

Case Examiner Decision
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FTPS-20471

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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	Information requested. Information received December 2022. Accepted disposal proposed – Warning, 3 years
Final outcome	Accepted disposal – Warning, 3 years
Date of the final decision	30 January 2023

Executive summary

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

1. **Regulatory concern 1 only** could be found proven by the adjudicators.
2. Those concerns could amount to the statutory ground of conviction or caution.
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 of 3 years.

On 24 January 2023, the social worker responded accepting the proposed sanction of a three warning order.

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 raised by self-referral.
Date the complaint was received	22 March 2022
Complaint summary	The social worker made a self-referral when they were charged with the following offences: Failure to provide a sample of breath for analysis when suspected of having driven a vehicle whilst under the influence of alcohol.

Regulatory concerns

Regulatory concerns are clearly identified issues that are a concern to the regulator. The regulatory concerns for this case are as follows:

1. Whilst registered as a social worker, on the 27 July 2022 you were convicted of a failure to provide a specimen of breath for analysis without reasonable excuse.



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 are aware of the need to consider cases expeditiously and the need to ensure fairness to all parties. However, the case examiners consider, bearing in mind their investigatory function and statutory duty, that further information is needed to be able to reach a decision on this case.

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.

The case examiner guidance (para 149) states that case examiners must request information in writing and explain why it is required. As such, they request consideration is given to the following:

- Amending regulatory concern one, so that it more accurately reflects the memorandum of conviction which suggests that the social worker was charged with a failure to provide a specimen of breath for analysis when they were stopped by police on 11 March 2022.
- The social worker is made aware of the amended regulatory concern and offered an opportunity to make further submissions on these amendments.

Returned to case examiners on 28 December 2022 with the suggested amendments made to the regulatory concerns.

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 the regulatory concern 1 being found proven, that the concern could amount to the statutory ground of conviction or caution, and that the social worker's fitness to practise could be found impaired.

With respect to regulatory concern 2, the case examiners determined that there was a realistic prospect of this concern being found proven. However, they concluded that the actions cited in this regulatory concern **would not** meet the relevant statutory ground of misconduct.

Reasoning

Facts

- 1. Whilst registered as a social worker, on the 27 July 2022 you were convicted of a failure to provide a specimen of breath for analysis without reasonable excuse.**

The case examiners have seen the memorandum of conviction, this confirms the social worker failed to provide a specimen of breath for analysis on 11 March 2022. The social worker plead guilty and was disqualified from driving for 20 months, made subject to a community order and fined.

The case examiners consider there is a realistic prospect this regulatory concern would be found proven.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Grounds

At this stage of the determination, the case examiners must assess whether there is a realistic prospect of adjudicators finding the facts which are capable of proof, (regulatory concern one and two), amounting to one of the statutory grounds. In this instance, the statutory grounds being considered are conviction (regulatory concern one) and misconduct (regulatory concern two). They will address each in turn:

Conviction

The case examiners have seen the memorandum of conviction and are satisfied that accordingly, **there is a realistic prospect that adjudicators could find the social worker to be impaired by reason of conviction.**

[REDACTED]

Impairment

In their consideration of personal impairment, the case examiners have considered insight, remorse, remediation, and risk of repetition.

In submissions the social worker accepts that their decision to drive, having consumed alcohol was *'unwise and impulsive.'* [REDACTED]

[REDACTED] they express their remorse, shame, and embarrassment for the action they took on the date in question. The social worker also reflects on the potential consequences of their actions and states that they will not repeat the behaviour which has given rise to these concerns.

The social worker has supplied positive testimonial evidence which speaks to the social worker's voluntary work and good character. The social worker's current manager states that the social worker has an 'exemplary record' and there have been no previous concerns in relation to them taking drugs or alcohol.

The social worker has now completed a drink driving awareness course. [REDACTED]

[REDACTED] the social worker is engaging with Probation Services to complete 100 hours unpaid work, they are working one day a week in a charity shop.

The case examiners consider that the social worker does demonstrate insight and remorse and has begun the process of reparation, completing courses as directed by the courts. The social worker is described to be of good character, and this appears to be an isolated incident of poor judgement, given this the case examiners consider that the risk of repetition is low.

In their consideration of the public interest element, the case examiners have considered the risk to the public, departure from standards and any impact on trust and confidence in the profession.

The case examiners note that the social worker appears to have been unable to provide a specimen of breath for analysis, with no reasonable excuse for failing to do so. The case examiners have reviewed Social Work England's Drink and drug driving policy, this

suggests that convictions resulting in disqualification from driving for over 12 months might be an aggravating factor, as would failure to provide a sample without good reason.

The case examiners are mindful that the social worker's actions could have presented a high risk of harm, their driving described by police as 'erratic.' The case examiners also take the view that the social worker made the decision to prioritise the needs of a family member over those of the road using public. There appears to have been very little thought to the alternative methods the social worker could have utilised to offer assistance to person A.

The social worker's actions could be seen to represent a departure from Social Work England professional standard

- 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 work.

The case examiners consider that the social worker's actions could impact on the trust and confidence in the social work profession and given this, the public would expect a finding of impairment to be made.

Accordingly, the case examiners have concluded there is a realistic prospect that a finding of current impairment would be made by adjudicators, should the regulatory concerns be found proven

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 no 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 provide the social worker with an opportunity to develop insight, reflect on their actions and the wider implications of the decisions they made.
- The publication of this decision 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.
- 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.

Lastly, 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.

Accepted disposal.

Case outcome

Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☒
	Conditions of practice order	☐
	Suspension order	☐
Proposed duration	Three 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 this instance the case examiners' determination has included careful consideration of the mitigating circumstances presented by the social worker, and their continued employment with the local authority. The social worker has begun the process of remediation, is described as of good character and as an exemplary social worker.

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 considered that this would not be appropriate in this instance as it would not satisfy the wider public interest.

The case examiners next considered whether offering advice would be sufficient. 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 view the social worker's conduct.

The case examiners then considered a warning order. A warning order implies a clearer expression of disapproval of the social worker's conduct than an advice order, and the case examiners concluded that a warning order is the appropriate and proportionate outcome

in this case; and represents the minimum sanction necessary to uphold the public's confidence.

When considering a warning order, case examiners can direct that a warning order will stay on the social worker's register entry for periods of one, three or five years. According to case examiner guidance, one year might 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; 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; and 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 propose to the social worker that this matter is dealt with by way of an accepted disposal. They propose a warning order of three years duration. The case examiners have reached this determination based on consideration of how the social worker's actions could have caused harm to themselves and others and how their behaviour has the potential to impact on public confidence in the profession. They have balanced this with the mitigating circumstances, the reparation that has taken place and the purported good character of the social worker. 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 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.

The social worker agreed to the proposal put forward by the case examiners on 24 January 2023.

Content of the warning

The case examiners consider that a warning is necessary to ensure the social worker understands that any repetition of the behaviour in question could result in a more severe sanction.

The case examiners warn the social worker of the importance of acting safely, respectfully and with professional integrity and adhering to Social Work England professional standards, in particular:

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 work.

This conduct should not be repeated. The regulator will take a dim view of any further criminal offences or similar matters brought to their attention and are likely to impose a more serious sanction.

Response from the social worker

The social worker signed a declaration on 24 January 2023 to confirm they accept and understand the terms of the accepted disposal proposal put forward by the case examiners. The social worker also sent an email expressing their remorse for their conduct on the night in question. They convey their assurances the behaviour in question will not be repeated.

Case examiners' response and final decision

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) is a fair and proportionate way to address the concerns and is the minimum necessary to protect the public and satisfy the wider public interest.