

Case Examiner Decision
Eleanor Dwyers – SW122029
FTPS-17833

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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	Warning order – 5 years
Date of the final decision	25 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 ground of misconduct;
3. The adjudicators could conclude that the social worker's fitness to practise is currently impaired.

The case examiners do not consider it to be in the public interest for the matter to be referred to a final hearing and that the case can be concluded by way of accepted disposal. The case examiners have notified the social worker of their intention to resolve the case with a warning order of 5 years and they have accepted this outcome in full.

The case examiners have considered all of the documents made available within the evidence bundle. Key evidence is referred to throughout their decision and the case examiners' full reasoning is set out below.

The complaint and our regulatory concerns

The initial complaint

The complainant	The social worker's current employer Kent County Council (KCC).
Date the complaint was received	24 July 2020
Complaint summary	The concerns were raised by the service manager where the social worker was employed for Kent childrens' social work teams. The police had informed the council they attended a home where the social worker was staying with her friend. It was alleged that the social worker grabbed Child L, the daughter of her friend, causing the child to fear violence from the social worker. The police were called to the house because of the social worker's level of alcohol consumption. The social worker was removed from the house under their safeguarding procedures. The council subsequently suspended the social worker from her employment and conducted a disciplinary investigation into the concerns. The social worker received a level two 12 month written warning.

Regulatory concerns

1. On or around 24th May 2020, whilst under the influence of alcohol you behaved in a way which brought into question your suitability to work as a social worker by:

- a. participating in a physical altercation in a friend's home with a child present.
- b. grabbing a child by their t-shirt.

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

Your fitness to practise as a social worker is impaired by reason of your misconduct.

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	Michael Lupson
Professional case examiner	Graham Noyce

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) and 1b) being found proven, that those concerns could amount to the statutory ground of misconduct and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

1. On or around 24th May 2020, whilst under the influence of alcohol you behaved in a way which brought into question your suitability to work as a social worker by:

a. participating in a physical altercation in a friend's home with a child present

Initial evidence from the complainant (KCC) states that they received a police report on 26 May 2020 which reported that the police were required to attend a home where the social worker was staying with her adult friend and their child on 24 May 2020. The call was made to the police in the early hours of the morning and during their attendance an allegation was made that the social worker grabbed a child (L) by their t-shirt, where the child feared violence from them.

The police report indicates that they were called because of the social worker's reported behaviours in the home and the level of alcohol consumption, where they felt that the social worker was still intoxicated.

KCC advised that the social worker contacted their team manager on 25 May 2020 to advise that they had been assaulted by their friend and that they were worried about their injuries and coming into work.

Initial submissions from the social worker accept that the child was 'witness to a volatile situation' under the influence of alcohol; they later accept that they were 'drinking heavily'. The social worker accepts that an argument took place with their friend in front of the child and states that their friend assaulted them as the situation 'became more heightened'; this was because they refused to leave the property when their friend asked them to do so. The social worker submits photographic images which she states were the outcome of the assault against her.

The case examiners have also reviewed the contents of the employer investigation, the 'LADO' report, the police crime report dated 24 May 2020, employer supervision records and the child and family assessment completed on 15 June 2020. These all align and support the evidence that the social worker participated in a physical altercation in their friend's home, with a child present, whilst under the influence of a substantial amount of alcohol. The case examiners conclude **there is a realistic prospect of the adjudicators finding the facts found as proven in regulatory concern 1a).**

b. grabbing a child by their t-shirt.

In their initial submissions the social worker does not accept that they grabbed the child by their t-shirt and they maintain this position in their reflective account of remedial actions; they make no comment on this issue in their final submissions. In the social worker's 'summary of events' they state *"my friend's daughter went into the kitchen and contacted the police. At this point I was worried as to what was going to happen and can remember rushing past my friend's daughter to get the phone off her to stop her contacting the police (sic)."* They state that when the police arrived, it was at this point that the child made the allegation of grabbing them by the t-shirt and fearing violence from them. Page 59 of the employer investigation asks whether the social worker pulled the child's pyjamas as alleged in the child and family assessment completed on 15 June 2020; the social worker disputes this.

The police crime report dated 24 May 2020 clearly refers to the allegation that the child 'grabbed her by the t-shirt'. Testimony from the mother of the child on a home visit dated 11 June 2020 states that *"Ellie grabbed her at the top at the front of her neck which she reports hurts the back of her neck."* This report says the *"child reports that she asked*

her to get off and tried to push her hand away however she was stronger and she had to wriggle away”.

It appears to be a moot point as to whether the child was ‘grabbed’ by their pyjamas or t-shirt, however the case examiners are of the view that there is enough evidence to suggest that the child was physically apprehended in some form by virtue of being pulled by their clothing. The case examiners therefore conclude **there is a realistic prospect of the adjudicators finding the facts found as proven in regulatory concern 1b).**

Grounds

The matters outlined in regulatory concern (1) amount to the statutory ground of **misconduct**. The case examiners are aware that ‘misconduct’ denotes serious acts or omissions, suggesting a significant departure from what would be proper in the circumstances.

The case examiners accept that the matters alleged occurred outside of their everyday professional practice, however the concerns were of a sufficiently serious nature to warrant police intervention, a ‘LADO’ referral, a child and family assessment and an employer investigation which resulted in the suspension of the social worker, a finding of misconduct and a level two written warning of 12 months.

Aggravating factors: It is established that the social worker was heavily intoxicated right through to the early hours of the morning when the police were called. These actions resulted in a child being disturbed from their sleep, resulting in a physical altercation between their mother and the social worker. During this episode it is alleged that the child was ‘in fear of violence’ and there is some evidence to suggest that the child was physically apprehended by the social worker in some form that may not have appeared to cause injury. An issue of significant concern is that the social worker appeared to attempt to try to prevent the 10 year old child from calling the police, an act which in itself suggests that they would have been in fear of their own safety. The social worker did not appear to leave the house when asked to by the mother which resulted in a police visit. The police had to invoke safeguarding protocols to make the situation safe and were obliged to have to remove the social worker to their own parents address, to render the situation safe.

Mitigating factors: It is accepted that ‘lockdown’ would have added restrictions to the social worker’s freedom of movement and this in itself may have contributed to additional pressures in the place of residence. The social worker alleges that they were the victim of an assault by the mother of the child and they provide photographic evidence of this. However, the mother has an alternative narrative of the situation.

Considering Social Work England's Standards, and the applicable guidance, they consider these matters viewed together are serious and would represent a significant departure from the following standards:

5.1 (will not) Abuse, neglect, discriminate, exploit or harm anyone, or condone this by others.

5.2 (will not) 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 therefore consider **that there is a realistic prospect of these complaints amounting to misconduct.**

Impairment

The current impairment test has two limbs: the personal element and the public interest element. The case examiners will assess each in turn.

1) Personal Impairment

Is the conduct remediable? The case examiners do consider this type of conduct to be remediable. The social worker could engage in training around alcohol use and misuse, reflective practice and writing about the incident in question; they could refresh themselves about the importance of 'the voice' and the 'experience' of the child; they would also benefit from reflecting on their private conduct and the impact that this has had on public life and public confidence in the profession.

Remorse and insight: The social worker has engaged in the regulatory process and has provided extensive submissions, which include a reflective submission based on a recognised reflective model used in social work practice. With regards remorse, they offer significant regret and apologies for their actions. They express what appear to be sincere apologies for the behaviours which were witnessed by the child. In this respect the social worker offers consistent and significant levels of remorse.

Insight in relation to their actions is currently in the process of development. The employer investigation specifically referenced the issue that at the time of the concerns, the social worker appeared to prioritise protecting their professional career over the voice and experiences of the child. The social worker has since reflected on this and accepts that their actions were detrimental to the child's experiences. However, some of their submissions continue to display a narrative which suggests that they were in fact the victim in this process, caused as a result of their alleged physical injuries. Whilst it is accepted that this must have been a distressing episode for the social worker, there is no question that the child was the main victim in this situation. This is an area of developing

insight which the social worker would benefit from considering further. The social worker continues to maintain that they did not grab the child by the t-shirt causing them to fear violence. While the social worker is entitled to dispute the alleged facts, it reinforces the concerns (above) that full insight is not yet complete with regards the experiences of this child in question.

The social worker does recognise that they will no longer put themselves into 'risky situations' and they have reflected on who they should or shouldn't associate with outside of work in terms of their 'friendship choices'.

Remediation: The social worker has submitted a reflective account of their learning experiences in relation to this event. They state that they have taken remedial action by evaluating their friendships and discontinuing those which could be harmful to them in the future. They state they have engaged in fortnightly supervision sessions with their manager and have submitted a positive 'CPD' observation of their everyday practice. It is notable that they have not included or evidenced any remediation around their alcohol misuse.

Risk of repetition: They state they have made significant lifestyle changes and that their alcohol intake is now minimal; they say that they do not now drink alcohol in any situation where they might be responsible for a child. They have enclosed two positive references from their line managers which evidence developing insight and positive practice. They continue to practise without restriction and appear to have the confidence of their employer. The case examiners are satisfied that excessive alcohol use on this occasion may have been a 'one-off' incident, which could suggest that any risk of repetition of such behaviour is likely to be at the lower end of the spectrum.

However, while the social worker offers significant remorse and some remediation, the case examiners cannot be certain that their insight around their behaviour and the negative effect on the child's experience is complete. Therefore, they cannot be fully confident that similar patterns of behaviour **would not occur again** in the future, suggesting a risk of repetition. They are of the view that the social worker would benefit from a framework of 'deterrent' which would prevent such behaviours occurring again.

For these reasons they have concluded **that there is a realistic prospect of the adjudicators making a finding of personal impairment in this case.**

2) Public interest

In consideration of any finding of impairment in the public interest, the case examiners have to consider whether the alleged conduct puts the public at risk. While it is accepted that the physical effects on the child might be negligible, the emotional impact on the child cannot be underestimated. The 'image' of a qualified child sector social worker

attempting to prevent a child from contacting the police when they may have been in fear of apparent violence, is a distressing one.

The regulatory concerns regarding misconduct are serious and have the potential to damage public confidence in the social work profession. The public would also be concerned to learn that a social worker would have engaged in such behaviour so undermining trust and public confidence in the profession. As such, it is likely the public would expect that a finding of current impairment is made by adjudicators. With regards the public interest, if a finding of impairment were not made, this could also have the potential to undermine trust and confidence in the profession. The case examiners have concluded **that there is a realistic prospect of a finding of public impairment in this case.**

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

The case examiners must now turn their minds to whether it is in the public interest for this matter to be referred to a final hearing to be considered by adjudicators. Whilst the case examiners have determined there is a realistic prospect that adjudicators would find the public interest is engaged in this case, 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 decision will provide the social worker with an opportunity to reflect on and gain further insight into the circumstances of this case. The publication of this matter will also 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 swift and appropriate action is taken in cases of alleged wrongdoing, enhancing the public's confidence in the social work profession. Further, the case examiners do not consider this to be the type of case where public confidence in the profession will be damaged by not holding a public hearing.

The public interest also entails the need for proportionate decision-making. The case examiners consider it is in the public interest to bring this matter to a prompt conclusion, whilst also ensuring the public remains adequately protected.

The case examiners are aware of the case examiner guidance (para 30) which states that the social worker is entitled to deny the facts alleged against them and that in these instances, accepted disposal would not normally be the appropriate outcome, instead such cases would be referred to a hearing for adjudication. However, the social worker accepts the majority of the facts and principles associated with the circumstances of this case, so they will need to consider this when agreeing to any offer of accepted disposal.

For the reasons stated, the case examiners have decided it is not in the public interest to refer this matter to adjudicators; rather they will write to the social worker and ask them to agree to dispose of this case without the need for a hearing.

Accepted disposal

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

Reasoning

The case examiners are satisfied there is a realistic prospect of the concern being found proven by adjudicators. Furthermore, they have found a realistic prospect that those complaints, if proven, would amount to 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 that it is not in the public interest to refer this matter to a final hearing. They must choose the most appropriate sanction necessary to protect the public. They have started at the lowest possible sanction and worked up, testing the appropriateness of each sanction and the next sanction above it to confirm their decision is proportionate.

They have considered taking no further action. The case examiner guidance (para 108) states that this may be appropriate if there has been a significant departure from professional standards or guidance, but which has been fully remediated with no risk of repetition. The case examiner guidance (para 110) states this outcome is very unlikely to be appropriate where there is any continuing risk to the public of the social worker behaving in the same way again. The case examiners consider that insight is incomplete and that there is a risk of the social worker repeating the conduct. Taking no further action would not provide the necessary level of public protection and would not satisfy the wider public interest.

The case examiners next considered whether offering advice would be sufficient in this case. An advice order will normally set out the steps a social worker should take to address the behaviour that led to the regulatory proceedings. The case examiners believe that issuing advice is not sufficient to mark the seriousness with which they viewed the matter.

The case examiners next considered whether a warning order would be appropriate in this case. The case examiners are aware that where a social worker's fitness to practise is potentially impaired, they will usually need to ensure the public is protected through some action by the regulator. They have decided to suggest a published warning is added to the social worker's entry on the register, for a set period of time.

The case examiners went on to test the suitability of this sanction by considering the final two sanctions, conditions of practice and suspension.

Due to the nature of the conduct, with evidence suggesting that this may have been a 'one-off' incident without evidence of alcohol dependence, it would be difficult to envisage any specified conditions that would be proportionate and workable. Therefore, this sanction would not be appropriate.

The case examiners have very seriously considered a suspension order, which is appropriate where no workable conditions can be formulated and where the case falls short of requiring a removal order. They have balanced the need to consider the public interest in this case, against the risk that prolonged suspension might have in de-skilling the social worker. They have concluded that while there may be public appetite for a suspension order in this case, the protection of the public can be achieved by a more proportionate sanction. The social worker's positive employment references have added weight to this decision.

The case examiners are of the view that a warning order would offer a safe deterrent effect to the social worker, which would ensure that they are mindful that such conduct should not be repeated. It would allow the social worker to develop full insight over a prolonged period of time, while satisfying the public interest outcome in this case.

In deciding the sanction of a warning order, an appropriate duration must be considered. One year is for an isolated incident of relatively low seriousness. While the social worker's conduct was an isolated incident, it was of relatively high seriousness, so a duration of a year would not be appropriate. A period of three years might be appropriate to maintain public confidence and send a message about the professional standards expected of social workers. However, a period of five years is more appropriate for serious cases which have fallen only marginally short of requiring restriction of registration. This is applicable in this case as a suspension order has been seriously considered and no conditions of practice appear to be workable. A period of five years offers an extended timeframe over which the social worker must demonstrate that there is no risk of repetition.

The case examiners have decided to propose to the social worker a warning order of five 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 warning

Your conduct under the influence of alcohol, in the presence of a child, was completely unacceptable. The case examiners have no tolerance of this type of behaviour which occurred in your private life. It has the potential to damage public confidence in the profession and has negatively impacted on the experience of the child.

The case examiners remind the social worker of the importance of adhering to the following professional standards:

5.1 (I will not) Abuse, neglect, discriminate, exploit or harm anyone, or condone this by others.

5.2 (I will not) Behave in a way that would bring into question my suitability to work as a social worker while at work, or outside of work.

Any further matters brought to the attention of the case examiners will be viewed dimly and will likely result in a more serious outcome.

Response from the social worker

The social worker has responded on 10 June 2021 stating that they have read the case examiners' decision and that they understand the terms of the proposed disposal and accept them in full. They have also provided a short submission stating that they agree with the case examiner decision and that they will engage in further training, learning and reflection.

Case examiners' response and final decision

Having been advised of the social worker's response, the case examiners have again turned their minds to whether the most appropriate means of disposal for this case remains as a warning order, as listed above. They have reviewed their decision, paying 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 is a fair and proportionate outcome which will protect the public and serve the wider public interest.