



Case Examiner Decision

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FTPS-21509

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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 (five years)
Final outcome	Accepted disposal - warning order (five years)
Date of the final decision	12 April 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, with the exception of a single element of regulatory concern 2;
2. Those concerns could amount to the statutory grounds of a conviction or caution in the United Kingdom for a criminal offence (regulatory concern 1), and misconduct (regulatory concern 2);
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 of five years. The social worker responded on 7 April 2023 confirming that they wished to accept the case examiners' proposal.

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.

In the published version of this decision, redactions will be applied to the element of regulatory concern 2 that was closed by the case examiners at the facts stage of the realistic prospect test.

The complaint and our regulatory concerns

The initial complaint

The complainant	The complaint was raised by the regulator, during consideration of a previous complaint
Date the complaint was received	28 December 2022
Complaint summary	During consideration of other concerns, the case examiners adjourned their decision making to ask the regulator to gather further information about a conviction the social worker appeared to have received. The regulatory concerns below, accurately capture the conduct of concern.

Regulatory concerns

Regulatory Concern 1: Whilst registered as a social worker, on or around 8 ~~March~~ May 2018, you were convicted of being in charge of a motor vehicle whilst under the influence of alcohol.

The case examiners have amended the date of this regulatory concern as the evidence suggests it was May rather than March when the social worker was convicted. As this is a minor amendment, clerical in nature, the case examiners consider it unnecessary for the case to be returned.

Regulatory Concern 2: You did not inform [REDACTED] the regulatory body of the above in a timely manner.

The matter outlined at regulatory concern 1 amounts to the statutory grounds of a conviction or caution in the United Kingdom for a criminal offence.

The matter outlined at regulatory concern 2 amounts to the statutory grounds of misconduct.

Your fitness to practise is impaired by reason of a conviction or caution in the United Kingdom for a criminal offence and/or misconduct.

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 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 (in part) being found proven, that those concerns could amount to the statutory grounds of a conviction or caution in the United Kingdom for a criminal offence (regulatory concern 1) and misconduct (regulatory concern 2), and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

1: Whilst registered as a social worker, on or around 8 May 2018, you were convicted of being in charge of a motor vehicle whilst under the influence of alcohol.

The case examiners have been provided with the certificate of conviction which confirms the above conviction and that the social worker pleaded guilty, was fined and received 10 points on their licence. The case examiners noted that the social worker was not disqualified from driving.

The case examiners are satisfied that there is a realistic prospect of this matter being found proven, should the matter go forward to adjudicators.

2: You did not inform [REDACTED] the regulatory body of the above in a timely manner.

The social worker admits they did not inform the regulator at the relevant time, the Health and Care Professions Council, of the above conviction. There is also no evidence available to the case examiners of any such declaration having been made.



The case examiners are therefore satisfied that there is a realistic prospect of this matter being found proven, in relation to the regulator [REDACTED] should the matter go forward to adjudicators.

For clarity, the concern that will proceed for further consideration is as follows:

2: You did not inform the regulatory body of the above in a timely manner.

Grounds

In relation to regulatory concern 1, in light of the documentary evidence described above, the case examiners **are satisfied there is a realistic prospect of adjudicators establishing the statutory grounds of a conviction or caution in the United Kingdom for a criminal offence**, as provided by The Social Workers Regulations 2018 (as amended).

In relation to regulatory concern 2, the case examiners have considered whether this conduct could amount to misconduct.

The case examiners note that ‘misconduct’ denotes serious acts or omissions, suggesting a significant departure from what would be proper in the circumstances. Misconduct can occur during professional practice or in the social worker’s personal life.

To help them decide if the evidence suggests a significant departure from professional standards, the case examiners have considered the following Health and Care Professions Council, standards of conduct, performance and ethics (2016), which were applicable at the time of the regulatory concerns:

9.5 You must tell us as soon as possible if you accept a caution from the police or you have been charged with, or found guilty of, a criminal offence.

Social Work England’s overarching objective, public protection, is laid down in The Children and Social Work Act (2017). Secondary legislation – the Social Workers Regulations (2018) – outlines the requirement for the regulator to set professional standards for social workers, and to adjudicate upon issues that might impact upon individual social workers’ fitness to practise.

The regulator can only fulfil its overarching objective, and exercise its regulatory duties, if it is informed of matters that might impact upon public safety, or on public confidence in the social work profession, or the maintenance of standards for social workers. It is therefore of paramount importance that social workers adhere to their professional standards, which require them to inform the regulator of anything that might affect their ability to do their job competently, or that may affect their fitness to practise.

The case examiners are firm in their view that a ‘failure to declare’ is a significant departure from the professional standards, as it prevents the regulator from exercising its duties, and from assessing and managing risk in a timely manner. **As such, the case examiners are satisfied there is a realistic prospect of adjudicators finding regulatory concern 2 amounts to misconduct.**

Impairment

The case examiners have reminded themselves that the purpose of regulation is not to punish a social worker for past mistakes. Rather, the regulatory process seeks to establish whether a social worker is safe and fit to practise today and in the future.

The case examiners have assessed current impairment on the grounds of public protection and in the wider public interest.

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 current impairment on the grounds of public protection, 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.

Whilst the case examiners have noted that the social worker pleaded guilty in court to the offence that led to their conviction, they have provided no further detailed submissions on this matter to the regulator. In respect of the social worker's failure to declare the matter to the regulator, the social worker made admissions in early correspondence with the regulator, but again no further detailed submissions have been received.

As such there is a lack of evidence to suggest that the social worker recognises the serious nature of their conduct, nor that they have taken any action or reflection to prevent recurrence. Therefore, the case examiners cannot be assured that there is no risk of repetition.

The case examiners acknowledge that Social Work England's drink and drug driving policy (December 2022) states "*In the absence of any aggravating factors, a drink or drug driving conviction is unlikely to require a finding of impairment or a sanction to be imposed*". However, regardless of any aggravating or mitigating factors, which will be considered when looking at sanction, the case examiners consider it must be in the public interest to make a finding of impairment, given they have already concluded there is a risk of repetition.

To conclude, the case examiners consider that there is a realistic prospect of adjudicators finding the social worker's fitness to practise 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

Having established there is a realistic prospect of finding current impairment, the case examiners must 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.

The case examiner guidance (December 2022) states for a case to be concluded through accepted disposal, the social worker must accept the key facts and that their fitness to practise is currently impaired. In this case, the social worker has accepted the core facts of the case and there is no conflict of evidence to be addressed. However, the social worker has not stated whether they consider their fitness to practise to be currently impaired.

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.

On this occasion, the case examiners are therefore satisfied that it is appropriate to depart from their guidance, their further reasoning is as follows:

There is no conflict in evidence in this case and the social worker accepts all of the key facts.

With regard to the personal element of impairment, the case examiners concluded earlier in this decision that there remains a risk of repetition. However, the case examiners are mindful that the social worker has made admissions to the regulator, and pleaded guilty in court in respect of their conviction. The case examiners consider it reasonable to take this into consideration, particularly as the available evidence indicates that at the point at which the conviction was identified by the regulator, the social worker made no effort to conceal the matter. The case examiners consider that, in light of this, on this occasion, it would be appropriate and proportionate to offer the social worker opportunity to review the case examiners' reasoning on impairment, and to consider whether they agree.

With regard to the public element of impairment, the case examiners are of the view that the public interest can be satisfied by their decision, and the reasons for that decision, being published on Social Work England's public register which can be found on its website.

The publication of this matter will highlight behaviour that falls short of acceptable standards in social work and will act as an example to other members of the profession. Publication also demonstrates that appropriate action is taken in cases of alleged wrongdoing, thus enhancing the public's confidence in the social work profession.

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

For the reasons given above, the case examiners believe the public would not consider it proportionate to refer this matter to a hearing, having considered the specific circumstances. Considering all the factors discussed above, the case examiners have decided it is not in the public interest to refer this matter to a hearing. Alternatively, they will seek to resolve this matter, with the social worker's consent, by way of an accepted disposal.

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 had regard to Social Work England's sanctions guidance (December 2022) and reminded themselves that the purpose of a sanction is not to punish the social worker, but to protect the public. The case examiners have also given careful consideration to the regulator's drink and drug policy (December 2022), which is applicable in this case.

The case examiners have decided that it is not in the public interest to refer this matter to a final hearing and have chosen the least restrictive sanction necessary to protect the public and the wider public interest. They have started at the lowest possible sanction and worked up, testing the appropriateness of each sanction and the next sanction above it to confirm their decision is proportionate.

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 advises that if the personal element of impairment is found, *"a sanction restricting or removing a social worker's registration will normally be necessary to protect the public"*. The case examiners are therefore led to consider sanctions which restrict the social worker's practice. They note the guidance suggests it may therefore *"be reasonable to move beyond the lower sanctions (no action, advice or a warning) on this basis alone"*. The case examiners have already determined that they do not consider that the social worker has demonstrated sufficient insight nor remediation and, in such circumstances, the sanctions guidance advises that the sanctions of no further action, advice or a warning are inappropriate, on the basis that these outcomes would not restrict practice and therefore may not be sufficient to protect the public.

However, the case examiners are mindful that in cases relating to drink or drug driving, the regulator has a relevant policy, which encourages the case examiners to consider a wider range of factors, including a distinct set of aggravating and mitigating circumstances, when considering the appropriate sanction for these types of concerns. The case examiners' application of the factors outlined in the policy is laid out below.

The drink and drug driving policy applies to a wide range of offences, which the case examiners recognise are treated with differing severity by the courts. In this case, the social worker was convicted of being in charge of a motor vehicle, rather than driving that vehicle whilst under the influence of alcohol. The sanction applied by the courts in this particular case is recognised by the case examiners as less serious than those routinely applied in drink driving cases, as the social worker did not receive a disqualification from driving. The regulator's policy is clear that any sentence imposed by a court may be relevant to the case examiners' decision making, though wider aggravating or mitigating factors may also impact upon the seriousness of the matter before the regulator. In the case examiners' view, it is therefore reasonable and appropriate to give careful consideration to the lesser severity of the offence in question, in weighing the aggravating and mitigating factors of the case.

The case examiners are of the view that this case has one aggravating factor, that the social worker did not report their conviction; and one mitigating factor, that there is no evidence to suggest this is a repeat offence.

In weighing these factors, the case examiners noted that the sole aggravating factor did not suggest that, at the time of their offending, the social worker had placed members of the public at substantial risk of harm. However, by failing to report the matter to the regulator, the social worker prevented timely action to assess any risk posed by their conviction to public safety, or to public confidence.

The case examiners considered that in respect of the sole mitigating factor, whilst there is no evidence of repetition over a notable period of time (4 years), this is balanced by the social worker's failure to report the matter. Therefore, whilst there is no available evidence of repetition at this time, the case examiners' level of assurance that this is the case is reduced. Accordingly, whilst the case examiners have included this factor in their considerations, they are cautious to attach it significant weight.

Having carefully considered the above factors, and with weight attached to the lesser severity of the offence in question, the case examiners considered that a restrictive sanction appears disproportionate.

In respect of a conditions of practice order, the case examiners would question whether the regulator need impose oversight of further reflection and development by the social

worker in such circumstances and, in any event, the workability of any such order would be limited as the social worker is already subject to an interim suspension order in respect of a different matter before the regulator.

In respect of a suspension order, it is the case examiners view that this would be disproportionate in a case where a social worker has been convicted of an offence that, had they reported it to the regulator, the drink and drug driving policy would suggest they needn't have been found impaired. This position is further supported in this case, given there is no evidence the social worker sought to further conceal their conviction when it was identified by the regulator, and given the social worker pleaded guilty in court, informed their employer, and made full admissions to the regulator.

In light of the above, the case examiners also considered their overarching purpose, the protection of the public. It is their view that what is necessary in this case is for the social worker to be reminded that engaging in criminal activity is unacceptable for a regulated professional, and that it is of paramount importance that social workers make timely and frank declarations to their regulator when required. Case examiners are of the view that a warning can achieve this objective and are mindful that the sanctions guidance states a *"warning order is a signal that the social worker is highly likely to receive a more severe sanction if they repeat the behaviour"*. The case examiners are therefore satisfied that a warning would be both sufficient in the circumstances, and proportionate.

In considering the length of the warning, the case examiners again note the sanctions guidance which states that *"5 years may be appropriate for serious cases that have fallen only marginally short of requiring restriction of practice. This helps to maintain public confidence and highlight the professional standards"*. Given the factors taken into account in the decision on sanction, and particularly that due to the lack of insight or remorse demonstrated a restrictive sanction may be necessary, the case examiners are of the view that this is a case which fell marginally short of requiring restriction and therefore five years appears proportionate.

The case examiners have given consideration to how their proposed sanction might interact with the social worker's existing interim suspension order. With reference to the regulator's sanctions guidance (December 2022), they are satisfied that the imposition of a warning would have no impact on the existing interim order, though they would advise that it may be taken into consideration in the fitness to practise proceedings relating to that order.

The case examiners have decided to propose to the social worker a warning order of five years duration. They will now notify the social worker of their intention and seek the social worker's agreement to dispose of the matter accordingly. The social worker will be offered

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 warning

The case examiners formally warn the social worker as follows:

Being in charge of a motor vehicle whilst under the influence of alcohol is a serious criminal offence. Your decision to do this, which led to your conviction, demonstrated a serious lack of judgement. You put yourself and members of the public at risk of harm. Your conviction could also have an adverse effect on the public's confidence in you as a social worker and may also damage the reputation of the social work profession.

As a registered professional you are required to adhere to the professional standards and inform the regulator promptly of anything which could affect public safety or public confidence.

In order to prevent recurrence of the alleged failings, you must adhere to Social Work England's (2019) professional standards for registered social workers. The case examiners specifically draw your attention to the following professional standard:

As a social worker:

- 5.2 *I will not behave in a way that would bring into question my suitability to work as a social worker while at work, or outside of work.*
- 6.6 *I will 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 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 case examiners have received a response from the social worker, dated 7 April 2023, in which the social worker has confirmed that they have read the case examiners' proposal, along with accompanying guidance provided by the regulator. The social worker confirmed that they understood the terms of the proposed disposal of the fitness to practise case and accept them in full.

Case examiners' response and final decision

The case examiners have again considered the public interest in this matter and, as they have not been presented with any new evidence that might change their previous assessment, they are satisfied that it remains to be the case that the public interest in this case may be fulfilled through the accepted disposal process.

The case examiners therefore direct that the regulator implement a warning order with a lifespan of five years.