

Case Examiner Decision
Olayinka Omowumi – SW137697
FTPS-22266

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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	16 February 2024
	Accepted disposal proposed: Warning order - 3 years
Final outcome	14 March 2024
	Accepted disposal: Warning order - 3 years

Executive summary

The case examiners have reached the following conclusions:

1. There is a realistic prospect of the regulatory concern being found proven by the adjudicators;
2. There is a realistic prospect of the regulatory concern being found to amount to the statutory grounds of a conviction or caution in the United Kingdom for a criminal offence;
3. That 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 they determined that the case could be concluded by way of accepted disposal, subject to the social worker's agreement.

As such, the case examiners requested that the social worker was notified of their intention to resolve the case with a warning order of 3 year's duration, subject to the social worker's agreement. The proposed disposal was subsequently accepted by the social worker and, having reviewed their decision, the case examiners remain of the view

that an accepted warning order of 3 year's duration remains the most appropriate disposal for this case, and is in the public interest.

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 [REDACTED] will be redacted only from the published copy of the decision, and will therefore be shared with the complainant in their copy.

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	5 June 2023
Complaint summary	On 5 June 2023, the social worker advised the regulator that they had received a conviction for 'drink driving' on 13 February 2023.

Regulatory concerns

Whilst registered as a social worker:

1. You were convicted on the 13th February 2023 of an offence of driving a motor vehicle whilst over the prescribed limit of alcohol.

Grounds for impairment (as amended by the case examiners):

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

By reason of your conviction, your fitness to practise as a social worker is impaired.

Preliminary issues

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

Requests for further information or submissions, or any other preliminary issues that have arisen

The case examiners were presented with the statutory grounds of "*conviction.*" They have amended the grounds to reflect the full statutory wording, which is "*a conviction or caution in the United Kingdom for a criminal offence.*"

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

The case examiners also noted evidence to indicate that the social worker had failed to refer their conviction to Social Work England until over four months after their arrest and charge, which was almost four months after their conviction. They therefore considered whether it would appropriate to pause the case and request consideration of an additional concern, to reflect a potential breach of professional standard 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 case examiners noted however, that within Social Work England's Drink and Drug Driving Policy, December 2022, a failure by the social worker to report the criminal proceedings to the regulator can be considered an aggravating factor when considering the seriousness of a drink drive conviction. With that in mind, the case examiners determined that they could appropriately address this evidence as an aggravating feature of concern 1, rather than requiring a separate concern.

The case examiners are aware of the need to consider cases expeditiously and the need to ensure fairness to all parties, and are satisfied that their chosen course of action is consistent with the guidance.

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 being found proven, that the concern could amount to the statutory grounds of a conviction or caution in the United Kingdom for a criminal offence, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

1. You were convicted on the 13th February 2023 of an offence of driving a motor vehicle whilst over the prescribed limit of alcohol.

The case examiners have carefully considered all of the information presented to them, and have specifically noted the following key points with regards to this concern.

On 5 June 2023, the social worker self-referred themselves to the regulator, advising that they had received a conviction for 'drink driving' on 13 February 2023.

The Crown Prosecution Service/Police documentation references the social worker having been arrested and charged on 28 January 2023 for driving over the prescribed limit, i.e., having consumed so much alcohol that the proportion of alcohol in their breath was 64 microgrammes of alcohol in 100 millilitres of breath. The vehicle had come to the attention of the police due to the manner in which it was being driven.

A copy of a memorandum of an entry into a Magistrate's Court Register on 13 February 2023 for the social worker. This relates to an offence of driving a motor vehicle on a road whilst over the prescribed limit for alcohol. A plea of guilty was entered and the social worker was disqualified from driving for a period of 18 months, subject to a reduction on completion of an approved driving course.

The case examiners are satisfied that there is evidence to support a realistic prospect of adjudicators finding the facts of the concern proven.

Grounds

The grounds under consideration are "a conviction or caution in the United Kingdom for a criminal offence."

The case examiners are also satisfied from the information presented to them and considered under 'facts' above, that there is evidence to support a realistic prospect of adjudicators finding the grounds of the concern proven.

Impairment

Assessment of impairment consists of two elements:

1. The personal element, established via an assessment of the risk of repetition.
2. The public element, established through consideration of whether a finding of impairment might be required to maintain public confidence in the social work profession, or in the maintenance of proper standards for social workers.

Personal element

With regards to the concerns before the regulator, the case examiners have given thought to their guidance, and they note that they should give consideration to whether the matters before the regulator are easily remediable, and whether the social worker has demonstrated insight and/or conducted remediation to the effect that the risk of repetition is highly unlikely.

Whether the conduct can be easily remedied

The case examiners do consider that the social worker's alleged conduct could be remediable, for example by completion of a relevant training course, and demonstrating insight into why they acted in the way they did, its impact on the public and profession, and reassurance that they will not repeat their alleged behaviour.

Insight and remediation

The case examiners do consider the social worker to have demonstrated some insight and remediation in relation to the alleged concern, which they admit. However, they are

concerned that the social worker's self-referral did not occur until 5 June 2023, almost four months after they received their conviction, and over four months since they were arrested and charged, despite them being required to report the matter in line with their professional standards. The evidence presented to the case examiners also indicates that the social worker did not inform their employer of their arrest, charge, and conviction until 23 March 2023.

Further, despite evidence of some remediation by completing a driving awareness course on 29 April 2023, the case examiners are of the view that the social worker's subsequent self-referral (5 June 2023) does not demonstrate a sound understanding by them of the seriousness of their actions and the risks they posed to the public. For example, the social worker reports having "had a little drink while at a party," and makes no reference to them being significantly over the limit for alcohol in breath (64 microgrammes compared to a limit of 35 micrograms) or of them having been stopped by the police because of the nature of their driving. The case examiners are concerned that the content and delay of their self-referral appears to minimise the serious nature of the social worker's conviction.

The case examiners do consider that the social worker's subsequent submissions, made after the social worker was advised of the content of the full investigation carried out by the regulator, demonstrates that some further insight and reflection have developed. The social worker apologises for their actions and recognises that their actions "*made (them) look ... unprofessional*" and that as a result of attending the driving course they now have "*awareness of risk to drink driving, cost on Government, rate of death in the UK due to drink drive*", and how to measure units in drinks. The social worker states that they no longer drink alcohol, and will not do anything to put themselves "*in this kind of situation again.*" The social worker states that, as well as the driving awareness course they completed, they have also done "their own research around drink drive" to add to their knowledge and awareness.

However, the case examiners consider that the social worker still does not appear to acknowledge that were significantly above the alcohol limit for driving, stating that that as they knew they were driving they "*deliberately had few drinks.*" They also maintain that they were stopped by the police for a different reason than the manner of their driving

while the police clearly state that the social worker was stopped because they were "driving on the off-side of the road, slowly swerving towards the centre white lines and then back onto the off-side". The police report that they challenged the social worker at the time about how they were driving, but that the social worker "denied" driving in the way the police had witnessed and recorded.

The social worker's submissions do not explain why they delayed notifying their employer or regulator of their arrest, charge, and conviction, although it clearly impacted on their work once their employer became aware. The employer advises that the social worker was then asked not to undertake visits, and was also subsequently instructed not to undertake any direct casework, or duty visits, and their case load was 'deallocated,' whilst a disciplinary investigation took place. In their submissions however, the social appears to be of the view that there was no significant impact on their work, stating that *"I assure you, the incident and ban did not stop me from carrying on with my duties diligently, by meeting deadlines, covering visits, attending professional meetings, and covering duty task"*.

Risk of repetition

The case examiners have noted some insight and remediation, and the social worker's assurances that they will not repeat the actions that led to their conviction. However, they are of the view that while the social worker does not acknowledge the amount of alcohol consumed, and the impact this had on their ability to drive safely, that insight and remediation remains limited, and they conclude that some risk of repetition remains.

Public element

The case examiners have next considered whether the social worker's actions have the potential to undermine public confidence in the social work profession, or the maintenance of proper standards for social workers.

The case examiners consider that a member of the public, fully informed of all of the circumstances of this case, would be concerned that a social worker had been convicted of drink driving, and as such had potentially placed the public at risk of harm, and did not appear to have developed full insight and remediation since the incident. The case examiners consider that the public would also be concerned by the aggravating features of this case, including that they did not report their arrest, charge and conviction to their employer or regulator promptly, and would expect a finding of impairment.

Having considered both the personal and public elements, the case examiners have concluded there is a realistic prospect that adjudicators would find the social worker to be currently 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	☒
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 noted the following:

- There is no conflict in evidence in this case and the social worker accepts the facts.
- The social worker is clear that they accept that their conduct fell short of the standards expected of them, and regret their actions.
- The case examiners are of the view that the risk of repetition can be managed through the sanctions available to them, and that they are able to satisfy the public that this risk is being managed without the need for this to be examined within a public hearing.
- While the social worker has indicated to the regulator that they do not consider their fitness to practise to be currently impaired, the accepted disposal process will provide 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.

- 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, with the publication of an accepted disposal decision providing a steer to the public and the profession on the importance of adhering to the professional standards expected of social workers in England.

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, case examiners have had regard to Social Work England's Sanctions Guidance and reminded themselves that the purpose of sanction is not to punish the social worker but to protect the public and the wider public interest. Furthermore, the guidance requires that decision makers select the least severe sanction necessary to protect the public and the wider public interest. The case examiners have also had regard to Social Work England's Drink and Drug Driving Policy, December 2022.

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 first considered taking no further action, but are of the view that this is not appropriate in a case where a social worker has a conviction for drink driving that resulted in a disqualification of 18 months (albeit reduced on completion of an appropriate driving awareness course) and does not appear to have shown full insight and remediation, indicating a potential future risk of repetition. Taking no further action would not provide the necessary level of public protection and would not satisfy 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. Case examiners decided that issuing advice is not sufficient to mark the seriousness with which the regulator

views the social worker's alleged conduct, or satisfy the public interest in a case where the social worker's actions leading to conviction had the potential to cause harm to the public, and the social worker is not considered to have fully remediated.

The case examiners next considered issuing a warning order. The case examiners note that in circumstances where they have determined that there is some risk of repetition, the guidance suggests that a restriction to the social worker's practice is required. While a warning will not restrict the social worker's practice, the case examiners note the alleged conduct occurred in the social worker's personal life, and that the social worker has an otherwise unblemished career.

Further, the social worker has demonstrated some remorse and some insight and remediation, which the case examiners consider the social worker can continue to build on. The case examiners are satisfied that whilst they have concluded that some future risk of repetition does remain, they do not consider that risk to be high, and in all the circumstances of this case, they are satisfied that a warning order, which serves as a clear expression of disapproval of the social worker's conduct, is the most appropriate and proportionate response, and is the minimum necessary to protect the public and the wider public interest. A warning order will also be a signal that any repetition will be highly likely to result in a more severe sanction.

In considering the duration of the warning, the case examiners have had regard to the Sanctions Guidance (2022) 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,' particularly as it is aggravated by the social worker not making a timely referral to their employer or to the regulator. They note that whilst the social worker has demonstrated some insight and remediation, this is not considered to be complete. 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 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 in all the circumstances of this case, and hence would be unnecessarily punitive.

The case examiners did go on to consider whether the next two sanctions, conditions of practice and suspension, were more appropriate in this case. Whilst the case examiners identified that some risk of repetition remains, they do not consider that oversight by the regulator in this instance is required, for the reasons already outlined above; conditions would also be unworkable where the conviction related solely to actions that occurred in the social worker's private life. The examiners also consider that suspension from the register would be a disproportionate and punitive outcome. The social worker has expressed considerable regret for their conviction, which, while serious, appears to have been isolated, and the social worker has had an otherwise unblemished career.

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

Content of the warning

The case examiners formally warn the social worker as follows:

Driving whilst under the influence of alcohol is a serious criminal offence. Your decision to drive on the occasion that 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 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.

The case examiners remind the social worker of the Social Work England professional standards, and particularly:

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 whilst 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.

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 case examiners have had sight of an email from the social worker to Social Work England dated 9 March 2024, in which the social worker makes the following declaration:

I have read the case examiner's decision and the accepted disposal guide. I understand the term of the proposed disposal of my fitness to practice case and ACCEPT them in full. (YES)

Case examiners' response and final decision

The case examiners note that the social worker has accepted the proposed disposal as outlined by them. The case examiners then proceeded to further consider whether the proposed disposal of a warning order of 3 year's duration remains the most appropriate means of disposal for these matters.

The case examiners have reviewed their decision, paying particular regard to the overarching objectives of Social Work England, i.e., the protection of the public, the maintenance of public confidence in the social work profession, and the maintenance of proper standards.

The case examiners are of the view they have not been presented with any new evidence that might change their previous assessment. The case examiners remain satisfied that an accepted disposal by way of a warning order of 3 year's duration is the minimum necessary to protect the public and the wider public interest.