

Case Examiner Decision
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FTPS-23129

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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	27 August 2024
	Accepted disposal proposed - Warning Order - 3 years duration
Final outcome	10 September 2024
	Accepted disposal - Warning Order - 3 years duration

Executive summary

The case examiners have reached the following conclusions:

- There is a realistic prospect of regulatory concerns 1, 2 and 3 being found proven by the adjudicators.
- There is a realistic prospect of regulatory concern 1 being found to amount to the statutory ground of conviction or caution in the United Kingdom for a criminal offence. There is a realistic prospect of regulatory concerns 2 and 3 being found to amount to the statutory ground of misconduct.

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 that the case could 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 this proposal on 5 September 2024.

The case examiners have considered all 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	15 January 2024
Complaint summary	The social worker received a conviction of driving a motor vehicle with a proportion of a controlled drug above the specified limit. The social worker did not inform Social Work England of the conviction in a timely manner, and therefore, acted dishonestly.

Regulatory concerns

Whilst registered as a social worker;

1. On 12 August 2021 you were convicted of the criminal offences of driving a motor vehicle with a proportion of a controlled drug above the specified limit.
2. You failed to declare your conviction of driving a motor vehicle with a proportion of a controlled drug above the specified limit, to Social Work England, in a timely manner.
3. Your conduct at regulatory concern (2) was dishonest.

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

The matters outlined in regulatory concerns (2) and (3) amounts to the statutory ground of misconduct.

Your fitness to practise is impaired by reason of your 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	☐

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 conviction or caution in the UK for a criminal offence (concern 1), and misconduct (concerns 2 and 3) and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

Whilst registered as a social worker;

1. On 12 August 2021 you were convicted of the criminal offences of drive motor vehicle with a proportion of a controlled drug above the specified limit.
2. You failed to declare your conviction of drive motor vehicle with a proportion of a controlled drug above the specified limit, to Social Work England, in a timely manner.
3. Your conduct at regulatory concern (2) was dishonest.

1. On 12 August 2021 you were convicted of the criminal offences of driving a motor vehicle with a proportion of a controlled drug above the specified limit.

The case examiners have had sight of court documentation, which confirms that the social worker was convicted on 12 August 2021 of driving a motor vehicle with a proportion of a controlled drug above the specified limit.

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

2. You failed to declare your conviction of driving a motor vehicle with a proportion of a controlled drug above the specified limit, to Social Work England, in a timely manner.

The social worker has accepted in their submissions that they did not inform the regulator of the conviction in a timely manner.

The case examiners have reviewed the annual renewal documents submitted by the social worker in 2021, 2022 and 2023 in which the social worker declared 'No' to the query regarding conviction, caution, or penalty notice.

The case examiners are satisfied there is a realistic prospect of adjudicators finding regulatory concern 2 proven.

3. Your conduct at regulatory concern (2) was dishonest.

When considering dishonesty, the case examiners have applied two tests, in line with relevant case law. Firstly, they have assessed the evidence to establish what adjudicators may determine the social worker's actual state of knowledge or belief was at the relevant time (the subjective test). Secondly, they have considered whether the social worker's conduct could be deemed as dishonest by the standards of ordinary, decent people (the objective test).

With regard to the subjective test, the case examiners note that the social worker has provided detailed submissions in which they accepted that they had been dishonest by not disclosing their conviction in a timely manner to their employer and Social Work England. The social worker also acknowledged that they had reflected on why they had not disclosed the conviction and concluded that this had been due to personal gain as they were concerned they may lose their job. The case examiners note that the social worker was consistently dishonest over a period of three years when they renewed their registration without disclosing the conviction.

The case examiners consider that the social worker would have been aware at the relevant time that their actions were dishonest.

With regard to the objective test, the case examiners are satisfied that the conduct of the social worker in stating they had no convictions on three occasions, when that was not the case, would be considered dishonest by the standards of ordinary decent people.

The case examiners are satisfied there is a realistic prospect of adjudicators finding regulatory concern 3 proven.

Grounds

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

The case examiners have seen the court documentation relating to the social worker's conviction.

The case examiners are therefore satisfied that adjudicators would determine that the statutory ground of a conviction or caution in the United Kingdom for a criminal offence would be engaged.

The matters outlined in regulatory concerns (2) and (3) amount to the statutory ground of misconduct.

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

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

Social Work England Professional Standards (2019)

2.1: As a social worker, I will: Be open, honest, reliable, and fair.

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.

6.6: As a social worker, 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 practice, or if I am subject to criminal proceedings or a regulatory finding is made against me, anywhere in the world.

The case examiners have also considered Social Work England's professional standards guidance that states:

'Social workers are open and honest with people, including when something goes wrong or has the potential to cause physical, emotional, financial or any other harm or loss. Where they are not open and honest, it can put people at risk and may damage confidence in them as a social worker and the social work profession.'

Social Work England needs to be made aware of any matters that could impact on a social worker's fitness to practise, such as a criminal conviction, in a timely manner. This is necessary to enable the regulator to carry out an assessment of risk and fulfil its overarching objective of protecting the public.

Any assessment of risk needs to be carried out at the earliest opportunity so that prompt steps can be taken to mitigate any risk. Social workers should have a good understanding of this, as risk assessing is central to social work practice.

The social worker has acknowledged that they acted dishonestly and stated: *"I have shown that my level of honesty on this occasion has fallen far below what would be expected of me. I can understand that by not disclosing this offence that the trusting relationship with those I have worked hard to achieve has been broken and I need to ensure that I am able to demonstrate my commitment to these values going forward."*

The case examiners consider that the alleged dishonest behaviour, of confirming to the regulator on re-registration that they were not subject to a criminal conviction, is a significant departure from the expected professional standards. Repeating this dishonest conduct over a three-year period, as the evidence suggests, and the social worker accepts, is a serious concern to the regulator, as it indicates repeated dishonesty rather than a one-off lapse of judgement. Having the capacity to act with honesty and integrity is central to social work values and failure to do so has the potential to bring the social work profession into disrepute.

Therefore, the case examiners are satisfied that there is a realistic prospect of adjudicators finding the grounds of misconduct proven.

Impairment

Having concluded there is a realistic prospect of adjudicators establishing the statutory ground of a conviction or caution in the United Kingdom for a criminal offence, and misconduct, the case examiners must consider whether there is a realistic prospect of adjudicators finding current impairment.

Assessment of impairment consists of two elements:

The personal element, established via an assessment of the risk of repetition.

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 regulatory concerns, 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

Allegations of persistent dishonesty over a period of three years are particularly serious and difficult to remediate; they may potentially indicate a serious character or attitudinal flaw which can be difficult to address.

The case examiners are of the view that, whilst it is difficult to remediate alleged conduct that may point to a character flaw, a social worker can nevertheless attempt to demonstrate remediation by providing meaningful and honest reflection.

Insight and remediation

The case examiners have reviewed the social worker's submissions in which they stated:

- *"I have reflected greatly on why I had not disclosed this and can understand that this has been due to personal gain, in that I have put more importance on my own fears and wishes above that of my duty to meet the professional standards set out in Social Work. In breaching the standards and values set out by social work England."*
- *"I was pulled over routinely by the police on the way home...Although I felt I was no longer feeling the effects of cannabis when I drove, I am aware that I clearly should have made other arrangements to get home."*

The case examiners have noted that the social worker, by using the word 'routinely' to describe how they were stopped by police on (20 February 2021), appears to be minimising their alleged conduct, suggesting they were stopped as part of a random check. Information provided by the police indicates that the social worker was stopped because *'the car they were driving appeared to be travelling from one side of the lane*

to the other side of the lane.’ Furthermore, the social worker has submitted that when they started driving, they were “no longer feeling the effects of cannabis.” The police statement refers to the driver appearing ‘quite lethargic and had slow speech....his eyes were all bloodshot and very red.’

The case examiners have concluded that whilst the social worker has accepted the concerns and reflected on their conduct, their submissions suggest that they are seeking to minimise the exact nature of their alleged actions.

Therefore, the case examiners consider that the social worker has not demonstrated full insight, albeit there is evidence of developing insight.

Risk of repetition

The case examiners consider that the social worker has demonstrated some insight into their behaviour and accepted conditions in place from the employer to support and monitor their work and conduct.

The social worker appears to have reflected on the alleged conduct and acknowledged the impact of this on potential service users, colleagues with whom he works and the reputation of the social work profession.

The evidence suggests that use of cannabis was a one off, however the dishonesty to conceal the conviction was persistent. The case examiners consider that whilst insight is developing, the social worker has reflected on their conduct and, on balance, the risk of repetition is low.

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 must now consider the public interest in this matter.

In doing so, the case examiners have taken into account Social Work England’s drink and drug driving policy. This directs the case examiners to consider aggravating and mitigating factors when assessing the seriousness of the case. The case examiners have considered the circumstances of the case and highlighted matters that would be considered aggravating or mitigating, below:

Aggravating factors:

- The case examiners note from the police report that the social worker was driving a car whilst almost 4 times over the limit of a specified controlled drug.

- The sentence imposed includes a period of disqualification from driving of over 12 months, endorsement of driving licence, and a fine of £450.
- The social worker engaged in persistent repeated dishonesty with the regulator over a 3-year period.
- The social worker appeared to minimise their actions in their submissions to the regulator and during the disciplinary investigation. Information provided by the social worker about being randomly stopped differed from the evidence provided by the police as detailed above.

Mitigating factors:

- The offence in question is not a repeat offence.
- The social worker has demonstrated some remorse and developing insight in relation to the offending behaviour.

When assessing the public element, the case examiners have also taken into account Social Work England's case examiner guidance which states:

- *“Paragraph 123 ‘Case examiners should be careful when assessing actual harm caused by a social worker’s actions and its impact on the seriousness of the case. An action that (by luck) has not caused harm may still represent an unacceptable risk of serious harm if repeated. If this is the case, case examiners should not regard it as any less serious because actual harm did not occur.’*
- *Paragraph 124 ‘Case examiners should assess the extent to which the social worker could (and should) have foreseen the risk of harm (or actual harm caused). The case examiners may conclude that the social worker should have anticipated the risk of harm and managed it in advance.’*

The social worker in their submissions appears to acknowledge this and is remorseful. The social worker stated:

- *“I am aware of the importance of maintaining the professional standards set out by Social Work England, and in committing the offence, as I have, I may have damaged my ability to build and maintain trust with those that I have worked with should they be aware of the offence. I have further failed to maintain honesty with those I have worked with as colleagues.”*
- *“I would not normally consume cannabis, and I am aware in doing so I am committing a crime.I am aware that there is an expectation that I do not bring the profession into disrepute, which on this occasion I have. As a result*

of my actions, there could have been an accident leading to serious injury or death to the public or myself. There is the further possibility that media involvement could have caused negative press regarding the social work profession which would cause great concern to the public.”

Though the case examiners note there are some mitigating factors as per the case examiner guidance, there are also aggravating factors. Specifically, persistent dishonesty, together with the risk that the social worker’s alleged actions caused. The case examiners conclude that the risk to public confidence is serious.

As such, it is likely the public would expect that a finding of current impairment is made by adjudicators to maintain public confidence in the regulation of the profession.

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’s fitness to practice 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 concluded that the public interest in this case is engaged. However, they are satisfied that this interest may be appropriately fulfilled by the accepted disposal process.

Whilst the matter before the regulator is serious, the case examiners are not of the view that it is 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. In addition, there is no conflict in evidence in this case and the social worker accepts all of the key facts.

The case examiners have noted, however, 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 (December 2022) 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. In reaching this conclusion, they noted the following:

- The case examiners are of the view that there is low risk of repetition, 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.

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	☐
	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 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 policy guidance (December 2022) which states, '*in determining a sanction, the decision makers should also take account the relevant aggravating and mitigating factors*'. The case examiners have set out the aggravating and mitigating factors in the impairment section of their decision, as summarised in the following paragraph.

The case examiners have acknowledged this was the first criminal offence for the social worker and have determined that there is a low risk of repetition due to the developing insight demonstrated by the social worker, and the reflection undertaken. However, the case examiners also recognise that the social worker received a 12-month disqualification, endorsement of their driving licence and a fine of £450 for driving a car whilst almost 4 times over the limit of a specified controlled drug. Furthermore, the case examiners have considered that the social worker was persistently dishonest over a period of three years and appeared to minimise their alleged conduct to the regulator and their employer.

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 consider for a case where the public interest was engaged, that no further action and advice would not be appropriate. They acknowledge their guidance allows for exceptional cases where there is evidence of complete remediation and no risk of repetition. However, the case examiners return to the aggravating factors described previously and consider that no further action or advice, would not be proportionate in this case, as neither would appropriately mark the severity of the conduct in question.

The case examiners consider a warning would be a proportionate outcome given the full circumstances of the case. A warning would remain on the social worker's record for an allocated time and sends a clear message about the conduct expected of social workers.

The case examiners have considered whether a restrictive sanction may be required, however note that they have previously concluded there is a low risk of repetition. A condition of practice order is ordinarily most appropriate for practice issues and the case examiners note that the conduct occurred outside of work, there are no concerns regarding the social worker's practice and the evidence from the employer indicates that they are *'person centred and supportive of other staff members.'*

The case examiners are of the view that a suspension order or removal would be disproportionate in this case and consider that a published warning would be sufficient to mark the regulator's disapproval with the conduct of the social worker.

The case examiners have then turned their minds to the duration of the warning. They are of the view that, the length of the warning should reflect how serious the alleged conduct was.

The case examiners have noted the sanctions guidance (December 2022) which indicates that one year *'may be appropriate for an isolated incident of relatively low seriousness...to send a message about the professional standards expected of social workers'*.

The case examiners consider a one-year warning to be insufficient to mark the seriousness of the social worker's alleged dishonesty over a three-year period.

A warning for three years is described as *'appropriate for more serious concerns...to maintain public confidence and highlight the professional standards'*. The guidance also noted that a period of 3 years will *'allow more time for the social worker to demonstrate that they have successfully addressed any risk of repetition'*.

The case examiners note that the conviction appears to have been an isolated incident, albeit serious. The persistent dishonesty, also considered to be serious by the regulator, is related to the conviction only. The case examiners have taken into account the developing insight shown by the social worker, and the fact that no issues with their practice have been raised. However, the evidence suggests that the social worker's driving was impaired and therefore represented a significant risk to the public, it was by good fortune that nobody was hurt by the social worker's actions. The case examiners have therefore concluded that three years is necessary to mark the seriousness of the alleged conduct and send a message about the professional standards expected of social workers.

The case examiners consider that a 5-year warning would be disproportionate as this is suitable for serious cases which have fallen only marginally short of requiring restriction of practice.

The case examiners have decided to propose to the social worker a warning order of 3 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 21 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 almost 4 times over the limit of a specified controlled drug is serious. Your actions could have caused physical harm to a member of the public and damaged public trust and confidence in you and the profession.

Social workers are expected to demonstrate honesty and integrity at all times. Persistent dishonesty over a three-year period has the potential to bring the profession into disrepute.

You must adhere to Social Work England's (2019) professional standards for registered social workers and pay particular attention to the following standards to prevent repetition of a similar incident.

As a social worker,

2.1: As a social worker, I will: Be open, honest, reliable, and fair.

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.

6.6: As a social worker, 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 practice, or if I am subject to criminal proceedings or a regulatory finding is made against me, anywhere in the world.

Your conduct could have an adverse effect on the public's confidence in you as a social worker. It may also damage the reputation of the social work profession. This conduct should not be repeated. Any 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 on 5 September 2024 and indicated that they have read the case examiners' decision and the accepted disposal guide. They have indicated they understand the terms of the proposed disposal of their fitness to practise case and accept them in full.

Case examiners' response and final decision

Due to leave and to prevent delay, a different lay case examiner was involved following the social worker's acceptance of the accepted disposal proposal.

The case examiners have reviewed the decision and considered again whether accepted disposal remains the most appropriate resolution of this case.

Given the social worker's acceptance of the warning order, 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. The case examiners have therefore concluded that a warning

order for 3 years is the most proportionate response and is the minimum necessary to protect the public and satisfy the wider public interest.