

Case Examiner Decision

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FTPS-19089

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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	7 May 2024
	Accepted disposal proposed - warning order (3 years)
Final outcome	28 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 concerns 1, [REDACTED] being found proven by the adjudicators.
2. There is a realistic prospect of regulatory concerns 1 [REDACTED] being found to amount to the statutory grounds of (1) conviction or caution in the United Kingdom for a criminal offence [REDACTED]
[REDACTED]
3. For regulatory concern 1, there is a realistic prospect of adjudicators determining that the social worker's fitness to practise is currently impaired. [REDACTED]
[REDACTED]

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 proposed to resolve the case with a warning order of 3 years.

The social worker accepted this proposal and the terms in full on 26 May 2024.

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 only from the published copy of the decision, and will therefore be shared with the complainant in their copy. Text in [REDACTED] 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.
Date the complaint was received	19 April 2021
Complaint summary	The social worker's former employer raised that the social worker had a conviction for drink driving [REDACTED] [REDACTED]

Regulatory concerns and concerns recommended for closure

Regulatory concerns

1. On 22 February 2021 you were convicted of an offence of driving a motor vehicle whilst over the prescribed limit of alcohol.

The matters outlined in regulatory concern 1 amount to the statutory ground of conviction or caution in the United Kingdom for a criminal offence.

Your fitness to practise is impaired by reason of your UK conviction.

Preliminary issues

Investigation		
Are the case examiners satisfied that the social worker has been notified of the grounds for investigation?	Yes	☒
	No	☐
Are the case examiners satisfied that the social worker has had reasonable opportunity to make written representations to the investigators?	Yes	☒
	No	☐
Are the case examiners satisfied that they have all relevant evidence available to them, or that adequate attempts have been made to obtain evidence that is not available?	Yes	☒
	No	☐
Are the case examiners satisfied that it was not proportionate or necessary to offer the complainant the opportunity to provide final written representations; or that they were provided a reasonable opportunity to do so where required.	Yes	☒
	No	☐

Requests for further information or submissions, or any other preliminary issues that have arisen



The realistic prospect test

Fitness to practise history

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

Decision summary

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

Yes



No



The case examiners have determined that there is a realistic prospect of regulatory concern 1 being found proven, that 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 on the basis of regulatory concern 1 only.

Reasoning

Facts

Regulatory concerns

1. On 22 February 2021 you were convicted of an offence of driving a motor vehicle whilst over the prescribed limit of alcohol.

Whilst the case examiners note that they have not been provided with a certificate of conviction, they are satisfied that the evidence provided by the regulator confirms the social worker received a conviction for driving a motor vehicle when the alcohol in their breath exceeded the prescribed limit.

The case examiners have had sight of the following documents:

- Police MG5 report outlining the social worker's arrest.
- A police document detailing the social worker pleaded guilty to the offence in court and the sentencing outcome.
- A copy of the social worker's Disclosure and Barring Service (DBS) certificate which details the social worker's conviction.

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

- The police attended a road traffic collision (RTC) involving two vehicles, one of which the social worker was driving.
- The social worker completed a road side breath test at the scene of the RTC. The social worker was arrested due to the reading of the road side breath test.
- The social worker completed two further breath tests using the evidential breath machine (EBM) at the police station with the minimum reading being 107ug/100ml. The legal limit in the UK 35ug/100ml
- During interview it is documented that the social worker had a passenger in the car at the time of the RTC.
- The social worker has not given an explanation as to why they drove a car whilst intoxicated, however in a statement by their father, provided by the social worker, it is said that the social worker's partner asked for a lift as they could not drive.

In light of the above, there is a realistic prospect of adjudicators determining that regulatory concern 1 is proven.

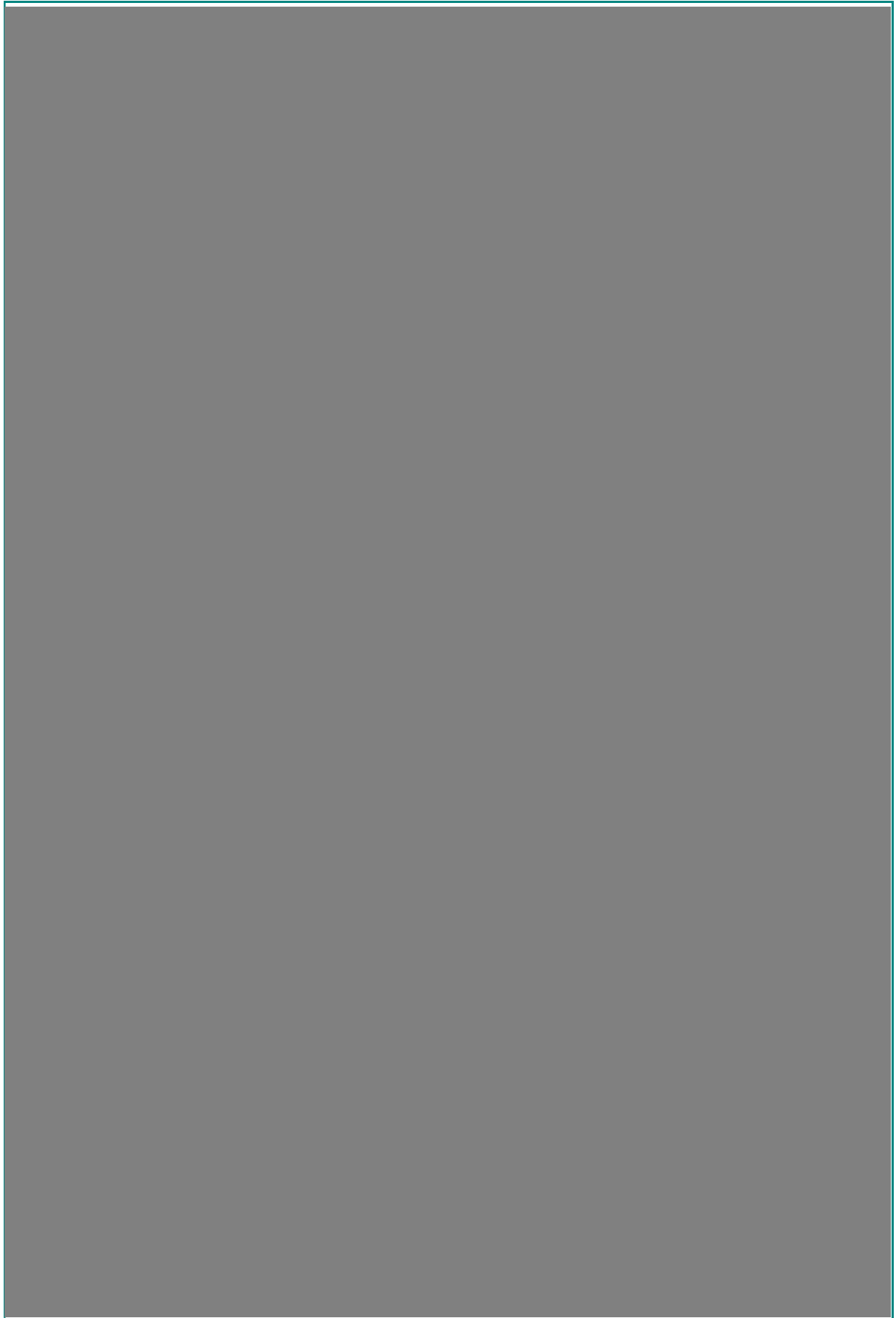


Grounds

Conviction or caution in the United Kingdom for a criminal offence

The case examiners have had had sight of the information from the court as detailed above and they are satisfied that this sufficiently evidences the conviction.

Accordingly, there is a realistic prospect of adjudicators determining that for regulatory concern 1, the statutory grounds of conviction or caution in the United Kingdom for a criminal offence are engaged.



Impairment

Assessment of impairment consists of two elements:

- The personal element, established via an assessment of the risk of repetition.
- 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.

For regulatory concern 1, 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

With regards to regulatory concern 1, the case examiners note limited submissions from the social worker. However, the case examiners have benefitted from access to evidence that the social worker has completed the drink drive rehabilitation course and engaged well with probation for the court imposed community order. The social worker's probation officer has reported to the regulator that the social worker has been a 'model client', and the case examiners noted evidence from the social worker's father which

reports that the social worker had immediately emphasised to their family the serious nature of their conduct, and the need to ensure their employer was made aware. Though the case examiners felt the social worker's direct submissions to the regulator were limited, they nevertheless considered the social worker to have demonstrated genuine remorse for their conduct.

Risk of repetition

For regulatory concern 1, having considered the evidence available in this case, although the case examiners are satisfied that there is some evidence of insight and remorse, they would be cautious to conclude that the risk of repetition is now highly unlikely.

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.

Regulatory concern 1

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.

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 over 12 months. (24 months)
- The offence including involvement in a road traffic collision
- The social worker failing to report the criminal proceedings to the regulator
- The social worker carrying a passenger in their vehicle at the time of the offence

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

- the offence in question 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

With regards to regulatory concern 1 the case examiners have weighed the public element in this case carefully. Although they are satisfied that the social worker has 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 a community order and an extended period of disqualification.

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 in respect of regulatory concern 1.



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 partially 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 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 given they had found that a risk of repetition remains (albeit reduced), it would normally be the case that a restrictive sanction would be appropriate. However, the case examiners were mindful that the social worker's probation officer attested to the social worker's engagement with the community order and the social worker produced a certificate of completion for the drink drive rehabilitation course offered by the courts. Therefore, the case examiners consider that regulatory oversight of the social worker, via a conditions of practice or suspension order, would be disproportionate.

The case examiners also 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 in the social work profession, and in the regulator's maintenance of professional standards for social workers.

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 3 years may be appropriate for more serious concerns. This 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.
- To test this position the case examiners considered the guidance in respect of 1 year orders, which states that they may be appropriate for isolated incidents of relatively low seriousness, which the case examiners do not consider the conviction to low seriousness.
- Finally, 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,

though they have considered the possibility of a restrictive sanction, a conditions of 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 went on to consider whether the final two sanctions, conditions of practice and suspension were appropriate in this case. They concluded that conditions were more relevant in cases requiring some restriction in practice and were not suitable for this case of conviction that related to matters in the social worker's private life. The case examiners considered that suspension from the register would be a disproportionate and punitive outcome in this case.

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.

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.

Response from the social worker

The social worker responded by email on 26 May 2024 and returned the accepted disposal response confirming: *'I have read the case examiners' decision and the accepted disposal guidance. I admit the key facts set out in the case examiners 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 concluded that the social worker's fitness to practise was likely to be found impaired but that the public interest could be met through a prompt conclusion, published decision and warning, rather than through a public hearing. They proposed a warning with a duration of 3 years and the social worker accepted this proposal.

In light of the social worker's acceptance of the warning, the case examiners have considered again whether there would be a public interest in referring this matter to a public hearing. They remain of the view that this is unnecessary for the reasons set out earlier in the decision.

Having been advised of the social worker's response, the case examiners have again turned their minds as to whether a warning remains the most appropriate means of disposal for this case. They have reviewed their decision, paying particular regard to the overarching objectives of Social Work England, i.e. protection of the public, the maintenance of public confidence in the social work profession, and the maintenance of proper standards. Having done so, they remain of the view that an accepted disposal by way of a warning order of 3 years is a fair and proportionate disposal and is the minimum necessary to protect the public and the wider public interest.