

Case Examiner Decision
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FTPS-21999

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The role of the case examiners

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

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

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

If the case examiners find a realistic prospect of impairment, they consider whether there is a public interest in referring the case to a hearing. If there is no public interest in a hearing, the case examiners can propose an outcome to the social worker. We call this accepted disposal and a case can only be resolved in this way if the social worker agrees with the case examiners' proposal.

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

Decision summary

Decision summary

Preliminary outcome	2 July 2024
	Accepted disposal proposed - removal order
Final outcome	5 August 2024
	Accepted disposal - removal order

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 concern 1 being found to amount to the statutory grounds of lack of competence or capability. There is a realistic prospect of regulatory concern 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 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 agreed to this proposal and the case examiners have concluded the case by way of accepted disposal.

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, Bournemouth, Christchurch and Pool Council
Date the complaint was received	8 November 2022
Complaint summary	The complainant reported that they had raised concerns locally with the social worker in respect of an alleged failure to record visits, care plans and viability assessments. An action plan was drawn up, which the social worker did not sign. The complainant reported that the social worker resigned, without completing a substantial amount of case recordings.

Regulatory concerns

Whilst registered as a social worker, between 3 January 2022 and 18 March 2024, you:

1. Did not maintain accurate and up to date records of:
 - 1.1. Visits to children in care.
 - 1.2. Completion of care plans.
 - 1.3. Statutory viability assessments.
2. Did not cooperate with this investigation by Social Work England into your fitness to practise.

The matter outlined in regulatory concern 1 amounts to the statutory ground of misconduct and/or lack of competence.

The matter outlined in regulatory concern 2 amounts to the statutory ground of misconduct.

Your fitness to practise is impaired by reason of misconduct and/or lack of competence.

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 1 and 2 being found proven, concern 1 could amount to the statutory grounds of lack of competence and capability, concern 2 could amount to the statutory grounds of misconduct, and the social worker's fitness to practise could be found impaired.

Reasoning

Facts

Whilst registered as a social worker, between 3 January 2022 and 18 March 2024, you:

1. Did not maintain accurate and up to date records of:

1.1. Visits to children in care.

1.2. Completion of care plans.

1.3. Statutory viability assessments.

The case examiners have had sight of email correspondence from a consultant social worker in August 2022, which reported that they had reviewed the social worker's case files, and found the following:

- For the majority of the young people allocated to the social worker, there was not a single case note recorded;
- For several young people, there had been significant issues that had arisen, none of which were reflected in case records;
- A majority of young people had no visit records between May and August 2022.

The case examiners have reviewed the results of a subsequent audit, and they are satisfied that it suggests the social worker had not maintained records for visits to children in care, care plans, and statutory viability assessments.

In response to the case management concerns, it appears that an action plan was drawn up by the social worker's former employer, which sets out requirements for the social worker to bring their records up to date. The case examiners have had sight of the plan, and whilst they noted that the social worker had not signed it, copies of correspondence exchanged with the social worker at the time suggest that the social worker did not dispute that they had not maintained accurate or up-to-date records.

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

2. Did not cooperate with this investigation by Social Work England into your fitness to practise.

The case examiners have reviewed copies of emails, letters and call logs, and are satisfied that the regulator has demonstrated that appropriate attempts have been made to contact and engage with the social worker in respect of this fitness to practise investigation.

The regulator has reported that the social worker has not responded to any correspondence or contact. The case examiners are therefore satisfied that the evidence suggests the social worker has not cooperated with the regulator's investigation.

Accordingly, there is a realistic prospect of regulatory concern 2 being found proven.

Grounds

Regulatory concern 1

Regulatory concern 1 has been presented on the grounds of misconduct and/or a lack of competence or capability. The case examiners' guidance encourages them to (where possible) identify the appropriate statutory ground to proceed on, as this provides clarity as to the basis of Social Work England's case against the social worker. The case

examiners are reminded, however, that in some cases they may not always be in the best position to identify one ground over another.

In respect of regulatory concern 1, the case examiners are satisfied that adjudicators would be more likely to consider the available evidence to suggest lack of competence or capability, as opposed to misconduct.

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

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

The case examiners are aware that the social worker was newly qualified, and completing an Assessed and Supported Year in Employment (ASYE). In such circumstances, the case examiners appreciate that social workers may not yet have fully developed their skills and expertise. It is apparent that from records of ASYE supervisions that the social worker had demonstrated some level of developing expertise in a number of areas of social work practice. The ASYE supervisions did not, however, include a review of the social worker's case recording.

In reviewing the evidence available, the case examiners were unable to find any evidence to suggest the social worker had demonstrated the required level of competence in maintaining accurate and up-to-date case records, at any time whilst in post. The case examiners would therefore be cautious to suggest that the social worker had knowingly departed from the professional standards and, instead, consider it more likely that the evidence indicates a lack of competence or capability.

Accordingly, for regulatory concern 1, there is a realistic prospect of adjudicators determining that only the statutory grounds of lack of competence or capability are engaged.

Regulatory concern 2

Regulatory concern 2 has been presented to the case examiners under the statutory grounds of 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.

Social Work England – Professional Standards (2019)

As a social worker, I will:

6.7 Cooperate with any investigations by my employer, Social Work England, or another agency, into my fitness to practise or the fitness to practise of others.

The case examiners reminded themselves that Social Work England's overarching objective is to protect the public. In order to do so, the regulator is afforded powers of investigation where there are concerns about whether a social worker is fit to practise.

As laid out in professional standard 6.7, it is a requirement of all registered social workers that cooperate with any investigation into their fitness to practise. It is essential that social workers take concerns raised with the regulator seriously, and that they participate in investigations, including complying with requests for information.

The case examiners appreciate that there are varying shades in the level of cooperation that might reasonably be expected of social workers at different stages of a fitness to practise investigation. There are some requests made of social workers, however, that are fundamental, and for which social workers have a legal duty to comply.

One such requirement is for social workers to provide details of their current and previous employment; where they have provided services as a social worker, or in relation to social work. This requirement is set in place to ensure the regulator can undertake appropriate and necessary risk assessments, in order to ensure the public are protected whilst investigations are underway.

In this case, the case examiners have had sight of correspondence sent to the social worker, which made clear that the social worker had a legal duty to provide details of

their employment. The case examiners were particularly concerned to note that the social worker failed to respond. The case examiners are satisfied that adjudicators may consider the social worker's complete lack of engagement and cooperation with the regulator's investigation to represent a significant departure from the standards.

Accordingly, for regulatory concern 2, there is a realistic prospect of adjudicators determining that the statutory grounds of misconduct are engaged.

Impairment

Assessment of impairment consists of two elements:

1. The personal element, established via an assessment of the risk of repetition.
2. The public element, established through consideration of whether a finding of impairment might be required to maintain public confidence in the social work profession, or in the maintenance of proper standards for social workers.

Personal element

With regards to the concerns before the regulator, the case examiners have given thought to their guidance, and they note that they should give consideration to whether the matters before the regulator are easily remediable, and whether the social worker has demonstrated insight and/or conducted remediation to the effect that the risk of repetition is highly unlikely.

Whether the conduct can be easily remedied

The case examiners are satisfied that the conduct outlined in regulatory concern 1 could be easily remedied. For example via a demonstration of insight into the risks attached to poor record keeping, and engagement with appropriate training.

For regulatory concern 2, the case examiners consider that it may be more challenging to demonstrate remediation. The case examiners would expect to see strong evidence of the social worker having engaged with the regulator's investigation, and a demonstration of their understanding of the risks attached to a failure to cooperate.

Insight and remediation

Given the social worker has not engaged with the regulator's investigation at all, the case examiners have no evidence before them that might suggest the social worker has generated appropriate insight, or that any remedial action has been undertaken.

The case examiners also noted with some concern that the social worker left employment without having brought their case records up to date. The case examiners consider that

this could, potentially, suggest a lack of understanding with regards to the importance of accurate and up-to-date case recording.

With regards to whether the social worker is able or willing to remediate the conduct of concern in this case, the case examiners noted submissions from the social worker's former employer, which suggest that the social worker has left social work practice and enrolled upon an unrelated university degree course. The case examiners noted that text message correspondence, exchanged between the social worker and their manager, would appear to confirm that this is the case.

Risk of repetition

The case examiners have found no evidence of insight or remediation, and they are informed that the social worker remains disengaged from the regulator's investigation.

In mitigation, the case examiners were troubled by evidence that suggested the social worker had received limited managerial supervision (distinct from ASYE supervision) whilst in post. As a result, it appears from the evidence provided that oversight of the social worker's record keeping was severely lacking, without any issues being identified or brought to the social worker's attention until August 2022. However, in the absence of any evidence to suggest the social worker has reflected on the matters now before the regulator, or engaged with any remedial action, the case examiners can only conclude that the risk of repetition remains high.

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.

The case examiners reminded themselves that the core matter of concern in this case, record keeping, is in theory remediable. However, given there is no evidence to suggest the social worker is willing or able to cooperate with the regulator's investigation, the case examiners have concluded that the risk of repetition remains high.

In such circumstances, the case examiners are satisfied that a failure to find impairment could seriously undermine public confidence in the social work profession, and in the regulator's maintenance of proper professional standards for social workers.

Accordingly, there is a realistic prospect of adjudicators determining that the social worker's fitness to practise is 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

The case examiners have found no conflict in the evidence before them, and they are satisfied that although the public interest is engaged, it could be appropriately managed via publication of a case examiner decision on the regulator's website, and the implementation of one of the restrictive outcomes available to the case examiners.

The case examiners are mindful that accepted disposal may only be implemented if the social worker accepts the key facts of a case, and agrees that their fitness to practise is impaired. In this case, the social worker has not yet engaged with the regulator's investigation, and their position on facts and impairment is therefore unknown.

The case examiners consider that it would be appropriate and proportionate to therefore offer the social worker opportunity to review the case examiners' decision, along with an accepted disposal proposal. Accepted disposal could only be implemented if the social worker were to formally declare their acceptance of the key facts and impairment. It would be open to the social worker to request a hearing if they disagreed on either element, and wished to explore the matter further with adjudicators.

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

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

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

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

No further action, advice and warning

In light of the case examiners' findings in respect of the risk of repetition, they are satisfied that the outcomes of no further action, advice or warning order would be insufficient in this case. None of these outcomes would offer any degree of oversight for

the regulator, in respect of any remedial action the social worker might take to improve their practice in respect of record keeping.

In the case examiners' view, considering the social worker's continued failure to cooperate with the regulator's investigation, these outcomes would also be insufficient to safeguard public confidence in respect of regulatory concern 2.

Conditions of practice order

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

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

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

Having established that the social worker has failed to engage or cooperate with the regulator's investigation, the case examiners are satisfied that a conditions of practice order is therefore insufficient. Although workable conditions could be formulated in respect of regulatory concern 1, the social worker has demonstrated no insight, and the case examiners consider that a conditions of practice order would also be insufficient to safeguard public confidence in respect of regulatory concern 2.

Suspension order

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

Suspension may be appropriate where (all of the following):

- *the concerns represent a serious breach of the professional standards*
- *the social worker has demonstrated some insight*

- *there is evidence to suggest the social worker is willing and able to resolve or remediate their failings*

As set out above, the case examiners have found no evidence of insight from the social worker with regards to either the competence or misconduct matters before the regulator. Furthermore, in light of the social worker's complete lack of engagement, and given there is some evidence to suggest the social worker has enrolled on an unrelated university degree course, it appears likely that the social worker is not willing or able to resolve or remediate their failings. Accordingly, the case examiners are satisfied that a suspension order would be insufficient to protect the public, or to safeguard public confidence.

Removal order

The case examiners are satisfied that a removal order is available to them, given they have found there is a realistic prospect that the adjudicators would make a determination that the social worker's fitness to practise is impaired on one or more of the grounds set out in regulation 25(2)(a), (c), (d), (f), or (g).

With reference to the regulator's sanctions guidance, the case examiners note that a removal order *"may be appropriate in cases involving 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)"*.

In the case examiners' view, the combination of the factors set out above is sufficient to amount to clear evidence that the social worker does not wish to practise in the future. Accordingly, the case examiners are satisfied that the social worker is unwilling and/or unable to remediate. The case examiners therefore consider that no other outcome than a removal order would be enough to protect the public, to maintain confidence in the profession, and to maintain proper professional standards for social workers.

The case examiners have decided to propose to the social worker a removal order. 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 28 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.

Response from the social worker

The social worker provided a completed accepted disposal response form on 3 August 2024. Within the form, the social worker provided the following response:

“I have read the case examiners’ decision and the accepted disposal guide. I admit the key facts set out in the case examiner decision, and that my fitness to practise is impaired. I understand the terms of the proposed disposal of my fitness to practise case and accept them in full.”

Case examiners’ response and final decision

The case examiners have considered the public interest in this matter and, as they have not been presented with any new evidence that might change their previous assessment, they are satisfied that it remains to be the case that the public interest in this case may be fulfilled through the accepted disposal process.

The case examiners therefore direct that the regulator enact a removal order.