

Case Examiner Decision

Shaira Khatun – SW136746

FTPS-20197

Contents

The role of the case examiners.....	3
Decision summary.....	4
The complaint and our regulatory concerns	5
Preliminary issues	6
The realistic prospect test.....	8
The public interest	13
Accepted disposal	15
Accepted disposal	14

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 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)	Accepted disposal proposed – warning order (3 years)
Date of preliminary decision	28 June 2023
Final outcome	Accepted disposal – warning order (3 years)
Date of final decision	14 August 2023

Executive summary

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

1. The factual concern could be found proven by the adjudicators;
2. The concern could amount to the statutory ground of conviction or caution in the United Kingdom for a criminal offence;
3. The 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 wish to notify the social worker of their intention to resolve the case with a warning order for the duration of three years. The social worker returned a completed accepted disposal response form, signed and dated 20 July 2023, confirming their acceptance of 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 a self-referral by the social worker
Date the complaint was received	20 January 2022
Complaint summary	The allegations raised against the social worker have been captured by the regulatory concern(s) as detailed below.

Regulatory concerns

Regulatory concerns are clearly identified issues that are a concern to the regulator. The regulatory concerns for this case are as follows:

Regulatory Concern 1: Whilst registered as a social worker on or around 7th January 2022, you were convicted of driving a vehicle whilst over the prescribed alcohol limit.

Grounds of impairment

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

Your fitness to practise is impaired as outlined at regulatory concern 1 by reason of 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

Further evidence

The memorandum of conviction confirms the magistrates' court endorsed a 20-months driving ban on the social worker's driving licence, which would be reduced by five months following successful completion of an approved drink-driving rehabilitation course. The social worker states in their submissions to the regulator that they have completed a drink driving course. However, the social worker has not provided evidence of this.

The case examiners are aware of the need to consider cases expeditiously and to ensure fairness to all parties. In doing so, they gave consideration to whether it would be proportionate and fair in the circumstances to pause the case to request the investigators obtain further information from the social worker: written confirmation or certificate of completion of the drink-driving rehabilitation course. After careful consideration, the case examiners have decided it would be unnecessary to do so. The case examiners consider

that whilst this course is voluntary, it would be in the social worker's interest to complete the course in order to reduce their driving disqualification. Therefore, evidence of completion of this course would not impact on the case examiners' decision that there is a realistic prospect that the social worker's fitness to practise is currently impaired.

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 there is a realistic prospect of regulatory concern 1 being found proven, that this concern could amount to the statutory ground of criminal conviction or caution in the United Kingdom, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

Regulatory Concern 1: Whilst registered as a social worker on or around 7th January 2022, you were convicted of driving a vehicle whilst over the prescribed alcohol limit.

The case examiners have been provided with a copy of the memorandum of conviction which confirms that the social worker was convicted on 7 January 2022 at East London Magistrates' Court of the criminal offence of driving a motor vehicle (*"after consuming alcohol that the proportion of it in [the social worker's] breath, namely 78 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit"*) contrary to section 5(1)(a) of the Road Traffic Act 1988 and schedule 2 to the Road Traffic Offenders Act 1988. The social worker was given a sentence of 20-months driving ban, fined £138.00 and ordered to pay £34.00 victim surcharge and £85.00 legal costs.

The MG5 police report contains details of the criminal offence and confirms the social worker was arrested on 23 December 2021. The report states that the social worker, whilst

in police custody, provided a specimen of 78 micrograms of alcohol in 100 millilitres of breath (the legal limit is 35 micrograms per 100 millilitres of breath).

The social worker has made submissions to the regulator in which they accept the regulatory concern and provided contextual information regarding the events leading up to their arrest. The case examiners will consider these matters in the forthcoming sections.

In light of the evidence, as detailed above, the case examiners are satisfied that there is a realistic prospect of this fact being found proven by the adjudicators.

Grounds

At this stage of the determination, the case examiners must assess whether there is a realistic prospect of adjudicators finding the facts which are capable of proof (in this case regulatory concern 1) amounting to the relevant statutory grounds. In this instance, the statutory ground being considered is a conviction or caution in the United Kingdom for a criminal offence.

The case examiners have considered the social worker's conduct in relation to Social Work England's professional standards (2019). The case examiners considered the following standard(s) may have been breached:

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.*

Within their considerations of the facts, the case examiners have explained why the evidence confirms the social worker has been convicted, as described at regulatory concern 1. **Accordingly, the case examiners are satisfied that there is a realistic prospect of adjudicators finding regulatory concern 1 amounts to a criminal conviction or caution in the United Kingdom.**

Impairment

Having concluded there is a realistic prospect of adjudicators establishing the statutory ground of 'criminal conviction or caution in the United Kingdom', the case examiners must consider whether there is a realistic prospect of adjudicators finding current impairment. The case examiners are aware they must assess both the personal and public elements of current impairment. They will consider each in turn.

Personal impairment

In assessing personal impairment, the case examiners have considered the test for personal impairment as set out in the case examiner guidance (December 2022), namely whether the conduct is remediable; whether the social worker has demonstrated insight and/or undergone remediation; and whether there is a likelihood the matters alleged will be repeated. As this is a drink-driving offence, the case examiners also had regard to Social Work England's drink and drug driving policy (December 2022), which sets out the factors the case examiners should take into account when assessing the *"seriousness of the offending and the question of whether a social worker's fitness to practise can or should be found impaired when convicted of such an offence"*.

Due to the nature of the offence, the case examiners have also given consideration to the background facts and circumstances surrounding the conviction (case examiner guidance, paragraph 101). The case examiners will therefore draw focus on the social worker's submissions and the police disclosure. The case examiners have made the following observations:

- The MG5 details the circumstances giving rise to the social worker's arrest on 23 December 2021. The road traffic accident occurred outside of work in which the social worker drove through a red light and collided with another vehicle *"causing severe damage to both cars as well as roadside property"*. There is no evidence of serious physical harm to the social worker or any member of the public. The arresting officer's description of the social worker's physical appearance suggests that they may have been under the influence of alcohol. They state that the social worker was obstructive and uncooperative with the police officers and staff at the hospital. The officer states the social worker *"was unsteady on [their] feet and verbally abusive towards officers...Suspect was given multiple opportunities to provide a specimen of breath but failed to blow appropriately into the ESD. [The social worker] repeatedly shouted and screamed at officers and refused to cooperate."* The social worker was taken to the hospital to assess for any injury(s), and it is reported that they refused to provide the necessary information to the doctor. The social worker was subsequently taken into police custody and after *"numerous attempts"* they successfully completed a breath test, and they provided two breath samples of 78 and 80 microgames respectively.
- The social worker has provided submissions to the regulator in which they accept the regulatory concern:
 - They provided a summary of the events leading to their conviction. They state that they had consumed both alcoholic and non-alcohol beverages at a Christmas function the evening of their arrest and as they do not drink alcohol frequently, they were not aware of the level of alcohol they had consumed. They state that they received a distressing telephone call from a friend following an alleged domestic incident and agreed to pick up their friend who lived close to where they were at

the time. The social worker describes themselves as an *“empathetic individual”* and the conversation with their friend *“evoked strong feelings of wanting to help [them]”*.

- The social worker demonstrates regret and remorse for their actions. They state that they made a *“grave error of judgement”* and *“deeply regret”* their actions. They further state that they *“responded with [their] emotions rather than rationally...I made a human error of perceiving to be within the limit. I have thought back to that night numerous times and I can honestly say that I would have done things differently”*. The social worker has provided some reflection. They informed the regulator that following the alleged events, they have abstained from alcohol. The social worker has demonstrated that they recognise the implications of their actions on the profession, and they resigned from their social work role pending the outcome of the regulatory proceedings.
- The social worker states that they completed a drink-driving rehabilitation course and so their driving disqualification was reduced to 15 months. They state that they now have a full driving licence.

The case examiners have considered the aggravating and mitigating factors as set out in the drink and drug driving policy and case examiner guidance (which is not an exhaustive list). The case examiners note the mitigation submitted by the social worker (detailed above) and the following mitigating factors: the offence in question is not a repeat offence and there is no evidence to suggest the social worker is not of good character or that they have an underlying alcohol problem. In terms of aggravating factors, the offence included involvement in a road traffic collision; the social worker initially repeatedly failed to provide a breath specimen and was uncooperative with the police officers (albeit this appears to be due to the social worker being under the influence of alcohol) and the sentence imposed included a period of disqualification from driving of over 12 months. The policy also requires decision makers to consider the extent to which the social worker’s level of alcohol was over the legally specified limit and in this instance, the social worker’s consumption was twice the legal limit.

Taking all the above into consideration, the case examiners have concluded that the social worker has demonstrated remorse and they have taken accountability for their actions. The social worker’s insight appears to have developed from an early stage, as they pled guilty to the charge at court, and they self-referred the criminal proceedings to the regulator within a reasonable timeframe. However, the case examiners do not consider the insight and remediation demonstrated by the social worker to be complete, albeit it is evolving. For example, the social worker has not addressed how their actions may have caused actual harm to members of the public as a result of the road traffic collision, nor

have they detailed how they may address any similar circumstances in the future. Therefore, the case examiners are of the view that the risk of repetition remains and **conclude that there is a realistic prospect of adjudicators making a finding of personal impairment in this case.**

Public interest

The case examiners are aware that when considering public interest, they must consider whether there is a risk to the public; whether the alleged conduct represents a significant departure from professional standards; and whether the alleged conduct has the potential to undermine trust and confidence in the social work profession.

The case examiners are of the view that a conviction for driving whilst being over the legal limit of alcohol raises a concern about risk to public safety and these matters are a significant departure from professional standards. In this case, there is evidence that the social worker experienced personal circumstances at the time of the alleged concerns, which may have impacted on their cognitive behaviour (mitigation cited above). Notwithstanding, on the day in question, the social worker had taken a course of action which posed a potential risk of harm to themselves and the public. Based on the arresting officer's description of the social worker's physical appearance (see above) and the result of the breath test, the case examiners find it difficult to reconcile the social worker's argument that they did not know they were above the legal alcohol limit.

The public would expect that a social worker will act appropriately in their professional and private life. Social workers hold privileged positions of trust. It is essential to the effective delivery of social work that the public can trust social workers implicitly. The conduct of the social worker has the potential to undermine trust and confidence in the profession.

The case examiners are of the view that, notwithstanding the insight demonstrated by the social worker, a member of the public may be concerned to learn that a social worker had been allowed to practise without sanction following a serious departure from the standards. Furthermore, public confidence in the social work profession and the regulator may be undermined if a finding of impairment was not made.

Accordingly, given the element of public interest, the case examiners are satisfied that there is a realistic prospect of the adjudicators making a finding of current impairment.

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	☒

Additional reasoning

Having established there is a realistic prospect of finding current impairment, the case examiners must turn their minds to whether it is in the public interest for this matter to be referred to a final hearing to be considered by adjudicators. In doing so, the case examiners have considered the following:

- The case examiner guidance (paragraph 184) states for a case to be concluded through accepted disposal, the social worker must accept the key facts and that their fitness to practise is currently impaired. Although the social worker does not accept that their fitness to practise is currently impaired, they self-referred the matter to the regulator, and they accept the regulatory concern so there is no conflict of evidence to be addressed.
- The case examiners note that whilst the allegations are serious, the social worker has demonstrated evolving remediation and insight into their actions.

- The case examiners do not consider this to be the type of case where public confidence in the profession will be damaged by not holding a public hearing as the social worker has already faced criminal proceedings and was found guilty of the charged offence. Further, the case examiners note that the criminal matter was disposed of by way of a fine and reduced driving disqualification upon successful completion of an approved course.
- Whilst the case examiners have determined there is a realistic prospect that adjudicators would find the public interest is engaged in this case, they are of the view that the public interest can be satisfied by their decision, and the reasons for that decision, being published on Social Work England's public register. The publication of this matter will highlight behaviour that falls short of acceptable standards in social work and will act as an example to other members of the profession. Publication also demonstrates that swift and appropriate action is taken in cases of alleged wrongdoing, thus enhancing the public's confidence in the social work profession.

For the reasons stated, the case examiners have decided it is not in the public interest to refer this matter to adjudicators; rather they will write to the social worker and ask them to agree to dispose of this case without the need for a hearing.

Accepted disposal

Case outcome		
Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☒
	Conditions of practice order	☐
	Suspension order	☐
Proposed duration	Three 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 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 sanctions in ascending order of seriousness. The sanctions guidance (paragraph 73) states *"the sanction imposed should be the minimum necessary to protect the public (including the wider public interest)"*.

The case examiners consider for a case where the public interest is engaged, an outcome of no further action or advice may be inappropriate. As already noted, there was the aggravating factors of the social worker being involved in a collision and having a passenger in the car therefore the risk of harm to the public may be considered high. No further action or advice would not be sufficient to mark the seriousness with which the case examiners view the social worker's alleged conduct and fails to safeguard the wider public interest.

The case examiners went on to consider whether a warning order would be appropriate. After careful consideration, 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. A warning order implies a clearer expression of disapproval of the social worker's conduct than an advice order. Further, a warning will be a signal that any repetition will be highly likely to result in a more severe sanction.

The case examiners went on to test the suitability of a conditions of practice, suspension, and removal order. They concluded that conditions of practice would not be proportionate or workable in this case. This is because there is no evidence to suggest that the social worker has an underlying alcohol problem and the concerns do not relate to their practise at work. Whilst a case for driving under the influence of alcohol is a serious offence, the case examiners do not believe a suspension or removal order would be appropriate in these circumstances. This is due to the insight demonstrated by the social worker (albeit not complete, but it is evolving), and the offence appears to be an isolated incident. Further, the social worker has already faced criminal proceedings and was found guilty of the charged offence. Therefore, a suspension or removal order would be wholly disproportionate and punitive.

Taking all the above into consideration, the case examiners are satisfied that a warning order would be sufficient to maintain public confidence in the profession and maintain proper professional standards for social workers. When considering a warning order, case examiners are required to decide a period for the warning to be published on the public social work register. After careful consideration, the case examiners have determined three years would be appropriate in this case.

Although the offence is in respect of an isolated incident, the case examiners consider the nature of the criminal offence and potential risk of harm to the public to be serious. Also, the case examiners have taken into account the aggravating factors as detailed above. The sanctions guidance states three years warning *“helps to maintain public confidence and highlight the professional standards. The period also allows more time for the social worker to show that they have addressed any risk of repetition.”* The case examiners consider that a warning order of less than three years would not adequately signal the strong disapproval of the regulator or uphold public confidence in the social work profession; and anything more would be excessive and punitive.

The case examiners have decided to propose to the social worker a warning order of three 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 under the influence of alcohol is a serious criminal offence. Your decision to drive, that led to your conviction, demonstrated a serious lack of judgement. 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.

In order to prevent recurrence of the alleged failings, you must adhere to Social Work England's (2019) professional standards for registered social workers. The case examiners specifically draw your attention to the following professional standard:

As a social worker I will not:

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

The conduct that led to this complaint should not be repeated. Any similar conduct or matters brought to the attention of the regulator are likely to result in a more serious outcome.

Response from the social worker

The social worker has returned a completed response form, signed and dated 20 July 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

This case has been allocated to a new pair of case examiners, as the initial pair were not available to complete consideration of the fitness to practise case. 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 the previous case examiners' 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.