

Case Examiner Decision
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FTPS-21253

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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 December 2023
	Accepted disposal proposed - warning order (5 years duration)
Final outcome	9 February 2024
	Accepted disposal - warning order (5 years duration)

Executive summary

The case examiners have reached the following conclusions:

1. There is a realistic prospect of regulatory concerns 1 and 2 being found proven by the adjudicators.
2. There is a realistic prospect of regulatory concerns 1 and 2 being found to amount to the statutory grounds of misconduct.
3. For regulatory concerns 1 and 2, 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 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 an accepted disposal warning order of 5 year's duration, subject to the social worker's agreement.

The social worker subsequently notified Social Work England that they understood and accepted the proposed disposal, and having reviewed the public interest in relation to this

case, the case examiners determined that a warning order of five years' duration remained the most appropriate outcome.

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.

In accordance with Social Work England's fitness to practise proceedings and registration appeals publications policy, the case examiners have anonymised the names of individuals to maintain privacy. A schedule of anonymity is provided below for the social worker and complainant, and will be redacted if this decision is published.

Person A	
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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	10 October 2022
Complaint summary	The social worker's former employer referred concerns to Social Work England following an allegation from a member of the public (Person A) that the social worker had smoked cannabis while working from home.

Regulatory concerns

As amended by the case examiners

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;

- (1) On one or more occasions the social worker has used an illegal class B drug, namely cannabis.
- (2) On or around Friday 25 February 2022, the social worker has used cannabis during working hours and/or has conducted work under the influence of cannabis.

The matters outlined in regulatory concerns (1) & (2) amount to the statutory ground of misconduct.

Your fitness to practise is impaired by reason of 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

The case examiners have made a minor amendment to concern 2, highlighted in purple:

- (2) On or around Friday 25 February 2022, the social worker has used cannabis during working hours and/or has ~~attended~~ **conducted** work under the influence of cannabis.

The case examiners are of the view that this amendment more accurately reflects the evidence which is that the social worker conducted work at home, rather than attended any workplace or other work location. They consider this to be a minor amendment which does not prejudice the social worker, and as such, do not consider it proportionate or necessary to pause the case and ask for further submissions.

The case examiners are aware of the need to consider cases expeditiously and the need to ensure fairness to all parties, and are satisfied that their chosen course of action is consistent with the guidance

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 and 2 being found proven, that those concerns could amount to the statutory grounds of misconduct, and that the social worker's fitness to practise could be found impaired.

Reasoning

Facts

Whilst registered as a social worker;

- (1) On one or more occasions the social worker has used an illegal class B drug, namely cannabis.**

The case examiners have carefully considered all of the information presented to them, and have particularly noted the following:

- A video recording, timed and date stamped as 1540hrs on 25 February 2022, shows a person identified as the social worker, smoking what appears to the case examiners to be some type of 'joint'. The social worker is also seen using a laptop while smoking. During the course of the video, a person, whom the case examiners consider to be Person A, asks the social worker what they have got in

their hand, while focussing the camera on the item being smoked, to which the social worker smiles and responds, '*delete it*'.

- A toxicology report (hair analysis), while unable to positively confirm cannabis use by the social worker, concludes that the social worker tested positive for a constituent of cannabis in hair sections covering a time period of December 2021 to the middle of June 2022. In the opinion of the specialist producing the report, the findings are "on a balance of probabilities, more likely than not due to the use of cannabis".
- The social worker accepts the concern. They submit that they had smoked cannabis on "multiple occasions" over a period of around 12 months, with the last time being between June-August 2022.

The case examiners are satisfied that there is a realistic prospect of adjudicators finding concern 1 proved.

(2) On or around Friday 25 February 2022, the social worker has used cannabis during working hours and/or has conducted work under the influence of cannabis.

The case examiners have again carefully considered all of the information presented to them, and have particularly noted the following:

- The video recording referred to at concern 1 above, is time and date stamped 1540hrs on 25 February 2022. During this video a person identified as the social worker is seen using a laptop while smoking what appears to the case examiners to be some type of joint.
- The social worker's former employer confirms that on 25 February 2022, the social worker had worked during the day and was also on call that weekend from 1630hrs on the 25 February 2022. The case examiners note that the social worker was working from home during this period.
- The social worker recalls being shown a video, by Person A that they had taken of the social worker smoking cannabis whilst using their laptop. The social worker does not recall when the video was taken, but submits that they were not working, but were "completing mileage claims". The social worker, in their employer interview questions the accuracy of the time and date stamp on the video, and also stated that Person A had other videos of them that they had threatened to share to "try and disrepute her".
- The social worker submits that the video shown to them by Person A would have pre-dated December 2021, as they recall that person A was "threatening" to share it with their employer since December 2021.

- Copies of phone messages between the social worker and Person A dated March 2022 appear to include the social worker making reference to Person A “threatening” to make them lose their job. The social worker also responds to Person A “send it then” and states that they will not be held “to ransom”.
- The employer has provided dates of mileage claims submitted by the social worker – these are claims for September and October dated 25 November 2021, November mileage claimed on 25 January 2022, and February and March mileage submitted 24 April 2022.

The case examiners are required to apply a ‘realistic prospect test’ when considering the concerns presented to them. The threshold for this test is one of ‘possibility’ whereas in a hearing, adjudicators apply a higher threshold of “balance of probability’.

While the social worker disputes this concern, the case examiners are of the view that there is some evidence to suggest that the social worker may have been working and was about to start an on-call weekend at the time they were filmed, apparently smoking cannabis. In addition, the social worker’s own account, that they were not working but were submitting mileage claims, would also support a realistic prospect of this concern being found proven.

The case examiners are therefore satisfied that there is a realistic prospect of adjudicators finding concern 2 proved.

Grounds

The case examiners are aware that misconduct is generally considered to 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.

3.1: As a social worker, I will:

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

5.2: As a social worker, I will not;

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 case examiners are of the view that both concerns, both separately and together, are serious and likely to indicate a significant departure from the standards required at 3.1 and 5.2.

Smoking cannabis, as alleged, suggests possession of an illicit class B drug. The case examiners are concerned that in their professional role, the social worker may be required to work with service users with substance misuse issues. If it was the case that the social worker had used illicit drugs in their personal life, the case examiners consider that any professional decision-making they may make in such instances, has the potential to be biased or called into question.

Furthermore, the possession and use of illicit substances, as well as being a criminal offence, is also considered by the case examiners to present a significant risk to the wider public and public confidence in the social work profession, and may be considered incompatible with a social worker's role.

In relation to concern 2, the case examiners are of the view that, if as alleged, the social worker smoked cannabis during working hours, then this would be particularly serious, likely to impair their judgment and ability to practise safely, and pose a risk to any families or service users that they may have been required to come into contact with or respond to.

The case examiners, when considering misconduct, have also taken into account the circumstances in which the alleged actions of the social worker occurred. They have noted mitigation put forward by the social worker, and are of the view that the social worker, at the time the alleged concerns occurred, was experiencing high levels of stress and exceptional personal challenges, some of which they reported to their employer in December 2021.



While the case examiners are of the view that the social worker has provided some mitigation for their actions, this does not negate the evidence of serious misconduct. The case examiners are of the view that the social worker had opportunities over the course of several months to disclose the full extent of their personal challenges to their employer and to seek support.

The case examiners are satisfied that there is a realistic prospect of adjudicators finding the grounds of misconduct proved.

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.

While serious, the case examiners do consider that the conduct can be remedied, through the social worker ceasing the use of cannabis and taking actions to ensure that they do not again find themselves in similar circumstances where they resort to taking illicit substances.

The case examiners have also seen evidence of insight and remediation. The social worker has demonstrated an understanding of the adverse impact their personal circumstances had on their actions, [REDACTED]

[REDACTED] has engaged fully with the investigation, and has submitted to drug testing; the toxicity report of January 2022 indicated no cannabis use by the social worker from June 2022 to December 2022. The social worker [REDACTED]

■■■■■ has positive testimony from their current employer, who is aware of the fitness to practise concerns. The employer reports no concerns about the social worker's current practice, or any suspicions in relation to substance misuse.

The social worker acknowledges that they *"slowly began to lose (their) personal values ■■■■■"* and that they were *"embarrassed, shamed and have questioned how (they) allowed for this to happen. Not just from a professional perspective, and the impact on my career, but from a personal perspective"*

The social worker reflects that they *"sacrificed (their) own values, identity and the life that (they) wanted to lead"*.

The social worker has denied taking cannabis while working, and as such disputes concern 2, which they are entitled to do. The case examiners are of the view that the social worker could, nonetheless, have reflected on how working under the influence of drugs could impact on their ability to work safely and on the reputation of their profession, even if only when conducting administrative tasks, such as submitting mileage claims.

While the case examiners are reassured by the extent of insight and remediation shown by the social worker in relation to their alleged use of cannabis, they consider that in the absence of insight into the risks of taking illicit drugs whilst working, some risk of repetition remains.

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.

The case examiners are of the view that a fully informed member of the public, aware of all the circumstances of this case, would be concerned by the social worker's actions, and particularly that a social worker may have smoked cannabis while working, which had the potential to place families or service users at risk of harm. The case examiners consider that confidence in the social work profession would be undermined if the concerns were subsequently found proved.

As such, the case examiners conclude that it is likely the public would expect that a finding of current impairment was made by adjudicators to maintain public confidence in the regulation of the profession.

Having considered both the personal and public elements, the case examiners have concluded there is a realistic prospect that adjudicators would find the social worker to be currently impaired.

The public interest

Decision summary

Is there a public interest in referring the case to a hearing?

Yes

☐

No

☒

Referral criteria

Is there a conflict in the evidence that must be resolved at a hearing?

Yes

☐

No

☒

Does the social worker dispute any or all of the key facts of the case?

Yes

☒

No

☐

Is a hearing necessary to maintain public confidence in the profession, and/or to uphold the professional standards of social workers?

Yes

☐

No

☒

Additional reasoning

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, while the social worker disputes elements of concern 2, they do appear to accept the fact that they were on a work laptop at the same time as taking cannabis.

The offer of accepted disposal will provide the social worker with the opportunity to consider the case examiners' rationale for finding a realistic prospect of concern 2 being found proved, and to consider whether or not they agree with their determination.

It is also unclear to the case examiners whether the social worker accepts current impairment in relation to the concerns raised. Where it is not clear that a social worker accepts impairment, the guidance suggests that a referral to a hearing may be necessary

in the public interest. However, the case examiners consider it is appropriate to depart from the guidance in this case because:

- There is no conflict in the evidence that requires resolving at a hearing.
- The social worker accepts elements of 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 some ongoing risk due to some 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.
- This is not a case where there is a realistic prospect that adjudicators would seek to permanently remove the social worker from the register.
- The publication of their decision will send a clear message about the types of behaviour that are unacceptable. It will also demonstrate that the regulator will take 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 order may be necessary for protection of members of the public	Yes	☐
	No	☒
An interim order may be necessary in the best interests of the social worker	Yes	☐
	No	☒

Accepted disposal

Case outcome

Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☒
	Conditions of practice order	☐
	Suspension order	☐
	Removal order	☐
Proposed duration	5 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 misconduct. The case examiners have also found a realistic prospect that adjudicators would find the social worker's fitness to practice 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 of the serious nature of the alleged breaches, and because they have found the social worker to be currently impaired.

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.

A warning order implies a clearer expression of disapproval of the social worker's conduct than an advice order. While the case examiners are aware from their guidance that a warning order is not likely to be appropriate where insight and remediation is not considered complete, and some risk of repetition remains, they were nonetheless minded to offer a warning order in the specific circumstances of this case. While the social worker has disputed some elements of the concerns, they have shown good insight and remediation into a number of the issues underlying this case, including the taking of cannabis, a controlled drug.

The case examiners are aware that every case must be considered on its own merits, and are of the view that in this case there are specific circumstances which led to the social worker themselves becoming vulnerable to drug misuse. While the case examiners consider the concerns to be serious, they are of the view that, in view of the insight and remediation demonstrated by the social worker, and the protective factors they have put in place to assist them from any future relapse, a warning order will be sufficient to protect the public and mark the seriousness of the concerns raised,

Having concluded that a warning order is the appropriate outcome in this case, the case examiners went on to consider the length of time for the order and consider five years to be proportionate in this case. The case examiners consider that anything less than five years would not adequately signal the strong disapproval of the regulator, uphold the professional standards expected, or public confidence in the social work profession. They have noted from their sanction guidance that 5 years may be appropriate for serious cases that have fallen only marginally short of requiring restriction to practise and consider, particularly in relation to concern 2, that this is a case that meets that criteria.

The case examiners went on to test the suitability of their proposed sanction by considering the next most severe sanction, a conditions of practice order. The case examiners gave serious consideration to this sanction due to the serious nature of the concerns raised. However, after taking into account that there is no previous adverse fitness to practise history, the insight and remediation demonstrated to date, and the positive testimony of their current employer, who confirm that the social worker has been practising effectively while unrestricted, they concluded that conditions of practice would be a disproportionate and punitive outcome in this case; and that a warning order was more appropriate.

The case examiners have therefore decided to propose to the social worker a warning order of 5 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 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:

The use of prohibited drugs, both when not at work and when conducting work, poses a risk of harm to service users and the wider public. It also has an adverse effect on the public's confidence in you as a social worker, and may damage the reputation of the social work profession. This conduct should not be repeated.

You are reminded of the need to comply with Social Work England's professional standards for social workers (2019), and in particular:

3.1: As a social worker, I will:

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

5.2: As a social worker, I will not;

Behave in a way that would bring into question my suitability to work as a social worker while at work, or outside of work.

Any further matters brought to the attention of the regulator are likely to result in a more serious outcome.

Response from the social worker

On 7 February 2024, in communications with Social Work England, the social worker confirmed that they had read all of the information sent to them (the case examiners' decision and the accepted disposal guide), and understood, agreed and accepted the proposed disposal of a warning order of five year's duration.

Case examiners' response and final decision

In light of the social worker's acceptance of the proposal, 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 order of five year's duration 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 of a warning order of five year's duration is a fair and proportionate disposal, and is the minimum necessary to protect the public and the wider public interest.