



Case Examiner Decision

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FTPS-19926

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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	29 November 2023
	Accepted disposal proposed - removal order
Final outcome	11 January 2024
	Accepted disposal - removal order

Executive summary

The case examiners have reached the following conclusions:

1. There is a realistic prospect of regulatory concerns 1, 2 and 3 being found proven by the adjudicators.
2. There is a realistic prospect of regulatory concerns 1, 2 and 3 being found to amount to the statutory grounds of a conviction or caution in the United Kingdom for a criminal offence, adverse physical or mental health and being included:
 - (i) by the Disclosure and Barring Service in a barred list (within the meaning given in section 60(1) of the Safeguarding Vulnerable Groups Act 2006(1) or article 2(2A) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(2)), or
 - (ii) by the Scottish Ministers in the children's list or the adults' list (within the meaning given in section 1(1) of the Protection of Vulnerable Groups (Scotland) Act 2007(3))
3. For regulatory concerns 1, 2 and 3, 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 determined that the case could be concluded by way of accepted disposal.

As such, the case examiners notified the social worker be notified of their intention to resolve the case with a removal order. The social worker accepted the case examiner's proposal in full. The case examiners again considered the public interest and remain of the view that a removal order 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.

Anonymity and redaction

Elements of this decision have been marked for redaction in line with our Fitness to Practise Publications Policy. Text in blue will be redacted only from the published copy of the decision and will therefore be shared with the complainant in their copy. Text in red will be redacted from both the complainant's and the published copy of the decision.

The complaint and our regulatory concerns

The initial complaint

The complainant	The complaint was raised by the social worker's former employer, South Tyneside Council, as well as by way of self-referral.
Date the complaint was received	23 November 2021
Complaint summary	Concerns were raised by the social worker's employer at the time that the social worker reported that they anticipated receiving a caution from the police in respect of possession of ketamine, a controlled drug. The social worker had informed their employer, and the social worker had also made a self-referral to Social Work England. Subsequent to this, Social Work England received a letter from the Disclosure and Barring Service (DBS) advising that the social worker had been included on the list on 21 March 2023, [REDACTED]

Regulatory concerns

Amendments by the case examiners noted in bold.

1. Whilst registered as a social worker, you received a police caution **authorised** on or around 29th November 2021 for the possession of ketamine.
2. You have an unmanaged health condition [REDACTED]
3. Whilst registered as a social worker, you have been included in the Disclosure and Barring Service barred list for adults and children, [REDACTED]

Grounds of impairment:

The matters outlined in regulatory concern 1 amount to the statutory ground of ~~criminal~~ conviction or caution in the **United Kingdom for a criminal conviction**.

The matters outlined in regulatory concern 2 amount to the statutory ground of adverse physical or mental health.

The matters outlined in regulatory concern 3 amounts to the statutory ground of being included ~~on a barred list~~ **by the Disclosure and Barring Service in a barred list or the Scottish Ministers children's or adult's list**.

Your fitness to practise is impaired as outlined at regulatory concern 1 by reason of ~~criminal~~ conviction or caution in the **United Kingdom for a criminal conviction**, at regulatory concern 2 by reason of adverse physical or mental health and/or at regulatory concern 3 by reason of being included ~~on a barred list~~ **by the Disclosure and Barring Service in a barred list or the Scottish Ministers children's or adult's list**.

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

Amendments to concerns

The case examiners have made the following amendments to the regulatory concerns:

- 1) Whilst registered as a social worker, you received a police caution authorised on or around 29th November 2021 for the possession of ketamine.

The case examiners have added the word 'authorised' to indicate that this is the date the caution was authorised, as indicated on the 'Out of Court Disposal Acceptance Form' presented to them in the evidence bundle, rather than necessarily the date the caution was administered, which is not included on the form presented.

- The grounds were not listed in full in line with the regulations.

The case examiners are satisfied that the amendments they have made are minor and do not prejudice the social worker; 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, 2 and 3 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, adverse physical or mental health and being included in the Disclosure and Barring Service barred list or the Scottish Ministers children's or adults' lists, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

1. Whilst registered as a social worker, you received a police caution authorised on or around 29th November 2021 for the possession of ketamine.

The case examiners have seen a letter from Northumbria Police dated 9 October 2023, along with a copy of the proposal for an out of court disposal acceptance form dated 29 November 2021, which has been signed by the social worker and the officer authorising the simple caution.

The case examiners note that the acceptance form has not been signed off by the administering officer. However, they have also seen minutes from a Local Authority Designated Officer (LADO) meeting dated 6 December 2021, where the police in attendance have confirmed that the social worker received and accepted a police caution for the possession of ketamine. Further, the DBS letter to the social worker, dated 21 March

2023 includes reference to the social worker *'having one Caution for possession of Ketamine'*.

The social worker in their original submissions to the regulator has accepted this concern.

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

2. You have an unmanaged health condition

The case examiners have seen the social worker's initial submissions to the regulator in which they have acknowledged that the alleged health condition was impacted by the birth of their child

The social worker, in their final submissions to the regulator stated that they had suffered with the alleged health condition for six years.

The case examiners have seen information within the LADO minutes dated 6 December 2021, in which is it reported that the social worker had informed their employer of their alleged health condition.

The case examiners note an email from the social worker's employer dated 26 May 2022, advising that the social worker had resigned with immediate effect, and that they had information indicating that their alleged health condition remained unmanaged.

The case examiners note the outcome letter from the DBS service, dated 21 March 2023 in which the social worker is reported to have made representations in relation to the alleged health concern, [REDACTED] The social worker stated that [REDACTED] they '*believed they would have been impaired*' [REDACTED] had also accepted that they were a risk [REDACTED]

The case examiners note that the social worker has provided differing accounts to different people at separate times [REDACTED] The case examiners further note that the social worker has not always acknowledged their alleged health concern [REDACTED]
[REDACTED]
[REDACTED]

Whilst the social worker provided some evidence of engagement with support services at the point of the initial referral, the social worker has not engaged with the regulator and has not provided consent for up-to-date medical information to be sought.

The evidence suggests that the social worker has not always acknowledged the extent of their alleged health condition and [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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

3. Whilst registered as a social worker, you have been included in the Disclosure and Barring Service barred list for adults and children, [REDACTED]

The case examiners have seen a letter dated 21 March 2023 from the DBS service, which sets out the reasons that the social worker has been included on the children's and adult's barred list, which is consistent with the reasons set out in the regulatory concern above.

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

Grounds

The case examiners note that the concerns have been listed again three different statutory grounds. The case examiners have addressed these in turn.

A conviction or caution in the United Kingdom for a criminal offence

As outlined at the facts stage, the case examiners have had sight of documentation, which appears to confirm that the social worker received and accepted a caution.

Accordingly, there is a realistic prospect that adjudicators would find engaged the ground of a conviction or caution in the United Kingdom for a criminal offence.

Adverse physical or mental health

As outlined at the facts stage, the case examiners are satisfied that there is evidence the social worker has health conditions that may impact upon their ability to practise safely.

Accordingly, there is a realistic prospect that adjudicators would find engaged the ground of adverse physical or mental health.

Being included by the Disclosure and Barring Service in a barred list or the Scottish Ministers children's or adults' lists

As outlined at the facts stage, the case examiners have had sight of a letter, which confirms that the social worker is included on the Disclosure and Barring Services' Children's and Adults Barred Lists.

Accordingly, there is a realistic prospect that adjudicators would find engaged the ground of being included in the Disclosure and Barring Service barred list or the Scottish Ministers children's or adults' lists.

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 easily remediable; whether the social worker has undergone remediation and demonstrated insight; and whether there is a high likelihood the matters alleged will be repeated.

In assessing the personal element, the case examiners consider that some, but not all, of the matters before the regulator are capable of being remedied.

The case examiners note that the social worker's alleged conduct is listed under three statutory grounds: a conviction or caution in the United Kingdom for a criminal offence; adverse physical or mental health; and being included by the Disclosure and Barring Service in a barred list or the Scottish Ministers children's or adults' lists. In the case examiners' view, any risk of repetition is likely to depend on the statutory grounds established by adjudicators. For this reason, they have laid out separate considerations below.

A conviction or caution in the United Kingdom for a criminal offence

The case examiners consider if adjudicators were to find the statutory grounds of a conviction or caution in the United Kingdom for a criminal offence is engaged for regulatory concern 1, then the risk of repetition remains high. The case examiners were of the view that the risk of repetition could be sufficiently reduced if the social worker were to demonstrate strong insight into the impact of their actions, in terms of the impact upon their practise directly, the risk of harm to the public presented by coming into the possession of illicit substances, and on public confidence in the social work profession. The social worker has provided some submissions, and whilst they have expressed remorse into their alleged conduct, the case examiners consider that their insight is limited and incomplete.

Furthermore, the case examiners have not been provided with any evidence of remediation from the social worker. [REDACTED]
[REDACTED]

In respect of this statutory ground, the case examiners consider it likely that adjudicators would make a finding on the personal element of impairment.

Adverse physical or mental health

The case examiners note that the alleged health concern spans a number of years. The case examiners are also concerned that the social worker has provided different accounts as to the level of their [REDACTED] Whilst there is evidence that the social worker, on a number of occasions, has made attempts to address their health issues, the social worker has not engaged more recently with the regulator in terms of demonstrating their insight into their health condition. Furthermore, the case examiners are of the view that the social worker has no insight into the adverse impact [REDACTED] on others and does not appear to understand the triggers that lead to this.

The social worker, in their submissions, has apologised and stated that they are addressing their alleged health concern. However, the case examiners note that evidence has been provided that contradicts this [REDACTED]
[REDACTED]
[REDACTED]

Since the social worker has not engaged or provided any current information on their health, the case examiners are not reassured by the social worker's earlier responses and engagement in support services.

In light of the limited insight or recent remediation, the case examiners must conclude that the risk of repetition remains high. In respect of adverse physical or mental health,

the case examiners consider it likely that adjudicators would make a finding on the personal element of impairment.

Being included by the Disclosure and Barring Service in a barred list or the Scottish Ministers children's or adults' lists

Finally, with regards to the social worker having been included on the Disclosure and Barring Service's barred lists, the case examiners have received little in the way of insight from the social worker. The social worker has acknowledged that they are unable to work as a social worker, due to the inclusion on the list. The case examiners have received no evidence of remediation.

In light of the lack of insight or remediation, the case examiners must conclude that the risk of repetition remains high. In respect of being included by the Disclosure and Barring Service in a barred list or the Scottish Ministers children's or adult's lists, the case examiners consider it likely that adjudicators would make a finding on the personal element of impairment.

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.

Being included by the Disclosure and Barring Service in a barred list or the Scottish Ministers children's or adults' lists and a conviction or caution in the United Kingdom for a criminal offence

The case examiners have reminded themselves that the public interest includes responding proportionately to regulatory concerns. However, they consider that a member of the public would be concerned by the alleged criminal conduct, which has led to the inclusion on a barring list. In the case examiners' view, in such circumstances a finding of no impairment would seriously undermine public confidence in both the social work profession, and in the regulator's maintenance of proper standards for social workers.

Accordingly, the case examiners are satisfied that there is a realistic prospect of adjudicators making a finding of current impairment if the grounds of being included by the Disclosure and Barring Service in a barred list or the Scottish Ministers children's or adults' lists and a conviction or caution in the United Kingdom for a criminal offence were engaged.

Adverse physical or mental health

The case examiners consider that a member of the public would be troubled that a social worker was allowed to practise unrestricted, when the evidence suggests that they have been unable to manage their health and have not always been open with professionals who were trying to provide support to deal with this.

Whilst the public may have some sympathy for a social worker struggling with their health, they may nonetheless be concerned about the potential impact on the people that the social worker may be working with. The case examiners are of the view that in these circumstances, members of the public would expect a finding of impairment.

Accordingly, the case examiners are satisfied that there is a realistic prospect of adjudicators making a finding of current impairment if the grounds of adverse physical or mental health were engaged.

To conclude, the case examiners consider that adjudicators would determine that the social worker was currently impaired in respect of the three grounds cited.

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

☒

Additional reasoning

The case examiners have therefore considered whether a referral to a hearing may be necessary in the public interest. The case examiners have noted the following:

- There is no conflict in evidence in this case and the social worker has accepted the facts.
- The social worker does not appear to accept that their conduct is impaired, in particular on the adverse health grounds. The case examiners noted that the social worker has accepted previously that their health impacted upon their ability to practise safely, however their submissions suggest that they consider that they are no longer impaired in respect of their health. However, as set out in earlier sections of this decision, in the absence of any recent evidence, the case examiners have already concluded that there remains a risk of repetition. The case examiners are of the view that whilst remains a high risk of repetition, this can be managed through other sanctions available to them.

- The case examiners were also mindful that in respect of regulatory concern 3, the question of repetition is of limited value, given that the social worker will either remain on the barred list or be removed from it. The case examiners consider that, 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 recognise that not all professionals will have an innate understanding of how and when the public interest may be engaged, or how exactly this might impact upon findings concerning current fitness to practise.
- The accepted disposal process will provide the social worker an opportunity to review the case examiners reasoning on impairment and reflect on whether they do 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.

The case examiners are also of the view that the public would be satisfied to see the regulator take prompt, firm action in this case, particularly in light of the fact the social worker is already included on the Disclosure and Barring Service's barred lists. Furthermore, the publication of an accepted disposal decision will provide a steer to the public and the profession on the importance of adhering to the professional standards expected of social workers in England.

Interim order

The case examiners note that the social worker is already subject to an interim suspension order which expires on 29 March 2025.

Accepted disposal

Case outcome		
Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☐
	Conditions of practice order	☐
	Suspension order	☐
	Removal order	☒
Proposed duration	Where a social worker is removed from the register, there is no defined end to the finding of impairment. A social worker that has been removed from the register may only apply to be restored to the register 5 years after the date the removal order took effect. The adjudicators will decide whether to restore a person to the register.	

Reasoning

In considering the appropriate outcome in this case, the case examiners had regard to Social Work England's Sanctions Guidance (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 consider a sanction, the case examiners have considered mitigating and aggravating factors in this case:

Mitigating

- The social worker has accepted all of the relevant facts and expressed remorse for their alleged conduct.

Aggravating

- The social worker has shown limited insight into the alleged conduct, and the risk of repletion remains high.

- The social worker is unable to remediate or demonstrate they can practise safely due to their inclusion on a barred list.

In determining the most appropriate and proportionate outcome in this case, the case examiners considered the available options in ascending order of seriousness.

No further action, advice or warning:

With reference to the regulator's sanctions guidance (December 2022), the case examiners noted that in cases where a risk of repetition remains, the outcomes of no further action, advice or warning are not appropriate as they will not restrict the social worker's practice. Whilst the guidance advises that these outcomes may be considered where there are mitigating factors, the case examiners are satisfied that in this case, given the social worker has been included in the Disclosure and Barring Service's barred lists, such outcomes remain inappropriate.

Conditions of practice order:

The case examiners next considered a conditions of practice order. The case examiners considered paragraph 114 of the guidance which states:

Conditions of practice may be appropriate in cases where (all of the following):

- the social worker has demonstrated insight.
- the failure or deficiency in practice is capable of being remedied.
- appropriate, proportionate, and workable conditions can be put in place.
- decision makers are confident the social worker can and will comply with the conditions.
- the social worker does not pose a risk of harm to the public by being in restricted practice.

The case examiners were of the view that in light of the social worker having been included in the barred lists, there are no appropriate, proportionate or workable conditions that could be put in place. Furthermore, the case examiners considered that the public interest in this case would require a more serious sanction, so that public confidence could be maintained.

Suspension order:

The case examiners went on to consider whether a suspension order might be an appropriate sanction.

The case examiners have considered the guidance, which states:

Suspension may be appropriate where (all of the following):

- the concerns represent a serious breach of the professional standards.
- the social worker has demonstrated some insight.
- there is evidence to suggest the social worker is willing and able to resolve or remediate their failings.

The case examiners have therefore considered the guidance which states a suspension order may be appropriate where workable conditions cannot be formulated.

In this instance, the case examiners consider that whilst the social worker has shown some limited insight and indicated at the early stages of the fitness to practise process that they would be willing to remediate, it would be unworkable to expect the social worker to remediate when they are barred from working with both children and adults.

Removal order:

The case examiners therefore went on to consider whether a removal order may be the only outcome sufficient to protect the public, maintain confidence in the profession, and maintain proper professional standards for social workers in England. The case examiners consider that in light of the social worker having been included in the barred lists, there is no other outcome available to them that would provide the level of assurance needed in respect of these three criteria.

The case examiners have noted paragraph 150 of Social Work England's sanctions guidance which states that, a removal order cannot be made in respect of the statutory ground of adverse physical or mental health. However, the case examiners are of the view that in this instance, they are able to propose a removal order on the statutory grounds of being included in the Disclosure and Barring Service barred list or the Scottish Ministers children's or adults' lists and a conviction or caution in the United Kingdom for a criminal offence.

The case examiners would note again that there is little to no prospect of the social worker demonstrating that they have remediated their conduct, when there is evidence that they have continued to engage in the possession of illicit substances after having accepted a police caution, and when they are barred from engaging in work with children or adults. In the case examiners' view, a removal order is therefore the only sanction available that will safeguard public confidence.

To conclude, the case examiners have decided to propose to the social worker a removal order in relation to their impaired fitness to practise on the grounds of misconduct and conviction or caution in the United Kingdom for a criminal offence. 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 28 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.

Response from the social worker

2 January 2024

The social worker initially responded on 2 January 2024, stating, *'Yes I am happy to be disposed of from Social Work England'*.

11 January 2024

The social worker responded to the email from the operations team, stated that *'Yes, I have read and agree'*.

Case examiners' response and final decision

First response

The case examiners were not satisfied that the social worker had fully read and understood the accepted disposal. They therefore requested that the social worker was given an additional 7 days. The case examiners operations officer wrote to the social worker and requested that they confirmed that. *'I have read the case examiners' decision and the accepted disposal guide. I understand the terms of the proposed disposal of my fitness to practise case and accept them in full'*.

Second response

The case examiners were satisfied that the social worker had read and accepted the proposed accepted disposal of a removal order in full.

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 removal order.

The case examiners note that there is an interim order currently in effect; this will be revoked on implementation of the removal order.