

Case Examiner Decision
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SW141794
FTPS-23128

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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	21 November 2024
	Accepted disposal proposed - warning order (3 years)
Final outcome	22 November 2024
	Accepted disposal proposed - 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. There is no realistic prospect of regulatory concerns 3 being found proven by the adjudicators, and this concern has therefore been closed at the facts stage.
2. There is a realistic prospect of regulatory concern 1 being found to amount to the statutory ground of a conviction or caution in the United Kingdom for a criminal offence. [REDACTED]
[REDACTED]
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 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 requested that the social worker be notified of their intention to resolve the case with a warning order of 3 years.

The social worker accepted the proposal and the terms, in full, on 21 November 2024.

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	11 January 2024
Complaint summary	The social worker self-reported a conviction to the regulator. The concern is outlined in full in the regulatory concerns.

Regulatory concerns

Whilst working as a social worker:

1. On the 24 April 2023 you were convicted in Court for:
 - a. Failing to provide a specimen of breath
 - b. Driving without due care and attention
2. You failed to declare the above conviction to the regulator, in a timely manner

[REDACTED]

Grounds of impairment:

The matters outlined in regulatory concern (1), ~~(2) and (3)~~ amount to the statutory ground of a conviction or caution in the United Kingdom for a criminal offence.

The matters outlined in regulatory concern 2 and 3 amount to the ground of misconduct. *(Amended by the case examiners)*

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	☐

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

The case examiners are aware of the need to consider cases expeditiously and the need to ensure fairness to all parties.

Firstly, the case examiners have amended the statutory ground in respect of the matter of conviction to match the wording in the regulations (a conviction or caution in the United Kingdom for a criminal offence). They do not consider this to be a material amendment.

Secondly, having considered the information provided to them, the case examiners note that the incorrect statutory ground has been cited for regulatory concerns 2 and 3. The statutory ground for regulatory concerns 2 and 3 should be cited as

misconduct and not a conviction or caution in the United Kingdom for a criminal offence.

The case examiners have noted the case examiner guidance (para 70) which states: *‘When deciding whether an amendment is material or minor, the case examiners should consider the impact of the amendment on both the seriousness of the case and the fairness to the social worker. If the amendment makes the regulatory concerns more serious, it may be unfair for the case examiners to make a decision on the concerns without the social worker having an opportunity to comment. This would suggest the amendment is material rather than minor.’*

Whilst ordinarily a change to the statutory grounds would be considered a material amendment, and therefore require a referral back to investigators, having considered the evidence available the case examiners do not consider it proportionate in this case to delay the matter.

The case examiners consider that given the evidence available in respect of regulatory concerns 2 and 3 the amended statutory ground would not impact on the seriousness of the case or the fairness to the social worker. This is because the case examiners do not consider that there is a realistic prospect of the statutory ground being engaged for regulatory concern 2, and there is no realistic prospect of regulatory concern 3 being found on the basis of facts. As such, the amendment becomes immaterial.

The case examiners are satisfied that their chosen course of action is consistent with the guidance and they will proceed with their consideration of this case.

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 no realistic prospect of regulatory concern 3 being found proven.

The case examiners have determined that there is a realistic prospect of regulatory concerns 1 and 2 being found proven, and that concern 1 could amount to the statutory ground of a conviction or caution in the United Kingdom for a criminal offence. They have determined that there is no realistic prospect of regulatory concern 2 amounting to misconduct. In respect of regulatory concern 1, the case examiners have determined that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

Whilst working as a social worker:

- 1. On the 24 April 2023 you were convicted in Court for:**
 - a. Failing to provide a specimen of breath**
 - b. Driving without due care and attention**

The case examiners have had sight of the certificate of conviction from the magistrate's court which confirms that on 22 April 2023 the social worker was arrested for a failure to provide a specimen of breath for analysis and driving without due care and attention.

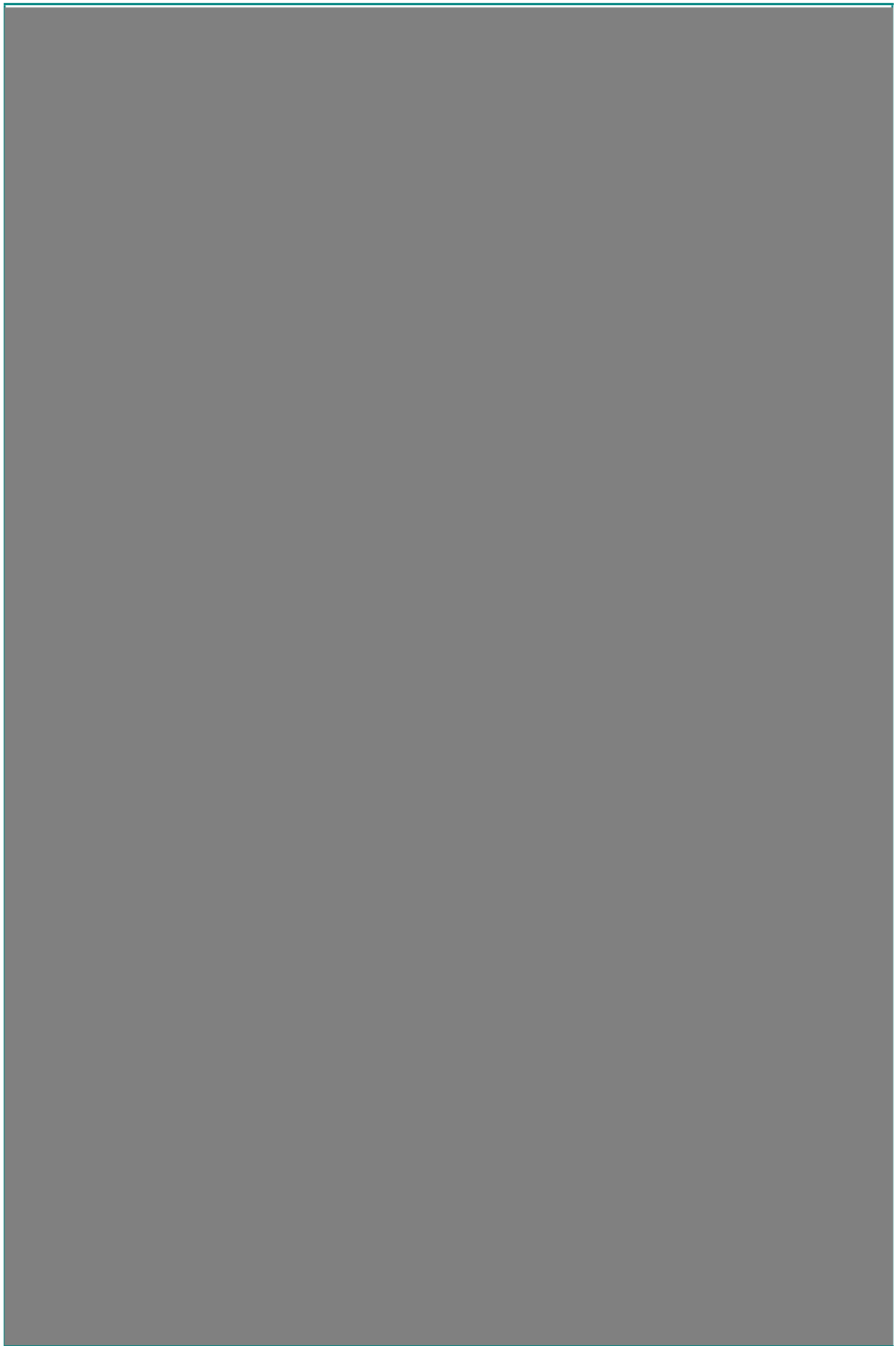
The social worker appeared in court on 24 April 2023 and was sentenced for the offences as follows:

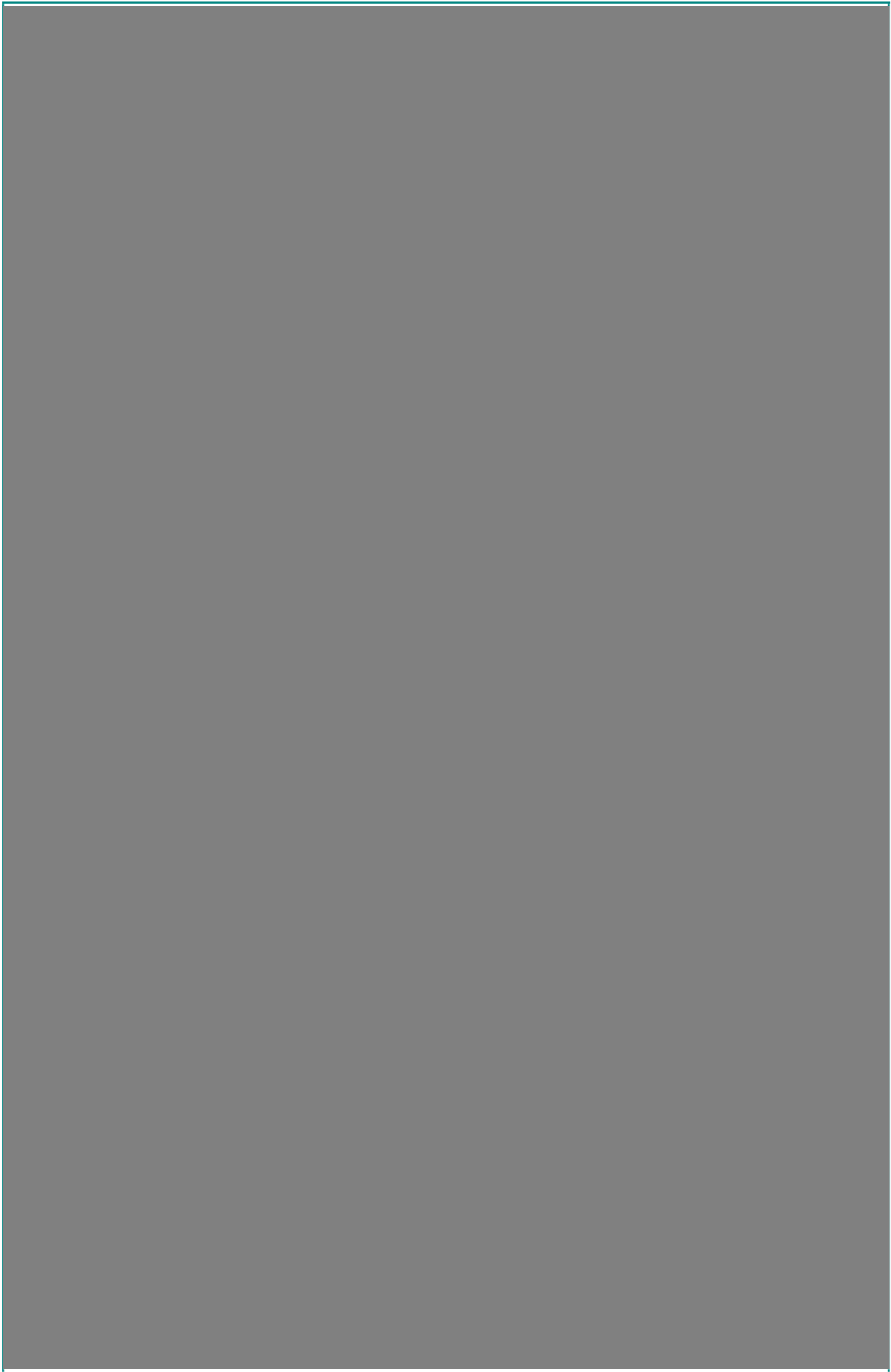
- Disqualified from driving for 15 months
- Fine £423.00

With regards to the context of the offence, the case examiners noted the following from police MG5 and MG15 documentation:

- Police received a report from a member of the public stating they had witnessed a car driving erratically, weaving in and out of traffic, stopping abruptly and driving through a red light.
- The social worker denies consuming any alcohol prior to driving but accepts they consumed alcohol at a family member's address, where they were arrested.
- The social worker failed to provide a specimen of breath to police in custody.
- The social worker accepts driving through a red light.

The case examiners are satisfied that there is a realistic prospect of regulatory concern 1 being proven by adjudicators.





Grounds

A conviction or caution in the United Kingdom for a criminal offence (regulatory concern 1).

The statutory ground being considered by the case examiners is that of a conviction or caution in the United Kingdom for a criminal offence.

The case examiners have had had sight of the information from the court, as detailed above, and they are satisfied that this sufficiently evidences the conviction.

The case examiners are satisfied there is a realistic prospect of adjudicators establishing the statutory ground.

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 consider that the conduct before the regulator can be remedied. In their view, the conduct is not fundamentally incompatible with continued registration and the evidence does not suggest any deep-seated character or attitudinal failing.

The case examiners consider that the social worker could remediate by demonstrating their insight and reflection on the circumstances of their criminal offence, and by engaging with the requirements of the court, including the successful completion of a suitable driving rehabilitation course.

Insight and remediation

The case examiners consider the submissions provided by the social worker to be limited, and focused in part on the social worker's view that they had not been fully

informed as to why they needed to provide a specimen of breath whilst in custody. The case examiners are mindful that this point is, at this stage, immaterial. The case examiners refer to their sanctions guidance, which explains:

183. Decision makers should not give any weight to (either of the following arguments):

- *a social worker arguing that they are not guilty of the offence*
- *a social worker arguing that they did not realise what they were admitting to*

Decision makers can still consider the background facts and circumstances surrounding the conviction. However, they should not use these to undermine the basis of the conviction.

The case examiners acknowledge the successful completion of the drink drive rehabilitation course, however the social worker has not shared any learning from the course and how this learning will translate into their future conduct and prevent them making the same choices, which led to the conviction, in the future.

The case examiners are satisfied that the social worker accepts their conduct is serious and this is reflected in their early guilty plea within the court process. The case examiners have noted the social worker has developing insight and they would anticipate this will continue throughout the disqualification period, and beyond.

Risk of repetition

Having considered the evidence available in this case, although the case examiners are satisfied that there is some evidence of insight and remediation, this is limited and they would be cautious to conclude that the risk of repetition is now highly unlikely.

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.

In considering the public element, the case examiners have had reference to the regulator's Drink and Drug Driving Policy (December 2022), which advises the case

examiners to consider aggravating and mitigating factors when assessing the seriousness of the social worker's criminal offence.

In respect of aggravating factors, the case examiners were satisfied that the following factors drawn from the policy would apply:

- the sentence imposed includes a period of disqualification from driving of over 12 months
- the social worker failing to provide a breath specimen without reasonable excuse
- the criminal conviction relating to more than one driving offence

In respect of mitigating factors, the case examiners were satisfied that the following factors drawn from the policy would apply:

- the social worker demonstrating remorse and insight in relation to the offending behaviour
- the social worker undertaking voluntary relevant remediation including (but not limited to) completing relevant driving courses (for example a drink-drive rehabilitation course)

The case examiners have weighed the public element in this case carefully. Although they are satisfied that the social worker has reduced the risk of repetition through their developing insight and completion of the drink drive rehabilitation course, they are mindful that the social worker failed to provide a specimen for analysis when required to do so by police, and that this has been reflected by the courts by the imposition of a driving disqualification and fine.

With reference to the regulator's drink and drug driving policy, the case examiners are advised that a finding of impairment is only unlikely to be necessary in cases where there are no aggravating features. The case examiners are therefore of the view that the public may expect to see a finding of impairment in this case and, in its absence, public confidence in the maintenance of professional standards for social workers may be undermined.

Accordingly, there is a realistic prospect of adjudicators finding the social worker's fitness to practise to be currently impaired in respect of regulatory concern 1.

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 concluded that the public interest in this case is engaged. However, they are satisfied that this interest may be appropriately fulfilled by virtue of the accepted disposal process.

The case examiners do not consider the case to be so serious that a hearing might be necessary to maintain public confidence in the social work profession, or in Social Work England's maintenance of the standards expected of social workers.

The case examiners have noted that the social worker has indicated to the regulator that they do not consider their fitness to practise to be currently impaired.

Where a social worker does not accept impairment, Case Examiner Guidance (February 2020) suggests that a referral to hearing may be necessary in the public interest.

However, the case examiners note that the guidance states the social worker must accept the matter of impairment at the point of *concluding* the case, and are of the view that this does not prevent them offering accepted disposal prior to this. The case

examiners consider that it is reasonable to offer accepted disposal in this case because:

- There is no conflict in evidence in this case and the social worker accepts all of the key facts.
- The case examiners are of the view that the risk of repetition has already been partially reduced, and therefore any finding of impairment would be primarily made in the public interest, to safeguard public confidence.
- 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 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.

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, the case examiners had regard to Social Work England's Sanctions Guidance (2022) and reminded themselves that the purpose of a sanction is not to punish the social worker but to protect the public and the wider public interest. They have also considered the drink and drug driving policy guidance (December 2022) which states, 'in determining a sanction, the decision makers should also take account the relevant aggravating and mitigating factors'.

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 commenced by considering whether it may be appropriate to reach a finding of impairment, with no requirement for any further action (a no further action outcome). The case examiners were satisfied that, in this case, a finding of no further action would be insufficient to protect public confidence. In reaching this conclusion, the case examiners reminded themselves that the social worker failed to provide a specimen for analysis when suspected of driving over the legally specified limit.

The case examiners have 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 consider that whilst they could offer advice to prevent this situation

arising again, this would not be sufficient to mark the seriousness with which they viewed the social worker's conviction.

The case examiners went on to consider a warning order, which would provide a clearer expression of disapproval of the social worker's conduct than an advice order. The case examiners conclude that a warning order is the most appropriate and proportionate outcome in this case and represents the minimum sanction necessary to adequately address the public's confidence in the profession.

The case examiners considered that a warning order would appropriately mark the severity with which the case examiners view the social worker's conduct, and it would therefore appropriately safeguard public confidence in the social work profession, and in the regulator's maintenance of professional standards for social workers.

The case examiners therefore moved on to consider the length of the warning order, with reference to the regulator's sanctions guidance. Warning orders can be imposed for 1, 3 or 5 years. The case examiners are satisfied that in this case, a 3 year warning order would be sufficient to mark the conduct in question. In reaching this conclusion, the case examiners referred to the sanctions guidance, and noted the following:

- The guidance states that 1 year orders may be appropriate for isolated incidents of relatively low seriousness. Having considered the aggravating and mitigating factors for this case the case examiners do not consider the conduct of low seriousness.
- The guidance states that 3 years may be appropriate for more serious concerns. Given the aggravating features of this case along with the developing insight shown by the social worker, the case examiners consider 3 years may be most appropriate.
- To test this position the case examiners considered the guidance in respect of 5 year orders. The guidance states 5 years may be appropriate for serious cases that have fallen only marginally short of requiring restriction of practice. In the case examiners' view, a conditions of practice order or suspension order would be disproportionate, and therefore the matter has not fallen only marginally short of requiring restriction to practice.

The case examiners went on to consider whether the final sanctions, conditions of practice, suspension and removal order were appropriate in this case. The case examiners reminded themselves that given they had found that a risk of repetition remains (albeit reduced), it would normally be the case that a restrictive sanction

would be appropriate. They concluded that conditions were more relevant in cases requiring some restriction in practice and were not suitable for this case of conviction that related to matters in the social worker's private life. The case examiners considered that suspension or removal from the register would be a disproportionate and punitive outcome in this case.

As such, the case examiners have decided to propose to the social worker a warning order with a duration of 3 years. 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:

Your conduct in this case represented a significant breach of professional standards, and had the potential to have an adverse impact on public confidence in you as a social worker and the social work profession.

The case examiners warn that as a social worker, it is of paramount importance that you conduct yourself appropriately and in line with the law, in both your personal and professional life. The case examiners remind the social worker of the following Social Work England professional standards (2019):

As a social worker, I will not:

5.2 Behave in a way that would bring into question my suitability to work as a social worker while at work, or outside of work

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 social worker responded by email on 21 November 2024 and returned the accepted disposal response confirming: *'I have read the case examiners' decision and the accepted disposal guidance. I admit the key facts set out in the case examiners decision, and that my fitness to practise is impaired. I understand the terms of the proposed disposal of my fitness to practise case and accept them in full.'*

Case examiners' response and final decision

The case examiners concluded that the social worker's fitness to practise was likely to be found impaired but that the public interest could be met through a prompt conclusion, published decision and warning, rather than through a public hearing. They proposed a warning with a duration of three years and the social worker accepted this proposal.

In light of the social worker's acceptance of the warning, the case examiners have considered again whether there would be a public interest in referring this matter to a public hearing. They remain of the view that this is unnecessary for the reasons set out earlier in the decision.

Having been advised of the social worker's response, the case examiners have again turned their minds as to whether a warning remains the most appropriate means of disposal for this case. They have reviewed their decision, paying particular regard to the overarching objectives of Social Work England, i.e. protection of the public, the maintenance of public confidence in the social work profession, and the maintenance of proper standards. Having done so, they remain of the view that an accepted disposal by way of a warning order of three years is a fair and proportionate disposal and is the minimum necessary to protect the public and the wider public interest.