

Case Examiner Decision
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FTPS-18848

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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	14 August 2023
	Information requested. Submissions requested.
Preliminary outcome	26 September 2023
	Accepted disposal proposed - suspension order (2 years).
Final outcome	10 November 2023
	Accepted disposal - suspension order (2 years).

Executive summary

The case examiners have reached the following conclusions:

1. For the facts:
 - a. There is a realistic prospect of regulatory concerns 1 (1.1), 8, 9, and 10 being found proven by the adjudicators.
 - b. There is no realistic prospect of regulatory concerns 1 (1.2 and 1.3), 2, 3, 4, 5, 6 and 7 being found proven by the adjudicators, and these concerns have therefore been closed at the facts stage.
2. For the grounds:
 - a. There is a realistic prospect of regulatory concerns 1 (1.1), and 9 being found to amount to the statutory grounds of misconduct.
 - b. There is a realistic prospect of regulatory concern 8 being found to amount to the statutory grounds of a criminal conviction or caution in the United Kingdom for a criminal offence.

- c. There is a realistic prospect of regulatory concern 8 being found to amount to the statutory grounds of adverse physical or mental health.
3. For regulatory concerns 1 (1.1), 8, 9, and 10 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 they 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 suspension order of 2 years. The social worker agreed to this proposal and the case examiners have concluded the case by way of accepted disposal.

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 blue will be redacted only from the published copy of the decision and will therefore be shared with the complainant in their copy. Text in red will be redacted from both the complainant's and the published copy of the decision.

The complaint and our regulatory concerns

The initial complaint

The complainant	The complaint was raised by the social worker's former employer, Oldham council.
Date the complaint was received	04 February 2021.
Complaint summary	The complainant initially raised concerns in relation to the social worker's conduct and capability in the workplace, including concerns about their response and understanding of safeguarding issues. In August 2021 further information came to light in relation to the social worker's health. In May/June 2022 the complainant became aware of additional information. The issues the complainant raised are captured in the regulatory concern section.

Regulatory concerns and concerns recommended for closure

Regulatory concerns as amended following request for further information by the case examiners.

Please note that amendments are highlighted in bold text and the reason for amendments is given in the 'preliminary issues' section of this decision.

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

Whilst registered as a social worker you:

1. Failed to adhere to Covid-19 Guidelines in that you:
 - 1.1. Did not wear PPE effectively.

8. On the 20/07/2022 you were convicted at Minshull Magistrates Court for the criminal offence of Assault Occasioning Actual Bodily Harm.
9. Did not inform Social Work England that you were subject to a police investigation.
10. You may have health conditions as set out in Schedule 1 which affect your practice.

Schedule 1



The actions outlined at regulatory concerns 1.1 and 9 amount to the statutory ground of misconduct.

The actions outlined at regulatory concern 8 amount to the statutory ground of a criminal conviction or caution in the United Kingdom for a criminal offence.

The actions outlined at regulatory concern 10 amount to adverse physical or mental health.

By reason of your misconduct **and/or criminal conviction or caution in the United Kingdom for a criminal offence** and/or adverse physical or mental health, your fitness to practise is impaired.

Concerns being recommended for closure:

Concerns being recommended for closure are concerns raised by the complainant, for which no evidence has been found during the investigative process or where the evidence obtained negates the concern(s). Decisions regarding concerns being recommended for closure remains the remit of the case examiners.





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

14 August 2023

The case examiners are aware of the need to consider cases expeditiously and the need to ensure fairness to all parties. However, the case examiners considered, bearing in mind their investigatory function and statutory duty, that further information was needed to be able to reach a decision on this case.

The case examiners noted the case examiner guidance, which states they should only request further information if it would not be possible to reach a decision without it. They were satisfied that their chosen course of action is consistent with the guidance.

The case examiner guidance states that case examiners must request information in writing and explain why it is required. As such, they requested that:

1. Consideration be given to adding the statutory grounds of 'a conviction or caution in the United Kingdom for a criminal offence, in respect of regulatory concern 8.
2. The social worker to be informed of any amendments to the regulatory concerns and invited to make further submissions.

The case examiners also requested that a rationale should be provided if the statutory grounds of 'a conviction or caution in the United Kingdom for a criminal offence' were not added in respect of regulatory concern 8. The case examiners requested this because in their view it will support understanding of the decision-making process.

Consequently, the case examiners decided to pause their decision subject to further information being provided.

18 September 2023

The case examiners resumed consideration of their decision.

The realistic prospect test

Fitness to practise history

The case examiners have been informed that there is no previous fitness to practise history.

Decision summary

Is there a realistic prospect of the adjudicators finding the social worker's fitness to practise is impaired?

Yes



No



The case examiners have determined that there is a realistic prospect of:

- Regulatory concerns 1 (1.1), 8, 9, and 10 being found proven.
- Regulatory concerns 1 (1.1) and 9 amounting to the statutory grounds of misconduct.
- Regulatory concern 8 amounting to the statutory grounds of a criminal conviction or caution in the United Kingdom for a criminal offence.
- Regulatory concern 10 amounting to the statutory grounds of adverse physical or mental health.

The case examiners have also determined that there is a realistic prospect that the social worker's fitness to practise could be found impaired in respect of regulatory concerns 1 (1.1) 8, 9 and 10.

Reasoning

Facts

Regulatory concern 1.1

The case examiners are satisfied there is evidence to support the allegation that whilst registered as a social worker in 2021, the social worker failed to adhere to Covid-19 guidelines in that they did not wear PPE effectively. Specifically, the case examiners note that:

- They have been provided with supervision notes which indicate the social worker did not always wear PPE effectively, despite being asked and reminded “repeatedly” to do so.

As such, the case examiners are satisfied there is a realistic prospect of the matter being found proven by adjudicators.

Regulatory concern 8

The case examiners are satisfied there is evidence to support the allegation that on 20 July 2022, the social worker was convicted at Minshull Magistrates Court for the criminal offence of Assault Occasioning Actual Bodily Harm.

Specifically, the case examiners note that:

- There is evidence that the social worker punched a neighbour and kicked them to the body and head following an ongoing dispute that involved racially aggravated behaviour.
- They have been provided with a digital transcript of the court proceedings whereby the social worker was sentenced.

As such, the case examiners are satisfied there is a realistic prospect of the matter being found proven by adjudicators.

Regulatory concern 9

The case examiners are satisfied there is evidence to support the allegation that the social worker did not inform Social Work England that they were subject to a police investigation. Specifically, the case examiners note that:

- They have been provided with a disciplinary investigation report (dated 05 September 2022) that states the social worker had not informed Social Work England that they were subject to a police investigation.
- In their submissions, the worker states that “I was under the impression my employer would do this” – the case examiners are satisfied this statement implies the social worker did not inform Social Work England themselves.

- The regulator has found no evidence of the social worker having declared the police investigation.

As such, the case examiners are satisfied there is a realistic prospect of the matter being found proven by adjudicators.

Regulatory concern 10

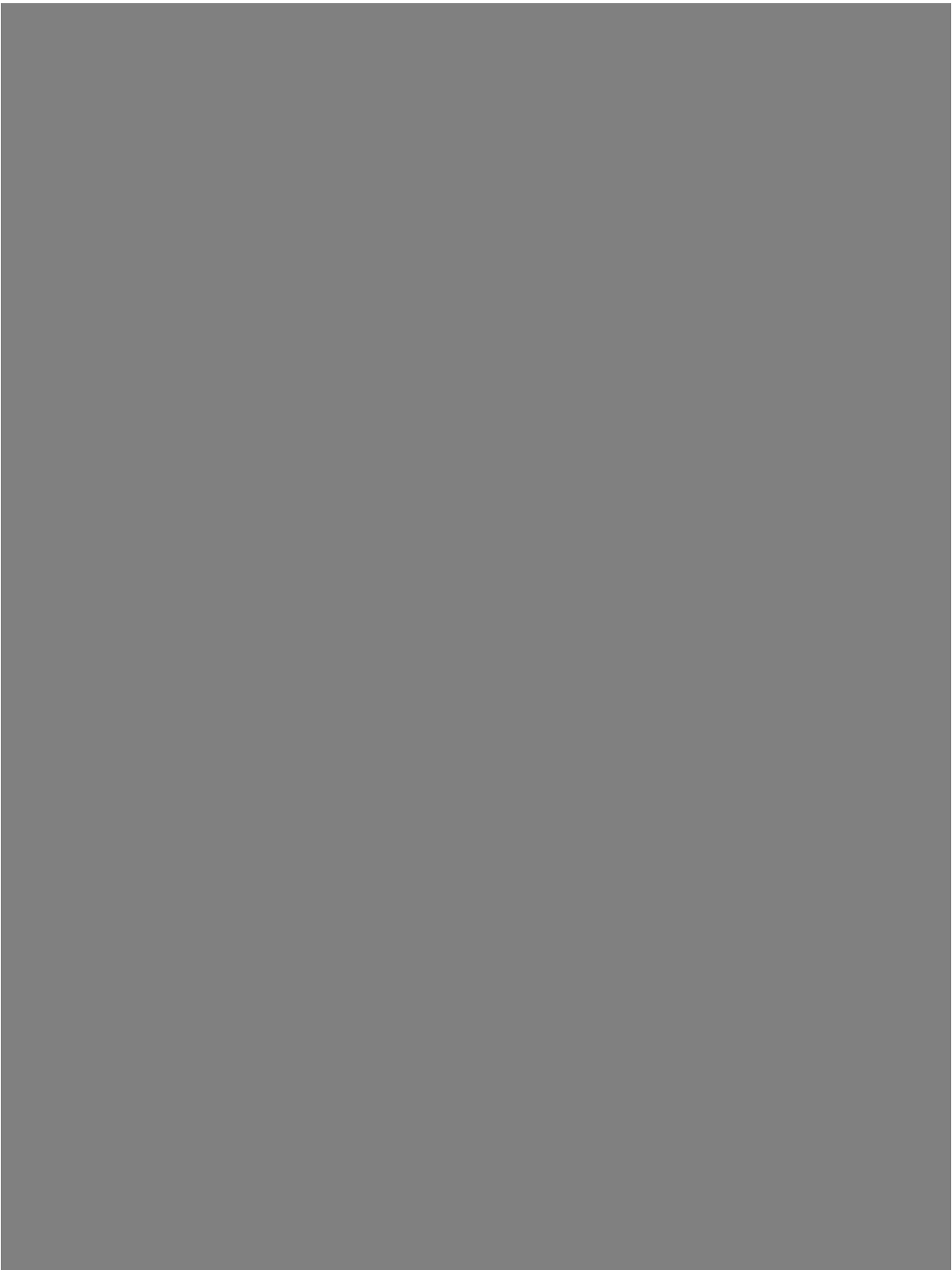
The case examiners are satisfied there is evidence to support the allegation that the social worker may have health conditions as set out in Schedule 1 which affect their practice. Specifically, the case examiners note that:

- They have been provided with a copy of investigatory interview notes (dated February / April 2022) which indicate the social worker stated they had seen a medical professional ([REDACTED] and had been diagnosed with several conditions [REDACTED]).
- They have been provided with occupational health reports from 2021 and 2022 that state the social worker is not fit to work.
- They have been provided with a copy of medical consultation reports dated 02 June 2023 in which the GP states the social worker is not fit to practise.

As such, the case examiners are satisfied there is a realistic prospect of the matter being found proven by adjudicators.

Concerns being recommended for closure





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 concerns 1.1, 8, 9 and 10), amounting to one of the statutory grounds. In this instance, the statutory grounds being considered are criminal conviction or caution in the United Kingdom for a criminal offence (in respect of regulatory 8); adverse physical or mental health (in respect of regulatory concern 10); and misconduct (in respect of regulatory concerns 1.1 and 9).

The case examiners have been provided with a digital transcript of the court proceedings whereby the social worker was sentenced.

As such, the case examiners are satisfied that there is a realistic prospect of the statutory grounds of criminal conviction or caution in the United Kingdom for a criminal offence being established by adjudicators in respect of regulatory concern 8.

The case examiners are mindful that having a health condition does not necessarily mean the social worker's fitness to practise may be found impaired. However, in this instance, the case examiners have been provided with evidence from a suitably qualified medical practitioner that there is a health condition, and that the health condition impairs the social worker's fitness to practise.

As such, the case examiners are satisfied that there is a realistic prospect of the statutory grounds of adverse physical or mental health being established by adjudicators in respect of regulatory concern 10.

The case examiners are aware that misconduct would generally consist of serious acts or omissions, which suggest a significant departure from what would be expected of the social worker in the circumstances. This can include conduct that takes place in the exercise of professional practice and conduct which occurs outside the exercise of professional practice but calls into question the suitability of the person to work as a social worker.

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

Social Work England professional standards

2.1 Be open, honest, reliable, and fair.

3.1 Work within legal and ethical frameworks, using my professional authority and judgement appropriately.

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.

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 ability to

practice, or if I am subject to criminal proceedings or regulatory finding is made against me, anywhere in the world.

Having considered the applicable standards, the case examiners note the following:

- It was the social worker's responsibility to notify Social Work England that they were subject to criminal proceedings; however, the social worker did not do so. In not doing so, the social worker failed to demonstrate the necessary openness.
- The social worker had a responsibility to adhere to Covid-19 guidelines and wear PPE effectively in the interests of protecting themselves and others. By not doing so, the social worker failed to work within ethical frameworks and behaved irresponsibly (and potentially, dangerously), thus bringing into question their suitability to work as a social worker.

Having considered the applicable standards, the case examiners are of the view that adjudicators may conclude that the alleged conduct would amount to a significant departure from these.

The case examiners have therefore concluded there is a realistic prospect of the statutory grounds of misconduct being established by adjudicators in respect of regulatory concerns 1.1 and 9.

Impairment

Assessment of impairment consists of 2 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 consider 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

In this instance, the case examiners are satisfied that the conduct can be remedied. For example, in respect of regulatory concern 1.1, the social worker could reflect upon the importance of wearing PPE effectively. In respect of regulatory concerns 8 and 9, the social worker could reflect upon their conduct (including their duty to report and the potential impact of not doing so), as well as considering what they would do differently in the future, and how they can prevent a recurrence. In respect of regulatory concern 10, the social worker could continue to access appropriate treatment and support.

Insight and remediation

In respect of regulatory concern 10, the social worker has accessed appropriate treatment to address their adverse health conditions, which evidences both insight and remediation. However, it is noted that the latest health evidence suggests that the social worker remains to be unfit to practise.

The case examiners have not been provided with any evidence of insight and remediation in respect of regulatory concerns 1.1 and 9.

In respect of regulatory concern 8, the case examiners acknowledge that the social worker has stated they were subject to prolonged and significant provocation in the form of unacceptable, racially motivated abuse. Consequently, the social worker is likely to have been upset, distressed, and offended, and the case examiners acknowledge that as such, there is some mitigation. Nevertheless, social workers are expected to act with integrity both inside and outside work, and the case examiners consider the social worker's conduct to be wholly inappropriate. Furthermore, in their submissions, the social worker does not demonstrate any insight or remediation in respect of their conduct, for example, in respect of how else they could have addressed the matter.

Risk of repetition

Given the lack of insight and remediation demonstrated in respect of regulatory concern 1.1, 8 and 9, the case examiners must conclude that there is a risk of repetition.

In respect of regulatory concern 10, the case examiners note that since 2021, medical professionals have consistently stated that the social worker is not fit to practise, and that this opinion was reiterated most recently in June 2023. The case examiners have therefore concluded that the social worker's health will remain to be unmanaged until such a time when it is no longer assessed to be impacting upon their fitness to practise.

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 this instance, the case examiners have concluded that the alleged conduct in respect of the regulatory concerns, if found proven, would amount to a significant departure from the professional standards and have the potential to undermine trust and confidence in the social work profession, because it is vital that social workers are medically fit to practice and behave in a way that would not bring into question their suitability to work as a social worker while at work, or outside of work.

Accordingly, the case examiners have concluded that there is a realistic prospect that a finding of current impairment would be made by adjudicators, should the regulatory concerns be found proven.

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

Case examiner guidance states that if the case examiners have found there is no public interest in the case being referred to a hearing, they may then consider whether an accepted disposal may be appropriate (paragraph 181). The guidance goes on to state that 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.

In this instance:

- There is no conflict in the evidence that requires resolving at a hearing.
- The social worker accepts the key facts.
- Public confidence in the profession and the professional standards for social workers can be upheld by the decision being published on Social Work England's public register.

Furthermore, the case examiners have concluded that:

- Whilst there may be an ongoing risk of repetition, this risk can be managed by one of the outcomes available to them, without the need to refer the matter to a hearing.
- The publication of their decision will send a clear message about the types of behaviour that are completely unacceptable. It will also demonstrate that the regulator will take significant regulatory action when presented with such types of behaviour.
- The public would support efforts made by the case examiners to resolve this case in a timely and proportionate manner, without the need to refer to a hearing.

Consequently, the case examiners have determined that accepted disposal is the appropriate outcome in this case.

Interim order

An interim suspension order is already in effect.

- Start date: 02/09/2023.
- End date: 01/03/2024.

The Interim Order does relate to the concerns that are the subject of this decision.

Accepted disposal

Case outcome

Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☐
	Conditions of practice order	☐
	Suspension order	☒
	Removal order	☐
Proposed duration	Suspension order - 2 years	

Reasoning

The case examiners are satisfied there is a realistic prospect of the concerns being found proven by adjudicators. Furthermore, they found a realistic prospect that the concerns, if proven, would amount to the statutory grounds of criminal conviction or caution in the United Kingdom for a criminal offence (in respect of regulatory 8); adverse physical or mental health (in respect of regulatory concern 10); and misconduct (in respect of regulatory concerns 1.1 and 9). The case examiners have also found a realistic prospect that adjudicators would find the social worker's fitness to practise is currently impaired.

In considering the appropriate outcome in this case, the case examiners had regard to Social Work England's Impairment and 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.

The guidance requires that decision makers select the least severe sanction necessary 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 case examiners considered taking no further action but considered that this would not be appropriate in this instance because the case examiners have concluded there is a continuing risk to the public of the social worker breaching the identified professional standards again, and in respect of the social worker's health.

The case examiners next considered whether offering advice or a warning would be sufficient. 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 believe that issuing advice is not sufficient to mark the seriousness with which they view the alleged misconduct, and again it would not adequately protect the public in light of the social worker's health.

A warning order implies a clearer expression of disapproval of the social worker's conduct than an advice order. However, the case examiners are not satisfied that a warning order would send a strong enough message to the social worker, and particularly, the wider social work profession. Furthermore, a warning order is not likely to be appropriate where there is a lack of insight and a risk of repetition, and again it would not adequately protect the public in light of the social worker's health.

The case examiners then considered a conditions of practice order. The case examiners have concluded that a conditions of practice order is not suitable for this case, because the social worker is not currently practising and therefore there are unlikely to be workable conditions that could be formulated.

The case examiners have gone on to consider a suspension order and have noted the sanctions guidance which indicates that such an order may be appropriate in cases where there has been a serious breach of the professional standards, the social worker has demonstrated some insight and there is evidence to suggest the social worker is willing and able to resolve or remediate. The case examiners are of the view that this case meets these requirements, and that in light of the social worker's health, a suspension order would also give the social worker time to undertake further treatment and then return to practice when it is felt they are able to do so safely.

In considering the duration of the suspension order, the case examiners were mindful of the sanction's guidance, which indicates that whilst an order can be made up to 3 years in duration, case examiners need to be mindful of the risk of deskilling a social worker. In this instance, it is unlikely that the social worker will be able to return to practise in the short-term given the ongoing nature of their adverse health conditions, and the case examiners note that their guidance suggests that in such cases, it may be "in the interests of the social worker to impose a longer period of suspension...to avoid the stress of a review hearing before they have recovered to full health".

The case examiners are therefore of the view that a 2-year suspension order provides an opportunity for the social worker to continue their recovery and undertake professional development to assist with their return to practice. This sanction will mark the seriousness of the regulatory concerns, as well as considering the social worker's adverse health. If the social worker's health improves prior to the end of this order, the social worker is able to request an early review hearing where adjudicators could be consider

the option of supporting the social worker's return to practice through a conditions of practice order.

The case examiners are aware that removal orders are not an available sanction in cases where the primary concern relates to adverse physical and/or mental health. The case examiners acknowledge that in this instance there are other serious concerns; however, they are of the view that the social worker's adverse health may have contributed to those concerns and the associated conduct, and that the concern relating to adverse health is therefore one of the primary concerns.

The case examiners have therefore decided to propose to the social worker a suspension order of 2 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 28 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.

Recommendations for the social worker

Prior to attending a review panel, the case examiners recommend the social worker:

- Continues to access relevant medical support and provides up-to-date evidence in this respect.
- Provides a reflective piece demonstrating insight and remediation into their misconduct and conviction. If they are able to do so, the social worker may benefit from reflecting on these matters with a peer, who would be welcome to provide a witness statement for adjudicators.

Response from the social worker

The social worker responded on 02 November 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.

In their emails with the regulator, the social worker reflected further on the circumstances of their offence, which the case examiners acknowledge will have been

distressing. The social worker has also outlined work they have been undertaking to remediate, including [REDACTED]

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 suspension order, with a duration of 2 years.

The case examiners have noted the social worker's wider correspondence, which includes statements about remediation the social worker has started to undertake. The case examiners would encourage the social worker to ensure that evidence of this remediation is submitted to adjudicators at the suspension review, to ensure an informed decision can be made. The case examiners would highlight again their recommendations to the social worker, which may be helpful in structuring the social worker's submissions at the time of the review hearing.