

Case Examiner Decision

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FTPS-20290

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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

If the case examiners find a realistic prospect of impairment, they consider whether there is a public interest in referring the case to a hearing. If there is no public interest in a hearing, the case examiners can propose an outcome to the social worker. We call this accepted disposal and a case can only be resolved in this way if the social worker agrees with the case examiners' proposal.

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	11 October 2023
	Accepted disposal proposed - warning order (3 years)
Final outcome	31 October 2023
	Accepted disposal - warning order (3 years)

Executive summary

The case examiners have reached the following conclusions:

1. There is a realistic prospect of regulatory concerns 1 and 2 being found proven by the adjudicators.
2. There is a realistic prospect of regulatory concern 1 being found to amount to the statutory ground of misconduct. There is no realistic prospect of regulatory concern 2 being found to amount to the statutory ground of misconduct, and this concern has therefore been closed at the grounds stage.
3. For regulatory concern 1, there is a realistic prospect of adjudicators determining 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 that the case could 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. The social worker accepted the case examiners' proposal in full. The case examiners again considered the public interest and remain of the view that

a warning order of 3 years duration remains the minimum necessary to protect the public and maintain public confidence in the profession.

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 way of a self-referral by the social worker.
Date the complaint was received	23 September 2021
Complaint summary	The social worker made a self-referral after they were arrested in June 2021 followed an alleged altercation with initially a hotel member of staff and subsequently a police officer, which resulted in their arrest.

Regulatory concerns

Whilst registered as a social worker, you:

1. On or around 3 May/June 2022, were convicted at Gloucestershire Magistrates Court contrary to section 39 of the Criminal Justice Act 1998 and section 1 of the Assaults on Emergency Workers (Offences) Act 2018.
2. You failed to notify the regulator in relation to RC1 in a timely manner.

The matter outlined in regulatory concern 1 amounts to the statutory ground of a conviction or caution in the United Kingdom for a criminal offence and/or misconduct.

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

Your fitness to practise is impaired by reason of misconduct and/or 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 have made the following amendments to the regulatory concerns:

- The case examiners note in regulatory concern 1 that the date listed for the conviction is 3 May 2022, which is the date cited in the appeal documentation. However, in the memorandum of entry, the date cited for the conviction is 7 June 2022. Therefore, the case examiners have amended the regulatory concern to cover both potential dates for the conviction.
- The case examiners also noted that the conviction ground was not laid out in full on the case investigation report and therefore they have listed this in full within their decision.

The case examiners are satisfied that the amendments they have made are minor, and they therefore considered it to be unnecessary and disproportionate to delay consideration of the case further by seeking additional submissions from the social worker.

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 concern 1 could amount to the statutory grounds of misconduct, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

Whilst registered as a social worker, you:

1. On or around May/June 2022, were convicted at Gloucestershire Magistrates Court contrary to section 39 of the Criminal Justice Act 1998 and section 1 of the Assaults on Emergency Workers (Offences) Act 2018.

The case examiners have had sight of the memorandum of entry from the Magistrate's Court. This details the social worker being convicted for the offence, as captured in the regulatory concern. The case examiners have also seen the result of an appeal submitted by the social worker in the Crown Court, which confirms the offence.

The social worker admits the regulatory concern.

The case examiners are satisfied there is a realistic prospect of adjudicators finding this concern proven.

2. You failed to notify the regulator in relation to regulatory concern 1 in a timely manner.

The case examiners have seen a copy of the self-referral form submitted by the social worker on 23 September 2021, in which they detail the incident which occurred in June 2021.

In considering whether the social worker has failed to do something, the case examiners have looked at what would be expected in the circumstances. The case examiners note the Social Work England Professional Standards (2019), which state:

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 evidence suggests that there was an expectation on the social worker to report this to their regulator and the evidence suggests that they did so after a three-month period.

The case examiners have therefore gone on to consider what may be deemed timely in the circumstances. They note that the social worker informed their employer shortly after the incident in June 2021, however they did not inform the regulator for a further three months.

The case examiners consider that adjudicators may not consider this time period to be timely.

The case examiners are satisfied there is a realistic prospect of adjudicators finding this concern proven.

Grounds

The case examiners have then gone on to consider grounds and note for regulatory concern 1, the grounds of conviction or caution in the United Kingdom for a criminal offence and/or misconduct are listed. The case examiners have considered each in turn.

Conviction or caution in the UK for a criminal offence.

The case examiners have noted the result of appeal documentation from Gloucester Crown Court, which confirms the conviction, however as a result of the appeal, the sentence was amended to a conditional discharge for 6 months.

The case examiners note Part 5 of the Sentencing Act 2020, Paragraphs 82 (1) and (2), which state:

82 Effect of discharge

(1) This section applies where—

- (a) an order for absolute discharge, or
- (b) an order for conditional discharge,

is made in respect of an offence.

(2) The conviction of that offence is to be deemed not to be a conviction for any purpose other than the purposes of—

- (a) the proceedings in which the order is made, and
- (b) in the case of an order for conditional discharge, any subsequent proceedings which may be taken against the offender under Schedule 2.

The case examiners are satisfied that as a result of the appeal, the conviction against the social worker would not be deemed to meet the statutory threshold for the ground of caution or conviction in the United Kingdom for a criminal offence.

The case examiners are satisfied there is no realistic prospect of adjudicators finding concern 1 amounts to the statutory ground of caution or conviction in the United Kingdom for a criminal offence.

Misconduct

The case examiners are aware that there is no legal definition of misconduct, but it generally would consist of serious acts or omissions, which suggest a significant departure from what would be expected of the social worker in the circumstances. This can include conduct that takes place in the exercise of professional practice, and also conduct which occurs outside the exercise of professional practice but calls into question the suitability of the person to work as a social worker.

To help them decide if the evidence suggests a significant departure from what would be expected in the circumstances, the case examiners have considered the following standards, which were applicable at the time of the concerns.

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.

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 are aware that falling short of the standards may not always amount to misconduct. However, adjudicators in this instance may determine that the threshold for misconduct has been reached in respect of concern 1. The social worker is alleged to have assaulted a police officer in their personal life. Social workers are expected to work with a variety of different professionals in their working life, including police officers. Adjudicators may view being convicted of assaulting another professional as very serious.

The case examiners note the social worker's submissions in respect of their frame of mind at the time of their arrest. The social worker has commented that at the time of the incident, they were fearful due to the number of police officers attending the incident, furthermore they felt that they were being discriminated against due to their race. They provide commentary that the incident took place against the backdrop of the Black Lives Matter campaign, and this may have heightened their anxiety.

However, the case examiners have seen the description of the CCTV footage from the time of the incident provided within the employer's disciplinary information. The police are described as trying to de-escalate the situation for over an hour, before additional police officers attended the scene and that the social worker had requested additional, more senior police officers attend the scene to resolve the matter as they accused the original police officers of being racist. After additional police officers attended, the social worker is said to have continued shouting, even after it was confirmed that the receptionist, who originally contacted the police, would not be pursuing a complaint against the social worker. The police were described as explaining to the social worker why they were being arrested, but the social worker was described as continuing to shout and kick out at police officers, despite being advised not to do so by officers.

Whilst the case examiners accept that this may have been a frightening and intimidating experience for the social worker, the case examiners would expect the social worker to be

respectful of other professionals in the course of their duties, and not respond in an aggressive and violent manner, which resulted in harm to a police officer.

Where it is alleged that a social worker has assaulted and caused harm to another professional, this would not align with Social Work England standards 5.1 and 5.2.

If the matters were to be found proven, the case examiners conclude the conduct described is likely to suggest a significant departure from the professional standards detailed above.

The case examiners are satisfied there is a realistic prospect of adjudicators finding concern 1 amounts to the statutory ground of misconduct.

In respect of concern 2, the case examiners note the social worker in their submissions states that they were of the belief that their employer had completed a referral to Social Work England after the social worker had shared the information with them. The case examiners have seen the disciplinary report from the social worker's employer, which states, *'Social Work England have been informed about his current suspension'*. Furthermore, the case examiners note in the same document the author cites the employer's code of conduct stating *'an employee must inform their manager ASAP if they are arrested/charged/bailed by police. Such a requirement is placed on the Council to report to Social Work England any social work staff member under investigation for any criminal offence in the UK or any other country...'*

The case examiners note that the social worker may have departed from the Social Work England standards as they did not report the matter in a timely manner. Whilst it is the social worker's individual responsibility to report matters such as their arrest to their regulator, there is evidence to support their belief that their employer had already done so. There does not appear to have been any deliberate attempt by the social worker to delay the regulator being made aware of the situation so that it can assess the risk.

The case examiners consider adjudicators may be satisfied that in this context the alleged conduct is not significantly serious to meet the threshold of the statutory ground of misconduct.

The case examiners are satisfied there is no realistic prospect of adjudicators determining that concern 2 meets the statutory ground for misconduct.

Impairment

Personal element of impairment

In considering the personal element of impairment, the case examiners have considered the test for personal impairment as set out in the case examiner guidance (2022), 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 should also look at whether the social worker has admitted the allegations, any relevant previous history and any testimonials that have been provided.

Relevant previous history

There is no previous history for the case examiners to take into account.

Admissions

The social worker admits the allegations. In their submissions the social worker accepts their role and responsibilities in relation to the events that gave rise to the concerns. They state:

- *'This incident has an impact on my fitness to practise as social workers are regarded to be experts in resolution and champions on how to challenge injustice. As I had consumed alcohol, I recognise that at the time of the incident, my actions may have been interpreted as challenging and disrespectful towards police officers. I fully acknowledge that, as a social worker, I am required to uphold a good sense of character and approach situations which are provoking in a calm manner. I understand that I failed in this regard, and I offer no excuses. I recognise that this was unacceptable and have learnt from the situation.'*
- *'Upon reflection, I do however recognise and take full responsibility for my contribution to the situation escalating. While the situation was very anxiety provoking, upon reflection, I am mortified to think I let the situation get out of control and accept responsibility'.*

Insight

In respect of insight, the case examiners are aware that they must take care to assess the quality of any insight. A social worker may accept they have acted wrongly. However, simply asserting this is unlikely to be enough to demonstrate genuine insight.

The social worker, in their submissions has accepted the facts, in that they accept that they received a conviction. However, their narrative indicates that they do not accept they behaved in the way described, which led to the conviction and they have indicated that they are intending to challenge the conviction.

Notwithstanding this, whilst the social worker explains the personal circumstances that led to their involvement with the police and subsequent arrest, they appear to accept that their

actions contributed to the situation. The social worker has also addressed how they might act differently to avoid reoccurrence of similar concerns. For example, they state:

- *'Upon reflection, it is important to consider the trajectory of situations and where they may end up due to my actions. In future, if I am to find myself in a situation where I feel provoked, then as a regulated social worker, I accept I need to act more responsibly. I also recognise the importance of drinking responsibility as I am always calm and collected when interacting with people. I will continue to do so in the future and not put my profession into disrepute.'*

When assessing insight, it is also important to establish if the social worker demonstrates a genuine understanding of the impact of their actions on others, and the profession. The case examiners highlight the following parts of the social worker's submissions that indicate the social worker does have this understanding:

- *'I understand that my actions could potentially undermine public confidence in the social work profession...and in the maintenance of appropriate standards for social workers. If someone had been assaulted, this could have serious implications for the person and could result in injury. In addition to physical injury, this could also have long-term emotional impact on the individual that has been assaulted'.*

Employment reports and testimonials

The case examiners must carefully look for and assess any objective evidence that might confirm the social worker's insight. For example, reports from employment. The case examiners have not been provided with an employment report, they note in the chairperson's decision following the employer's formal hearing, the chairperson states that they heard *'the social worker is a good social worker and of conduct and there have been no previous concerns about their conduct or performance'*.

The case examiners have not been provided with any testimonials.

Remediation

Turning their minds to remediation, the case examiners are aware that this is best shown by objective evidence. For example, by the successful completion of training courses.

The case examiners have not been provided with any objective evidence of remediation and whilst the social worker states they have reflected and will act differently in the future, they have provided no examples of how they will achieve this. The case examiners also note that the social worker is challenging the conviction and does not appear to accept that they behaved in the manner described.

Risk of repetition

The case examiners have taken into account that there is no previous history in this case, and this appears to be an isolated matter.

Whilst the social worker has demonstrated some insight, the case examiners consider that this is in its infancy and the social worker has shown no evidence of remediation. On this basis, they consider that a risk of repetition remains.

Public element of impairment

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 the 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 have reminded themselves that the public interest includes responding proportionately to regulatory concerns. However, they consider that adjudicators may determine that a member of the public would be concerned, where a social worker has been convicted for an offence relating to violence against an emergency service worker, if the regulator were not to make a finding of impairment.

The case examiners note Social Work England professional standards (2019) which state:
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 whilst at work, or outside of work.

The case examiners note evidence from the police that suggests the police officer sustained minor injuries after being kicked by the social worker. The case examiners are also mindful of the real risk of emotional harm to victims of assault, and emergency workers should not be excluded from this.

The case examiners note the social worker's alleged conduct took place outside of the workplace. Nevertheless, they consider that any conduct involving violence by a social worker would significantly impact upon public confidence in the social worker.

The case examiners are satisfied that the actions of the social worker, which resulted in them being convicted, are far removed from the professional standards detailed above.

The case examiners are of the view that in the circumstances of this case, members of the public would expect a finding of impairment.

The case examiners are satisfied that there is a realistic prospect of adjudicators making a finding of current impairment.

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	☒
Is a hearing necessary to maintain public confidence in the profession, and/or to uphold the professional standards of social workers?	Yes	☐
	No	☒

Accepted disposal

Case outcome		
Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☒
	Conditions of practice order	☐
	Suspension order	☐
	Removal 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 (December 2022) 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 it has been alleged that the social worker has assaulted and harmed an emergency worker. Taking no further action is not sufficient to mark the seriousness with which the case examiners view the social worker's alleged conduct and fails to safeguard 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 note that the sanctions guidance (July 2022) states that advice is not appropriate where the social worker poses a current risk to the public. As the case examiners determined a risk of repetition remains, advice is not appropriate in this instance. Further, the case examiners consider that advice would not be sufficient to mark the seriousness with which they view the social worker's alleged conduct.

The case examiners next gave careful consideration to whether a warning might be suitable, given that it would show clear disapproval of the social worker's conduct. They were mindful of their guidance, which states that where there is a risk of repetition, a sanction requiring restriction of practice will normally be necessary. A warning order would not restrict the social worker's practice but, on this occasion, the case examiners consider that conditions of practice or suspension are not warranted. The case examiners are of the view that although the social worker's development of insight is not as yet complete, oversight by the regulator of their further reflective progress would be disproportionate, and a warning will achieve the primary goal of protecting the public and safeguarding public confidence. Further, the case examiners note that the alleged conduct took place in the social worker's private life and the employer noted no concerns about their practice in the workplace, as such the case examiners do not consider it necessary to impose restrictions on the social worker's practice.

In considering the duration of the warning, the case examiners have had regard to the sanctions guidance which states, *'1 year may be appropriate for an isolated incident of relatively low seriousness. In these cases, the primary objective of the warning is to highlight the professional standards expected of social workers. 3 years may be appropriate for more serious concerns. This helps to maintain public confidence and highlight the professional standards. The period also allows more time for the social worker to show that they have addressed any risk of repetition.'*

The case examiners are of the view that the alleged conduct would not be considered of 'low seriousness'. They note that whilst the social worker has demonstrated some insight, this is still developing. In line with the sanction's guidance, the case examiners therefore consider that a warning order of three years is more appropriate as this will allow the social worker more time to develop further insight and successfully address any remaining risk of repetition. Further, it marks the seriousness of the conduct in this instance. The case examiners consider that a period of three 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. The case examiners considered that a five-year duration would be disproportionate and hence would be punitive.

The case examiners did go on to consider whether the next sanctions, conditions of practice and suspension, were more appropriate in this case. As set out above, the case examiners consider that a conditions of practice order would not be necessary in this case as the alleged conduct took place outside the workplace. The case examiners considered that suspension from the register would also be a disproportionate and punitive outcome. In particular, a suspension would risk deskilling the social worker and the case examiners consider that it is in the public interest to allow the social worker to remain in practice.

To conclude, the case examiners have decided to propose to the social worker a warning order of three-year 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:

Assaulting an emergency worker is a serious matter. Your actions that led to your conviction, demonstrated a serious lack of judgement and harm was caused as a result.

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 responded on 24 October 2023 and accepted the disposal 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 can be fulfilled through the accepted disposal process.

The case examiners therefore direct that Social Work England implement a warning order with a duration of 3 years.