity to make decisions about their care. The supervision records from around this time advise the social worker to consider a capacity assessment, it does not instruct the social worker to complete one.

Whilst the case examiners are aware that one of the principles around this issue is that capacity should be assumed unless there is evidence to the contrary, they are of the opinion that it would be good practice for the social worker to have completed an assessment given some of the evidence that Service User A was struggling and the conflicting opinions of the OT.

It is recorded in the interview with the local authority that the social worker gives the following rationale as to why Service User A had capacity at the time, detailing that they were *"able to engage in conversation, very clear on that she wanted to go the shops and felt it was good for her wellbeing"*. The case examiners appreciate that this may not be reflective of all that was discussed but they are concerned that the social worker makes no comment on Service User A's understanding of the risks they are taking and an ability to weigh up and retain information, which would suggest they have the capacity to make these decisions.

The case examiners have been provided with case notes where the social worker records that arranging residential care is not straightforward as Service User A *"has expressed her wish to remain in her own home and owns it"*. The case examiners are aware that this is a relevant and important consideration but they remain concerned that it is not the only consideration, no reference is made to whether Service User A has the capacity to make a decision about whether they remain at home, do they understand the risks to them and are they making an informed decision about balancing that risk? The case examiners are of the view that there is insufficient evidence or justification for not completing a Mental Capacity Assessment, given the concerns raised by others.

The social worker submitted to their employer that they did not complete a risk assessment as the OT had already completed this. The social worker also suggested that whilst they did not complete the necessary paperwork, they were taking action to mitigate the risks and meet Service User A's needs at home.

The case examiners acknowledge that the case records provide evidence that the social worker attempted to address some of the risks, for example they worked with the OT to have the gas isolated so Service User A could not use the cooker unsupervised.

Suggestions were also made to the care service about ways to convince Service User A to be supported with personal care. However, there are other responses which the case examiners conclude are likely to be considered insufficient.

The case examiners have been provided with the social worker's case note of a home visit, where the OT's concerns about road safety were discussed. The social worker acknowledged that Service User A stepping into the road despite having just been reminded about looking for traffic was "quite dangerous". The suggestion to mitigate this risk was for Service User A to wear something bright so they were more visible to motorists. The case examiners are unsure how this would be sufficient as even with bright clothing on, motorists would not be expecting Service User A to walk into oncoming traffic and there appears to have been a significant risk of serious harm. The case examiners are of the view that the social worker's response to this risk is likely to be considered insufficient and that it did not adequately consider the potential of harm for Service User A.

The case examiners have also been provided with evidence of an incident where Service User A was found by the police at 1am on a Sunday morning. The social worker was made aware of this and was recorded explaining to their employer that this was due to Service User A missing the bus back after shopping. The case examiners are of the view that this incident appears to be minimised and that the context of missing the bus does not address the concerns around what Service User A was doing for several hours before being found at 1am. This incident may suggest that Service User A was outside at night, long after the shops had closed and buses had stopped, but did not know they could call someone or ask for help in a local business or from passers by. There appears to have been the potential for Service User A to have come to harm but this is not adequately considered in any of the records provided to the case examiners.

The case examiners are satisfied this regulatory concern has a realistic prospect of being found proven, should the matter go forward to adjudicators.

b. Did not organise a social care review in a timely manner.

In the interview with the social worker's former employer, it is recorded that the social worker admitted a social care review did not take place and indicated that it should have happened, as it may "*have helped to bring everything together and likely had a resolution*".

The case examiners have been provided with evidence that there were difficulties in finding a venue for the meeting but that the social worker was attempting to resolve this. They also note that the social worker acknowledged in the case notes that it may need to be held on Zoom but no arrangements were made for this to happen. Given the safeguarding concerns being raised by various others involved in Service User A's care and

the differences of opinion between professionals, it would have been most appropriate to discuss these in a review in order to safeguard Service User A. The evidence suggests that it was the responsibility of the social worker to organise this care review, but that this did not take place. As such, it is likely to be considered that there was a failure on the social worker's part.

The case examiners are satisfied this regulatory concern has a realistic prospect of being found proven, should the matter go forward to adjudicators.

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 Social Work England professional standards, which were applicable at the time of the concerns.

As a social worker, I will;

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

3.3 Apply my knowledge and skills to address the social care needs of individuals and their families commonly arising from physical and mental ill health, disability, substance misuse, abuse or neglect, to enhance quality of life and wellbeing.

3.5 Hold different explanations in mind and use evidence to inform my decisions.

3.6 Draw on the knowledge and skills of workers from my own and other professions and work in collaboration, particularly in integrated teams, holding onto and promoting my social work identity.

3.7 Recognise where there may be bias in decision making and address issues that arise from ethical dilemmas, conflicting information, or differing professional decisions.

3.11 Maintain clear, accurate, legible and up to date records, documenting how I arrive at my decisions.

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

The case examiners acknowledge that the social worker was completing some work with Service User A and attempting to mitigate some of the risks. However, they have also found evidence that suggests there were significant risks which were not appropriately addressed, that the social worker has not evidenced they were effectively applying the legal framework of the Mental Capacity Act, nor that a holistic assessment was being undertaken, including gaining the views of others involved with Service User A. The case examiners consider these are central tenets of effective social work practice. Service User A appears to have been at significant risk of harm and whilst social work involves balancing risks against the independence and autonomy of service users, without evidence of this being adequately explored and assessed, the case examiners cannot be satisfied that the social worker was sufficiently safeguarding Service User A.

Accordingly, the case examiners are satisfied that the alleged conduct is likely to be considered serious, and a significant departure from the professional standards detailed above.

The case examiners are of the view that adjudicators are likely to conclude the social worker's alleged actions and omissions, amounted to 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 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 conduct can be easily remedied

The case examiners are of the view that the alleged conduct could be easily remedied, through a combination of reflection and further training/self directed learning around relevant areas of practice such as the Mental Capacity Act and safeguarding.

Insight and remediation

The case examiners note that the social worker has provided limited submissions, which focus largely on their denial of the allegations. Whilst the social worker provides some contextual mitigation, the case examiners are not satisfied that they have demonstrated any insight into the potential impact upon Service User A, or why the public may be concerned about these matters. The case examiners are mindful that where a social worker denies the allegations against them, this can present a challenge in demonstrating insight due to the core dispute over the facts.

The social worker states that they have been investigated by their former employer and they do not want to endure another investigation when they no longer want to practice in social work. The social worker retired from their employment. The case examiners have not been provided with any evidence of remediation, though they note this would be difficult given that they have retired from practice.

Risk of repetition

The case examiners note that the social worker was very experienced and they have not been provided with evidence of any previous concerns raised. In this situation it may be that any misconduct was an isolated mistake, however, without any evidence of insight or remediation, the case examiners cannot be assured that there is no 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.

A social worker failing to safeguard a vulnerable adult has the potential to undermine public confidence. Such conduct is likely to be considered a significant departure from professional standards.

As such, it is likely the public would expect that a finding of current impairment is made by adjudicators to maintain public confidence in the regulation of the profession. The case examiners again have noted that this could be considered an isolated matter, however they acknowledge the lack of insight demonstrated by the social worker, which they view as an aggravating factor in the case.

The case examiners have concluded that, in the light of the serious allegation, and given the apparent lack of insight, a well informed member of the public would be troubled to learn that a social worker in this situation had not received a finding of impairment from the regulator.

The case examiners conclude that there is a realistic prospect that adjudicators would find 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 mindful of their guidance, which states they must refer matters to a hearing if a social worker does not accept the key facts or that they are currently impaired. In this case, the social worker has disputed the key facts of the case and has not provided a view on whether their fitness to practise is impaired, as they no longer wish to practise as a social worker.

The case examiners have considered whether the social worker's position on the regulatory concerns should preclude them from proposing accepted disposal and they have concluded that there is nothing within the guidance which prevents this. They are of the view that, in proposing accepted disposal, the social worker would have the opportunity to read their decision and then establish whether they accept the decision and proposed sanction in full. If they did not agree, then the case would go forward to a hearing.

The case examiners have then considered whether the social worker's lack of demonstrated insight and remediation indicates that a hearing is required or that accepted disposal is not appropriate. The case examiners note that the full range of

sanctions are available to them as part of the accepted disposal process, including those which restrict the social worker's practice.

The case examiners have considered carefully whether they could, and should, offer accepted disposal to the social worker rather than refer this case to a hearing. They are aware that the social worker has retired and states they no longer intend to practise social work and this has consistently been their position. In line with this, the case examiners are aware that the social worker has been provided with the means to request voluntary removal from the register. They are informed the social worker has not made this application.

The case examiners have determined there is a realistic prospect that adjudicators would find the public interest is engaged in this case, but they are of the view that the public interest can be satisfied by their decision, and the reasons for that decision, being published on Social Work England's public register which can be found on its website.

The publication of this matter will highlight behaviour that falls short of acceptable standards in social work and will act as an example to other members of the profession. Publication also demonstrates that appropriate action is taken in cases of alleged wrongdoing, thus enhancing the public's confidence in the social work profession.

The accepted disposal process will provide to the social worker an opportunity to review the case examiners' reasoning and reflect on whether they are able to accept a finding of impairment and whatever sanction is proposed. 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.

For the reasons given above, the case examiners believe the public would consider it proportionate to address this matter through the proposal of an accepted disposal, having considered the specific circumstances. Considering all the factors discussed above, the case examiners have decided it is not in the public interest to refer this matter to a hearing. Alternatively, they will seek to resolve this matter, with the social worker's consent, by way of an accepted disposal.

Accepted disposal

Case outcome		
Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☐
	Conditions of practice order	☐
	Suspension order	☐
	Removal order	☒
Proposed duration	Where a social worker is removed from the register, there is no defined end to the finding of impairment. A social worker that has been removed from the register may only apply to be restored to the register 5 years after the date the removal order took effect. The adjudicators will decide whether to restore a person to the register.	

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 a sanction is not to punish the social worker, but to protect the public. The case examiners have decided that it is not in the public interest to refer this matter to a final hearing and have chosen the least restrictive sanction necessary to protect the public and the wider public interest. They have started at the lowest possible sanction and worked up, testing the appropriateness of each sanction to confirm their decision is proportionate. The case examiners have already determined there is a realistic prospect that the social worker's fitness to practise would be found impaired. The sanctions guidance advises that if the personal element of impairment is found, <i>"a sanction restricting or removing a social worker's registration will normally be necessary to protect the public"</i>. The case examiners are therefore led to consider sanctions which restrict the social worker's practice. They note that the guidance suggests it may therefore <i>"be reasonable to move beyond the lower sanctions (no action, advice or a warning) on this basis alone"</i>. The case

examiners have already determined that they do not consider that the social worker has demonstrated sufficient insight nor remediation. Therefore, the sanctions of no further action, advice or a warning are considered inappropriate on the basis that these outcomes will not restrict practice and therefore not sufficiently protect the public.

The case examiners have then considered a conditions of practice order, which are often appropriate in cases relating to professional practice. The case examiners have not been provided with any evidence that the social worker is motivated to remediate and they are not currently in practice. Their sanctions guidance suggests that conditions of practice are only appropriate when a social worker has demonstrated insight and case examiners *“are confident that the social worker can and will comply with the conditions”*.

The case examiners are similarly guided to only consider a suspension order when the social worker has demonstrated some insight and when *“there is evidence to suggest the social worker is willing and able to resolve or remediate their failings”*. As previously noted, the case examiners are aware that the social worker states they have retired and will not be returning to practice.

The case examiners acknowledge that the conduct described in these regulatory concerns would not generally result in a proposal of removal, particularly given the social worker’s lengthy career with no previous concerns.

The case examiners have paid particular attention to the sanctions guidance where describes factors which may lead to a proposed removal. It says this may be appropriate for *‘social workers who are unwilling and/or unable to remediate (for example, where there is clear evidence that they do not wish to practise as a social worker in the future).’*

Given that the social worker has not demonstrated any insight or remediation, which they have had the opportunity to provide, and as the social worker has clearly expressed that they do not wish to practise in the future, the case examiners conclude that they cannot propose a lesser sanction than removal.

Therefore, they propose that the social worker is removed from the register.

The case examiners 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 35 days to respond. The case examiners note their guidance which directs them to offer upto 28 days for a response, however due to the Christmas period being covered within this time frame, they have decided to offer an additional 7 days, to allow the social worker time to consider this outside of the holidays.

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.

Response from the social worker

The case examiners have been made aware of a conversation between the case examiner operations team and the social worker, following the receipt of the case examiners decision and proposal. The call note of this conversation recorded that the social worker had noted a factual inaccuracy in the decision, where the case examiners had ticked the box to indicate that a hearing was in the public interest when the rest of their decision stated otherwise. The case examiners acknowledge this was an error and have amended their decision accordingly.

The social worker was also reported to have made some comments which suggested they had indicated to investigators that they wished to retire due to stress but now felt differently. The social worker was provided with information about the accepted disposal process and public hearings, to allow them to make an informed choice.

The social worker submitted a response form on 9 January 2024, declaring *"I have read the case examiners' decision and the accepted disposal guide. 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 note that the investigator has updated the Case Investigation Report with the following comments, relating to the call note between the social worker and the case examiner operations team.

"We have provided you with this additional information as we consider this is may be relevant to the case examiners decision making as it provides further information in relation to the social worker's intentions as to whether they wish to practise as a social worker and is relevant to the accepted disposal offer and the social worker's response.

It is a matter for you but we think it may be helpful for the case examiners to consider obtaining your own legal advice in relation to this additional information".

The case examiners have considered carefully whether to obtain legal advice, specifically around where in their decision they could consider the additional information. They have chosen not to obtain legal advice as they are of the view that there are only two places within the decision that they could consider this information, in the consideration of the public interest in a hearing and in their decision on sanction.

Sanction

The case examiners acknowledge that part of their decision to offer removal to the social worker was based around the belief that they wished to retire and did not intend to remediate or return to practice. The social worker's comments to the case examiner operations team could be viewed as undermining that belief and suggest that suspension may be a more appropriate sanction.

The case examiners have returned to the sanctions guidance which suggests that suspension is *"likely to be unsuitable in circumstances where (both of the following):*

- *the social worker has not demonstrated any insight and remediation*
- *there is limited evidence to suggest they are willing (or able) to resolve or remediate their failings".*

The social worker has not provided any additional insight into the regulatory concerns which would change the case examiners' view on the adequacy of their reflection. Additionally, the case examiners note that following the accepted disposal acceptance, the social worker sent a further email making the following points;

"(1) It is NOT my wish to practice again as a social worker, not now, not in the future, not ever.

(2) I could have 'officially' renewed my SWE registration between October - December 2023 but chose not to.

(3) I wish to proceed with the 'Accepted Disposal' option that was offered to me and which I completed and signed the form to accept."

The case examiners are therefore satisfied that although the social worker may have experienced some ambivalence initially about the decision, removal remains the appropriate sanction. The social worker has had the opportunity to change their mind formally about their future career intentions and they have communicated their intentions clearly and with all the information provided to them.

Public interest in a hearing

The case examiners acknowledge that given the social worker's comments about having changed their mind about retirement, perhaps the social worker does not fully accept the case examiners decision and proposal, which may suggest that the case should go forward to a hearing. As above, the case examiners note that the social worker has subsequently signed a declaration accepting the decision and sanction proposed. The case examiners are of the view that the social worker's further comments are not open to interpretation, they are very clear about their future intentions.

The case examiners do not believe that there is any risk to the public by concluding the case with accepted disposal as any risk of repetition will be mitigated by the social worker being removed from practice.

The case examiners remain of the view that referring this matter to a hearing in the public interest is unnecessary for the reasons set out earlier in the decision.