

Case Examiner Decision
Sarah Georgina Walden
SW18397
FTPS-18799

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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	Accepted disposal proposed-warning order (3 years, published)
Final outcome	Accepted disposal - warning order (3 years, published)
Date of the final decision	6 January 2023

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 conviction or caution in the United Kingdom for a criminal offence.
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 order (published) of 3 years duration and the social worker agreed to conclude the case by way of accepted disposal.

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

The complaint and our regulatory concerns

The initial complaint

The complainant	The complaint was a self-referral by the social worker.
Date the complaint was received	2 February 2021.
Complaint summary	The social worker self-referred to Social Work England after they were arrested by the police for assault and criminal damage [REDACTED] The social worker is alleged to have hit [REDACTED] with a glass jar, causing injuries in the form of a minor scratch and soreness. Further, it is alleged the social worker threw the glass jar with liquid in it causing damage to the paintwork on the wall of the property. The social worker was later charged by the police and convicted at court for both offences.

Regulatory concerns

Whilst registered as a social worker:

1. On 17 August 2021, you were convicted of common assault by beating and criminal damage.

(As presented to the case examiners)

The matters outlined in regulatory concern (1) amount to the statutory grounds of criminal conviction or caution in the UK

(As amended by the case examiners)

The matters outlined in regulatory concern 1 above amounts to the statutory ground of conviction or caution in the United Kingdom for a criminal offence.

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

The case examiners noted that the ground of impairment was worded slightly wrong in respect of regulatory concern 1. The case examiners have made this minor clerical amendment, as seen in the regulatory concerns section, to ensure the grounds are consistent with those named in The Social Workers Regulations 2018. They are satisfied this does not make a material difference and that there is no requirement to pause the case to make the social worker aware of this change. The case examiners will proceed with their consideration of this case.

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 concern 1 being found proven, that this could amount to the statutory ground of conviction or caution in the United Kingdom for a criminal offence, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

On 17 August 2021, you were convicted of common assault by beating and criminal damage.

The case examiners have had sight of the court memorandum of entry detailing the social worker being convicted on the date, and for the offences, cited in the regulatory concern. The case examiners note that the memorandum does not refer specifically to 'common assault', rather an assault contrary to section 39 of the Criminal Justice Act 1988. The case examiners are aware that this correlates to 'common assault'.

The social worker accepts the matter of conviction.

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

Grounds

The case examiners have seen the court memorandum of entry detailed above and they are satisfied that the documentation provided sufficiently evidences the social worker's conviction in the United Kingdom for a criminal offence.

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

Impairment

Having concluded there is a realistic prospect of adjudicators establishing the statutory ground of conviction or caution in the United Kingdom for a criminal offence, the case examiners must consider whether there is a realistic prospect of adjudicators finding current impairment. The case examiners are aware they must assess both the personal and public elements of current impairment. They will consider each in turn.

Personal impairment

In considering current impairment, the case examiners have considered whether the conduct is remediable, whether the social worker has demonstrated insight and/or undergone remediation, and whether there is a likelihood the matters alleged will be repeated.

In respect of insight, the case examiners note that the social worker has demonstrated remorse for their actions. They state:

- *'I deeply regret the incident that occurred which may have harmed [REDACTED] and I have made amends by pleading guilty at the earliest opportunity, paying the Court fine and compensation, and I have apologised for my actions.'*

The social worker explains that they were [REDACTED]

[REDACTED] They state:

[REDACTED]

[REDACTED]

The social worker states they have reflected on their actions and how they would handle the matter differently. They state:

'If faced with a similar incident whether in my private life or at work where I could see conflict arising or the service user or person appeared to become agitated or angry, I would leave the situation immediately and would not place myself in any difficulty and would look to avoid confrontation or provocation. I would leave the property and contact my manager if at work, or family and friends if it was outside of work, to discuss the situation whereby I would have space and time to reflect on what was happening.'

The social worker has demonstrated a good understanding of why the public would be concerned by the behaviour that led to their conviction. They state:

- *'I understand I have could have damaged the public perception of the profession under the Professional standards of Social Work England to: 'Act safely, respectfully and with professional integrity,' and as a social worker, I will not: Standard 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.'*
- *'I can see how a member of the public could view the criminal conviction as hypocritical if I was to be working with a service user who had been involved in a similar type of incident, however the incident was a one-off and completely out of character for me.'*
- *'If they were to meet a social work professional and found out they had a criminal conviction, it may undermine public trust and confidence as Social Workers are in trusted positions. Some may view it as hypocritical or a barrier to working with someone to (sic) [REDACTED]*
[REDACTED]
- *'I accept that I broke the law and now have a criminal conviction. I understand my actions would have led to the public's trust and confidence in the social work profession being compromised. I understand that I have fallen short of the Social work England's Professional standard 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, on this occasion.'*

In addition to this, and when considering remediation, the social worker has provided extensive submissions setting out (and providing evidence of) the learning they have done around the matter of [REDACTED] and how they would apply this to their personal life in the future. [REDACTED]
[REDACTED]

The social worker provides specific examples of cases they have worked on since their conviction, in order to demonstrate that the matter in their personal life has not negatively impacted their decision making in a professional context where they deal with situations relating to [REDACTED]

The case examiners note the positive testimonials that were provided for court from the social worker's two managers and head of service, as well as the employer disciplinary hearing minutes. All of this supports the submissions made by the social worker and describes a social worker whose practice exceeds the standard expected of them.

The incident that led to the social worker's conviction occurred in January 2021, approaching two years ago. There is no evidence before the case examiners to suggest there has been any repetition of the alleged conduct. Nor is there any evidence to suggest the social worker has ever acted similarly before, pointing to this being an isolated matter.

The information reviewed leads the case examiners to conclude that there is a low risk of repetition in this case.

Public Interest

The case examiners next considered whether the social worker's actions 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 consider that the following Social Work England Professional Standards are engaged in this case:

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.

[REDACTED] the case examiners have noted that [REDACTED]
[REDACTED]
[REDACTED] the social worker's response to the situation is likely to cause considerable concern to the public.

The case examiners are of the view that a conviction for an assault by beating, as well as criminal damage, all in the context of a [REDACTED] is a serious matter and suggests a significant departure from the professional standards outlined above. It appears actual harm was caused to the victim and irrespective, creating risk of harm is equally serious.

The case examiners have noted Social Work England's sanction guidance where it says:

- *'Some concerns are so serious that action is required even if the social worker poses no current risk to the public. This is because a failure to sanction a social worker in such cases may undermine public confidence in social workers generally or may fail to maintain the professional standards expected of social workers. Sexual misconduct, violence, dishonesty, abuses of trust and discrimination involving a protected characteristic are examples of cases that are likely to be viewed particularly seriously given the access social workers have into people's homes and lives.'*

Notwithstanding that the risk of repetition in this case may be low, adjudicators may determine that the public would expect a finding of impairment due to the nature of this case. Furthermore, public confidence in the social work profession and the regulator may be undermined if a finding of impairment was not made.

Having considered both the personal and public limbs of impairment, **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. 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 case examiners are satisfied that:

- The matter is not so serious that consideration needs to be given by adjudicators with regard to removing the social worker from the register.

- There is not a dispute regarding facts at the core of this case.
- This is not the type of case where public confidence in the profession will be damaged by not holding a public hearing.
- The publication of this decision will highlight behaviour that falls short of acceptable standards in social work and will act as an example to other members of the profession.
- The publication of this decision demonstrates that swift and appropriate action is taken in cases of alleged wrongdoing, thus enhancing the public's confidence in the social work profession.

The case examiners have noted that the social worker has indicated to Social Work England that they do not consider their fitness to practise to be currently impaired. Where a social worker does not accept impairment, case examiner guidance suggests that a referral to hearing may be necessary in the public interest. However, the case examiners consider it is appropriate to depart from that guidance in this instance. In reaching this conclusion, the case examiners recognise that not all professionals will have an innate understanding of how and when the public interest may be engaged, or how exactly this might impact upon findings concerning current fitness to practise.

The accepted disposal process will provide the social worker an opportunity to review the case examiner's 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.

Accepted disposal

Case outcome		
Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☒
	Conditions of practice order	☐
	Suspension order	☐
Proposed duration	3 years	

Reasoning

In considering the appropriate outcome in this case, the case examiners had regard to Social Work England's sanctions 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 least severe 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.

The case examiners considered taking no further action but were of the view that this would not be appropriate in a case where the social worker had been convicted of an assault and criminal damage within the context of a domestic situation. 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 decided that issuing advice was not sufficient to mark the seriousness of the social worker's conviction.

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. The case examiners have decided that such protection can be met with a warning order.

The case examiners have considered the length of time for the published warning and consider three years to be proportionate in this case. Whilst the primary objective of the warning is to send a message about the standards expected, the case examiners did not feel that the matter was of low seriousness, so one year was not appropriate. The case examiners consider that a period of three years is appropriate in the circumstances 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 do not consider that the matter fell marginally short of the need to restrict practice, there is a low risk of repetition, and an extended period time is not required to demonstrate there is no risk of repetition. As such, five years would be disproportionate.

The case examiners went on to consider whether the final two sanctions, conditions of practice and suspension were appropriate in this case. They concluded that conditions of practice are more relevant in cases requiring some form of restriction in practice and not suitable for this case of conviction that related to matters in the social worker's private life. The case examiners consider that suspension from the register would be a disproportionate and punitive outcome in this case.

The case examiners will notify the social worker of their proposal to issue a published warning and will 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, 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 advice warning

The case examiners formally warn the social worker as follows:

A conviction for [REDACTED] assault and criminal damage is a serious matter and suggests a serious lack of judgement on your part.

Your conviction could have an adverse effect on the public's confidence in you as a social worker. It may also damage the reputation of the social work profession.

This conduct should not be repeated. Any further criminal offences or matters brought to the attention of the regulator are likely to result in a more serious outcome.

Response from the social worker

The social worker provided a response on 12 December 2022 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 3 years and on 12 December 2022, 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 is a fair and proportionate disposal and is the minimum necessary to protect the public and the wider public interest.