

Case Examiner Decision
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FTPS-21835

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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	
1 st Preliminary outcome	7 May 2024
	Information requested
2 nd Preliminary outcome	30 July 2024
	Accepted disposal proposed – warning order (5 years)
Final outcome	27 August 2024
	Accepted disposal – warning order (5 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 ground of a criminal conviction or caution in the UK.
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 be notified of their intention to resolve the case with a warning order of 5 years. The social worker accepted this 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.

Anonymity and redaction

Elements of this decision have been marked for redaction in line with our Fitness to Practise Publications Policy. This content will be redacted in the complainant's copy of this decision, and the social worker will be advised that text highlighted in a different colour has been redacted.

Elements of this decision have been marked for redaction in line with our Fitness to Practise Publications Policy. Text in **red** will be redacted from both the complainant's and the published copy of the decision.

In accordance with Social Work England's fitness to practise proceedings and registration appeals publications policy, the case examiners have anonymised the names of individuals to maintain privacy. A schedule of anonymity is provided below for the social worker and complainant and will be redacted if this decision is published.

Person A	
Person B	
Person C	

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	25 September 2023
Complaint summary	The social worker advised they had been convicted of Assault occasioning Actual Bodily Harm. They provided context and mitigation, this occurred in their personal life.

Regulatory concern

Whilst registered as a social worker:

1. On 15 August 2023 you were convicted of Assault occasioning Actual Bodily Harm (ABH) under section 47 of the Offences Against the Person Act 1861.

The matters outlined in regulatory concern 1 amounts to the statutory ground of a criminal conviction or caution in the UK.

Your fitness to practise is impaired by reason of a criminal conviction or caution in the UK.

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

May 2024

The case examiners paused the case for further information for the reasons below.

The case examiners are aware that the social worker is currently subject to a community order for 12 months, which expires in September 2024. They are mindful of their guidance which states that *“case law confirms that a social worker convicted of a serious offence should not normally be permitted to return to practice (while they are still subject to a criminal sentence). This includes any suspended custodial sentence or community order”*.

The case examiners are aware that it may be appropriate for them to depart from guidance, if they provide clear and well evidenced reasoning. The case examiners have not been provided with any information from the social worker’s probation officer, who would be best placed to comment on the social worker’s engagement with their community

order. They are of the view that in the interests of fairness to the social worker, they should request this information, as it may be materially relevant to the issue of impairment and/or sanction.

Once the investigator has received this information, it may be appropriate to provide the social worker with an opportunity to comment on the evidence from the probation service.

July 2024

The case examiners are satisfied there are no further preliminary issues.

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 ground of a criminal conviction or caution in the UK, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts and Grounds

1. *On 15 August 2023 you were convicted of Assault occasioning Actual Bodily Harm (ABH) under section 47 of the Offences Against the Person Act 1861.*

The case examiners have been provided with the certificate of conviction for the above offence.

They are satisfied that there is a realistic of this regulatory concern being found proven and of amounting to the statutory ground of a criminal conviction or caution in the UK, should the matter go forward to adjudicators.

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 can be remedied, through the social worker demonstrating insight, explaining what went wrong and what they would do differently in the future.

Insight and remediation

The case examiners consider it valuable to provide context to the conviction. The social worker's conviction relates to an incident in January 2023 when the social worker attended the address of Person A, where Person A's partner, Person B was also present. Person C later arrived, seemingly to support the social worker and was involved in the physical assault. The accounts of the social worker, Person A and B differ in parts but it is commonly accepted that a physical altercation took place between the four adults, with the police viewing the social worker and Person C as the perpetrators and Person A and B to be acting in self defence. Evidence to support the conviction included CCTV footage and messages sent from the social worker to Person A prior to the incident, with threats made to Person B.

The social worker appears to have developed greater insight through the criminal justice process and the disciplinary process for her employer at the time. They submit,

"I feel that I did not initially accept responsibility for my actions and believed myself to be a victim...Since the incident, I have had a considerable amount of time to reflect on what happened, and I apologise wholeheartedly".

The social worker has identified that there was a great deal of change in their life prior to the incident and they were struggling to manage the emotional implications of this. They

have accessed support and taken time away from work to deal with these difficulties,

The case examiners have been provided with evidence of the social worker's engagement with probation, the social worker's own account states *"I have engaged meaningfully with probation and have completed some self-reflection and discussed future strategies for managing"*. The probation officer has confirmed that the social worker *"complied well with appointments. Due to me being on a long period of leave there was a period of time where [the social worker] was seeing duty officers in my absence however feedback from these officers was that she engaged well"*. The probation officer also stated that the supervision element of the community order was now complete.

The case examiners do note that the social worker appears to lack insight around what the public's perception may be of the conviction, they submit that they do not consider that public confidence could be affected by their conduct. They appear to be relying upon the fact that there were no reported witnesses to the offence and it was not reported in the media. The case examiners are of the view that there may well have been witnesses, given that it appears the assault occurred in the street. Additionally, it must be noted that Person A and B are members of the public and may have shared their experience with others. They were aware of the social worker's profession.

Risk of repetition

The case examiners note the character references provided, from both family members and previous colleagues of the social worker who have subsequently become friends. The referees explicitly reference the conviction and it is clear that they are aware of what occurred, which gives them weight. The referees all comment on how they consider the social worker's conduct to be extremely out of character and support the social worker's submissions that they did not recognise themselves in the incident, they are not volatile and their responses are normally measured.

As previously noted, the case examiner would like to have seen greater insight demonstrated by the social worker into how their conduct may have impacted upon public confidence in them as a professional and in the profession as a whole. However, the case examiners are of the view that the social worker has demonstrated sufficient insight and remediation for them to be satisfied that the social worker has taken steps to prevent a recurrence and conclude that there is a low risk of repetition.

Public element

The case examiners have noted the case examiner guidance which sets out that *"Some concerns are so serious that if proven, a finding of impairment is likely. This is because in*

these cases, a failure to make a finding of impairment may (do one or more of the following):

- *undermine public confidence in the profession*
- *fail to maintain the professional standards expected of social workers”.*

The guidance further sets out examples of cases that are likely to be viewed as serious, and one of these categories is violence. The case examiners acknowledge that the incident appears to be out of character and that there were some mitigating circumstances to explain how the incident occurred, however they are of the view that it remains a serious incident, which the social worker acknowledges they had several opportunities to walk away from.

The case examiners are of the view that a member of the public would be troubled to learn that the regulator had not found a social worker’s fitness to practise impaired, following a conviction for violence. It therefore follows that a failure to find impairment could undermine public confidence.

The case examiners consider that there is a realistic prospect of the social worker’s fitness to practise being found 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 virtue of the accepted disposal process.

Whilst the matter 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.

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 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 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 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	5 years	

Reasoning

In considering the appropriate outcome in this case, the case examiners had regard to Social Work England's sanctions guidance (December 2022) and reminded themselves that the purpose of a sanction is not to punish the social worker, but to protect the public.

The case examiners have decided that it is not in the public interest to refer this matter to a final hearing and have chosen the least restrictive sanction necessary to protect the public and the wider public interest.

The case examiners have dismissed the sanctions of no further action and advice due to the seriousness of the conduct. They are aware that no further action would only be appropriate in exceptional circumstances and while the social worker has provided context, there is nothing they would consider exceptional.

The case examiners acknowledge that there appears to be a low risk of repetition, which suggests that a restrictive sanction is not necessary, however they have also noted the sanctions guidance in relation to convictions.

"Decision makers must assess the conviction against the available sanctions. They should determine what sanction is necessary to protect the public and the wider public interest. However, decision makers should also note case law. Case law confirms that a social worker convicted of a serious offence should not normally be permitted to return to

practice (while they are still subject to a criminal sentence). This includes any suspended custodial sentence or community order”.

The case examiners note the social worker’s community order expires in September 2024 and the evidence suggests that they have complied with the required supervision and that element of the order is now complete. The case examiners consider that to impose a suspension order, at the end of the social worker’s sentence, would be disproportionate, particularly given the remediation and insight demonstrated, and the evidence that this was an isolated incident.

The case examiners note that conditions of practice are generally suitable in cases of lack of competence or ill health and given that there appears to be a low risk of repetition, they do not consider this suitable nor the minimum necessary to protect the wider public interest.

The case examiners note the sanctions guidance which states *“a warning order is likely to be appropriate where (all of the following):*

- *the fitness to practise issue is isolated or limited*
- *there is a low risk of repetition*
- *the social worker has demonstrated insight”.*

The guidance therefore suggests that a warning order is the most appropriate order in this case, particularly given the case examiners’ earlier conclusions that suspension or conditions of practice appear disproportionate.

The case examiners have then turned their mind to the appropriate length of a warning. They have discounted a one year warning, given these are aimed at *“an isolated incident of relatively low seriousness”*. Whilst the evidence suggests that the social worker’s conviction was an isolated incident, it cannot be characterised as relatively low seriousness and the community order they received, reflects this.

The guidance sets out that *“3 years may be appropriate for more serious concerns”* and 5 years *“may be appropriate for serious cases that have fallen only marginally short of requiring restriction of practice”*. Both are aimed at helping to maintain public confidence and highlight the professional standards as well as allowing more time for the social worker to show that they have addressed any risk of repetition.

The case examiners have concluded that this is a case which has fallen only marginally short of requiring a restrictive sanction, as set out above. They are balancing their assessment that the offence was serious and a significant departure from how the public would expect a registered professional to behave along with the evidence that this was

an isolated mistake which the social worker regrets and has taken steps to prevent recurrence. The case examiners believe that a 5-year warning is a proportionate and suitable sanction in the circumstances.

The case examiners have decided to propose to the social worker a warning order of 5 years duration. They will now notify the social worker of their intention and seek the social worker's agreement to dispose of the matter accordingly. The social worker will be offered 14 days to respond. If the social worker does not agree, or if the case examiners revise their decision regarding the public interest in this case, the matter will proceed to a final hearing.

Content of the warning

The use of violence and criminal behaviour is not in line with the value base of social work and is unacceptable.

In relation to the social worker's ongoing practice, any further issues brought to the attention of the case examiners are likely to be dealt with more seriously by the regulator.

This warning will appear on the social worker's entry on Social Work England's register for 5 years.

Response from the social worker

The social worker responded 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

The case examiners have reviewed their decision and considered again whether accepted disposal remains the most appropriate resolution of this case. In light of 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 5 years is the most proportionate response, and is the minimum necessary to protect the public and satisfy the wider public interest.