



Case Examiner Decision

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FTPS-20524

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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)
Final outcome	9 January 2024
	Accepted disposal proposed - warning order (5 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;

[REDACTED]

3. There is a realistic prospect of regulatory concern 1 being found to amount to the statutory grounds of conviction or caution in the United Kingdom for a criminal offence;

[REDACTED]

5. 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 requested that the social worker be notified of their intention to resolve the case with warning order of 5 years. This was accepted by the social worker on 20 December 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 ■■■ will be redacted from 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	7 April 2022
Complaint summary	The social worker notified the regulator by way of a self-referral form confirming they had received a conviction for the following offences; Assault of an emergency worker on 17 November 2021, Driving a motor vehicle with excess alcohol and Dangerous Driving. The social worker was also subject to investigation in a further two linked case [REDACTED]

Regulatory concerns and concerns recommended for closure

Whilst registered as a social worker-

- 1) On the 6 January 2022 at Bromley magistrates court you were convicted of-
 - a) Assaulting an emergency worker
 - b) Driving a motor vehicle whilst over the prescribed alcohol limit
 - c) Dangerous driving

[REDACTED]

Grounds of impairment

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

[REDACTED]

By reason of your [REDACTED] conviction or caution in the United Kingdom for a criminal offence, your fitness to practise as a social worker is impaired.

[REDACTED]

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 concerns [REDACTED] being found proven, that regulatory concern 1 could amount to the statutory ground 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.

Reasoning

Facts

Whilst registered as a social worker-

1. On the 6 January 2022 at [REDACTED] magistrates court you were convicted of-
 - a. Assaulting an emergency worker
 - b. Driving a motor vehicle whilst over the prescribed alcohol limit
 - c. Dangerous driving

The case examiners have had sight of a memorandum of an entry in the register of [REDACTED] agistrates' court dated 6 January 2022. They are satisfied that the social worker received a conviction for the three offences as detailed above, which are indicated to have taken place on 17 November 2021.

The case examiners will summarise and explore the context of the social worker's offending in the impairment section of their decision.

The social worker in their submissions admits this regulatory concern.

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

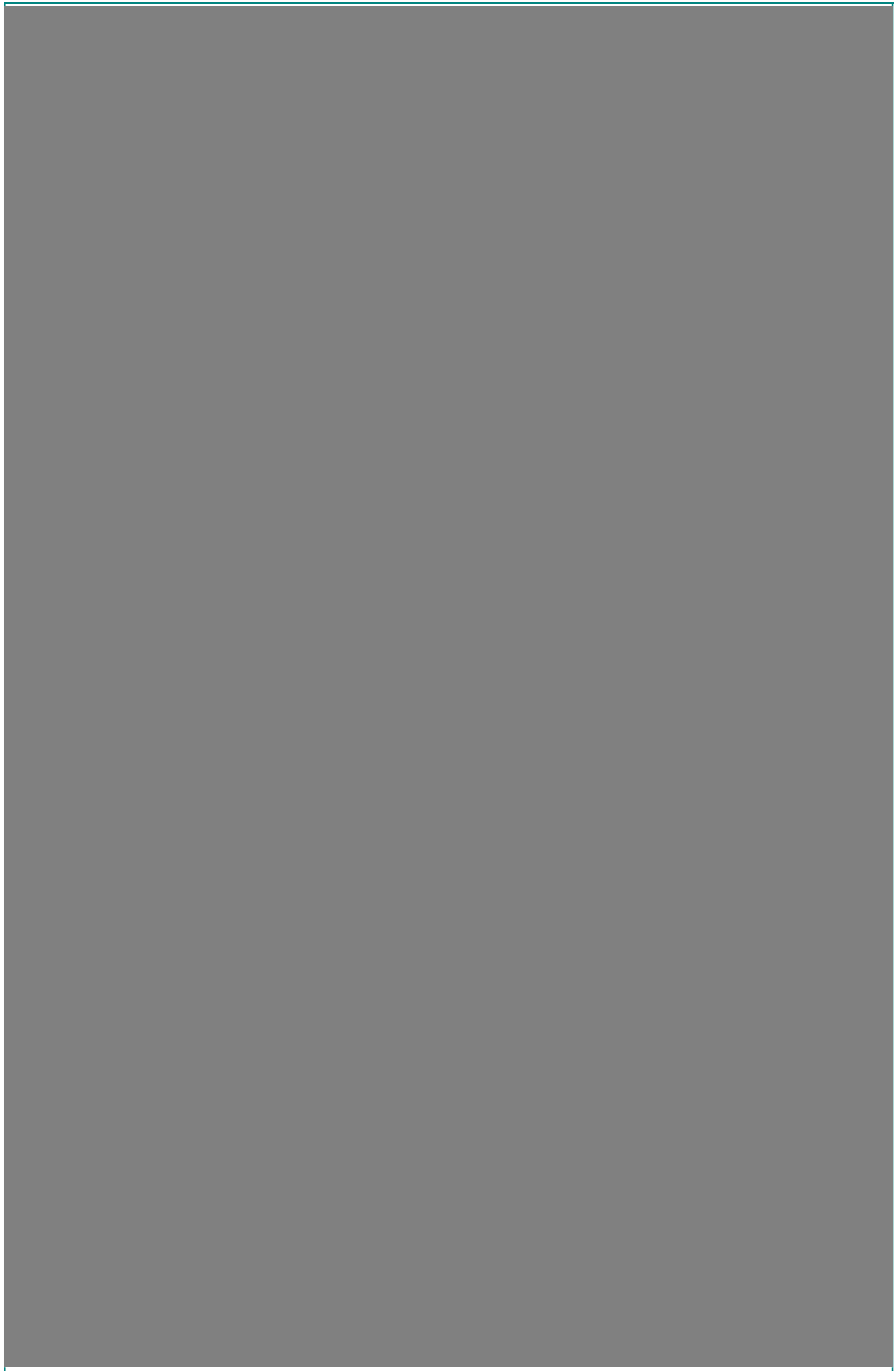


Grounds

As the case examiners consider regulatory concerns 1 [REDACTED] to have passed the realistic prospect test of being found proven by adjudicators on the basis of facts, they will now consider the relevant statutory grounds of impaired fitness to practise which are that of conviction or caution in the United Kingdom for a criminal offence (regulatory concern 1), [REDACTED]

Conviction

Having had sight of the memorandum of entry from the magistrates court in relation to the alleged offences, the case examiners are satisfied there is a realistic prospect of adjudicators establishing the statutory ground of a conviction or caution in the United Kingdom for a criminal offence, as provided by The Social Workers Regulations 2018 (as amended).



Impairment

Having concluded there is a realistic prospect of adjudicators establishing the statutory ground of conviction or caution in the United Kingdom for a criminal offence for regulatory concern 1, the case examiners must consider whether there is a realistic prospect of adjudicators finding current 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 do consider that the social worker's alleged conduct could be remediable, for example, in relation to the offence, by completion of a relevant training course and critical reflection.

The case examiners note that the social worker was subject to 120 hours community service. The social worker states; *"I attended weekly, was timely and completed online courses to complete this work sooner."* The case examiners have not been provided evidence to suggest otherwise.

The case examiners note that the evidence provided indicates the social worker was experiencing challenging personal circumstance [REDACTED]

[REDACTED] The social worker appears to have considered what steps they could take to avoid a repetition of the alleged behaviour. They provide details of the support services they have accessed and further advise; [REDACTED]

[REDACTED] *I am currently completing an online Diploma in CBT. I have worked in a support worker role to build my confidence as a professional again and ease myself back into work."*

Insight and remediation

The case examiners note that the evidence indicates the social worker pleaded guilty, and although not considered to be in a timely manner, self-referred to the regulator in recognition that their conduct was unacceptable. The case examiners note the evidence suggests the social worker demonstrated early insight and remorse for their actions. The following is documented in police interview with the social worker on 18 November 2021:

"I'm thankful no one was injured as a result of the crash, as I put my life and someone else's life at risk and I'm thankful I would like to add that I would like to apologise to the officer either in person or in writing as after seeing that footage because I think that behaviour is appalling."

Risk of repetition

Having taken the above into account, the case examiners consider the risk of repetition to be low.

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 have considered Social Work England's drink and drug driving policy (2022). Having applied it to this case, they consider there are the following aggravating factors in this case:

- whilst not over 12 months, the evidence indicates the social worker was disqualified from driving for 12 months from 22 December 2021;
- the evidence suggests the social worker crashed into another car which was being driven on the road. This car appears to have contained one person, the driver;
- the memorandum of entry indicates the social worker was at least one and a half times over the legal limit (58 microgrammes of alcohol in 100 millilitres of breath);
- while the social worker did not fail to report the criminal proceedings to the regulator, they were found to have failed to do so in a timely manner;
- the evidence suggests the social worker received a criminal conviction relating to more than one driving offence (dangerous driving and driving a motor vehicle whilst over the prescribed limit of alcohol);
- while the case examiners do not consider that the circumstances of the offence suggested the social worker was being uncooperative with police, there is evidence to suggest the social worker acted unreasonably (by way of assaulting a police officer). The case examiners will examine this in greater depth below.

Having considered the aggravating factors, the case examiners note that there are also the following mitigating factors:

- the offences in question are not repeat offences. The evidence suggests they all occurred at one time and are out of character for the social worker;
- the evidence demonstrates the social worker's remorse and insight in relation to the offending behaviour;
- the social worker appears otherwise of good character. The case examiners have been provided with testimony of this;
- the social worker appears to have undertaken voluntary relevant remediation including (but not limited to) completing relevant courses;

The case examiners are satisfied the social worker has learnt from the incident and is unlikely to repeat the alleged conduct, and they note that the period of disqualification has come to an end.

The case examiners note their guidance (2022) which states that potential risk of harm should be considered as serious as actual harm. In this instance, the case examiners note there is evidence to indicate the social worker crashed into a car being driven by a member of the public, and assaulted a police officer by spitting at them. The case examiners have not had sight of evidence to suggest the other driver experienced any injury. They note, however, the evidence suggests the social worker's spit hit the officer in the face and mouth which required preventative hospital treatment.

The case examiners are of the view it is important to give context to this offence. The police officer's witness statement indicates that the social worker was sitting in the back of an ambulance. After a verbal interaction, the police officer states that they noticed the social worker 'began to move their arms, I deemed this to be a potential threat due to the risks presented on the ambulance, the confined space and access to various items of medical equipment'. It appears the police officer determined to place the social worker in handcuffs, and instructed the social worker to stand up after placing one arm in handcuffs, to allow them to secure the other arm. It appears the social worker followed this instruction before other officers arrived and took hold of the social worker's head. The evidence suggests the social worker protested that they were not resisting. It is after a further verbal interaction between the police officer and the social worker that the social worker spat at, and thereby assaulted, the police officer. When questioned it is recorded the social worker did not remember doing this and was evidently disgusted by their own behaviour and remorseful, asking to apologise to the officer personally. The evidence indicates the social worker provided a letter of apology.

The case examiners are aware that, notwithstanding the insight and remorse shown by the social worker, there are matters where the public's confidence in the profession would be undermined if a finding of impairment was not made.

The case examiners are of the view that adjudicators may determine that a member of the public would be concerned to learn that a social worker had been allowed to practise without sanction from their regulator, given the aggravating factors associated with this case. Adjudicators may consider there is potential risk of harm to the wider public in terms of their ability to trust and have confidence in a social worker who is alleged to have acted in this manner. Furthermore, the social worker's actions may undermine

public confidence in the social work profession. The case examiners also consider that such conduct, if proven, is a significant departure from the professional standards.

As such, given the element of public interest, the case examiners are satisfied that there is a realistic prospect of the 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

With reference to their case examiner guidance (2022) the case examiners have given careful consideration to whether there is a public interest in these matters proceeding to a hearing.

Whilst the case examiners have determined there is a realistic prospect that adjudicators would find the public interest is engaged in this case, they are of the view that the public interest can be satisfied by their decision, and the reasons for that decision, being published on Social Work England's public register which can be found on its website. The publication of this decision will provide the social worker with an opportunity to reflect on and gain further insight into the circumstances of this case.

The case examiners note however, that the social worker does not accept their fitness to practise is impaired. Where a social worker does not accept impairment, case examiner guidance (2022) 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.

The case examiners note there is no conflict in the evidence in this case and the social worker does not dispute any of the key facts, appearing to accept the concerns in full. Further, 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 with 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.

Lastly, public interest also entails the need for proportionate decision-making. The case examiners consider it is in the public interest to bring this matter to a prompt conclusion, whilst also ensuring the public remains adequately protected.

For the reasons stated, the case examiners have decided it is not in the public interest to refer this matter to adjudicators; rather they will write to the social worker and ask them to agree to dispose of this case without the need for a hearing.

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 regulatory concern 1 being found proven by adjudicators. Furthermore, they have found a realistic prospect that the concern, if proven, would amount to the statutory ground of conviction or caution in the United Kingdom for a criminal offence. The case examiners have also found a realistic prospect that adjudicators would find the social worker's fitness to practise is currently impaired. The case examiners have decided however, that it is not in the public interest to refer this matter to a final hearing.

In considering the appropriate outcome in this case, the case examiners have 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. Furthermore, 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.

Firstly, the case examiners considered taking no further action but concluded this would not be appropriate in this instance as it would be insufficient to address the seriousness of the concern given the aggravating factors in this case.

Next, the case examiners considered whether offering advice 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 are of the view that

issuing advice is not sufficient to mark the seriousness with which they view the social worker's alleged conduct.

The case examiners then considered a warning order. A warning order implies a clearer expression of disapproval of the social worker's conduct than an advice order. The case examiners are of the view a warning order to be appropriate in that they consider the fitness to practise issue to be an isolated matter, have determined there is a low risk of repetition and consider the social worker has demonstrated insight and remediation.

As a further consideration, the case examiners turned their minds to the next two sanctions, conditions of practice and suspension. They note that conditions of practice orders are commonly applied in cases of lack of competence or ill health and therefore, the case examiners have concluded conditions were not suitable for this case. The nature of the alleged concerns are specific to matters in the social worker's personal life and there is positive testimony regarding the social worker's current employment.

Finally, the case examiners considered suspension. While they are of the view the concern represents a serious breach of the professional standards, they are of the view the social worker has demonstrated sufficient insight and remediation and therefore, suspension from the register would be a disproportionate and punitive outcome in this case. In reaching this conclusion the case examiners were mindful that although a conviction which includes assault is inherently serious, it is acknowledged that in this case there significant mitigating circumstances and the social worker has demonstrated considerable insight and remorse.

The case examiners have considered the length of time for the published warning and consider 5 years to be proportionate in this case. In coming to this determination, they have taken into account the 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. While an isolated incident, in that the three offences occurred at one time, the case examiners do not consider them to be of relatively low seriousness.
- 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. While the case examiners have

determined there to be a low risk of repletion, they consider this case to have fallen only marginally short of requiring restriction of practice as addressed below.

- 5 years may be appropriate for serious cases that have fallen only marginally short of requiring restriction of practice. This helps to maintain public confidence and highlight the professional standards. In this case, the case examiners have outlined that they gave consideration to a suspension order, in light of the serious nature of the concern, but determined it would be disproportionate. The case examiners are mindful of the circumstances that precipitated the offending behaviour, of the social worker's steps in remediating, and of their insight and remorse. The case examiners were therefore of the view that the matter only marginally fell short of requiring a restrictive sanction. The social worker should ensure there is no risk of repetition throughout this extended period. If successful, there will be no further fitness to practise findings (in relation to similar concerns).

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 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.

Content of the warning

The case examiners are aware that regarding the matters in this case the social worker has already been dealt with by the criminal justice system, and that it is not the purpose of the fitness to practise process to punish them for a second time. To close this matter without action would, however, fail to take into account the public interest requirements of the fitness to practise process, which include the need to declare and uphold proper standards of conduct, and the need to maintain public confidence in the social work profession.

The case examiners therefore formally warn the social worker:

Professional integrity in social work means upholding the values and reputation of the profession at all times. Conduct outside of work, including but not limited to criminal behaviour as indicated in this case, can damage confidence in the profession and the ability of social workers to support people. Acting in accordance with the values and principles of the profession at all times is also outlined in the social work code of ethics.

The social worker must ensure they comply with the following Social Work England Professional Standard:

As a social worker, I will not:

Standard 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 case examiners warn the social worker that the conduct alleged in this case should not be repeated. Any further matters of similar conduct brought to the attention of the case examiners will be viewed dimly and will likely result in a more serious outcome.

Response from the social worker

The case was returned to the case examiners on 5 January 2024.

The case examiners have had sight of the social worker's email dated 20 December 2023, which includes a completed a response form to confirm they have read the case examiners' decision and the accepted disposal guide, and that they understand the terms of the proposed disposal and accept them in full.

Case examiners' response and final decision

The case examiners note that the social worker has accepted the proposed disposal as outlined by them. The case examiners then proceeded to further consider whether accepted disposal (a five year warning order) remains the most appropriate means of disposal for these matters.

The case examiners 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. The case examiners are of the view they have not been presented with

any new evidence that might change their previous assessment. The case examiners remain satisfied that an accepted disposal by way of a warning order, is a fair and proportionate disposal and is the minimum necessary to protect the public and the wider public interest.