

Case Examiner Decision
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SW86972
FTPS-18535

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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 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 5 years
Final outcome	Accepted disposal - warning order 5 years
Date of the final decision	8 June 2021

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 grounds of conviction or caution and 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 that the case can be concluded by way of accepted disposal.

As such, the case examiners notified the social worker of their intention to resolve the case with a warning of 5 years duration.

The case examiners have considered all 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 social worker made a self-referral to Social Work England
Date the complaint was received	04 December 2020
Complaint summary	On 8 October 2018, the social worker was stopped in their motor vehicle by two members of the public who suspected they were intoxicated. The social worker was arrested for failing to provide a breath test at the scene and taken to the police station where they were found to have 164 micrograms of alcohol in 100 millilitres of breath. On 12 November 2018, the social worker was convicted of driving whilst over the prescribed limit of alcohol, contrary to section 5(1)(a) of the Road Traffic Act and Schedule 2 of the Road Traffic Offenders Act 1988. The social worker received a community order with an unpaid work requirement of 180 hours, was disqualified from driving for 36 months (reduced by 36 weeks on completion of a satisfactory course) and received a fine of £170. The social worker did not inform the regulator of the conviction until the registration renewal process in December 2020.

Regulatory concerns

Regulatory Concern 1: On 12 November 2018, you were convicted of driving whilst over the prescribed alcohol limit contrary to Section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988.

By reason of your conviction, your fitness to practise as a social worker is impaired.

Regulatory Concern 2: You delayed declaring your conviction in RC1 to the regulator.

By reason of your misconduct, your fitness to practise as a social worker is impaired.

Preliminary issues

Conflicts of interest

Declaration: *I am not aware of any material conflicts of interest that could impact upon my consideration of this case.*

Lay case examiner

Oliver Carr

Professional case examiner

Cath Connor

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, that those concerns could amount to the statutory grounds of conviction or caution and misconduct, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

Regulatory Concern 1: On 12 November 2018, you were convicted of driving whilst over the prescribed alcohol limit contrary to Section 5 (1) (a) of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988.

Case examiners have had sight of:

- the memorandum of conviction dated 12 November 2018 issued by Leicester and Loughborough Magistrates' Court. The memorandum records the offence as stated in the regulatory concern.
- An enhanced Certificate from the Disclosure and Barring Service dated 16 March 2020 which records the conviction obtained on 12 November as '*driving a motor vehicle with excess alcohol.*'

In their submissions the social worker states: "*the incident occurred because of a poor*

decision on my part to drive after consuming strong alcoholic drinks(vodka) that I would not normally take. I had taken a few days off work and on the weekend I had friends who visited. I ended up consuming the alcoholic beverages that I would not normally drink”.

The evidence in respect of the regulatory concern is compelling and not disputed by the social worker.

As a result, the case examiners are satisfied that there is a realistic prospect of regulatory concern 1 found proved by adjudicators.

Regulatory Concern 2: You delayed declaring your conviction in RC1 to the regulator.

The evidence indicates that the social worker informed Social Work England of the conviction obtained in 2018 during the process of re registration in November 2020.

The social worker acknowledges that they did not inform the previous regulator (HCPC) of the offence. The social worker informed Social Work England in their submissions that: *“At the time of the offence, I was stressed and devastated and It never crossed my mind that I needed to inform the Regulating body as the offence.”*

As a result, the case examiners are satisfied that there is a realistic prospect of regulatory concern 2 found proved by adjudicators.

Grounds

Regulatory concern 1

The statutory ground being considered is that of impaired fitness to practise due to conviction.

The case examiners have sight of copies of official court documentation dated 12 November 2018 issued by Leicester and Loughborough Magistrates’ Court, which indicate that the social worker was convicted for a drink driving offence contrary to Section 5 (1) (a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.

Case examiners are satisfied there is a realistic prospect of adjudicators establishing the statutory ground of ‘conviction’, as provided by The Social Workers Regulations 2018.

Regulatory Concern 2

The statutory ground being considered is that of impaired fitness to practise due to misconduct.

The case examiners note that ‘misconduct’ denotes serious acts or omissions, suggesting a significant departure from what would be proper in the circumstances.

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

- 9.1. You must make sure that your conduct justifies the public's trust and confidence in you and your profession.
- 9.5 You must tell us as soon as possible if you accept a caution from the police or you have been charged with, or found guilty of, a criminal offence.

The evidence indicates that the social worker is employed through an agency. On 5 March 2021, a principal consultant from the agency confirmed in email to Social Work England that:

- The social worker registered with the agency in September 2018
- the social worker declared their conviction to the agency in October/ November 2018
- since the social worker declared the conviction to the agency, they have informed all the social worker's employers and potential employers of the conviction
- the social worker has been open and transparent with the agency and always wanted to ensure the conviction was declared to employers

Is not clear from the evidence where the social worker was employed at the time of the offence and whether there were consequences because of the conviction. There is no independent verification from employers in 2019 and 2020 that they are aware of the social workers conviction.

Case examiners accept the submission of the social worker that they were "stressed and devastated" at the time of the offence. Case examiners note however that:

- The social worker is a registered professional and was fully aware of the importance of informing their agency and employer at the time.
- The social worker was required to disclose the conviction to the Disclosure and Barring Service when renewing their enhanced certificate dated March 2020.
- There is a clear obligation on the social worker to inform the regulator of the conviction and they failed to do so for a period of 2 years.

Case examiners are of the view that failure to inform the regulator of a criminal conviction for a period of 2 years is a significant departure from the HCPC standards 9.1 and 9.5 and what would be proper in the circumstances.

Case examiners are satisfied there is a realistic prospect of adjudicators finding regulatory concern 2 amounts to misconduct.

Impairment

Having concluded there is a realistic prospect of adjudicators establishing the statutory ground of conviction or caution for regulatory concern 1 and misconduct for regulatory concern 2, the case examiners must consider whether there is a realistic prospect of adjudicators finding current impairment.

Case examiners have reminded themselves that the purpose of regulation is not to punish a social worker for past mistakes. Rather, the regulatory process seeks to establish whether a social worker is safe and fit to practise today and in the future.

Case examiners have assessed both the personal and public elements of current impairment.

Personal impairment

Case examiners are of the view that isolated mistakes are unlikely to be repeated if a social worker recognises what went wrong and takes action to make sure it does not happen again. In considering current impairment, the case examiners have considered whether the social worker has demonstrated insight, whether the conduct is remediable and if so, whether the social worker has shown remediation and whether there is a likelihood the matters alleged will be repeated.

Insight

- In their submissions the social worker accepted full responsibility for their behaviour and said that they were *“horrified and ashamed”* of what happened and that they *“regret the poor decision they made.”* The social worker accepted that their actions *“endangered other road users”* and said that *“I am thankful that no one was physically harmed during the incident or property damaged.”*
- The social worker demonstrated some insight into the fact that their behaviour fell short of the standards expected of a social worker and stated: *“as a Social Worker I am supposed to hold a position of a role model in society, but I am also human and I made a mistake.”*

- The social worker stated that failure to inform the regulator of the conviction was a complete oversight on their part and stated: *“Looking at it now, I have revisited the professional standards of Social Work and as part of my future professional development, I will always be reminded that my personal and professional lives are intertwined and my life has to show the value that I aim to instil in others. As Social Workers we need to keep up to date with guiding standards of Social Work.”*

Remediation

The case examiners are satisfied that the conviction resulted from actions that could be remediated in several ways, for example, through demonstrable development of insight and attendance at relevant training events. The case examiners have sight of a certificate of completion of a drink drive rehabilitation course and the social worker stated in their submissions that: *“that this course increased my awareness of the long-term impact of some irrational decisions.”* Case examiners have also had sight of evidence that the social worker completed 180 hours unpaid work as part of a community order.

Repetition

The social worker appears to have reflected on the impact of their actions and considered how they would act in the future.

Case examiners consider that the social worker has demonstrated some insight, expressed understanding that their conduct fell below what was expected of them and demonstrated remorse. In addition, the social worker has completed the remediation required by the court. The social worker has also reminded themselves of the need to immediately alert the regulator of any matters affecting their fitness to practise. Given the information provided, case examiners consider the risk of repetition appears low. **As such, they are not satisfied there is a realistic prospect of adjudicators determining that the social worker’s fitness to practise is impaired on the personal element**

Public Interest

Case examiners next considered whether the social worker’s actions put the public at risk, have the potential to undermine public confidence in social workers and whether this is a case where adjudicators may determine that public interest requires a finding of impairment. 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.

The case examiners are of the view that a conviction for driving with excess alcohol is a serious matter. The proportion of alcohol in the social worker’s breath was 164

microgrammes in 100 millimetres of breath – more than four times over the legal limit. The potential for causing harm to themselves or the public was high. In addition, failure to inform the regulator of the conviction, when required to do as a registered social worker, is also a serious matter that might impact on public confidence.

Adjudicators may determine that the public would expect a finding of impairment recorded against a social worker who chose to drive in these circumstances and did not subsequently inform the regulator of a conviction. Further, public confidence in the social work profession and the regulator may be undermined if a finding of impairment was not made.

Accordingly, case examiners are satisfied that there is a realistic prospect of adjudicators finding that the social worker's fitness to practise is impaired on the public interest grounds.

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	☒

Reasoning

In considering the necessity, or otherwise, of a public hearing, case examiners have had regard to the following:

- the risk to public safety
- the need to maintain public confidence in the profession
- the need to uphold proper standards within the social work profession
- the need for regulators to act proportionately.

Removal from the register

While this is a case that potentially engages the public interest, the case examiners do not consider the social worker's conduct was such that removal from the register would be required to uphold the public's confidence in the profession. While all criminal offences are serious and will impact on the public confidence in the profession, the offences in this case, were dealt with by the courts and the social worker received a community order in addition to a driving ban and a fine. The social worker's misconduct was also serious, but not at a level where removal might be necessary.

As removal has been discounted, all other case disposal options are open to case examiners, without the need for a referral to a final hearing.

Public confidence and upholding standards

With regards to upholding standards, case examiners are aware, in the event the social worker agrees to an 'accepted disposal' without a referral to a hearing, their full decision (subject to any redactions) will be published on Social Work England's website, thus fulfilling the public interest and the need for the regulator to declare what is proper conduct. They are aware that their guidance supports this approach in all but the most serious cases.

The public and other professionals will be able to see the types of behaviour that are deemed completely unacceptable. Further, they will be able to see that the regulator will take swift and appropriate action when faced with instances of conduct which purportedly breach professional standards.

Proportionality

Case examiners are required to act proportionately, and they consider that an accepted disposal represents the most proportionate outcome for this case that will also protect the public. As the social worker has demonstrated remediation, case examiners are of the view that attempting to resolve the matter now represents a fair and proportionate outcome that would be supported by the public.

Accepted disposal

Case outcome		
Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☒
	Conditions of practice order	☐
	Suspension order	☐
Proposed duration	5 years	

Reasoning

Case examiners have found a realistic prospect that adjudicators would make a finding of current impairment. The case examiners have reminded themselves of their guidance on sanctions, which states they “...*must select the least severe sanction necessary to protect the public and the wider public interest.*” Case examiners have therefore considered their disposal options in ascending order to determine what is appropriate. They have considered taking no further action, or giving advice to the social worker, however they feel that doing so would fail to mark the serious nature of the conduct that has been identified.

Case examiners consider that whilst the social worker has shown insight and remorse for their actions, they were four times over the legal limit for driving, reported to be driving erratically, refused to provide a breath specimen at the roadside, and they failed to inform the regulator of their conviction when they had an obligation to do so.

Case examiners consider therefore that a warning is necessary to uphold public confidence, and to send a clear message to the wider profession regarding the types of behaviour that are unacceptable. Case examiners have referred to their Sanctions Guidance which states: “*Five years may be appropriate for serious cases that have fallen only marginally short of requiring restriction of registration, to maintain confidence in the profession and where it is necessary to send a clear signal about the standards expected.*” Case examiners consider five years to be proportionate in this case and required in the circumstances. Case examiners were of the view that a warning of one or three years was insufficient to mark the seriousness of the matter.

The case examiners did consider whether a suspension would be appropriate to mark the seriousness, however they are of the view that this would be disproportionate given the social worker's insight and remorse. There is no necessity to restrict the social worker's practice and therefore conditions of practice were not deemed relevant.

It is important to note that by accepting the proposal in full, the social worker would be accepting that their fitness to practise is currently impaired and agreeing to the closure of the investigation into these concerns.

Case examiners will notify the social worker of their proposals and seek the social worker's agreement to dispose of the matter accordingly. Should the social worker 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.

The social worker is given 14 days to respond to this offer.

Content of the warning

Case examiners remind the social worker that the commission of any criminal offence is wholly unacceptable and has the potential to seriously undermine the reputation of the profession.

The driving offence put the health and safety of the public at risk which is a serious concern and demonstrated a serious lack of judgement.

The social worker is reminded of the requirement to comply with all the professional standards, specifically:

5.2 Social workers must not: *"Behave in a way that would bring into question their suitability to work as a social worker while at work, or outside of work."*

6.6: *As a social worker: I will declare to the appropriate authority and Social Work England anything that might affect my ability to do my job competently or may affect my fitness to practise, or if I am subject to criminal proceedings or a regulatory finding is made against me, anywhere in the world.*

Any other matters of this nature will be viewed extremely seriously by the regulator and are likely to raise the question of whether the social worker should be permanently removed from the register.

Response from the social worker

On 2 June 2021 the social worker confirmed in writing that they had read the case examiners' decision and the 'further information about accepted disposal' guidance document, and that they understood the terms of the proposed disposal of their fitness to practise case and accepted them in full.

Case examiners' response and final decision

The case examiners have noted that the social worker has accepted the proposed disposal. 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. The case examiners remain satisfied that there has been no material change since their initial accepted disposal proposal and there remains no public interest in referring this matter to a hearing. Case examiners have thus concluded that an accepted disposal –warning of 5 years, is a fair and proportionate disposal and is the minimum necessary to protect the public and the wider public interest