

Case Examiner Decision

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FTPS-20226

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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 August 2023
	Accepted disposal proposed - removal order
Final outcome	19 September 2023
	Accepted disposal - removal order

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;



3. There is a realistic prospect of regulatory concern 1 being found to amount to the statutory ground of misconduct;
4. 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 they determined that the case could be concluded by way of accepted disposal.

As such, the case examiners proposed to resolve the case with a removal order. The social worker accepted this proposal and the terms in full on 14 September 2023.

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, which in this case would be the social worker as the concern was raised as a self-referral. 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 way of a self-referral by the social worker.
Date the complaint was received	13 December 2021
Complaint summary	The social worker reported to the regulator that they had been suspended from work due to concerns relating to professional conduct. The regulatory concerns set out the concerns in full.

Regulatory concerns

Regulatory concern 1

Whilst employed as a social worker for Virgin Care

You used cannabis and or alcohol whilst working from home.



The matters outlined at regulatory concern 1 amount to the statutory grounds of misconduct and/or adverse physical or mental health.

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	☐

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 those concerns could amount to the statutory ground of misconduct, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

Whilst employed as a registered social worker for Virgin Care

1. You used cannabis and or alcohol whilst working from home.

The case examiners have considered the following:

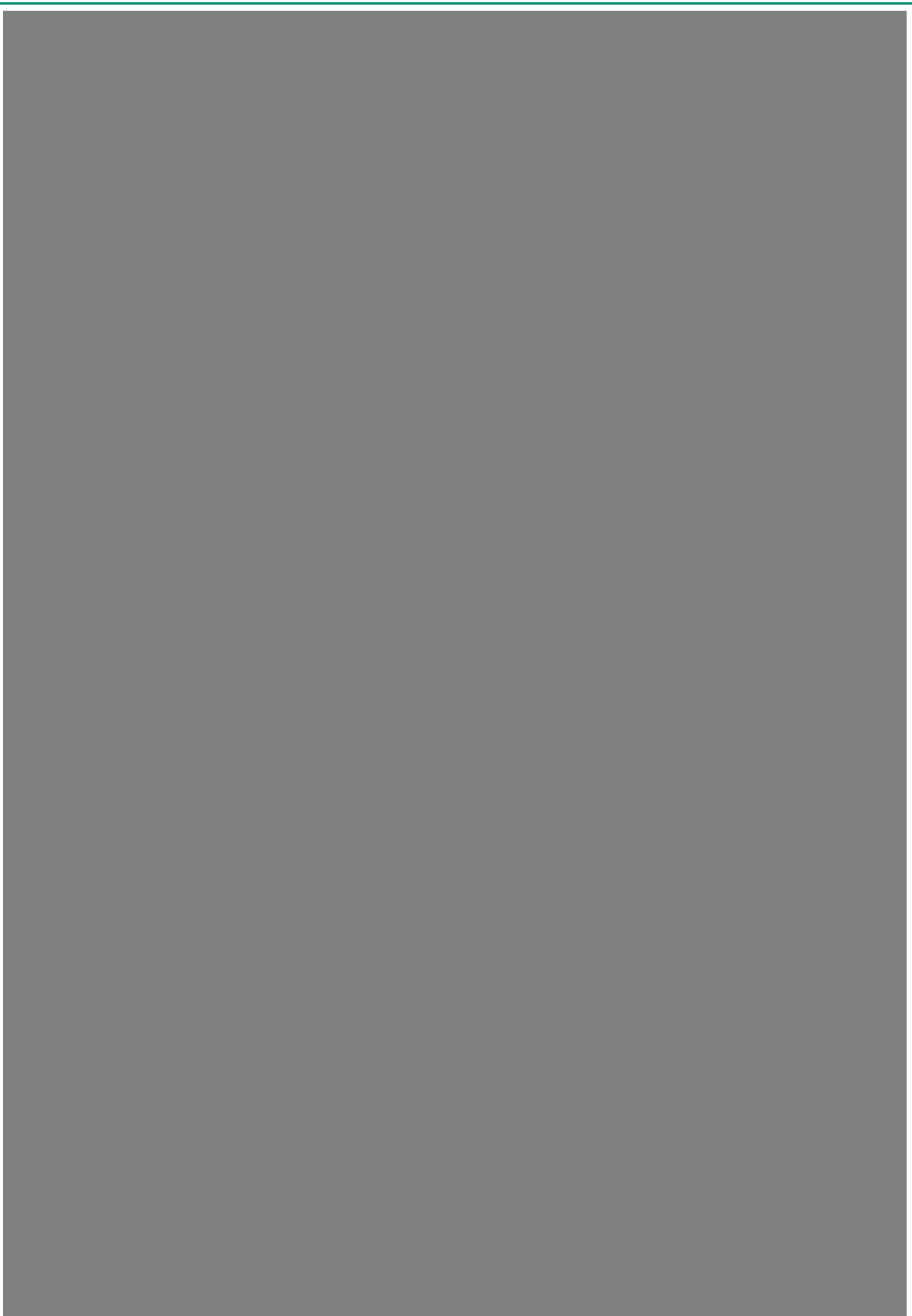
- A self-referral was made to the regulator by the social worker stating that, *"on the 01 November 2021, whilst working from home I disclosed that I had taken cannabis."*
- The social worker's service manager contacted the social worker on 01 November 2021 by telephone. It is said by the service manager, within the former employer's documentation, that the social worker sounded 'slurred'. It is said the social worker, during this call to the service manager discloses that they have taken

cannabis. The call was during working hours and the social worker was 'at work' in their role as a social worker when the cannabis was said to have been taken.

- The former employer has provided documentation, including an internal investigation into the matters in this case. Within the internal investigation the social worker accepts the use of cannabis and also, when asked, accepts they have been under the influence of alcohol whilst working at home, in their role as a social worker.
- The former employer has referenced a review of the social worker's supervision records. It is said there is reference to the social worker being asked by their manager in February 2021 if they were under the influence of medication or alcohol. This was reported to be due to the social worker presenting as incoherent and confused on the telephone. The social worker is reported to have denied any alcohol use, at this time. The social worker accepts this record.
- The former employer has referenced a statement prepared for the internal investigation by a senior manager who states that they had challenged the social worker due to smelling alcohol, this is reported to have been between May 2018 and May 2019. No further action was taken with regards to this. The social worker accepts this and refers to the interaction within their statement for the internal investigation.
- Within the social worker's submissions, they accept the regulatory concern in full.

Having considered the evidence, the case examiners are satisfied there is a realistic prospect of regulatory concern 1 being found proven by adjudicators.





Grounds

Adverse physical and/or mental health

The case examiners have not been presented with cogent evidence to suggest that the social worker has an adverse physical and/or mental health condition [REDACTED] there would not be a realistic prospect of adjudicators finding regulatory concern 1 amounts to the statutory ground of adverse physical or mental health.

Misconduct

The case examiners are aware that there is no legal 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.

Social Work England: Professional Standards (2019)

Act safely, respectfully and with professional integrity

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.

Promote ethical practice and report concerns

As a social worker, I will:

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.

A social worker who knowingly uses cannabis and/or alcohol, whilst at work, exposes vulnerable client groups to a risk of potential harm. Both alcohol and cannabis have known psychological and physiological effects on the human body which would render the social worker unable to work safely, whilst under the influence. Accordingly, it is a serious departure from the standards and what would be expected of a social worker.

Having considered the evidence the case examiners are satisfied there is a realistic prospect of adjudicators determining that the ground of misconduct is engaged.

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. The remediation could be demonstrated, for example, by engagement with specialist services, the social worker's abstinence from cannabis, alongside insight and reflection into the potential impact of the conduct alleged.

Insight and remediation

The case examiners are satisfied that the social worker has demonstrated a degree of insight which appears to have developed over time since the concern was raised.

The social worker has gone on to reflect on the potential impact their conduct may have had on practice, and they have not tried to minimise their actions. From the submissions to the regulator, the social worker would appear to have developing insight into their conduct.

The case examiners are satisfied that the social worker accepts the gravity of their conduct and note that they have chosen to depart from a social work career, reporting that this has alleviated the workplace stress which they attributed, in part, to their drug and alcohol use.

Whilst the case examiners have had sight of submissions in which the social worker accepts *'the seriousness of the concerns raised as well as the potential risk they have*

could have caused others', the case examiners do not consider that there has been any evidence of remediation presented. The social worker is no longer in social work practice, making remediation hard to demonstrate, and the social worker is reported to have shared the position that they 'have no intention of returning to social work' and that they 'do not feel confident in ever returning to social work practise'.

Risk of repetition

From the evidence available to the case examiners, although it is acknowledged the social worker has developing insight, the lack of remediation would suggest that the risk of repetition remains high.

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.

A social worker who chose to use cannabis and alcohol whilst at work undoubtedly has the potential to undermine public confidence. Such conduct is certainly a significant departure from professional standards. These types of concerns go to the heart of public confidence in the social work profession and have the potential to place the public at a significant degree of risk. Furthermore, they have the potential to undermine the public's trust in social workers.

Accordingly, the case examiners are satisfied 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 the facts.
- The social worker accepts their fitness to practise is impaired.
- The case examiners are of the view that there remains a risk of repetition, however they consider that this can be managed through other sanctions available to them.
- 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.

Interim order

An interim is in effect.

Accepted disposal

Case outcome		
Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☐
	Conditions of practice order	☐
	Suspension order	☐
	Removal order	☒
Proposed duration	Where a social worker is removed from the register, there is no defined end to the finding of impairment. A social worker that has been removed from the register may only apply to be restored to the register 5 years after the date the removal order took effect. The adjudicators will decide whether to restore a person to the register.	

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 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 first considered taking no further action but determined that the misconduct was too serious for the case to be concluded with no further action. The case examiners noted earlier that they consider the risk of repetition remains. Taking no further action would not provide the necessary level of public protection and would not satisfy 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

decided that issuing advice was not sufficient to mark the seriousness with which they view the social worker's misconduct.

The case examiners next considered whether a warning order would be appropriate in this case. The case examiners are aware that where a social worker's fitness to practise is potentially impaired, they will usually need to ensure the public is protected through some action by the regulator. In relation to a warning, the case examiners had regard to paragraph 108 of the guidance, which reads:

A warning order is likely to be appropriate where (all of the following):

- The fitness to practise issues is isolated or limited
- There is a low risk of repetition
- The social worker has demonstrated insight

The case examiners have already identified that they consider the risk of repetition is high and that the social worker has demonstrated no remediation. The case examiners also considered that this was not an appropriate sanction, in the circumstances, to address the wider public interest concerns.

The case examiners next considered a conditions of practice order. The case examiners considered paragraph 114 of the guidance which states:

Conditions of practice may be appropriate in cases where (all of the following):

- the social worker has demonstrated insight
- the failure or deficiency in practice is capable of being remedied
- appropriate, proportionate, and workable conditions can be put in place
- decision makers are confident the social worker can and will comply with the conditions
- the social worker does not pose a risk of harm to the public by being in restricted practice

The case examiners were mindful that the alleged conduct took place within working hours and engaged in employment, having the potential to directly impact the public accessing social work services. The case examiners note that the social worker is not currently in practice and has indicated they do not intend to return to social work practice. The social worker not currently practising would make conditions difficult to formulate and oversee and therefore, coupled with the seriousness of the misconduct, the case examiners do not consider conditions an appropriate sanction in this case.

The case examiners went on to consider whether a suspension order might be an appropriate sanction.

The case examiners have considered the guidance, which states:

Suspension may be appropriate where (all of the following):

- the concerns represent a serious breach of the professional standards
- the social worker has demonstrated some insight
- there is evidence to suggest the social worker is willing and able to resolve or remediate their failings

The case examiners have therefore considered the guidance which states a suspension order may be appropriate where workable conditions cannot be formulated.

In this instance, the case examiners consider the concerns represent a serious breach of the professional standards. Since the alleged conduct has been raised with the social worker, they have not been in practice and have provided evidence of an alternative career not aligned to social work. As the social worker has not indicated any wish to return to social work, the case examiners do not consider a suspension order to be appropriate.

The case examiners therefore went on to consider a removal order. The case examiners note Social Work England Impairment and sanctions guidance which states that a removal order may be appropriate in cases involving:

- Social workers who are unwilling and/or unable to remediate (for example where there is clear evidence that they do not wish to practise as a social worker in the future.)

The case examiners did not consider that public confidence in the profession could be satisfied by any sanction less than a removal order in this case. It is considered that a fair minded and reasonable member of the public fully informed of the facts, would be significantly concerned by the social worker's misconduct. This, coupled with the social worker's submission that they *'do not feel confident in ever returning to social work practise'*, would likely lead such a member of the public to expect the social worker to be removed from the register. The case examiners therefore consider that the only appropriate and proportionate sanction in this case is a removal order.

To conclude, the case examiners have decided to propose to the social worker a removal order. 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.

Response from the social worker

The social worker responded by email on 15 September 2023 and confirmed “*I understand the terms of the proposed disposal of my fitness to practice 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, accepted disposal, removal order, rather than through a public hearing. They proposed a removal order, and the social worker accepted this proposal.

In light of the social worker’s acceptance of the removal order, 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 removal order 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 removal order is a fair and proportionate disposal and is the minimum necessary to protect the public and the wider public interest.

The case examiners note that there is an interim order currently in effect, which will be revoked upon enactment of the agreed order.