

Case Examiner Decision
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SW104617
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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

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 - warning order (5 years) & voluntary removal
Date of preliminary decision	27 June 2022 Revised 5 July 2022
Final outcome	Accepted disposal - warning order (5 years) & voluntary removal
Date of the final decision	26 July 2022

Executive summary

The case examiners initially paused their considerations and requested that the social worker was provided with information with regards to the voluntary removal process, so that they could make an informed decision as to whether or not they wished to request consideration of their voluntary removal from the register.

On subsequently reviewing the evidence, including a request from the social worker for consideration of their voluntary removal from the register, the case examiners were satisfied that there was a realistic prospect that:

1. Some of the factual concerns could be found proven by the adjudicators;
2. Those concerns could amount to the statutory ground of misconduct and adverse physical and/or mental health;
3. The adjudicators could conclude 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 having considered Social Work England's voluntary removal guidance for social workers involved in an open fitness to practise investigation, the case examiners considered that this may be a case suitable for voluntary removal, and that the

case could be concluded by way of accepted disposal, subject to the social worker's agreement and final review by the case examiners.

As such, the case examiners requested that the social worker was notified of their intention to resolve the case with a warning order (published) of 5 years, together with the voluntary removal of the social worker, subject to the social worker's agreement and final review by the case examiners.

The social worker responded to this proposal on 1 July 2022, agreeing to the proposed accepted disposal, with a warning order of 5 years and voluntary removal.

Having reviewed their determination, the case examiners remain satisfied that it is not in the public interest to refer this matter to a substantive hearing. Their final determination is that this case should be concluded 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	Previous employer
Date the complaint was received	10 February 2021
Complaint summary	Central Bedfordshire Council (the council) raised concerns in relation to the fitness to practise of the social worker. The council advised that the social worker had been dismissed, having advised their employer that they had taken drugs and were seeking support from a drug agency. The council also subsequently became aware that the social worker may also be suffering from an adverse health condition.

Regulatory concerns

Regulatory Concern 1: Whilst registered as a social worker and employed by Central Bedfordshire Council, you obtained and took illegal drugs, including class A drugs.

Regulatory Concern 2: You may have an unmanaged health condition, as set out in Schedule 1:



Regulatory Concern 3: Whilst registered as a social worker, you breached government Covid 19 regulations in that you visited a hotel with 3 friends in September 2020.

Grounds of impairment:

The matters outlined in regulatory concerns 1 and 3 above amount to the statutory ground of misconduct.

The matters outlined in regulatory concern 2 above amounts to the statutory ground of adverse physical or mental health.

Your fitness to practise is impaired as outlined at regulatory concern 1 and 3 by reason of misconduct and as outlined at regulatory concern 2 by reason of adverse physical or mental health.

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	☐

Requests for further information or submissions, or any other preliminary issues that have arisen

Preliminary decision - 19 January 2022:

The case examiners have considered the evidence provided to them in relation to this case and note that the complainant has recently indicated (email to Social Work England 30 November 2021) that they have submitted an application to resign from the social work register.

In light of the social worker's indication that they may wish to resign their registration and having considered Social Work England guidance with regards to voluntary removal, the case examiners are of the opinion that this *may* be a case where voluntary removal may be appropriate. As such, the case examiners have paused their deliberations and request that the social worker is provided with information with regards to the voluntary removal process, so that they can make an informed decision as to whether or not they wish to request consideration of their voluntary removal from the register.

It will need to be made clear to the social worker that any request for voluntary removal, will not negate the requirement for the case examiners to consider all of the facts of the case, and to make a determination with regards to any impaired fitness to practise.

Any decision with regards to a request for voluntary removal will remain at the discretion of the case examiners.

The case examiners have noted the case examiner guidance (para 145) which states they should only request further information if it would not be possible to reach a decision without it; they are satisfied that their chosen course of action is consistent with the guidance.

Updated 31 May 2022:

The social worker submitted a completed request for voluntary removal, this was forwarded to the case examiners on 30 May 2022

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 misconduct and adverse physical and/or mental health, and that the social worker's fitness to practise could be found to be impaired.

The case examiners determined that there is no realistic prospect of regulatory concern 3 being found proven

Reasoning

Facts

Regulatory Concern 1: Whilst registered as a social worker and employed by Central Bedfordshire Council, you obtained and took illegal drugs, including class A drugs.

The case examiners have noted the following key evidence:

- Copy of an email from the social worker to their employer dated 9 September 2020 advising that they had taken illegal drugs [REDACTED]
- Local authority referral to the regulator which referenced the email from the social worker advising that they had taken illegal drugs, including class A drugs.

- Email from a hospital to the local authority dated 17 September 2020, following the social worker's presentation at the accident and emergency department, which details illegal drug use by the social worker.
- GP records indicate that on 19 August 2020 the social worker disclosed illegal drug use.
- [REDACTED]
- Minutes of a joint evaluation meeting with the local authority designated officer (LADO) which details illegal drug use by the social worker. The LADO is the person who should be notified when it has been alleged that a professional or volunteer who works with children has behaved or may have behaved in a way that indicated they may not be suitable to work with children.

The case examiners consider there is a range of credible evidence to support regulatory concern 1, and the social worker accepts this concern.

The case examiners are satisfied that there is a realistic prospect of regulatory concern 1 being found proven by adjudicators.

Regulatory Concern 2: You may have an unmanaged health condition, as set out in Schedule 1:



The case examiners have noted the following:

- The GP provided a comprehensive medical history [REDACTED]
- Letter of a locum consultant psychiatrist dated 31 December 2020 [REDACTED]

- Medical records detailing the social workers presentation at A&E on 7 September 2020 [REDACTED]
- Clinician's notes made following an A&E admission [REDACTED]
- Record of the social worker's interview for the employer's disciplinary investigation on 21 October 2020 [REDACTED]
- A LADO referral on 9 September 2020 [REDACTED]
- In their submissions the social worker admits that they used class A drugs on two occasions in the summer of 2020, but they have not taken any "narcotics" [REDACTED] he social worker provided an update on their mental health [REDACTED]
- Evidence from mental health services [REDACTED]
- The record of a remote consultation on 19 November 2020 between the social worker and the community [REDACTED] team states: *'[The social worker] denies being addicted to illicit drugs and says they have taken crystal meth only a few times'*
- A report dated 26 August 2021 following hair drug analysis found that there was no evidence that the social worker had used drugs in the previous 11-month period.

The case examiners note that there is some inconsistency in the evidence regarding the extent of the social workers illegal drug use. Whilst the social worker stated there were only two occasions in summer of 2020, the GP records indicate that in March 2019 the social worker disclosed that they had been using illegal drugs use at weekends for some months. The case examiners acknowledge that the social worker may have only

referenced drug use with their current employer, however there is evidence to suggest regular use of illegal drugs in March 2019.

There is some evidence that the social worker's health conditions have improved since the regulatory concerns were raised. However, it is the view of the case examiners that given the long-term history of [REDACTED] concerns and evidence of class A drug use, there has not been a sufficient period of time for the social worker to demonstrate stability in their health conditions, specifically, that their health can be sustained when experiencing personal stress or emotional challenge. Whilst the risk of relapse remains there is a realistic prospect of adjudicators finding regulatory concern 2 [REDACTED] proven.

The case examiners are satisfied that there is a realistic prospect of regulatory concern 2 being found proven by adjudicators.

Regulatory Concern 3: Whilst registered as a social worker, you breached government Covid 19 regulations in that you visited a hotel with 3 friends in September 2020.

Case examiners note that information provided by the social worker to health professionals and their line manager, regarding the circumstances of their drug use in September 2020, was inconsistent.

The social worker advised health professionals on 7 September 2020 that they had checked into a hotel with 3 friends on 6 September 2020 and had been injecting each other with methamphetamine. The social worker advised their line manager on 9 September 2020 that they had seen a friend at the weekend to take drugs.

Government guidelines changed on 9 September 2020, from allowing 2 households to meet indoors to allow people to meet socially in groups of 6.

Following a review of all the available information the case examiners are of the opinion that there is insufficient evidence for them to conclude that the social worker may have breached Covid 19 regulations in September 2020.

The case examiners are therefore not satisfied that there is a realistic prospect of regulatory concern 3 being found proven by adjudicators.

Grounds

The case examiners must next consider whether, if found proven, regulatory concern 1 would amount to an allegation of impaired fitness to practise by reason of the statutory ground of misconduct, and regulatory concern 2 would amount to an allegation of

impaired fitness to practise by reason of the statutory ground of adverse physical or mental health.

Misconduct

Misconduct can be broken down into two elements:

- Serious misconduct in exercise of professional practice.
- Conduct of a morally culpable or otherwise disgraceful kind which may occur outside the course of professional practice but could bring disgrace on the professional and reputation of the profession.

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 professional standards which were applicable at the time of the concern.

Relevant standards

Social Work England professional standards

5. Act safely, respectfully and with professional integrity. 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.

6. Promote ethical practice and report concerns. As a social worker I will:

6.6 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.

The case examiners consider that the regulatory concerns are grave; taking illegal class A drugs is likely to be viewed by adjudicators as a serious departure from the standards of Social Work England and potentially in contravention of criminal law. Drug misuse is likely to have a negative impact on the ability of a social worker to make professional decisions and protect vulnerable service users. In addition, when purchasing illegal drugs, a social worker may be interacting with those who supply drugs, thus perpetuating criminal activity and compromising the social worker's own integrity

The case examiners are therefore satisfied that there is a realistic prospect of adjudicators finding misconduct proven in relation to regulatory concern 1.

Health

The medical evidence provided to the case examiners indicates that the social worker has a history of [REDACTED] issues and of drug misuse, requiring interventions and support spanning a number of years. [REDACTED]

[REDACTED] The social worker in their submissions said, [REDACTED]

[REDACTED] *now feel more whole and at peace than I ever have done before*". The evidence does not include information about strategies and support the social worker would use to manage future stresses or how they would prevent a further relapse in their health.

While the GP considers the prognosis for the social worker's [REDACTED] health to be good, they note that they remain on 'ongoing treatment' and that with a long history of [REDACTED] they are "more likely to have relapses in the future", and that if the social worker did have a relapse, then their ability to perform their role would need to be reassessed. The GP also indicates that the social worker has a history [REDACTED] and "with previous recurrent episodes is more at risk of relapse".

The case examiners note that the social worker is taking positive steps to manage their health, and there is nothing to suggest that the social worker's mental health directly impacted on their practice as a social worker. However, the evidence indicates a potential link between the social worker's mental health and illicit drug use. Given the long history of relapse and limited information about specific changes made by the social worker, the case examiners consider that there is some evidence that the social worker continues to have unmanaged health conditions.

The case examiners are therefore satisfied that there is a realistic prospect of adjudicators finding the grounds of adverse health proven in relation to both parts of concern 2.

Impairment

The case examiners have next considered whether there is a realistic prospect of adjudicators finding the social worker's fitness to practise to be impaired.

In assessing whether there is a realistic prospect that adjudicators may find the social worker's fitness to practise to be impaired, the case examiners have considered both the personal and public interest elements.

In considering the personal element of impairment, the case examiners have considered the test as set out in the Case Examiner guidance (2020), namely whether the conduct is remediable; whether the social worker has undergone remediation and demonstrated insight; and whether there is a likelihood the matters alleged will be repeated.

The case examiners consider that the alleged actions are remediable, for example through sustained absence from illicit drug use and maintenance of good [REDACTED] health.

The case examiners have made the following observations:

There is some evidence of the social worker taking positive steps to address their drug misuse and health issues. In addition, the toxicology report suggests the social worker has not used illicit drugs since the episode which resulted in the regulatory concerns. However, given the long-standing issues there is insufficient evidence to indicate that the social worker has successfully and fully remediated at this time.

Whilst the social worker expressed some remorse and stated *"I feel there were extenuating circumstances behind the decision to take them [drugs]. I deeply regret my actions,"* they have demonstrated limited insight.

While the case examiners would consider insight to be strengthened if the social worker had provided fuller responses and reflection into the concerns raised; for example, considering the impact of their alleged actions on public confidence in the profession of social work; they do note that the social worker has indicated that they no longer wish to work as a social worker and as such, may not consider further reflection to be required.

On 23 November 2021 in email to the regulator the social worker stated: *"I no longer wish to contest this case. I have already submitted an application on the Social Work England website, requesting to resign my registration"*.

Overall, given the nature of the issues raised by the concerns, incomplete remediation, and the absence of full insight, the case examiners conclude that there remains some risk of repetition if the social worker were to return to unrestricted practise.

The case examiners next considered whether the social worker's alleged actions have the potential to undermine public confidence in the profession 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.

Given the nature of the concerns raised, the case examiners consider that adjudicators may determine that the public would expect a finding of impairment recorded against a social worker in these circumstances. Furthermore, public confidence in the social work profession and the regulator may be undermined if a finding of impairment was not made.

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

The public interest

Decision summary

Is there a public interest in referring the case to a hearing?	Yes	☐
	No	☒

Referral criteria

Is there a conflict in the evidence that must be resolved at a hearing?	Yes	☐
	No	☒
Does the social worker dispute any or all of the key facts of the case?	Yes	☐
	No	☒
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	☒

Additional 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.

In this case, while the case examiners have found a realistic prospect of adjudicators finding current impairment, they have noted the positive steps that the social worker has taken to date with regards to managing their health and to remediate the issues raised by the concerns. While the case examiners do not consider this remediation to be complete at this time, they do consider that any risk to public safety can be addressed without the need for a hearing, with any potential risk being managed through the 'accepted disposal' and 'voluntary removal' process. The case examiners note that the social worker has

submitted a signed voluntary removal agreement, which remains subject to the case examiner's approval.

The case examiners have considered whether the matter is of such seriousness that there is a realistic prospect that adjudicators would consider removal and whether the matters arising require a hearing to maintain public confidence in the profession, and to uphold the professional standards of social workers. Given the evidence of the social worker engaging with health professionals and taking positive steps to manage their health, the case examiners do not consider this to be the type of case which requires public scrutiny at a hearing. The case examiners are of the view that public confidence in the profession, or the regulator, would not be damaged if there was not a public hearing, but was instead addressed through the social worker being voluntarily removed from the register, together with a sanction published on its website

Interim order

An interim order may be necessary for protection of members of the public	Yes	☐
	No	☒
An interim order may be necessary in the best interests of the social worker	Yes	☐
	No	☒
The social worker is currently subject to an interim order		

Accepted disposal

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

Reasoning

In considering the appropriate outcome in this case, the case examiners have had regard to Social Work England's Sanctions Guidance (2019) and reminded themselves that the purpose of sanction is not to punish the social worker but 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 options in ascending order of seriousness.

The case examiners determined that taking no further action was not appropriate in a case where there is evidence that the social worker had engaged in taking illegal substances and may have a health condition that still has some potential to impact on their ability to work safely and effectively. The case examiners consider public confidence in the profession would be significantly undermined were no sanction to be imposed, as it would not address the gravity of the concerns.

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 do not consider that advice would be sufficient to prevent the alleged conduct from recurring or address the seriousness of the concerns raised.

The case examiners next considered issuing a warning and determined that, together with voluntary removal, this was the most appropriate and proportionate response in this case

and was the minimum necessary to protect the public and the wider public interest. While a warning will not restrict the social worker's practice, the voluntary removal of the social worker from the register will prevent them from practising. Furthermore, a warning will also serve as a clear expression of disapproval of the social worker's conduct.

In considering the duration of the warning, the case examiners have had regard to the Sanctions Guidance (2019) which states that one year may be appropriate for an isolated incident of relatively low seriousness where the primary objective is to send a message about the professional standards expected of social workers. Having considered the nature and seriousness of the concerns raised, the case examiners do not consider a one-year warning order to be appropriate.

A warning order of three years might be appropriate for more serious concerns to maintain public confidence and to send a message about the professional standards expected of social workers; However, having carefully considered the seriousness of the concerns raised in relation to the social worker taking illegal substances, together with the length of time that the social worker appears to have suffered from adverse health issues, the case examiners do not consider a warning order of three years to be sufficient.

The case examiners guidance advises that a warning order of five years might 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. The case examiners therefore consider that a warning order for a period of five years is appropriate in these circumstances and 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.

To test the appropriateness of their decision, the case examiners also considered whether conditions of practice or a suspension order might also be appropriate in the circumstances. They determined that neither conditions of practice nor suspension would serve a useful purpose or protect the public where a social worker has indicated that they have no intention of returning to social work and wish to remove themselves from the register.

The case examiners have thus decided to propose to the social worker a warning of five years duration, together with the voluntary removal of the social worker from the register. In signing the voluntary removal agreement, the social worker declarations include that:

- They understand the regulatory concerns made against them and admit to the factual particulars of those regulatory concerns. They also admit that their fitness to practise is impaired by reason of those regulatory concerns.
- Under schedule 2, paragraph 9 of the Social Workers Regulations 2018, they ask for the case examiners to consider disposal of the case without a hearing on the basis that they seek voluntary removal from the register.
- They do not intend to revoke their application prior to being removed from the register.
- They do not intend to practise as a social worker in future or apply for admission to the register again.
- They understand that if the case examiners agree to proceed by way of the voluntary removal process and they do apply for admission to the register in the future, they will be required to disclose their fitness to practise process to the regulator.
- They understand the following will be taken into account when considering any application to be admitted: admissions they have made to the regulatory concerns and my fitness to practise being impaired, and their stated intention not to practise as a social worker in future or apply for admission to the register.
- They understand that if the case examiners do agree to proceed by way of the voluntary removal process that the decision will be published including admissions they have made to the regulatory concerns and their fitness to practise being impaired, and their stated intention not to practise as a social worker in future or apply for admission to the register.
- They understand that they may be required to disclose to a third party such as an employer, agency, public authority and/or another regulator that they have been the subject of a fitness to practise proceeding.
- They understand that if requested by a third party, such as an employer, agency, public authority and/or another regulator, Social Work England can disclose the outcome of the voluntary removal process including admissions they have made to the regulatory concerns and their fitness to practise being impaired, and their stated intention not to practise as a social worker in future or apply for admission to the register.

The case examiners will now notify the social worker of their intention for accepted disposal and seek the social worker's agreement to dispose of the matter accordingly. The social worker will be offered 21 days to respond. If the social worker does not agree to both the five-year warning order and voluntary removal from the register, 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 have considered a warning in this case is necessary to declare and uphold proper standards of behaviour and conduct, as well as to mark the serious impact which unprofessional behaviour, and an unmanaged adverse health condition, can have on the reputation of the profession. The case examiners consider the warning should be a duration of five years.

The case examiners therefore formally warn the social worker that their conduct fell significantly short of the required standards and had the potential to place service users at risk of harm.

Behaviour bringing into question your suitability to work as a social worker, [REDACTED] will have an adverse effect on the public's confidence in the social work profession, and therefore this conduct should not be repeated. Any further concerns of this nature 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 suggested two amendments to the substantive decision on 3 July 2022 and provided a rationale/further information to support their request.

The social worker subsequently confirmed that they understood and accepted the terms of the proposal to conclude this matter by way of accepted disposal, warning order (5 years).

Case examiners' response and final decision

The case examiners considered the changes requested by the social worker on 5 July 2022 and have made amendments which they consider to be appropriate and in line with those requests; the case is likely to progress to a hearing if the social worker does not agree to the accepted disposal.

Following receipt of the social worker's confirmation of acceptance of the accepted disposal, including the conditions of their voluntary removal, the case examiners have reviewed their decision, paying particular regard to the overarching objective of Social Work England: protection of the public, the maintenance of public confidence in the social work profession and upholding professional standards. The case examiners are satisfied that an accepted disposal (warning order of 5 years, and voluntary removal) remains the most fair and proportionate way to address the concerns and is the minimum necessary to protect the public and satisfy the wider public interest.

The case examiners note that there is an interim order currently in effect, which should be revoked upon enactment of any agreed order.