



Case Examiner Decision

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FTPS-21186

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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

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	Accepted disposal – warning order (3 years, published)
Final outcome	Accepted disposal – warning order (3 years, published)
Date of the preliminary decision	29 August 2023
Date of final decision	19 September 2023

Executive summary

The case examiners are satisfied that there is a realistic prospect that:

1. The factual concern could be found proven by the adjudicators;
2. This concern could amount to the statutory ground of a conviction or caution in the United Kingdom for a criminal offence.
3. The adjudicators could conclude that the social worker's fitness to practise is currently impaired.

The case examiners do not consider it to be in the public interest for the matter to be referred to a final hearing and that the case can be concluded by way of accepted disposal.

As such, the case examiners notified the social worker of their intention to resolve the case with a warning order of 3 years duration and sought their agreement to conclude the case by way of accepted disposal. The social worker responded and confirmed their acceptance of this disposal.

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 way of a self-referral by the social worker.
Date the complaint was received	30 September 2022
Complaint summary	The social worker was arrested by the police after they had been the driver of a car involved in a road traffic collision and were found to have been under the influence of alcohol. The social worker was later convicted for drink driving.

Regulatory concerns

While registered as a social worker:

RC1. On 25 October 2022, at Bradford Magistrates Court, you were convicted of driving a motor vehicle with alcohol level above the legal limit.

The matter set out at RC1 above amounts to the statutory ground of a conviction or caution in the United Kingdom for a criminal offence.

By reason of your conviction or caution in the United Kingdom for a criminal offence your fitness to practise is impaired.

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 clerical change to the wording of the statutory grounds. The investigator cited a '*conviction or caution for a criminal offence in the UK*', whereas the correct wording as per the Social Workers Regulations 2018 is '*a conviction or caution in the United Kingdom for a criminal offence.*'

The amendment is reflected in the regulatory concerns section. The case examiners are satisfied this change is not material in nature and the social worker does not need to be made aware of the change prior to the consideration of this case.

The realistic prospect test

Fitness to practise history

The case examiners have been informed of the following fitness to practise history:



Whilst noting this would be considered an adverse decision, the case examiners are not satisfied that it is fair or relevant to take this history into account in their consideration of this current case. The most recent concern relates solely to a matter in the social worker's private life, and the conduct alleged is a very specific type of criminal offence. The allegation in light of the previous adverse decision does not create a pattern of behaviour and the case examiners do not consider the matters to be similar in nature.

Accordingly, the case examiners will disregard the adverse history from their decision making in this case.

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 the regulatory concerns being found proven, that this concern could amount to the statutory ground of a 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

RC1. On 25 October 2022, at Bradford Magistrates Court, you were convicted of driving a motor vehicle with alcohol level above the legal limit.

The case examiners have had sight of the social worker's memorandum of conviction from Bradford Magistrate's Court detailing the offence, as captured by the regulatory concern.

The social worker accepts they were convicted as cited by the regulatory concern.

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

Grounds

The statutory ground being considered by the case examiners is that of a conviction or caution in the United Kingdom for a criminal offence.

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

The case examiners are satisfied there is a realistic prospect of adjudicators establishing the statutory ground.

Impairment

Having concluded there is a realistic prospect of adjudicators establishing the statutory ground of a conviction or caution in the United Kingdom for a criminal offence, the case examiners must consider whether there is a realistic prospect of adjudicators finding current impairment. The case examiners are aware they must assess both the personal and public elements of current impairment. They will consider each in turn.

Personal element

The case examiner guidance states that there are multiple factors that case examiners should look for when considering the personal element of impairment, in order to assess the risk of repetition. These include, whether the social worker has admitted the allegations, if they have demonstrated insight, if they have evidenced remediation, any relevant previous history, and any testimonials that have been provided.

The social worker admits the allegations. In their submissions the social worker accepts their role and responsibilities in relation to the events that gave rise to the concerns.

In respect of insight, the case examiners are aware that they must take care to assess the quality of any insight. A social worker may accept they have acted wrongly. However, simply asserting this is unlikely to be enough to demonstrate genuine insight.

In their submissions the social worker appears to demonstrate an understanding of what led to the events which are the subject of the concern. Whilst the social worker explains the personal circumstances that led to them driving, they appear to accept that these do not excuse the social worker's decision to drive, and the social worker seems to recognise what went wrong.

The social worker has also addressed how they might act differently to avoid reoccurrence of similar concerns. For example, they state (contains grammatical or typographical errors):

- *'I have also reduced drinking in my personal life to further reduce that concern because I will always learn from my mistakes.'*
- *'When I allowed to drive again I will look to purchase an Alcohol Breathalyzers to further insure things are always safe, as I do not want to have any issues like this again.'*

When assessing insight, it is also important to establish if the social worker demonstrates a genuine understanding of the impact of their actions on others, and the profession. The case examiners highlight the following parts of the social worker's submissions that indicate the social worker does have understanding (contains grammatical or typographical errors):

- *'Also my actions could have gotten themselves, my partner or even a member of public so I understand the weight and that is why this will be the never happen again.'*
- *'I understand the concern and will never again act in a way that would bring into question my suitability to work as a social worker while at work, or outside of work, because I value the rules, life, my job, and being a good example.'*
- *'I value the work I do as a Social Worker and the people I serve in my community and my actions I placed that at risk.'*
- *'..... I understand the weight and importance of my role, and the privilege of driving a car, and I will reflect on this not only due to this investigation but for a lifetime because each time I drive a vehicle I will have some remembrance of what*

happened that day and the “could have happened”; leading me to make better choices.’

Case examiners must carefully look for and assess any objective evidence that might confirm the social worker’s insight. For example, reports from employment. The case examiners have been provided with limited information from the social worker’s employer, though there is confirmation that there have never been any concerns regarding the social worker’s use of alcohol.

At this point, the case examiners highlight there is no evidence before them to suggest the social worker has any health issues in respect of alcohol that may have been a contributing factor to their conviction, or that may impact the risk of repetition.

Turning their minds to remediation, the case examiners are aware that this is best shown by objective evidence. For example, by the successful completion of training courses. The case examiners have had sight of the social worker’s certificate of completion for a drink driving course which, in company with the insight highlighted above, suggested the social worker has taken steps towards remediation.

Other than limited information provided by the social worker’s employer, the case examiners have not been provided with any testimonial information.

As detailed earlier in this determination, the case examiners have noted that there is adverse history in this case, but do not consider that it is fair or relevant to take this history into account in their consideration of this current case.

Lastly, the case examiners are mindful that, despite there being evidence of some insight and remediation, the social worker is still disqualified from driving. Accordingly, it has not yet been possible for the social worker to demonstrate a period of time without repetition and on that basis the case examiners will proceed with caution and on the basis that the risk of repetition may still exist.

Public interest

The case examiners must now consider the public interest in this matter.

In doing so, the case examiners have taken into account Social Work England’s drink and drug driving policy. This steers case examiners to consider aggravating and mitigating factors when assessing the seriousness of the case. The case examiners have considered the circumstances of the case and highlighted matters that would be considered aggravating or mitigating, below:

Aggravating factors:

- the sentence imposed includes a period of disqualification from driving of over 12 months.
- the offence including involvement in a road traffic collision.
- the social worker was carrying passengers in their vehicle at the time of the offence.

The case examiners note from the court documentation that the social worker was banned from driving for a period of 16 months. The case examiners note from the police report that, when driving over the prescribed limit of alcohol, the social worker had a passenger in the car and the social worker collided into the central reservation of the motorway causing damage to the street furniture.

Mitigating factors:

- the offence in question not being a repeat offence.
- the social worker demonstrating remorse and insight in relation to the offending behaviour.
- the social worker undertaking voluntary relevant remediation including (but not limited to) completing relevant driving courses (for example a drink-drive rehabilitation course).

The case examiners have addressed each of the above points earlier in this determination under the 'personal element' of impairment.

When assessing the public element, the case examiners have also taken into account Social Work England's case examiner guidance which states:

- *'123. Case examiners should be careful when assessing actual harm caused by a social worker's actions and its impact on the seriousness of the case. An action that (by luck) has not caused harm may still represent an unacceptable risk of serious harm if repeated. If this is the case, case examiners should not regard it as any less serious because actual harm did not occur.'*
- *'124. Case examiners should assess the extent to which the social worker could (and should) have foreseen the risk of harm (or actual harm caused). The case examiners may conclude that the social worker should have anticipated the risk of harm and managed it in advance.'*

The police report details that the social worker was driving on a motorway at the time of the offence, that there was a vehicle immediately behind the social worker, and that the social worker fell asleep and lost control of the car before colliding with the central

reservation. From this description, the case examiners consider it reasonable to conclude that it is only by luck that more serious harm was not caused to others, and that the social worker should have anticipated the risk and managed it by not driving having consumed alcohol to the degree that they were over the legal limit. The social worker in their submissions appears to acknowledge this and is remorseful, as was also detailed in the police report.

Though the case examiners note there are some mitigating factors as per the case examiner guidance, there are also aggravating factors, the presence of which, in company with the risk that the social worker's actions caused, leads the case examiners to conclude the risk to public confidence is serious.

As such, it is likely the public would expect that a finding of current impairment is 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	☒
Could a removal order be required?	Yes	☐
	No	☒
Would not holding a public hearing carry a real risk of damaging public confidence in Social Work England's regulation of the profession?	Yes	☐
	No	☒
Is a hearing necessary to maintain public confidence in the profession, and to uphold the professional standards of social workers?	Yes	☐
	No	☒

Additional reasoning

The case examiners have noted that the social worker has indicated to the regulator that they do not consider their fitness to practise to be currently impaired. Where a social worker does not accept impairment, case examiner guidance suggests that a referral to hearing may be necessary in the public interest. The case examiners consider it is appropriate to depart from that guidance in this instance. In reaching this conclusion, they noted the following:

- There is no conflict in evidence in this case and the social worker accepts the facts.
- The social worker is clear that they accept that their conduct fell short of the standards expected of them.

- The case examiners are of the view that the risk of repetition can be managed, and they have a number of sanctions available to them in order to satisfy the public that this risk is being managed without the need for this to be examined within a public hearing.
- 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 examiners reasoning on impairment and reflect on whether they are able to accept a finding of impairment. It is open to the social worker to reject any accepted disposal proposal and request a hearing if they wish to explore the question of impairment in more detail.
- The case examiners are also of the view that the public would be satisfied to see the regulator take prompt, firm action in this case, with the publication of an accepted disposal decision providing a steer to the public and the profession on the importance of adhering to the professional standards expected of social workers in England.

Accepted disposal

Case outcome		
Proposed outcome	No further action	☐
	Advice	☐
	Warning order	☒
	Conditions of practice order	☐
	Suspension order	☐
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 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.

The case examiners considered taking no further action. Paragraph 95 of the sanctions guidance states that, when decision makers find impairment, an outcome of 'no further action' is rare. However, this could be possible in cases where the finding of impairment itself is enough to protect the public or address the public interest. The guidance goes on to provide the example of when a social worker has accepted a caution.

Paragraph 103 of Social Work England's case examiner guidance states that *'the issuing of a caution acknowledges the admission of guilt and suggests the offence is of a lower severity.'* In conjunction with the sanctions guidance, this suggests that criminal matters of lower severity may fall into the 'rare' category where a finding of impairment alone would be sufficient to protect the public or address the public interest. As drink driving offences are dealt with by way of conviction, it appears reasonable to conclude that, in line with the case examiner and sanctions guidance documents, this is not likely to indicate the offence is of a 'lower severity' and therefore not a 'rare' instance where taking no further action would be appropriate.

In addition, paragraph 96 of the sanctions guidance states that, if case examiners do decide to take no further action when they have found a realistic prospect of impairment, there must be factors that are 'exceptional in nature'. Whilst the case examiners note there are some mitigating factors present in this case, they also highlight that paragraph 108 of the sanctions guidance sets out three indications that a warning order is likely to be appropriate, these are:

- *'the fitness to practise issue is isolated or limited'*
- *'there is a low risk of repetition'*
- *'the social worker has demonstrated insight'*

Two of the three mitigating factors present in this case were that the fitness to practise issue is isolated, and the social worker had demonstrated insight (the third being that the social worker has completed a drink driving course which would go some way towards reducing the risk of repetition). As such factors are listed as those that may make a warning order 'likely', it follows that they therefore are not likely to be considered 'exceptional in nature' as to justify taking no further action. The case examiners conclude that 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 of the social worker's conviction.

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. The case examiners have decided that such protection can be met with a warning order.

The case examiners have considered the length of time for the published warning and consider three years to be proportionate in this case. The case examiners consider that a period of three years is appropriate in the circumstances 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. This period will also provide the social worker with an opportunity to fully address the risk of repetition. The case examiners did not feel that the matter was of low seriousness, so one year was not appropriate. The case examiners do not consider that the matter fell marginally short of the need to restrict practice, and therefore five years would be disproportionate.

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

The case examiners will notify the social worker of their proposal to issue a published warning, and will seek the social worker's agreement to dispose of the matter accordingly. The social worker will be offered 21 days to respond.

If the social worker does not agree, or if the case examiners revise their decision regarding the public interest in this case, the matter will proceed to a final hearing.

Content of the warning

The case examiners formally warn the social worker as follows:

Driving whilst under the influence of alcohol is a serious criminal offence. Your decision to drive on the occasion that led to your conviction, demonstrated a serious lack of judgement. You put yourself and members of the public at risk of harm.

Your conviction 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 provided a response on 18 September 2023 and confirmed *'I have read the case examiners' decision and the accepted disposal guide. I understand the terms of the proposed disposal of my fitness to practise case and **accept** them in full'*

Case examiners' response and final decision

The case examiners concluded that the social worker's fitness to practise was likely to be found impaired but that the public interest could be met through a prompt conclusion, published decision and warning, rather than through a public hearing. They proposed a warning with a duration of 3 years and the social worker accepted this proposal.

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

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