

Case Examiner Decision
Emma Dudley – SW92418
FTPS-20749

Contents

The role of the case examiners.....	3
Decision summary.....	4
The complaint and our regulatory concerns	6
Preliminary issues	7
The realistic prospect test.....	8
The public interest	13
Accepted disposal	15

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	15 February 2024
	Accepted disposal proposed - warning order (3 years)
Final outcome	08 March 2024
	Accepted disposal proposed - warning order (3 years)

Executive summary

The case examiners have reached the following conclusions:

1. There is a realistic prospect of the regulatory concern being found proven by the adjudicators;
2. There is a realistic prospect of the regulatory concern being found to amount to the statutory ground of misconduct;
3. 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 proposed to resolve the case with a warning order of 3 years. The social worker accepted this proposal and the terms in full on 07 March 2024.

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

Elements of this decision have been marked for redaction in line with our Fitness to Practise Publications Policy. Text in [REDACTED] will be redacted only from the published copy of the decision and will therefore be shared with the complainant in their copy. Text in [REDACTED] will be redacted from both the complainant's and the published copy of the decision.

The complaint and our regulatory concerns

The initial complaint

The complainant	The complaint was raised by way of a self-referral by the social worker.
Date the complaint was received	6 June 2022
Complaint summary	The social worker was charged with assaulting a police officer on 20 May 2022. They attended magistrates court and received a conditional discharge of nine months.

Regulatory concerns

Whilst registered as a social worker:

On or around 23 June 2022, you received a conditional discharge for common assault of an emergency worker.

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 the regulatory concern being found proven, that the concern could amount to the statutory ground of misconduct and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

Whilst registered as a social worker:

On or around 23 June 2022, you received a conditional discharge for common assault of an emergency worker.

The case examiners have had sight of the certificate of conviction. It confirms that on 20 May 2022, the social worker assaulted, "*an emergency worker, namely a police constable, acting in the exercise of his functions as such a worker.*" This is contrary to section 39 of the Criminal Justice Act 1988 and section 1 of the Assaults on Emergency Workers (offences) Act 2018.

The social worker pleaded guilty at a magistrates court on 23 June 2022 and was given a conditional discharge which was uplifted from six months to nine months to reflect the incident involved an emergency worker in the course of their duty. Compensation was ordered to be paid to the police constable.

The social worker admits the concern.

The case examiners are satisfied that there is a realistic prospect of this concern being found proven by adjudicators.

Grounds

The case examiners are aware that there is no statutory 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 not:

5.1 Abuse, neglect, discriminate, exploit or harm anyone, or condone this by others.

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 evidence suggests that the social worker had consumed a significant amount of alcohol and there was a report made to police following a disturbance. The police statement refers to being called to an incident involving reports of, ‘*a female who had been assaulting a number of people in the street*’. The social worker was identified to the police and arrested for assault. The social worker is said to have been screaming and the police decided to put them in the van so they had them, ‘*under control*’. The police statement comments that: “*The three of us finally got the female in the van, she was banging her feet and her arms in the cage*”. The police had opened the van door to try and calm the social worker down and when a decision was made to close the door to drive to custody, it is documented that the social worker kicked their leg out of the van cage and subsequently kicked the police constable. The social worker was then arrested for assaulting an emergency worker.

The social worker says that unfortunately due to the excessive amount of alcohol intake [REDACTED] they are unable to recall the alleged events.

The case examiners are aware that an isolated incident, unless it is particularly grave, is unlikely to meet the threshold to amount to misconduct. In this case the social worker has not only been arrested for assault whilst under the influence of drink, they have gone on

to assault an emergency worker in the course of their duty. The seriousness of such has been reflected in the length of the conditional discharge which was uplifted from six months to nine months.

If the matters were to be found proven, the case examiners conclude the alleged conduct is serious and a significant departure from the standards expected of a social worker.

As such, the case examiners are satisfied there is a realistic prospect of adjudicators finding the matters amount 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 regard to the concern before the regulator, the case examiners have given thought to their guidance, and they note that they should give consideration as 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 do consider that the social worker's alleged conduct could be remediable, for example, in that the social worker could demonstrate their understanding of what has gone wrong and what steps they could take to ensure this does not happen again. The case examiners consider steps could include, for example, engaging in support services, completing relevant associated training and/or a critical reflection addressing the concerns raised.

The social worker has completed a training course on mindfulness in the workplace (evidenced with a certificate) which they say has been helpful in identifying ways to promote their wellbeing. They have also found meditation helpful. They have been undertaking a [REDACTED] course. They say this has been helpful in [REDACTED]

They have also undertaken a course on team working and team building (certificate provided).

Insight and remediation

The case examiners note that the social worker pleaded guilty and self-referred to the regulator in a timely manner. Furthermore, they informed their recruitment agency and employer at the earliest opportunity.

The social worker states that they were pleased to hear that had not caused damage to the police constable and feel very lucky and relieved to hear such. They say they realised that not only could they have caused physical pain an injury to the police constable but also psychological harm. They have thought about the implications should the constable have needed time off work. The social worker states they intend to prioritise paying the compensation awarded to the police constable by the court.

The social worker, within their submissions, has considered the impact of their conduct on others, including those who witnessed the conduct, the police responding and also the wider public on hearing of the conduct.

The social worker, as a direct result of their conduct lost their employment and although they were saddened by such they fully expected it. They say they are sure the public would be '*shocked and appalled*' by their behaviour.

The case examiners have noted positive employment references from both the social worker's previous employer and current employer. They confirm there have been no concerns raised with regard to the social worker's professional conduct and the social worker has been open with both employers with regard to the fitness to practise concern raised.

Risk of repetition

Having taken the above into account, the case examiners are satisfied that the risk of repetition is low.

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 are aware that, notwithstanding the insight and remorse shown by the social worker, there are matters where the public's confidence in the profession would be undermined if a finding of impairment was not made.

The case examiners are of the view that adjudicators may determine that a member of the public would be concerned to learn that a social worker had been allowed to practise without sanction from their regulator, given the circumstances of this case. Adjudicators may consider there is potential risk of harm to the wider public in terms of their ability to trust and have confidence in a social worker who is alleged to have acted in this manner. Furthermore, the social worker's actions may undermine public confidence in the social work profession. The case examiners also consider that such conduct, if proven, is a significant departure from the professional standards.

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	☒
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 their 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 noted that the social worker has said their fitness to practise was impaired at the time but do not accept that it is currently impaired. The case examiners have considered whether a referral to a hearing may be necessary in the public interest. The case examiners have considered the following:

- There is no conflict of evidence.
- The case examiners are of the view that there is a low risk of repetition and consider that this can be managed through a number of 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 proposal and request a hearing if they wish to explore the question of impairment in more detail.

Furthermore, the case examiners are 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	☐
	Removal order	☐
Proposed duration	3 years	

Reasoning

The case examiners are satisfied there is a realistic prospect of the regulatory concern being found proven by adjudicators. Furthermore, they have found a realistic prospect that the concern, if proven, would amount to the statutory ground of misconduct. The case examiners have also found a realistic prospect that adjudicators would find the social worker's fitness to practise is currently impaired. The case examiners have decided however, that it is not in the public interest to refer this matter to a final hearing.

In considering the appropriate outcome in this case, the case examiners have had regard to Social Work England's sanctions guidance (2022) (the guidance) 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 decision makers select the minimum 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.

Firstly, the case examiners considered taking no further action but concluded this would not be appropriate in this instance as it would be insufficient to address the seriousness of the concern.

Next, the case examiners considered whether offering advice would be sufficient. 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 are of the view that issuing

advice is not sufficient to mark the seriousness with which they view the social worker's alleged conduct.

The case examiners then considered a warning order. A warning order implies a clearer expression of disapproval of the social worker's conduct than an advice order. The case examiners are of the view a warning order to be appropriate in that they consider the fitness to practise issue to be an isolated matter, have determined there is a low risk of repetition and consider the social worker has demonstrated insight and remediation.

As a further consideration, the case examiners turned their minds to the next two sanctions, conditions of practice and suspension. They note that conditions of practice orders are commonly applied in cases of lack of competence or ill health and therefore, the case examiners have concluded conditions were not suitable for this case. The nature of the alleged concerns are specific to matters in the social worker's personal life and there is positive testimony regarding the social worker's current employment.

Finally, the case examiners considered suspension. While they consider the concern represents a serious breach of the professional standards, they are of the view the social worker has demonstrated sufficient insight and remediation and therefore, suspension from the register would be a disproportionate and punitive outcome in this case. In reaching this conclusion the case examiners were mindful that although assault is inherently serious, the social worker has demonstrated considerable insight and remorse.

The case examiners have considered the length of time for the published warning. They note the guidance suggests one year may be appropriate for an isolated incident of relatively low seriousness. The case examiners do not consider the conduct to be low seriousness.

The case examiners note that a three year published warning may be appropriate for more serious concerns. Three years, it is said, may be appropriate for more serious concerns. This helps to maintain public confidence and highlight the professional standards. The period also allows more time for the social worker to show that they have addressed any risk of repetition.

The case examiners consider that a period of three years is the minimum necessary to maintain public confidence and to send a message to the public, the profession and the social worker about the standards expected from social workers. The case examiners considered that a five-year duration would be disproportionate and hence would be punitive.

The case examiners have therefore, decided to propose to the social worker a warning order of three years duration. They will now notify the social worker of their intention and seek the social worker's agreement to dispose of the matter accordingly. The social

worker will be offered 14 days to respond. If the social worker does not agree, or if the case examiners revise their decision regarding the public interest in this case, the matter will proceed to a final hearing.

Content of the warning

The case examiners are aware that regarding the matters in this case the social worker has already been dealt with by the criminal justice system, and that it is not the purpose of the fitness to practise process to punish them for a second time. To close this matter without action would, however, fail to take into account the public interest requirements of the fitness to practise process, which include the need to declare and uphold proper standards of conduct, and the need to maintain public confidence in the social work profession.

The case examiners therefore formally warn the social worker:

Professional integrity in social work means upholding the reputation and demonstrating the values of the profession at all times. Conduct outside of work, including but not limited to criminal behaviour, as indicated in this case, can damage confidence in you as a social worker, and the profession as a whole.

The social worker must ensure they comply with the following Social Work England Professional Standard:

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 warn the social worker that the conduct in this case should not be repeated. Any further matters of similar conduct brought to the attention of the regulator will be viewed dimly and will likely result in a more serious outcome.

Response from the social worker

The social worker responded by email on 07 March 2024 and confirmed: *'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 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 07 March 2024, 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 order of 3 years duration is a fair and proportionate disposal and is the minimum necessary to protect the public and the wider public interest.