

Case Examiner Decision

Rebecca Rose Lafferty – SW9196

FTPS-20252

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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)
Final outcome	Accepted disposal - warning order (3 years)
Date of preliminary outcome	4 November 2022
Date of the final decision	25 January 2023

Executive summary

The case examiners are satisfied that there is a realistic prospect that:

1. The factual concern could be found proven by the adjudicators;
2. That concern could amount to the statutory ground of conviction;
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 consider that the case can be concluded by way of accepted disposal.

As such, the social worker was notified of the case examiner's intention to resolve the case with a warning order of 3 years duration. The social worker responded that they accepted the proposal on 21 November 2022.

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 complaint was raised by the social worker as a self-referral and by their current employer.
Date the complaint was received	20 January 2022 by the social worker and 21 January 2022 by their current employer.
Complaint summary	The social worker reported that they had pleaded guilty and had been convicted for driving their car whilst above the legal alcohol limit.

Regulatory concern

Whilst registered as a social worker:

- 1. On the 20th January 2022, you were convicted of driving a vehicle whilst over the prescribed alcohol limit.**

Grounds of Impairment

In relation to regulatory concern 1, by reason of your conviction, your fitness to practise as a social worker is impaired.

Preliminary issues

Investigation		
Are the case examiners satisfied that the social worker has been notified of the grounds for investigation?	Yes	☒
	No	☐
Are the case examiners satisfied that the social worker has had reasonable opportunity to make written representations to the investigators?	Yes	☒
	No	☐
Are the case examiners satisfied that they have all relevant evidence available to them, or that adequate attempts have been made to obtain evidence that is not available?	Yes	☒
	No	☐
Are the case examiners satisfied that it was not proportionate or necessary to offer the complainant the opportunity to provide final written representations; or that they were provided a reasonable opportunity to do so where required.	Yes	☒
	No	☐

The realistic prospect test

Fitness to practise history

The case examiners have not been advised of any relevant adverse 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 that concern could amount to the statutory ground of conviction, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

1. **On the 20th January 2022, you were convicted of driving a vehicle whilst over the prescribed alcohol limit.**

The case examiners have had sight of court documents, which demonstrate that the social worker did receive a conviction for having driven a motor vehicle on a road after consuming so much alcohol that the proportion of alcohol in their breath– i.e. 44 microgrammes in 100 ml of breath, exceeded the prescribed limit. The case examiners therefore determine that **there is a realistic prospect of the adjudicators finding the factual particular proven**

Grounds

The case examiners have had sight of a range of evidence in respect of regulatory concern 1, including a memorandum of conviction. The case examiners determine that there is a

realistic prospect that **adjudicators would find that the statutory ground of ‘a conviction or caution in the United Kingdom for a criminal offence’ is engaged.**

Impairment

In assessing the personal element of impairment, the case examiners have considered the test set out in the Case Examiner’s Guidance (November 2019). When determining if the social worker’s fitness to practise is currently impaired, the case examiners are aware that the purpose of fitness to practise proceedings is not to punish the social worker for past mistakes. 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 doesn’t happen again.

In considering whether the social worker is currently personally impaired, the case examiners are mindful of the following:

- is the conduct remediable?
- has the social worker undergone remediation and demonstrated insight?
- whether there is a likelihood the matters alleged will be repeated?

Case examiners have made the following observations:

- Adjudicators may be satisfied that the social worker’s conduct is, in principle, remediable. There is no suggestion that the conviction in this case arose from a deep-seated attitudinal or character flaw (e.g. dishonesty) that would be difficult to remediate. Rather, the conviction resulted from actions that can be remediated in several ways, for example, through demonstrable development of insight, and/or attendance at relevant training events.
- The social worker has admitted the facts of the case. They have provided evidence of the actions they have taken to ensure that their conduct is not repeated, which include reflections on the circumstances around the event in question. The social worker advises that they understand the impact that their actions might have had on others. There is evidence of the social worker accepting responsibility for their actions, expressing regret and remorse at the earliest opportunity and consistently thereafter.
- The social worker’s current employer appears to be confident that this was not a pattern of behaviour that is of concern to them, although they do recognise the seriousness of the matter.

The case examiners are of the view that the social worker demonstrates some insight into the impact on themselves, their employer and the profession. However, they do not

consider that the social worker has demonstrated in any detail the level of risk that driving under the influence poses to the safety of the public, and has sought to minimise their actions. For example, the social worker does not refer to the circumstances in which the police came to breathalyse them, which included a member of the public reporting that the social worker was driving erratically and 'nearly hit' their vehicle while reversing. The social worker, in their initial submissions also focuses on the breathalyser reading, stating that "for context, I blew 44 and the limit is 35, the police do not prosecute under 40. The incident was the day after I had consumed alcohol and I was driving a short distance to help my friend get home. The amount I was over was very low and it was a genuine mistake."

The case examiners do not consider that this response demonstrates an understanding of the risks posed to public safety when driving over the prescribed limit for alcohol.

The social worker's final submissions, even after reporting that they have attended a drink driving alcohol awareness course, do not describe in any detail what they learned and does not focus on the risks posed to public safety .

The case examiners have therefore determined that insight is limited and some risk of repetition remains.

The public element of impairment

- The case examiners next considered whether the social worker's actions have the potential to undermine public confidence in the social work profession, or the maintenance of proper standards for social workers. The case examiners take the view that the social worker's conduct represents a serious departure from the standards expected of social workers. The case examiners consider that the public would expect the regulator to reach a finding of impairment in this case. It is by good fortune that the social worker's conduct did not cause physical harm to any member of the public. A finding of impairment makes it clear to the social worker and to the wider social work profession that it is unacceptable to engage in any activity contrary to the law and/or which places others at risk of harm. In such circumstances, a failure to find impairment may undermine public confidence in the maintenance of proper professional standards for social workers. Accordingly, the case examiners are satisfied that **there is a realistic prospect of the adjudicators finding the social worker's fitness to practise to be 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 have concluded that the public interest in this case is engaged. However, they are satisfied that this interest may be satisfied through the accepted disposal process. The case examiners note that this matter is serious. However, the case examiners, while finding that some risk of repetition remains, find there is no evidence to suggest that this is a pattern of behaviour, and therefore adjudicators may not conclude that removal from the register was required. The case examiners also do not consider the case to be so serious that a hearing might be necessary to maintain public confidence in the social work profession.

Accepted disposal

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

Reasoning
The case examiners have already determined that there is a realistic prospect that the social worker's fitness to practise would be found impaired. The Sanctions Guidance (Nov 2019) advises "Impairment is when a social worker is not suitable to be registered without restriction" (paragraph 71). In considering the appropriate outcome in this case, case examiners have had regard to Social Work England's Sanctions Guidance 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. The regulatory concern related to a conviction for driving whilst over the legal limit for alcohol. The evidence, according to the police report, suggests that the social worker was driving in an erratic manner. The case examiners consider there to have been a risk of harm to the public due to the social worker's actions. The case examiners consider that adjudicators are likely to take the view that the social worker has fallen short of the social work England professional standards. The case examiners however do consider that the public interest in this case can be satisfied without referral to a hearing. The case examiners acknowledge that for a social worker who was previously considered to be a competent practitioner of good character and has no previous adverse fitness to practise proceedings, a removal order would appear to be disproportionate. They consider in this case, that it would be appropriate, fair, and proportionate to offer the social worker the opportunity to consider resolving this matter through accepted disposal. The case examiners are, therefore, led to consider sanctions which restrict the

social worker's practice. It is important wherever possible to enable experienced professionals to remain in practice when it is safe to do so. Therefore, whilst the sanctions of no further action or advice are considered inappropriate on the basis that these outcomes do not reflect the seriousness of this matter, the case examiners are of the view that a warning order may be an appropriate disposal.

In considering a warning, the case examiners consider that this will give the social worker a clear message regarding the standards expected of them, and warn them of the consequences of any future repetition. The case examiners take the view that, given that this is a matter that occurred outside of the social worker's professional practice, it is not necessary to restrict the social worker's professional practice through a conditions of practice order.

Suspension at this time is considered by the case examiners to be disproportionate and not the least restrictive sanction necessary to protect the public and the wider public interest, given that the social worker has shown some insight and that their actions did not occur while practising as a social worker. A warning will provide a clear expression of disapproval of the conduct that led to the regulatory concerns. In determining the duration of the warning, the case examiners considered whether one year, three years or five years would be appropriate. The case examiners consider that a warning of one year does not adequately reflect the seriousness reflected in this regulatory concern. The case examiners reviewed the guidance which notes that three years may be appropriate for more serious concerns, to maintain public confidence and allow time for the social worker to demonstrate that they have successfully addressed any risk of repetition. The case examiners have determined that a warning of three years would be appropriate to reflect the seriousness of the potential harm to the public in these matters. The case examiners consider a warning of five years would be excessive as this case has not fallen marginally short of requiring restriction of practice.

The case examiners have therefore decided to propose to the social worker a warning order of three years duration. They will now notify the social worker of their intention and seek the social worker's agreement to dispose of the matter accordingly. The social worker will be offered 14 days to respond. If the social worker does not agree, or if the case examiners revise their decision regarding the public interest in this case, the matter will proceed to a final hearing.

Content of the warning

The case examiners formally warn the social worker as follows:

Allegations that a social worker has:

- Driven a vehicle whilst over the legal limit of alcohol

have an adverse impact on the public's confidence in the social work profession. Additionally, your actions did put members of the public at risk. The case examiners would particularly encourage the social worker to reflect upon these professional standards. Social Work England's professional standards state that:

I will not:

5.2 Behave in a way that would bring into question my suitability to work as a social worker while at work, or outside of work.

The conduct that led to this complaint should not be repeated. Any similar conduct 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 responded on 21 November 2022 to accept the case examiners decision and the warning order proposed.

Case examiners' response and final decision

The case examiners were informed on the 19 January 2023 that the social worker requested they consider a statement the social worker had provided to the employer as part of the disciplinary process as evidence of further insight. The case examiners are of the understanding that the social worker had presumed this statement had been made available to the case examiners when it had not. The case examiners are mindful of the principle of fairness and, although they would not ordinarily consider further evidence at this point in their considerations, they are aware that the case examiners guidance in place at the time of this preliminary decision allows for discretion in this area. Having considered this statement the case examiners are of the view it offers no further evidence as to depth of insight and reiterates submissions previously made. Therefore the case examiners conclude that the accepted disposal of a warning order of 3 years duration remains the most appropriate sanction.

In light of the social worker's acceptance of the warning order in full, 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 conditions remain the most appropriate means of disposal for this case. They have reviewed their decision, paying particular regard to the overarching objectives of Social Work England, i.e. protection of the public, the maintenance of public confidence in the social work profession, and the maintenance of proper standards. Having done so, they remain of the view that an accepted disposal by way of a warning order is a fair and proportionate disposal and is the minimum necessary to protect the public and the wider public interest.