



Case Examiner Decision
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FTPS-20686

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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	6 February 2024
	Accepted disposal proposed - warning order (3 years)
Final outcome	26 February 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, 2, 4 and 5 being found proven by the adjudicators;



3. There is a realistic prospect of regulatory concern 1 being found to amount to the statutory ground of conviction or caution in the United Kingdom for a criminal offence and 2, 4 and 5 being found to amount to the statutory ground of misconduct;
4. For regulatory concerns 1, 2, 4 and 5, 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 was notified of their intention to resolve the case with a warning order of 3 years. The social worker has accepted the 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 raised by the regulator, Social Work England.
Date the complaint was received	19 May 2022
Complaint summary	The concern was raised by the registration team within Social Work England, as during the 2021 renewal application, the social worker declared a caution, which had been received in 2018. This had not previously been declared to the Health and Care Professions Council or Social Work England.

Regulatory concerns

Whilst registered as a social worker:

1. On or around 14 September 2018 you accepted a Police Caution for theft, contrary to section 1(1) of the Theft Act 1968;
2. You failed to notify the regulator in a timely manner of your caution;

4. Supplied incorrect information to the regulator during your registration renewal process in November 2020, when asked if you had any cautions or convictions;
5. The action outlined in the regulatory concern 4 was dishonest.

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

The matters outlined in regulatory concerns 2., 3., 4. and 5. amount to the statutory ground of misconduct.

Your fitness to practise is impaired by reason of your conviction or caution and or misconduct.

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

21 December 2023

The case examiners initially paused consideration of the case, as they considered that the regulatory concerns as presented did not capture the true gravity of the case. Furthermore, the case examiners considered that there was additional information that was necessary for them to make a determination.

The case examiners noted that the social worker in their communications with the regulator indicated that they were initially unaware of the caution. The social worker advised that they became aware of the caution in September/October 2020, and they informed their employer as soon as they became aware of this. The social worker stated that they then declared this on their registration renewal in 2021 and they were unaware of the need to inform the regulator prior to their registration renewal and that this was an oversight.

The case examiners are aware that social workers are required to renew their registration every year and therefore the social worker would have been required to renew their registration in 2020. Within the registration renewal, social workers are required to declare any convictions or cautions.

The case examiners requested confirmation of when the social worker renewed their registration in 2020. The investigators have confirmed that this was done on 15 November 2020 and the social worker responded 'no' to the question which asked about any convictions, penalty notices or cautions.

The case examiners were of the view that it was necessary for the social worker's alleged conduct at the point of registration renewal in November 2020 to be captured as an additional regulatory concern. This is because there was information to suggest that the social worker had explicitly responded to a direct question from the regulator in a manner that has the potential to be considered dishonest.

As such, the case examiners requested that additional concerns were added to capture the alleged conduct.

The case examiners also requested additional information, in terms of confirmation from the social worker's employer of when the social worker informed them of the caution in 2020; copies of the social worker's renewal application in 2020 to be added to the bundle, and the social worker be given the opportunity to provide submissions.

The above information was sought, and the concerns amended, and the case was returned to the case examiners to continue their consideration of the case.

5 February 2024

The case examiners have made the following amendments to the regulatory concerns:

- Have clarified what the social worker is alleged not to have informed the regulator of in a timely manner.
- Listed the conviction ground in full.
- Have clarified in regulatory concern 5, that it is the conduct in regulatory concern 4 which is alleged to have been dishonest.

The case examiners are satisfied that the amendments they have made are minor, and they therefore considered it to be unnecessary and disproportionate to delay consideration of the case further by seeking additional submissions from the social worker.

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, 2, 4 and 5 being found proven, that for concern 1 this could amount to the statutory ground of conviction or caution in the United Kingdom for a criminal offence and concerns 2, 4 and 5 could amount to misconduct, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

Whilst registered as a social worker:

1. On or around 14 September 2018 you accepted a Police Caution for theft, contrary to section 1(1) of the Theft Act 1968;

The case examiners have seen the conditional caution which was signed by the social worker on 14 September 2018. They have also been provided with a letter from the police, however they note that the letter states the incident took place on 8 August 2018 and the caution was accepted on 21 August 2018. The conditional caution documentation does have the initial date of 21 August 2018, which had been over signed by a police officer and signed on 14 September 2018.

The evidence suggests, therefore, that on or around 14 September 2018, the social worker accepted a caution for theft.

The case examiners are satisfied that there is a realistic prospect of adjudicators finding this concern proven.

2. You failed to notify the regulator in a timely manner of your caution;

The conviction in question is that captured by regulatory concern 1. The case examiners have considered the evidence and consider the following as key to their decision making:

- Documentation from the police which shows the social worker accepted the caution on 14 September 2018.
- The referral by Social Work England's registration team, dated 19 May 2022, raising this concern. It appears that the matter of the social worker's conviction only came to light during the registration renewal process in 2021.
- The social worker's electronic renewal submission that shows them disclosing the conviction, this appears to have been made on 7 November 2021.
- The social worker's initial submissions in which they state that they only became aware of the caution in September 2020 when they renewed their DBS for a new position. The social worker said that they told their agency and manager of their employer, however they were not in regular contact with Health and Care Professions Council (HCPC). They acknowledged that they should have declared this to Social Work England during 2021, and prior to their renewal in November 2021.
- An email from the social worker's agency who confirmed that the social worker made them aware of the caution on their DBS on 14 October 2020 and this was discussed in length. Notes made by the social worker's former manager were shared, which suggest that the social worker discussed this with them at the time also.

The evidence suggests that there was around 27 months between the social worker accepting the caution and them disclosing this to Social Work England. Even if it is accepted that the social worker was only aware of the caution from September 2020, there were still 13 months until they disclosed this to the regulator.

As the regulatory concern cites a failure on the part of the social worker, the case examiners have turned their minds to what would have been expected in the circumstances.

In doing so, the case examiners have taken into account Social Work England professional standard 6.6 that says as a social worker I will:

‘Declare to the appropriate authority and Social Work England anything that might affect my ability to do my job competently or may affect my fitness to practise, or if I am subject to criminal proceedings or a regulatory finding is made against me, anywhere in the world.’

The regulatory concern refers to ‘a timely manner’, therefore the case examiners must also consider what is likely to be considered appropriate in the circumstances. Whilst the case examiners note there are no specific time frames referred to in the professional standards, they consider it fair to conclude that the standards would require a social worker to disclose any matters that could impact on their fitness to practise ‘at the earliest possible opportunity’. Whilst the social worker has explained why they did not disclose this in 2018, this does not justify the further delay of 13 months. As such, the case examiners conclude that adjudicators are likely to find that this was not in a timely manner. Accordingly, this would not align with the requirements of professional standard 6.6 and is likely to be deemed a failure on the social worker’s part.

The case examiners are satisfied that there is a realistic prospect of this concern being found proven by adjudicators.



4. Supplied incorrect information to the regulator during your registration renewal process in November 2020, when asked if you had any cautions or convictions;

The case examiners have seen the registration renewal for the social worker completed on 15 November 2020. Within this, the social worker has actively declared that they have no convictions, penalty notices or cautions.

The evidence, as outlined above, shows that the social worker did have a caution relating to theft and as such, the information they supplied to the regulator was incorrect.

The case examiners are satisfied there is a realistic prospect of adjudicators finding this concern proven.

5. The action outlined in the regulatory concern 4 was dishonest;

When considering dishonesty, the case examiners have applied two tests, in line with relevant case law. Firstly, they have assessed the evidence to establish what adjudicators may determine the social worker's actual state of knowledge or belief was at the relevant time (the subjective test). Secondly, they have considered whether the social worker's conduct could be deemed as dishonest by the standards of ordinary, decent people (the objective test).

In regard to the subjective test, the case examiners note the social worker's final submissions to the regulator. The social worker accepts that they were dishonest and states, *'I think it was the whole shameful incident that caused me not to be honest'* and *'being shocked and ashamed of this led me to fear which led me not to be honest with HCPC'*. The social worker therefore accepts that in providing incorrect information, they were acting dishonestly.

In regard to the objective test, the case examiners consider that ordinary decent members of the public would consider a social worker actively providing incorrect information by way of declaring on a form that they did not have any cautions or convictions, when this was not the case, would amount to dishonesty.

The case examiners are satisfied there is a realistic prospect of adjudicators finding this concern proven.

Grounds

Conviction or caution in the United Kingdom for a criminal offence.

The case examiners have seen the conditional caution which was signed by the social worker and a police officer on 14 September 2018.

The case examiners are satisfied there is a realistic prospect of adjudicators finding that this amounts to the statutory ground of conviction or caution in the United Kingdom for a criminal offence.

Misconduct

The case examiners are aware that there is no statutory definition of misconduct, but it generally would 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 also 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, namely Social Work England Professional Standards (2019):

As a social worker I will:

2.1 Be open, honest, reliable and fair.

5.2 Behave in a way that would bring into question my suitability to work as a social worker while at work, or outside 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 fitness to practise, or if I am subject to criminal proceedings or a regulatory finding is made against me, anywhere in the world.

The case examiners are aware that falling short of the standards may not always amount to misconduct. However, adjudicators in this instance may determine that the threshold for misconduct has been reached. The case examiners have provided commentary in their assessment of the facts, explaining why the evidence suggests the social worker did not do what was expected of them by not alerting Social Work England of their caution for a period of around 27 months.

It is important that social workers refer such matters to the regulator at the earliest opportunity, so that the regulator can carry out an assessment of risk and fulfil its overarching objective of protecting the public. As the evidence suggests the social worker did not do so, this means that the regulator was prevented from taking prompt steps to mitigate any risks that may have existed for a period of around 27 months. The alleged conduct would not align with standard 6.6.

Furthermore, where a social worker has received a caution for theft, this may bring into question their suitability to act as a social worker and would not align with standard 5.2.

Where it is found that a social worker acted dishonestly, this is always likely to be considered serious. Honesty is key to good social work practice. Social workers are routinely trusted with access to private spaces (such as people's homes), and highly sensitive and confidential information (such as case notes). Social workers are relied on to act with honesty and integrity when making important decisions about service users, their relatives and carers. Any instances of dishonesty would not align with standards 2.1, or 5.2.

If the matters were to be found proven, the case examiners conclude the alleged conduct is serious, and is likely to suggest a significant departure from the professional standards detailed above.

As such, the case examiners are satisfied there is a realistic prospect of adjudicators finding concerns 2, 4 and 5 amount to the statutory ground of misconduct.

Impairment

Personal element

In considering the personal element of impairment, the case examiners have considered the test for personal impairment as set out in the case examiner guidance (2022), namely whether the conduct is remediable; whether the social worker has undergone remediation and demonstrated insight; and whether there is a likelihood the matters alleged will be repeated. The case examiners should also look at whether the social worker has admitted the allegations, any relevant previous history and any testimonials that have been provided.

The case examiners note there is no previous history in respect of this social worker.

The social worker has accepted all the concerns and has shown full and deep insight into the actions that not only led to the conviction, but also their actions after this time.

In respect of the caution, they have expressed remorse and explained the context which led to this, which involved a specific set of personal circumstances leading the social worker to [REDACTED] which subsequently affected their judgement when they made the decision to steal the perfume. The social worker states, *'I am very ashamed of my actions at the airport and sincerely regret them'*. The case examiners note that the social worker states that they signed the paperwork for the caution and paid for the goods, which they were directed to do in the caution documentation.

In respect of not informing the regulator and providing incorrect information, the social worker states that due to their personal circumstances at the time, they did not appreciate

they had accepted a caution and did not receive documentation. They state it was only when they made an application for a subsequent DBS renewal that they became aware of this.

The case examiners note that the social worker did inform their agency and manager at the point of which they state they became aware of the caution and their agency have confirmed this.

In respect of this, the social worker states, *'I reflect that it was the gravity of this caution and its shameful aspect that caused me fear losing my career...that caused me not to inform the HCPC'* and *'I feel that I was able to tell managers and agency [sic] as these were people in person to whom I could explain what happened and why...the HCPC is not a personal service...and I felt fearful'*. The social worker also states, *'I take full responsibility...I know I am in a position of high trust with the public and so I am ready to lose my career from this as I do know the gravity and seriousness of what I have done'*.

The case examiners consider that whilst the social worker acted dishonestly, this was an isolated criminal matter which they sought to withhold from the regulator. However, the social worker did share their caution with their agency and employer. Furthermore, the social worker did declare the caution on their registration renewal in 2021, therefore they recognised the need to provide accurate information and sought to put right their previous actions. In addition, the case examiners note that it has now been over five years since the social worker accepted the caution and no other matters have been brought to the attention of the regulator.

In terms of testimonials, the case examiners have seen an email from the social worker's manager, who appears to have been made aware of the fitness to practise investigation. They have confirmed that they have no concerns about the social worker's practice and state the social worker, *'has and continues to show a dedication to the children they work with, the work they do is of a high standard'*.

They note that the social worker was transparent with their agency and immediate manager and also that they declared the caution to the regulator in the following renewal period. They have shown reflection into what led them to act in this way, they have been transparent with their current employer and spoken about the steps they have taken to ensure that their judgement and decision making is not affected in this way again.

The case examiners are aware that, where attitudinal or character issues arise, the risk of repetition is heightened as deep seated attitudinal flaws are extremely difficult to remediate. The case examiners are satisfied that, though both concerns have dishonest aspects to them, more broadly there does not appear to be a pattern of conduct that suggests a deep seated attitudinal flaw. Rather, that there has been momentary poor

decision making by the social worker which they have since successfully attempted to remediate.

On this basis, the case examiners are satisfied that there is a low risk of repetition.

Public element of impairment

The case examiners next considered whether the social worker's alleged actions have the potential to undermine public confidence in social workers and whether this is a case where adjudicators may determine that public interest requires a finding of impairment. Public interest includes the need to uphold proper standards of conduct and behaviour and the need to maintain the public's trust and confidence in the profession.

A social worker who is found to have acted criminally by way of theft, and who subsequently has not declared this to their regulator and thereby acted dishonestly undoubtedly has the potential to undermine public confidence. Such conduct is certainly a significant departure from professional standards.

Dishonest conduct has the potential to seriously undermine public trust in social workers and to damage the reputation of the profession.

The case examiners are of the view that in these circumstances, members of the public would expect a finding of impairment if the concerns were found proven.

Accordingly, the case examiners are satisfied that there is a realistic prospect of 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	☒
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 therefore considered whether a referral to a hearing may be necessary in the public interest. The case examiners have noted the following:

- There is no conflict in evidence in this case and the social worker has accepted all the key facts.
- The social worker does not appear to accept that their conduct is impaired. The case examiners have already concluded that there is a low risk of repetition as the social worker has demonstrated full insight into their alleged conduct.
- 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 the social worker an opportunity to review the case examiner's reasoning on impairment and reflect on whether they do 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 (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 options in ascending order of seriousness.

The case examiners determined that taking no further action was not appropriate in a case where a social worker has been found to have acted criminally by way of theft, and subsequently been dishonest with their regulator when renewing their registration. Taking no further action is not 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 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 note that advice is not required as the social worker did correct their earlier mistakes in respect of the dishonesty as they declared the caution in their subsequent registration renewal application in 2021. However, the case examiners consider that advice would not be sufficient to mark the seriousness with which they view the social worker's alleged conduct.

The case examiners next gave careful consideration to whether a warning might be suitable, given that it would show clear disapproval of the social worker's conduct. The case

examiners concluded there is a low risk of repetition in this case, and their guidance suggests that warnings may be appropriate in such circumstances. The case examiners determined that a warning was the most appropriate and proportionate response in this case and was the minimum necessary to protect the public and the wider public interest. A warning will serve as a signal that any repetition of the behaviour that led to the concerns is highly likely to result in a more severe sanction.

In considering the duration of the warning, the case examiners have had regard to the sanctions guidance which states, *'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. 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.'*

The case examiners are of the view that the alleged conduct would not be considered of 'low seriousness' as they note that not only did the social worker receive a caution for an offence, which is inherently dishonest, they then subsequently acted dishonestly when not providing accurate information to the regulator. However, the case examiners note that the social worker has demonstrated full insight, they were transparent with their employer at the time and took corrective action at their subsequent registration renewal as they did then bring this to the attention of the regulator at this time. Therefore, the case examiners do not consider that this is an instance where the social worker needs more time to develop further insight as they have concluded that the risk of repetition is low. However, the case examiners consider that three years marks the seriousness with which they view the alleged conduct in this instance. The case examiners consider that a period of three years is appropriate in these circumstances and is the minimum necessary to maintain public confidence and to send a message to the public, the profession and the social worker about the standards expected from social workers. The case examiners considered that a five-year duration would be disproportionate and hence would be punitive.

The case examiners did go on to consider whether the next sanctions, conditions of practice and suspension, were more appropriate in this case. As the case examiners consider the risk of repetition is low, a conditions of practice order would not be necessary in this case and are more commonly suited to cases relating to health, competence or capability. The case examiners considered that suspension from the register would also be a disproportionate and punitive outcome.

To conclude, the case examiners have decided to propose to the social worker a warning order of three-year duration. They will now notify the social worker of their intention and seek the social worker's agreement to dispose of the matter accordingly. The social worker will be offered **14 days** to respond. If the social worker does not agree, or if the case

examiners revise their decision regarding the public interest in this case, the matter will proceed to a final hearing.

Content of the warning

The case examiners formally warn the social worker as follows:

An allegation of theft and subsequently being dishonest about this is a serious matter.

Your actions that led to your caution, demonstrated a serious lack of judgement as well as your decision to provide inaccurate information to the regulator.

Both matters could have an adverse effect on the public's confidence in you as a social worker. It may also damage the reputation of the social work profession.

This conduct should not be repeated. Any further criminal offences 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 on 22 February 2024 and confirmed that they had read and understood the terms of the proposed disposal and they accepted the disposal in full.

Case examiners' response and final decision

The case examiners have again 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 can be fulfilled through the accepted disposal process.

The case examiners therefore direct that Social Work England implement a warning order for a duration of 3 years.