

Case Examiner Decision
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FTPS-20701

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The role of the case examiners

The case examiners perform a filtering function in the fitness to practise process, and their primary role is to determine whether the case ought to be considered by adjudicators at a formal hearing. The wider purpose of the fitness to practise process is not to discipline the social worker for past conduct, but rather to consider whether the social worker's current fitness to practise might be impaired because of the issues highlighted. In reaching their decisions, case examiners are mindful that Social Work England's primary objective is to protect the public.

Case examiners apply the 'realistic prospect' test. As part of their role, the case examiners will consider whether there is a realistic prospect:

- the facts alleged could be found proven by adjudicators
- adjudicators could find that one of the statutory grounds for impairment is engaged
- adjudicators could find the social worker's fitness to practise is currently impaired

Case examiners review cases on the papers only. The case examiners are limited, in that, they are unable to hear and test live evidence, and therefore they are unable to make findings of fact.

Decision summary

Decision summary

Preliminary outcome(s)	6 June 2023 - accepted disposal proposed – warning order (3 years, published) 23 August 2023 – response issued to the social worker’s request for amendments
Final outcome	Accepted disposal – warning order (3 years, published)
Date of the final decision	20 September 2023

Executive summary

This case was presented to the case examiners in two parts. Case investigators indicated that they considered regulatory concern 1 to be a substantive matter to be considered by the case examiners and the relevant tests should be applied. With regards to concern 2 the case investigators made a recommendation for closure.

Paragraph 4 (1) (d) of the Social Work England appointment rules 2019 allows for investigators to recommend that regulatory concerns can be closed if, for example, they have not been able to find evidence to support the concerns or if the evidence significantly undermines the concerns raised.

Decisions regarding concerns being recommended for closure remain the remit of the case examiners. In determining whether the case can be closed, the case examiners have noted the commentary and signposting to relevant evidence provided by the investigators. The case examiners have independently assessed the evidence available to them and explain their findings below.

Findings

The case examiners are satisfied that there is a realistic prospect that:

1. The factual concerns in respect of regulatory concern 1 could be found proven by the adjudicators.

2. The evidence provided in respect of concern 2 is insufficient and/or negates these concerns, and this concern has been closed.
3. Regulatory concern 1 could amount to the statutory grounds of conviction and/or caution for a criminal offence in the United Kingdom.
4. Having determined that adjudicators could find a realistic prospect of fact and that one of the statutory grounds have been engaged, the case examiners take the view that adjudicators could conclude that the social worker's fitness to practise is currently impaired.

The case examiners do not consider it to be in the public interest for the matter to be referred to a final hearing and that the case can be concluded by way of accepted disposal.

As such, the case examiners notified the social worker of their intention to resolve the case with a three year warning order. The social worker responded, requesting amendments.

The case was subsequently allocated to a new lay case examiner, as the first lay case examiner was no longer available. The case examiners reviewed the case and the social worker's request and, with reference to relevant case law, made a small number of amendments to the decision before issuing a response outlining their position and confirming that the proposed accepted disposal remained available to the social worker.

The social worker responded confirming that wished to accept the case examiners' proposal.

The case examiners have considered all of the documents made available within the evidence bundle. Key evidence is referred to throughout their decision and the case examiners' full reasoning is set out below.

The complaint and our regulatory concerns

The initial complaint

The complainant	The complaint was raised via a self-referral by the social worker
Date the complaint was received	25 April 2022
Complaint summary	The regulatory concerns as drafted accurately reflect the social worker's alleged conduct

Regulatory concerns and concerns recommended for closure

- 1 On 12 May 2022, while registered as a social worker, you were convicted of consuming so much alcohol that the proportion of it in your breath, namely 41 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit.

Concern recommended for closure

Concerns being recommended for closure are concerns raised by the complainant, for which no evidence has been found during the investigative process or where the evidence obtained negates the concerns. Decisions regarding concerns being recommended for closure remains the remit of the case examiners.

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Regulatory concerns 1 [REDACTED] amount to the statutory ground of a conviction and/or caution for a criminal offence in the United Kingdom [REDACTED]

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

Preliminary issues

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

The realistic prospect test

Fitness to practise history

The case examiners have been informed of the following fitness to practise history:

- The social worker self-referred themselves to the GSCC (previous regulator) in 2010. They had been convicted of a criminal offence [REDACTED]

[REDACTED] The case examiners have no information as to whether the social worker received a sanction from the regulator.

The case examiners are satisfied that it is fair and reasonable this history may be considered to be adverse. They have considered also whether this history is relevant to the current concerns and have concluded that it is for the following reasons:

- The circumstances of this current matter are broadly similar to the circumstances in 2010, given they both relate to criminal convictions [REDACTED]

The case examiners will therefore give consideration to this history as part of the assessment of current impairment, and not before.

Addendum – 23 August 2023

Clarification

The case examiners clarify that the social worker's adverse history relates to a conviction received in 2010 for a criminal offence [REDACTED]

[REDACTED] Given the regulator does not hold a record of the outcome of the GSCC's investigation, there is no adverse fitness to practise history, and the only adverse history considered is in respect of criminal conviction.





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 being found proven, that those concerns could amount to the statutory ground(s) of 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 *On 12 May 2022, while registered as a social worker, you were convicted of consuming so much alcohol that the proportion of it in your breath, namely 41 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit.*
- The case examiners have had sight of the memorandum of conviction. The evidence in respect of the regulatory concern is clear and compelling and is not disputed by the social worker.

As such, the case examiners are satisfied there is a realistic prospect of regulatory concern 1 being found proved by adjudicators.





Grounds

The case examiners as part of their determination, must next consider whether, if found proved, the concerns would amount to an allegation of impaired fitness to practise by reason of the statutory grounds. The relevant statutory ground in this case is conviction.

- The case examiners have had sight of the memorandum of conviction in relation to the offence. It is suggested that the social workers conduct was not aligned to the relevant professional standards which state that a social worker will not:

5.2 As a social worker, I will not behave in a way that would bring into question my suitability to work as a social worker while at work, or outside of work.

Accordingly, the case examiners are satisfied that there is a realistic prospect of adjudicators establishing the statutory ground of ‘conviction’, as provided by The Social Workers Regulations 2018.

Impairment

In assessing whether there is a realistic prospect that adjudicators may find the social worker’s fitness to practise to be impaired, the case examiners must consider the two limbs of the impairment test: the person and public interest elements.

Personal Impairment

The case examiners have considered the test for personal impairment, namely whether the social worker’s conduct is remediable, whether the social worker has undergone any remediation and demonstrated full and genuine insight and whether there is a likelihood of repetition.

Case examiners have made the following observations:

- Adjudicators may be satisfied that the social worker’s conduct is, in principle, remediable. There is no suggestion that the conviction in this case arose from a deep-seated attitudinal or character flaw (e.g. dishonesty) that would be difficult to remediate. Rather, the conviction, resulted from actions that can be remediated in several ways, for example, through participation in approved educational training and demonstrable development of insight.
- The case examiners note that within their submissions to the regulator the social worker accepts full responsibility for their actions and admits the regulatory concern which was the basis for the self-referral and subsequent investigations. The social worker states, *“I do.... Take full responsibility for what happened as I am solely responsible for making sure that I was ok and fit to drive that morning and fully acknowledgement [sic] my error in judgement and the enormity of my mistake in not ensuring I was under the limit at point of setting off from home.”*
- There is no evidence to suggest the offence took place during the course of their duties as a social worker and this was not cited as an aggravating feature by the sentencing court.
- The social worker provides details of the remedial actions they have taken since their conviction. [REDACTED]
[REDACTED] The social worker has also completed a Drink Drive Awareness course, which is intended to reduce the likelihood of further offending.

- The case examiners take the view that the social worker has an adverse fitness to practice history. They note that this is the second occasion that the social worker has come before the regulator, (GSCC (previous regulator)) due to concerns regarding their professional practice. The first occasion was in 2010. The concerns raised on that occasion also related to a criminal offence [REDACTED]
[REDACTED] The case examiners have no information as to whether the previous regulator imposed a sanction upon the social worker.
- The social worker does not agree that their fitness to practise may be impaired but does state that they take full responsibility for their actions. This would suggest that the social worker does not appreciate that in driving whilst under the influence of alcohol that this may cause individuals to question their ability to make safe decisions. Furthermore, this is the second occasion, the social worker has come to the attention of the regulator for criminal conviction [REDACTED]
- The case examiners acknowledge there is evidence of remediation and remorse, however, it is unclear from their submissions whether the social worker has considered the impact of their conduct on the profession and public. As such, the social worker has not demonstrated full insight into their actions in that they do not sufficiently acknowledge the potential harm their actions may have caused; or the impact the conviction could have on the reputation of the social work profession.

Consequently, the case examiners are not significantly reassured that the behaviour will not be repeated when the driving licence is returned. As a result, they consider that the adjudicators may take the view that there remains a risk; albeit a low risk of repetition.

Taking all of the above into consideration, the case examiners are of the view that there is a realistic prospect of adjudicators determining that the social worker's fitness to practise is impaired on a personal element.

Public Impairment

When considering the wider public interest, the case examiners are required to determine:

- Does the conduct put the public at risk?
- Is the conduct a significant departure from the Standards?
- Does the conduct have the potential to undermine the trust and confidence in the profession?

The case examiners must next consider 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 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 consider that a conviction for driving with excess alcohol is a serious matter. The proportion of alcohol in the social worker's breath, the following morning was 41 microgrammes of alcohol in 100 millilitres of breath. This is above the legal limit which is 35 and the potential for causing harm to self or the public was high. The case examiners note that the social worker was involved in a road traffic accident where they hit a signpost.

Adjudicators may determine that the public would expect a finding of impairment recorded against a social worker who conducted themselves in this matter and receiving a conviction as a result. Furthermore, public confidence in the social work profession and the regulator may be undermined if a finding of impairment was not made.

Accordingly, case examiners are satisfied that there is a realistic prospect that the social worker's fitness to practise is impaired on the public interest grounds.

The public interest

Decision summary

Is there a public interest in referring the case to a hearing?	Yes	☐
	No	☒

Referral criteria

Is there a conflict in the evidence that must be resolved at a hearing?	Yes	☐
	No	☒
Does the social worker dispute any or all of the key facts of the case?	Yes	☐
	No	☒
Could a removal order be required?	Yes	☐
	No	☒
Would not holding a public hearing carry a real risk of damaging public confidence in Social Work England's regulation of the profession?	Yes	☐
	No	☒
Is a hearing necessary to maintain public confidence in the profession, and to uphold the professional standards of social workers?	Yes	☐
	No	☒

Additional reasoning

With reference to their case examiner guidance (2022) the case examiners have given careful consideration to whether there is a public interest in these matters proceeding to a hearing. The case examiners have noted that the social worker does not consider their fitness to practise to be currently impaired.

Where a social worker does not accept impairment, case examiner guidance suggests that a referral to hearing may be necessary in the public interest. The case examiners consider it is appropriate to depart from that guidance in this instance.

As outlined above, the case examiners are satisfied that the matters are not so serious that a public hearing would be necessary to maintain public confidence in social workers,

or in Social Work England's maintenance of professional standards for the profession. The case examiners note there is no conflict in the evidence in this case and the social worker does not dispute any of the key facts. They are of the view that the risk of repetition can be managed, and they have a number of sanctions available to them which serve to reassure the public that risk is being managed without the need for this to be examined within a public hearing.

The case examiners note that the social worker is clear that their alleged conduct fell short of the standards expected of them. They have expressed *"I do acknowledge that the conviction calls into question my character and can only say that on that particular day I made a massive error in judgement and I take full responsibility for this and am massively remorseful. There is no one that feels more ashamed, consumed by self blame, self judgement, guilt and disappointment more than myself, as part of my recovery it has taken a great deal of strength to accept and move past this."* The case examiners also note that the social worker has undertaken remedial action [REDACTED]

The case examiners recognise that not all social workers who are subject to fitness practice procedures will have a clear 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 case examiners are satisfied there is a realistic prospect of the identified concern and statutory grounds i.e. conviction, being found proven by adjudicators. The case examiners have also found a real prospect that adjudicators would find the social worker's fitness to practise is currently impaired.

The case examiners have considered whether there is a realistic prospect of removal if the case was considered at a hearing. The social worker's alleged conduct is thought to be serious and departs from professional standard 5 outlined above. However, in weighing up the evidence which includes an acceptance of responsibility of their behaviour and the remediation completed, the case examiners feel that there would not be a realistic prospect of the social worker being removed from the register.

The case examiners have a range of sanctions (accepted disposals) available to them which would serve to mark the regulator's disapproval of the social worker's conduct. The accepted disposal process provides the social worker with an opportunity to review the case examiners' reasoning on impairment and reflect on whether they are able to accept a finding of impairment. The social worker can 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 expect the regulator to 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.

The publication of this matter will also highlight behaviour that falls short of acceptable standards in social work and will act as an example to other members of the profession. There is a public interest in proportionate regulation and in this instance, swift and appropriate action in response to the alleged wrongdoing will enhance the public's confidence in the social work profession whilst also ensuring the public remains adequately protected. There is nothing to be gained from delaying taking action by referring this to a public hearing.

Interim order

An interim order may be necessary for protection of members of the public	Yes	☐
	No	☒
An interim order may be necessary in the best interests of the social worker	Yes	☐
	No	☒

Accepted disposal

Case outcome

Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☒
	Conditions of practice order	☐
	Suspension order	☐
Proposed duration	3 years	

Reasoning

The case examiners have found a realistic prospect that adjudicators would find the social worker's fitness to practise is currently impaired. The case examiners have decided however, that it is not in the public interest to refer this matter to a final hearing.

In considering the appropriate outcome in this case, the case examiners have 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. Furthermore, the guidance requires that decision makers select the least severe sanction necessary 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 sanctions in ascending order of seriousness.

The case examiners considered taking no further action, but concluded this would not be appropriate in this instance as it would be insufficient to address the seriousness of the concerns.

The case examiners have considered whether offering the social worker advice would be sufficient and appropriate course of action. 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 are of the view that in this case, issuing advice is not sufficient to mark the seriousness with which they view the social worker's conduct.

The case examiners have given consideration to a warning order. A warning order implies a clearer expression of disapproval of the social worker's conduct than an advice order,

and the case examiners concluded that a warning order is the appropriate and proportionate outcome in this case and represents the minimum sanction necessary to uphold the public's confidence. The case examiners have considered the length of time for the published warning and consider three years to be proportionate in this case. The case examiners take the view that a one year order is not sufficient to mark the seriousness of the social worker's conduct. As part of this determination, they have considered whether a five year warning would be appropriate. The case examiners note the guidance suggests five years may be appropriate for serious cases that have fallen only marginally short of requiring restriction of registration and helps to maintain public confidence and highlight the professional standards. Whilst the social worker's alleged conduct was serious, the case examiners take the view that a five year warning would be disproportionate.

The imposition of three year warning is an extended period over which the social worker must demonstrate that there is no risk of repetition.

As part of the decision making process, the case examiners have considered whether the imposition of the next two sanctions, conditions of practice and suspension would be an appropriate disposal. They concluded that conditions were more relevant in cases requiring some restriction of practice and were not suitable for this case. The case examiners further considered that suspension from the register would be a disproportionate and punitive outcome in this case.

The case examiners have therefore decided to propose to the social worker a warning order of three 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:

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

The case examiners specifically draw your attention to Social Work England Professional Standards (2020).

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.

This conduct should not be repeated. The regulator will take a dim view on any further criminal offences or similar matters brought to their attention and are likely to impose a more serious outcome. This warning will remain published for three years which reflects how serious the case examiners consider the matter to be.

First response from the social worker

The social worker responded on 26 June 2023, confirming that they had read the case examiners' decision and the accepted disposal guide. The social worker confirmed that they understood the terms of the proposed disposal of the fitness to practise case, and wished to suggest amendments to the report. Specifically, the social worker requested that information relating to their conviction in 2010 be redacted, as it was now spent.

Case examiners' response

As outlined in the executive summary of this decision, upon receipt of the social worker's request for amendments, a new lay case examiner was appointed to consider this case because the first lay case examiner was no longer available. In considering the social worker's request, the case examiners reviewed the content of the decision report and determined that they may require legal advice on a number of potential issues, as laid out below:

1. Redaction of spent convictions



Having received signposting to relevant regulations, guidance and case law, the case examiners independently reviewed the case again, and determined that they could move

forward without the need for independent legal advice, which would have added further unnecessary delay to the process.

For point 1, redaction, the case examiners were informed that the regulator held decision-making responsibility for publication of information in case examiner decisions. The case examiners therefore advised the regulator of their view on redaction, and sought the regulator's position. The regulator agreed that all information relating to concern 2, [REDACTED] would be redacted if published because this concern had been closed. The regulator agreed, however, that there would be a public interest in publishing information about a 2010 conviction in respect of it being adverse history, as this had a material bearing on the case examiners' findings on impairment and sanction. It was noted that the regulations do not prohibit the regulator from publishing information about spent convictions, instead stipulating that it is not required. The case examiners consider it reasonable that limited information is published (i.e. that there is a previous conviction for a criminal offence), but have agreed with the regulator that specific information about that conviction will be redacted. The case examiners are of the view that this would satisfy the public interest, which includes the need for the regulator to make clear the reasons why a social worker is found to be impaired, and the reasons why a particular sanction is appropriate. The social worker will observe that in this copy of the report, amendments have been made to enable any published copy to provide limited information, with details then highlighted for redaction in a different colour font (red).

Summary

In summary, the case examiners have partially agreed with the social worker's requested amendments. There will be some further redactions applied, should the decision be published, but a limited amount of information will remain unredacted in the public interest. The case examiners have also made a small number of amendments to their report, which will be highlighted to the social worker.

The social worker will be offered opportunity to review the case examiners' response, and this revised report, and to respond again to the case examiners' accepted disposal proposal. For the avoidance of doubt, the proposal remains the same – a warning order of 3 years duration.

The case examiners recognise that the social worker may need a little more time than would usually be required in such circumstances to consider their options. The case examiners therefore direct that the social worker is offered 21 days to respond. The social worker should be made aware that they may not request substantial amendments again. However, the case examiners will, exceptionally and if required, consider submissions from the social worker on one further occasion only, if there are any minor points they wish to query.

Second response from the social worker

The social worker has returned a completed response form, signed and dated 18 September 2023, confirming that they have read the case examiners' decision and that they understand the terms of the proposed disposal and accept them in full.

Case examiners' response and final decision

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

The case examiners therefore direct that the regulator enact a warning order, with a duration of 3 years.