

Case Examiner Decision

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FTPS-21803

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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	18 November 2024
	Accepted disposal proposed - warning (3 years)
Final outcome	29 November 2024
	Accepted disposal - warning order (3 years)

Executive summary

The case examiners have reached the following conclusions:

1. There is a realistic prospect of regulatory concern 1 being found proven by the adjudicators.
2. There is a realistic prospect of regulatory concern 1 being found to amount to the statutory grounds of a criminal conviction or caution in the United Kingdom for a criminal offence.
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 did not consider it to be in the public interest for the matter to be referred to a final hearing and determined that the case could be concluded by way of accepted disposal.

As such, the case examiners requested that the social worker was notified of their intention to resolve the case with a warning order of 3 year's duration. The social worker accepted this proposal and the terms in full.

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	13 February 2023
Complaint summary	The concern relates to the social worker having been convicted for driving a motor vehicle in a public place, while over the prescribed limit for alcohol.

Regulatory concerns

Whilst registered as a social worker:

1. On 2 February 2023 at Hull Magistrates Court, you were convicted of the offence of driving a motor vehicle whilst over the prescribed limit for alcohol.

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

Your fitness to practise is impaired by reason of conviction or caution in the United Kingdom for a criminal offence.

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 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 concern 1 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

Whilst registered as a social worker:

1. On 2 February 2023 at Hull Magistrates Court, you were convicted of the offence of driving a motor vehicle whilst over the prescribed limit for alcohol.

In their consideration of the facts in this case, the case examiners have noted the following key evidence:

The case examiners have had sight of court documents, which include a certificate of conviction and a notice of disqualification. These confirm that at a hearing on 2 February 2023, the social worker received a conviction for driving a motor vehicle on a road, namely the A1079, when the proportion of alcohol in their breath, i.e., 84

microgrammes in 100 millilitres of breath, exceeded the prescribed limit. The date of the offence was recorded as 17 December 2022. The social worker received a driving disqualification of 20 months, to be reduced by 20 weeks on the satisfactory completing of an approved driving course.

The case examiners have also had sight of a police report, which records that a member of the public had been alarmed to observe the social worker's vehicle to have sustained damage and to have "become stranded in the middle of a live lane on the carriageway"; this was on a major road, the A1079.

The police report further states that on attending the location, the social worker was found to be asleep in the driver's seat of the vehicle, with the engine running and hazard lights displayed. The social worker was required to provide a roadside sample of breath which was positive; the social worker was arrested at 0826hrs. The social worker subsequently provided an evidential breath sample of 84 micrograms per 100 millilitres of breath, while in police custody.

The case examiners note that the social worker admits the regulatory concern.

In light of the above, the case examiners consider there to be a realistic prospect of adjudicators finding regulatory concern 1 proven.

Grounds

The case examiners have noted the court documents, which include a certificate of conviction; these confirm that the social worker received the conviction as outlined in the facts for concern 1.

The case examiners are satisfied that there is a realistic prospect that adjudicators would find the grounds of a conviction or caution in the United Kingdom for a criminal offence 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 consider that the conduct before the regulator, while serious, can be remedied. In their view, the alleged conduct is not fundamentally incompatible with continued registration, and the case examiners consider that the social worker could remediate by demonstrating insight and reflection into the circumstances and seriousness of their criminal offence, and providing evidence of remediation.

Insight and remediation

The case examiners do consider that they have been presented with some evidence of insight and remediation, although they consider it to be developing, rather than complete.

The social worker advises that they have attended a 'Reform Driving Awareness course, which they accessed as soon as possible after their conviction, in order *"to educate myself and learn from my behaviours"*. The social worker outlines learning from this course, stating that it has made them *"aware of the impact of alcohol, driving limits, unit consumption and most importantly in relation to the above incident absorption rates and how long it takes for alcohol to leave the body. It has taught of the need to be aware of how much alcohol is consumed and the time it takes to be legally and safe to drive a vehicle"*. A certificate of course completion has been provided.

The social worker has also provided information regarding personal and professional challenges that they were facing at the time the concerns arose. While they acknowledge that such factors *"do not excuse my actions that evening"*, they submit that they are *"certainly contributing factors that led to me behaving in manner not becoming of myself"*.

The social worker details steps that have taken to address the impact of personal factors on their *"emotional well-being"*. They also outline that, following the incident, they have engaged in regular discussions with their line manager, about *"the impact and how I can make changes to my behaviours"*, and *"how best to manage this both*

personally and professionally to ensure that incidents of this nature would not be repeated”.

The case examiners guidance reminds them that for insight to be complete, a social worker needs to demonstrate that they fully understand what they have done wrong, and why it is wrong. While the social worker has indicated some insight and remediation, the case examiners do not consider that the social worker has addressed the real risk of serious harm they presented to other road users as a result of them being so significantly over the limit (2 ½ times over the prescribed limit for alcohol in breath) and that they were asleep at the wheel of their vehicle, while it was stationary in a live lane of a major road. The case examiners are concerned that the social worker’s account of their learning from their awareness course is mainly focussed on them having learned how to calculate when it might be safe for them to drive after consuming alcohol, rather than on the significant risk they posed.

The case examiners have also noted that the social worker did not report their arrest and charge to Social Work England until after they had been convicted, almost 2 months after the date of the offence. The professional standards for social workers require them to:

6.6 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.

Criminal proceedings commenced at the point of charge, and while there is evidence that the social worker was advised by their employer that they did not need to report the proceedings to the regulator until after the court process, as an autonomous professional, a social worker is required to adhere to the relevant professional standards. The incorrect advice from an employer does not negate the social worker’s own responsibility to act in accordance with those standards. The case examiners’ guidance reminds them that making an early disclosure about what has happened to those impacted, and starting remediation early, may also be good evidence of insight. In delaying for approaching two months their report of their arrest and charge, the case examiners are unable to consider insight provided by the social worker to be ‘early’.

While the social worker does not directly address the likely adverse impact that their actions will have had on public confidence in the profession, they do express remorse, and acknowledge that they “*let myself and the profession down*”. Information from the social worker’s current employer also confirms that no concerns had been raised about the social worker’s practice either prior to their

conviction or since, and that no restrictions were placed on the social worker's practice.

Risk of repetition

The case examiners are of the view that while the social worker has demonstrated some insight and remediation, it is not complete at this time. The case examiners have therefore concluded 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.

In assessing the public interest, the case examiners consider that there are a number of aggravating factors in the specific circumstances of this case. These include that:

- The social worker was significantly over the prescribed limit for alcohol in their breath;
- The social worker was found asleep at the wheel of their vehicle in a live lane on a major road where they would be likely to have presented a hazard to other vehicles travelling at speeds. As such the potential for an accident, and thus serious injury to the public, would have been high;
- The social worker's insight and remediation is not complete.
- The social worker did not make a timely referral to the regulator in relation to the criminal proceedings against them.

The case examiners have next identified the following mitigating factors:

- The evidence suggests that this was the social worker's first offence;
- The social worker has demonstrated remorse and some insight into their behaviour;
- The social worker has undertaken, and demonstrated learning and reflection, from attending a drink awareness course;
- There is evidence to suggest that the social worker is of otherwise good character.

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 are of the view that a fully informed member of the public would be concerned that a social worker had received a conviction for driving while significantly over the prescribed limit for alcohol, including on major roads, and fell asleep at the wheel of their vehicle, in a live lane. If the concerns were to be found proven by adjudicators, the case examiners are of the view that a member of the public would consider the alleged conduct of the social worker to be serious, and would expect a finding of impairment to be made, together with an appropriate sanction.

The case examiners are therefore satisfied that there is a realistic prospect of adjudicators finding the social worker's fitness to practise 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 considered whether a referral to a hearing may be necessary in the public interest, and have noted the following:

- There is no conflict in the evidence in this case and the social worker accepts the key facts.
- While it is unclear to the case examiners whether the social worker considers themselves to be currently impaired, the case examiners' decision and proposal will allow the social worker to review the case examiners' reasoning on impairment and consider whether they accept the case examiners' findings. It is open to the social worker to reject any accepted disposal proposal and request a hearing if they wish to explore the matter of impairment in more detail.
- The case examiners are of the view that while they have identified some risk of repetition, any future risk can be managed through other sanctions available to them.
- 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.

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. The case examiners were satisfied that in this case, given the aggravating factors, seriousness of the concern raised, and some risk of repetition, a finding of no further action would be insufficient to protect the public and public confidence.

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. The case examiners consider that whilst they could offer advice to prevent this situation arising again, this would also be insufficient to mark the seriousness with which they viewed the social worker's conduct and conviction, or to protect the public.

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 concluded that a warning order was the most appropriate

and proportionate outcome in this case. While representing the minimum sanction necessary to adequately address the public's confidence in the profession, a warning order provides a signal to a social worker that they are highly likely to receive a more severe sanction if they repeat the behaviour leading to the concern.

The case examiners also considered that a warning order would sufficiently mark the seriousness with which the case examiners view the social worker's conduct, and would appropriately safeguard public confidence in the social work profession, and in the regulator's maintenance of professional standards for social workers. In reaching this conclusion, the case examiners also took into account that while they had found some risk of repetition, which might ordinarily suggest that a restrictive order would be appropriate, the social worker had shown that insight and remediation was developing, and the incident which led to the social worker's conviction appears to have been isolated.

To test whether a warning order was the most appropriate sanction, the case examiners went on to consider the next highest sanctions; conditions of practice or suspension order. As the social worker's alleged conviction was not directly linked to their practice, occurring outside of work, meaningful and workable conditions may be difficult to formulate.; the case examiners therefore did not consider conditions of practice to be an appropriate sanction.

The case examiners carefully considered the higher sanction of suspension, particularly given that they had identified the social worker's alleged conduct to have presented a high risk of harm to the public. However, the case examiners concluded that a suspension order would be disproportionate in this case, given that the incident appears to have been isolated, and the social worker's employer has confirmed no previous fitness to practice issues either prior, or since the incident leading to conviction occurred. The case examiners, having considered all the circumstances of this case, did not consider this to be a case that had fallen only marginally short of requiring removal from practice.

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 one, three or five years. The case examiners, taking into account that the social worker's insight and remediation was still developing, and the aggravating factors in this case, were not satisfied that a one year warning order was sufficient to mark the seriousness of the conduct in question.

The case examiners went on to consider a three-year order, which their guidance suggests may be appropriate for more serious concerns, and also allows more time for the social worker to show that they have addressed any risk of repetition. Having

noted that insight and remediation, while not complete, was developing, the case examiners were of the view that three years was an appropriate length of warning order.

The case examiners also gave consideration to a five-year order, which they are guided to consider where a case has fallen only marginally short of requiring restriction of practice. While they are of the view that this is a case that has fallen only marginally short of requiring restriction of practice, the case examiners reminded themselves that any sanction must be the minimum necessary to protect the public and the wider public interest. Given the developing insight and remediation, the case examiners are satisfied that three years is sufficient to allow the social worker to develop their insight and remediation fully, and to address the risk of repetition. The case examiners were also of the view that three years was sufficient to protect the public, and to safeguard public confidence. The case examiners therefore determined that a three year warning was the most appropriate length.

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

Your conduct in this case represented a significant breach of professional standards and had the potential to place members of the public at risk of serious harm, as well as having 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 and your professional standards, 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:

5.2 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 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 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

On 28 November 2024 the social worker accepted the proposed disposal, confirming that they had:

- read the case examiners' decision and the accepted disposal guide;
- admitted the key facts set out in the case examiner decision, and that their fitness to practise is impaired;
- understood the terms of the proposed disposal of their fitness to practise case and accepted 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 3 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 3 years is a fair and proportionate disposal and is the minimum necessary to protect the public and the wider public interest.