

Case Examiner Decision
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FTPS-22636

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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	15 March 2024
	Accepted disposal proposed - warning order (3 years)
Final outcome	3 May 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 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 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 duration.

The social worker provided a first response on 8 April 2024, requesting amendments due to a perceived factual inaccuracy in the case examiners' decision. The case examiners partially accepted the social worker's request, and issued an amended decision to the social worker for their consideration.

On 3 May 2024, the social worker provided a second response, accepting the case examiners' proposal. The case examiners proceeded to close the case via the accepted disposal process, issuing a warning order of 3 years duration.

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. Text in [REDACTED] will be redacted from the published copy of the decision.

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	27 September 2023
Complaint summary	The social worker reported that they had been arrested for driving under the influence of alcohol. The social worker subsequently was convicted.

Regulatory concerns

Whilst registered as a social worker you:

1. Were convicted on 10 October 2023 at Cheshire Magistrates Court for driving a vehicle whilst over the prescribed alcohol limit.

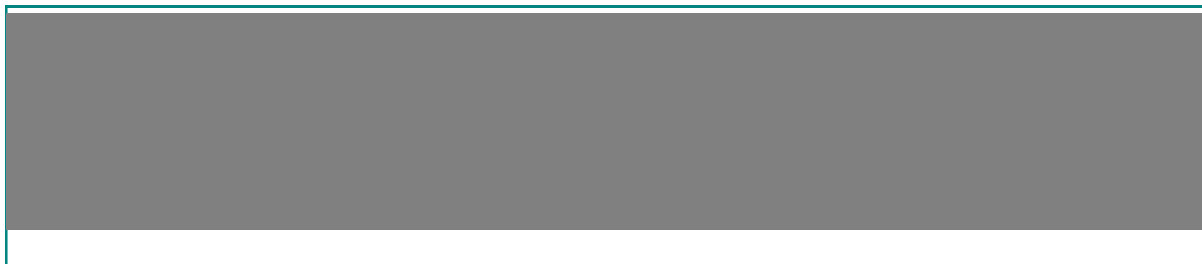
Your actions outlined at regulatory concern 1 amounts to the statutory ground of conviction or caution in the United Kingdom for a criminal offence.

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

Preliminary issues

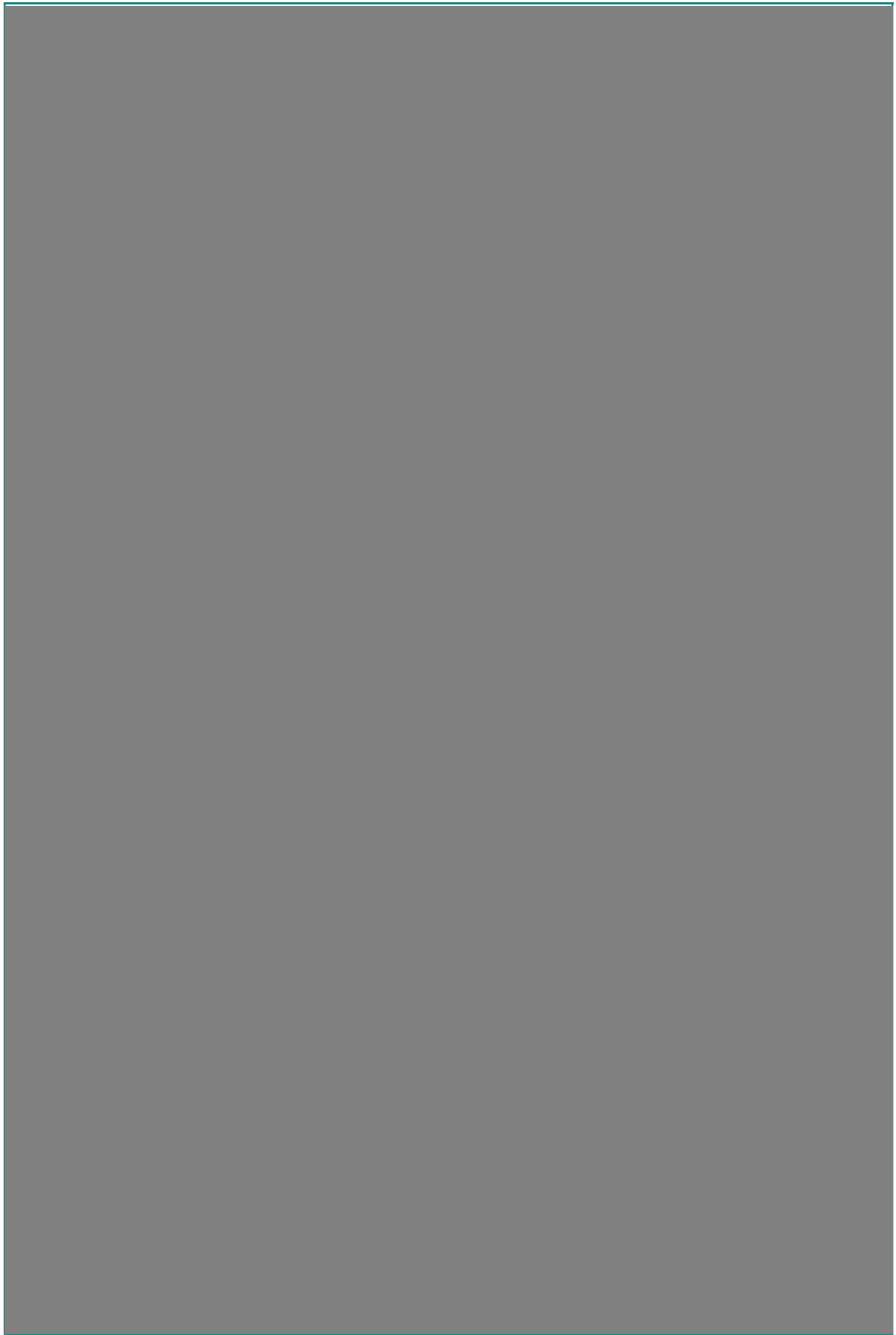
Investigation		
Are the case examiners satisfied that the social worker has been notified of the grounds for investigation?	Yes	☒
	No	☐
Are the case examiners satisfied that the social worker has had reasonable opportunity to make written representations to the investigators?	Yes	☒
	No	☐
Are the case 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



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 it could amount to the statutory grounds of conviction or caution in the United Kingdom for a criminal offence, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts and grounds

Whilst registered as a social worker you:

- 1. Were convicted on 10 October 2023 at Cheshire Magistrates Court for driving a vehicle whilst over the prescribed alcohol limit.**

Your actions outlined at regulatory concern 1 amounts to the statutory ground of conviction or caution in the United Kingdom for a criminal offence.

The case examiners have had sight of a certificate of conviction, dated 10 October 2023, which confirms that the social worker received a conviction for driving a motor vehicle when the alcohol in their breath exceeded the prescribed limit.

The case examiners observed that documentation provided by the social worker and the police confirms the following, in respect of the offence:

- The social worker had been out drinking with friends and intended to stay at a friend's home overnight. The social worker subsequently lost their friend, and had limited battery remaining on their phone.
- The social worker went to their car to charge their phone and reports that they became anxious about a group of men that had gathered nearby. They impulsively decided to drive home.

- Police report that the social worker collided with a heavy goods vehicle on the motorway, and their car spun round onto the grass verge.
- The social worker provided a roadside breath reading of 78mg.
- The social worker subsequently provided two custody breath readings, with a reading of 81mg taken forward as evidential.

In light of the above, there is a realistic prospect of adjudicators determining that regulatory concern 1 is proven, and that it amounts to the statutory grounds of conviction or caution in the United Kingdom for a criminal offence.

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 can be remedied. In their view, the conduct is not fundamentally incompatible with continued registration and the evidence does not suggest any deep-seated character or attitudinal failing. The case examiners consider that the social worker could remediate by demonstrating their insight and reflection on the circumstances of their criminal offence, and by engaging with the requirements of the court.

Insight and remediation

The case examiners have carefully reviewed the social worker's submissions, along with a number of testimonials provided to the court by the social worker's colleagues and personal friends / family.

Having done so, the case examiners are satisfied that the social worker has developed and demonstrated an appropriate level of insight. The case examiners noted in particular that the social worker has demonstrated an appropriate understanding of the different choices they could have made on the night of the offence, and reflected on the reasons why they acted impulsively in deciding to drive home. The case examiners noted also that the social worker had reflected on their health [REDACTED] and how this may have affected their judgement. The case examiners were reassured to see that the social worker is engaging with support to help manage their condition.

With reference to the testimonials provided to the court, the case examiners noted that they were consistent in outlining the social worker's regret, guilt and remorse for their conduct; and all testimonials suggest that the social worker quickly recognised the need to openly reflect on what happened with colleagues and adult family members.

The case examiners noted also that the social worker has provided evidence of their completion of a rehabilitation course offered to them by the courts.

Risk of repetition

In light of the available evidence of insight and remediation, the case examiners are satisfied that 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.

In considering the public element, the case examiners have had reference to the regulator's Drink and Drug Driving Policy (December 2022), which advises the case examiners to consider aggravating and mitigating factors when assessing the seriousness of the social worker's criminal offence.

Aggravating factors

In respect of aggravating factors, the case examiners were satisfied that the following factors drawn from the policy would apply:

- the sentence imposed includes a period of disqualification from driving of over 12 months (18 months)
- the offence including involvement in a road traffic collision (the social worker collided with a heavy goods vehicle)

- the extent to which the social worker's level of alcohol or drug impairment was over the legally specified limit (the case examiners considered the level declared, 81mg, to be particularly high)

Mitigating factors

In respect of mitigating factors, the case examiners were satisfied that the following factors drawn from the policy would apply:

- the offence not being a repeat offence
- the social worker demonstrating remorse and insight in relation to the offending behaviour
- the social worker is otherwise of good character
- the social worker undertaking voluntary relevant remediation including (but not limited to) completing relevant driving courses (for example a drink-drive rehabilitation course).

The case examiners have weighed the public element in this case carefully. Although they are satisfied that the social worker has already reduced the risk of repetition, they are mindful that the social worker was significantly over the legally specified limit, and that this has been reflected by the courts by the imposition of an extended period of disqualification. The case examiners also considered the fact the offence included a road traffic collision, on a motorway, to represent a serious aggravating factor.

With reference to the regulator's drink and drug driving policy, the case examiners are advised that a finding of impairment is only unlikely to be necessary in cases where there are no aggravating features. The case examiners are therefore of the view that the public may expect to see a finding of impairment in this case and, in its absence, public confidence in the maintenance of professional standards for social workers may be undermined.

Accordingly, 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 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 removal order might be required. The case examiners also do not consider the case to be 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 (February 2020) 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:

- 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 the risk of repetition has already been substantially reduced, 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	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. They have also considered the drink and drug driving policy guidance (December 2022) which states, 'in determining a sanction, the decision makers should also take account the relevant aggravating and mitigating factors'.

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 (a no further action outcome). The case examiners were satisfied that, in this case, a finding of no further action would be insufficient to protect public confidence. In reaching this conclusion, the case examiners reminded themselves that the social worker was involved in a traffic collision on a motorway; they were significantly over the legally specified limit, and an extended disqualification period had been imposed accordingly.

The case examiners have 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 not be sufficient to mark the seriousness with which they viewed the social worker's conduct and conviction.

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 conclude that a warning order is the most appropriate and proportionate outcome in this case and represents the minimum sanction necessary to adequately address the public's confidence in the profession.

In reaching this conclusion, the case examiners reminded themselves that they had found a low risk of repetition, and therefore a restrictive sanction is not necessary to protect the public. The primary goal of any sanction would therefore be to safeguard public confidence in the social work profession, and in the regulator's maintenance of standards for social workers. The case examiners considered that a warning order would appropriately mark the severity with which the case examiners view the social worker's conduct, and it would therefore appropriately safeguard public confidence.

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 1, 3 or 5 years. The case examiners are satisfied that in this case, a 3 year warning order would be sufficient to mark the severity of the conduct in question. In reaching this conclusion, the case examiners referred to the sanctions guidance, and noted the following:

- The guidance states that 1 year may be appropriate for an isolated incident of relatively low seriousness. In these cases, the primary objective of the warning is to highlight the professional standards expected of social workers. In considering a 1 year warning order, the case examiners noted the following in particular:
 - Although the case examiners maintain a view that driving under the influence of alcohol is serious, the regulator's policy on such cases is clear that a finding of impairment may not be required in such cases, unless there are aggravating factors. This suggests that the case examiners' consideration at the sanction stage should focus itself on the aggravating factors of the case.
 - The case examiners were mindful that, in this case, the social worker was involved in a road traffic collision on a motorway, which inevitably will have generated a serious risk of harm to the social worker and other road users. In addition, the social worker was significantly over the legally specified limit, and received an extended disqualification from driving accordingly.

- Balanced against this, the case examiners reminded themselves of the mitigating factors they had identified and laid out earlier in this decision.
- In weighing the above, the case examiners considered that even with mitigating factors taken into account, the serious nature of the aggravating factors would suggest that a 1 year warning order may be insufficient to safeguard public confidence.
- The case examiners therefore considered the guidance in respect of 3 year orders, which states that they may be appropriate for more serious concerns, and can help to maintain public confidence. The case examiners gave careful consideration to a 3 year order and, in their view, it would appropriately address the aggravating factors in this case, any may represent the minimum sanction necessary to safeguard public confidence.
- In order to test this position, the case examiners considered the guidance in respect of 5 year orders, which states that they may be appropriate for serious cases that have fallen only marginally short of requiring restriction of practice. In the case examiners' view, the social worker's level of insight and remediation is such that a conditions or practice or suspension order would be disproportionate, and therefore the matter has not fallen only marginally short of requiring restriction to practice.

The case examiners have decided to propose to the social worker a warning order with a duration of 3 years. They will now notify the social worker of their intention and seek the social worker's agreement to dispose of the matter accordingly. The social worker will be offered 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.

Publication of the decision

The case examiners have noted concerns raised by the social worker in respect of a decision being published on the regulator's website. The case examiners have highlighted elements of this decision for redaction, but reminded themselves of the importance of the fitness to practise process being conducted in accordance with the regulator's legislation, policies and guidance. It is a requirement of the fitness to practise process that case examiner accepted disposal decisions are published, in order to:

- promote understanding and good practice within the sector
- maintain confidence in the social work profession

- assist members of the public (including employers) to make informed choices

The case examiners are satisfied that there are no further redactions that they could reasonably or appropriately recommend.

The social worker may be assisted by reviewing the regulator's 'fitness to practise proceedings and registration appeals publications policy', which is available on the regulator's website.

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 have 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, 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, 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.

First response from the social worker

The social worker responded on 8 April 2024, stating the following:

"I have read the case examiners' decision and the accepted disposal guide. I understand the terms of the proposed disposal of my fitness to practise case and wish to suggest amendments."

Within the completed form, the social worker explained that their requested amendment was as follows:

"The document contains reference to what I blew on the roadside as [REDACTED] alcohol when it was [REDACTED] I have sent evidence of this in email today 08.04.2024. Many thanks"

The case examiners received photographs of a police document from the social worker, in support of their requested amendment, within which it was documented that prior to the social worker's arrest, a reading of [REDACTED] as given.

Case examiners' response

The case examiners carefully reviewed the social worker's request for amendments and additional evidence, and compared it with the initial evidence presented by the regulator.

The case examiners noted that there was a factual inaccuracy in their initial decision, in that they had initially stated at the facts stage that the social worker had provided an evidential breath reading of [REDACTED] which was a typographical error and incorrect. The case examiners were grateful to the social worker for highlighting this error.

The case examiners have therefore amended their decision, however, they have not made the amendment requested by the social worker (to change the reading stated to 78mg). The case examiners noted that although the social worker had correctly identified that there was a reading of 78mg, the certificate of conviction confirms that this was not the reading that was provided in evidence to the court. Police MG5 documentation available to the case examiners states that the social worker gave three readings:

- At the roadside – 78mg
- A first reading in custody – [REDACTED]
- A second reading in custody – 81mg

The certificate of conviction confirms that the third reading, 81mg, was the reading upon which the social worker's conviction was based. Accordingly, it is this reading that the case examiners should consider when determining which aggravating factors may apply to the case.

In light of the above, the case examiners have made an amendment to their decision, which is highlighted in the copy to be sent to the social worker. In summary, the case examiners have removed the incorrect reading that had initially been stated, and

replaced it with more detailed content, describing both the roadside reading (78mg) and the evidential reading taken in custody (81mg).

The case examiners also gave consideration to whether their amendment could have materially altered their decision on impairment and sanction. The case examiners were satisfied, however, that there would be no material change to their decision, noting that they had referred to the correct evidential reading (81mg) when determining which aggravating factors might apply at the impairment stage, and had this reading in mind at the sanction stage also.

The case examiners request that this amended decision be delivered to the social worker, so that they may consider the case examiners' proposal afresh and decide whether they wish to agree to the accepted disposal of the case, or reject the proposal and proceed to a final hearing. 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.

Second response from the social worker

The social worker returned a completed response form on 3 May 2024. The form includes confirmation it is the social worker's formal response, and a declaration as follows:

I have read the case examiners' decision and the accepted disposal guide. I admit the key facts set out in the case examiner decision, and that my fitness to practise is impaired. I understand the terms of the proposed disposal of my fitness to practise case and accept them in full.

Case examiners' response and final decision

The case examiners have considered the public interest in this matter and, as they have not been presented with any new evidence that might change their previous 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.