

Case Examiner Decision
Kate Rothwell – SW121567
FTPS-19471

Contents

The role of the case examiners.....	3
Decision summary.....	4
The complaint and our regulatory concerns	5
Preliminary issues	7
The realistic prospect test.....	11
Accepted disposal	20

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(s)	Information requested Submissions requested
Final outcome	Accepted disposal – 5 year warning order
Date of final decision	05 July 2023

Executive summary

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

1. Factual concern 1 could be found proven by the adjudicators;
2. That concern could amount to the statutory ground of misconduct;
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 consider that the case can be concluded by way of accepted disposal. As such, the case examiners have notified the social worker of their intention to resolve the case with a warning order of five-years duration; the social worker has now accepted the proposed disposal in full.

The case examiners have considered all the documents made available within the evidence bundle. Key evidence is referred to throughout their decision and the case examiners' full reasoning is set out below.

The complaint and our regulatory concerns

The initial complaint

The complainant	The complaint was raised by the social worker's former employer, with a self-referral by the social worker.
Date the complaint was received	21 May 2021: Self-referral. 26 June 2021: Former employer.
Complaint summary	Shortly after the social worker submitted a self-referral to Social Work England, their employer, Wiltshire County Council, raised similar concerns following an internal investigation. The social worker had been arrested for actual bodily harm following a dispute [REDACTED] (Person A). The police reported that the social worker, while intoxicated, kicked, and punched Person A repeatedly, during a verbal argument. Person A was found to have swelling to the back of the head and a black eye, which required further medical treatment.

Regulatory concerns

Whilst registered as a social worker, you;

1) On 6 March 2021, you caused physical harm to Person A;

The matter outlined in regulatory concern 1 amounts to the statutory ground of misconduct.

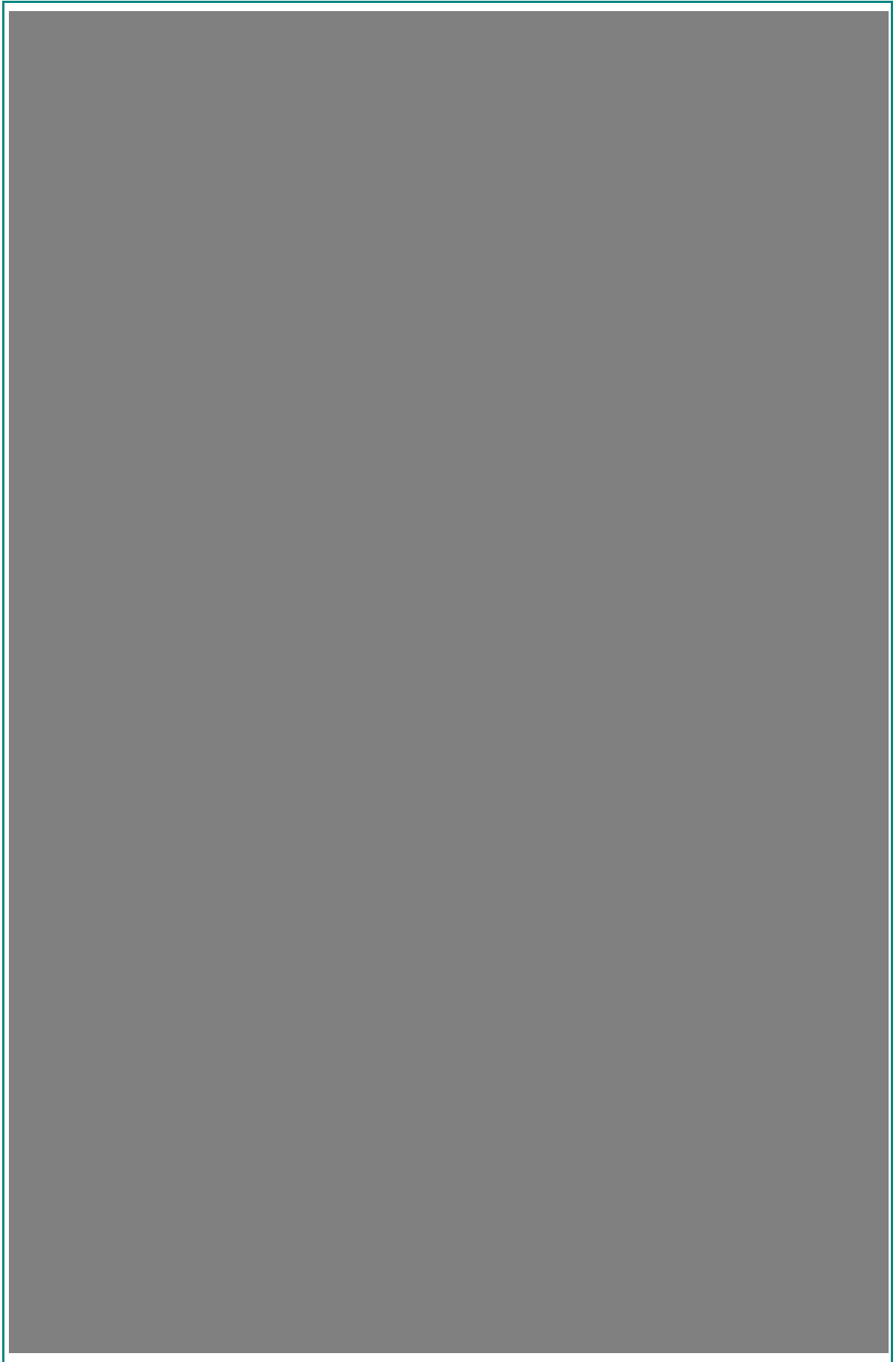
Your fitness to practise is impaired by reason of your misconduct.

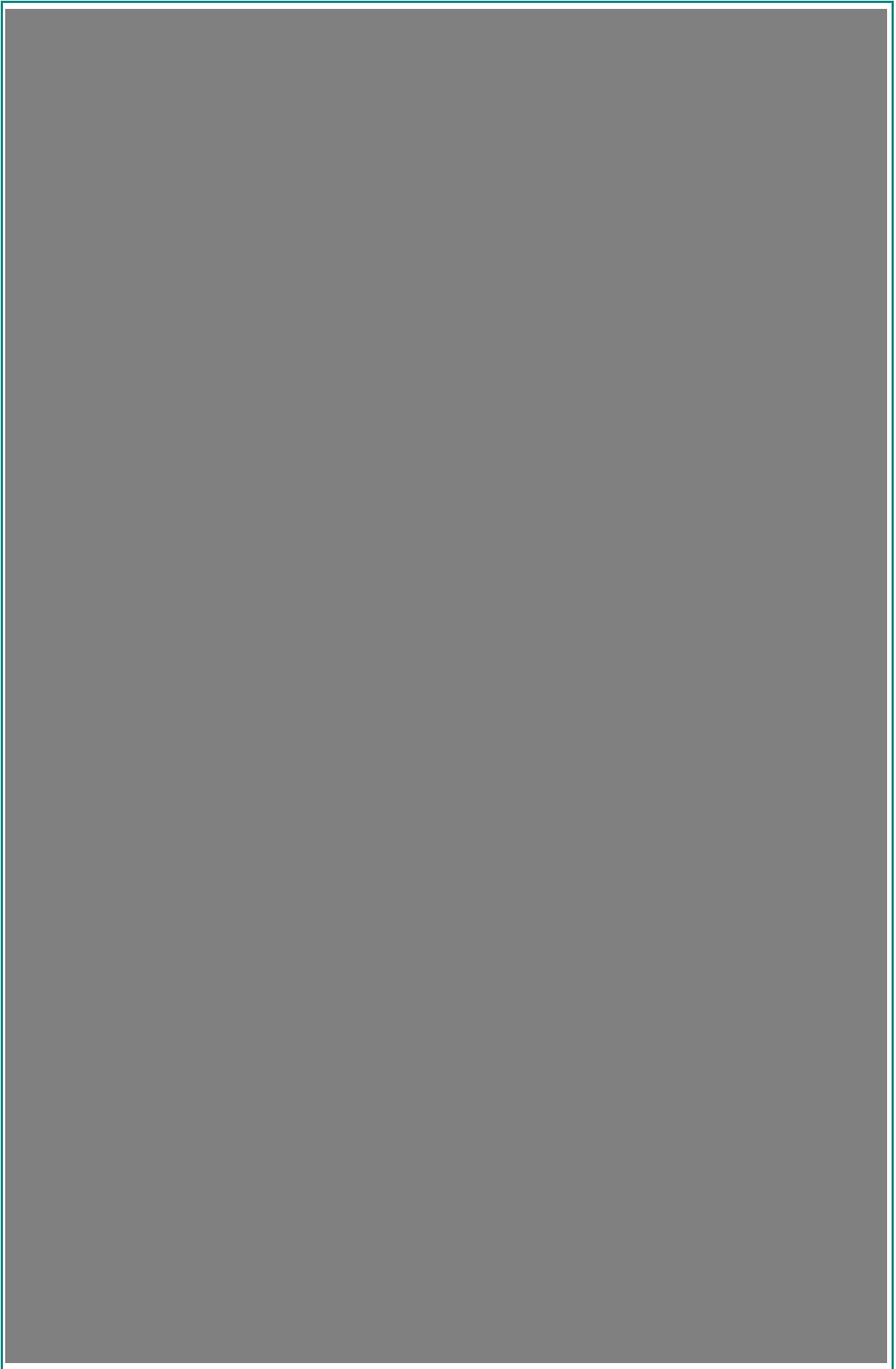


Preliminary issues

Investigation		
Are the case examiners satisfied that the social worker has been notified of the full 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 realistic prospect test

Fitness to practise history

The case examiners have been informed that there are no previous adverse findings in relation to the social worker.

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

Reasoning

Facts

1) On 6 March 2021, you caused physical harm to Person A;

Following a self-referral by the social worker, followed by one from their former employer, the case examiners have reviewed the police reports and 'storm log details dated 06 March 2021 onwards. On the date in question, the police received a call from the social worker who was clearly distressed and intoxicated. On arrival at the specified address, police reported that [REDACTED] (Person A) had clear injuries consistent with being assaulted, including a black eye, scratches and swelling to the back of their head. Person A also had concussion which required further medical attention. Person A stated to police that, during an argument, the social worker had kicked and punched them repeatedly.

The police reported discovering the social worker in their bed 'feigning sleep' and considered both parties to be alcohol intoxicated. [REDACTED]
[REDACTED] The social worker was

arrested for actual bodily harm. The log states that Person A had to be taken to another house to be safeguarded. [REDACTED]
[REDACTED]

The police log states that two days after the incident, the social worker advised the police that they wished to make a 'counter-allegation' [REDACTED] and subsequently reported having acted in self-defence, [REDACTED]
[REDACTED]

[REDACTED] However, the social worker made no allegations of Person A assaulting, injuring, or threatening them on the night that Person A received the alleged injuries by them; nonetheless, the social worker believed their actions were proportionate at the time. Upon further police interview, the social worker admitted to scratching Person A.

The case examiners note the police interview on 08 March 2023 resulted in the social worker making a counter-allegation against Person A, [REDACTED]
[REDACTED]

Police log outcomes dated 15 March 2021 resulted in no further action or charge due to lack of evidence through intoxication of both parties. One of the reasons for the basis of this decision was that *"the female is a social worker and provides a much-needed service during troubled times, and I am not convinced that causing her further issues moving forward will be of benefit to either party"*.

The subsequent local authority investigation into the social worker largely aligns with the broad content of the police logs. At the investigation, the social worker states that on the night in question, after an evening playing games, the social worker and Person A got into an argument which escalated. This was triggered by Person A getting a text message from an ex-girlfriend. The social worker alleged that they attempted to retrieve the phone from Person A, after believing they were being recorded Person A, and that this resulted in the Person A pushing the social worker off the bed and throwing them around; Person A then went downstairs and the social worker followed them. The social worker then continued their attempts to get Person A's phone off them and described their assault on Person A as 'going for him'.

Final submissions from the social worker to Social Work England state that they accept this regulatory concern. The social worker accepts that this was a 'drunken altercation' involving alcohol [REDACTED]

In review of the evidence, the case examiners are of the opinion that there is sufficient information to show significant physical harm was caused to Person A. **They therefore conclude a realistic prospect of finding the facts found proven for regulatory concern 1.**





Grounds

Summary of facts found as proven: [1](#)

The matter at regulatory concern 1 above amounts to the statutory ground of misconduct.

The case examiners are aware that 'misconduct' denotes serious acts or omissions, suggesting a significant departure from what would be proper in the circumstances.

Misconduct is of two grounds:

- 1) Serious misconduct in the exercise of professional practice.
- 2) Conduct of a morally culpable or otherwise disgraceful kind which may occur outside the course of professional practice but could bring disgrace on the profession and the reputation of the profession.

The case examiners consider that the alleged conduct occurred outside the course of professional practice, in relation to the social worker's private life. In review of the statutory ground of misconduct, the case examiners will review aggravating and mitigating factors:

Aggravating factors:

- While the social worker made a self-referral to Social Work England, it is noted that there was a significant delay (over three months) between the time of their arrest and their declaration to the regulator. The self-referral was finally made only after

the social worker was directed to do so by their Human Resources Department. The social worker maintains that this was because of incorrect advice given from their union, who said that they did not need to disclose. The regulator, like the employer, is concerned that the social worker chose to prioritise union advice, over their statutory obligation to disclose significant and serious issues, in a timely manner.

- Being charged with actual bodily harm is a very significant and serious matter; there is evidence of actual bodily harm being caused to a member of the public which required further medical intervention. The nature of the physical injuries caused were serious involving sustained aggression, resulting in a head injury. The circumstances of their arrest suggest that the social worker actively chose to pursue Person A in an aggressive and confrontational manner, while having the full opportunity to disengage themselves from the situation. They actively chose not to disengage. There was also no evidence of any injury caused to the social worker.
- While the social worker was not charged with actual bodily harm, fitness to practise proceedings differ from criminal proceedings, and are for a different purpose and to a different evidential standard. The case examiners consider there to be clear evidence that a serious assault by the social worker on Person A occurred, exacerbated by alcohol intoxication.

Mitigating factors:

- There is evidence that this was an isolated incident that may have been out of character for the social worker.



- The social worker states that they acted in self-defence and felt threatened; however, there is no clear evidence (other than self-reported) to suggest that Person A engaged in threatening behaviour on the night in question. The social worker appears to have been pursuing Person A immediately prior to the assault.

While the case examiners accept that this may have been an isolated incident, they are of the opinion that an assault such as this is sufficiently serious to meet the threshold for misconduct. Considering Social Work England's professional standards (2019), the case

examiners consider that the seriousness of these matters would represent a significant departure from the following standards:

I will not:

5.1 Abuse, neglect, discriminate, exploit or harm anyone, or condone this by others.

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.

I will:

6.1 Report allegations of harm and challenge and report exploitation and any dangerous, abusive, or discriminatory behaviour or practice.

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

The case examiners are of the view **that there would be a realistic prospect of a finding of misconduct in this case.**

Impairment

The current impairment test has two limbs: the personal element and the public interest element. The case examiners will assess each in turn.

1) Personal Impairment

Is the conduct remediable? It is difficult for the case examiners to form a view on how this type of alleged conduct could be remediated. While the social worker might choose to engage [REDACTED] and reflection, this should be reviewed in the context of the need to reduce their excessive alcohol consumption, reduce their impulsivity, and improve their anger management strategies.

Remorse and insight: While the social worker offers some remorse in relation to the incident, [REDACTED]

[REDACTED] They dispute that their fitness to practise is currently impaired. The social worker also frames their arguments in relation to the need to be safe, so acting in a way that justifies an element of self-defence. [REDACTED]

[REDACTED] there is no clear supporting evidence to indicate that this was the case. What is clear throughout their narrative is that they offer no insight or remorse into the effects that their violent behaviour had on Person A.

In their submissions to their employer investigation, they continue to state that they remain angry with Person A. This could suggest that their insight remains relatively limited, given that it was the social worker who was the alleged perpetrator of actual bodily harm, not Person A.

Remediation: The social worker recognises that interpersonal relationships are an issue and has taken steps to cease contact with Person A. [REDACTED]

[REDACTED] They also state that they have reflected and taken steps to review their relationship choices. However, they have offered limited information with regards to any steps they have taken to remediate their social work practice, which could prove problematic given that they are not currently engaged in social work practice.

Risk of repetition: The social worker has offered some generalised remorse for their actions. However, this is very limited in terms of any insight and remorse into the effects their alleged behaviour had on Person A. Any risk of repetition of such behaviour remains limited to actions taken with respect to their own lifestyle choices. Given that the social worker is not currently employed in social work practice, and is not currently in a relationship, it is difficult to predict how they would react should they ever find themselves in a similar situation to that which occurred in March 2021. For this reason, the case examiners cannot be confident that the future risk of repetition would be low.

2) Public interest

In consideration of any finding of impairment in the public interest, the case examiners have considered whether the alleged conduct puts the public at risk. The actions of the social worker do appear to have caused serious physical harm to a member of the public. There is also the potential for Person A to have suffered emotional harm, although this has not been captured in the evidence bundle provided in this case.

The regulatory concern regarding misconduct is serious and has the potential to damage public confidence in the social work profession. Despite the social worker's mitigation, the case examiners are of the view that the public would be extremely concerned to learn that a social worker would have engaged in such behaviour, thus undermining trust, and public confidence both in the profession and in their former employer. As such, it is likely the public would expect that a finding of current impairment is made by the adjudicators. With regards the public interest, if a finding of impairment were not made, this could also have the potential to undermine trust and confidence in the profession.

The case examiners have concluded **that there is a realistic prospect of a finding of impairment in this case.**

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 must now turn their minds to whether it is in the public interest for this matter to be referred to a final hearing to be considered by adjudicators. 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 publication of this matter will also highlight behaviour that falls short of acceptable standards in social work and will act as an example to other members of the profession. Publication also demonstrates that swift and appropriate action is taken in cases of alleged wrongdoing, enhancing the public's confidence in the social work profession. Further, the case

examiners do not consider this to be the type of case where public confidence in the profession will be damaged by not holding a public hearing.

The 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.

Further, the case examiners consider there to be no conflict in the evidence in this case with the social worker accepting the key facts. While the social worker has not accepted that their conduct is impaired, the accepted disposal process will provide the social worker an opportunity to review the case examiners reasoning on impairment and reflect on whether they do accept a finding of impairment. For these reasons, 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	☐
Proposed duration	Five years	

Reasoning

The case examiners are satisfied there is a realistic prospect of the concern being found proven by adjudicators. Furthermore, they have found a realistic prospect that the complaint, if proven, would amount to misconduct. 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 that it is not in the public interest to refer this matter to a final hearing. They must choose the most appropriate sanction necessary to protect the public. They have started at the lowest possible sanction and worked up, testing the appropriateness of each sanction and the next sanction above it to confirm their decision is proportionate.

They have considered taking no further action. The impairment and sanctions guidance (2022) paragraph 97, states that this outcome will not be appropriate where there is any continuing risk to the public of the social worker behaving in the same way again. The case examiners consider that the social worker's insight is incomplete, and that there is a potential risk of the social worker repeating the conduct. 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. Advice 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 viewed this matter.

The case examiners then considered whether a warning order would be appropriate in this case. 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. They have decided to suggest that a published warning be added to the social worker's entry on the register, for a set period. This would serve as a suitable 'deterrent effect' to the social worker, to maintain the confidence of the public and ensure that the social worker does not repeat the alleged conduct.

The case examiners went on to test the suitability of this sanction by considering the final two sanctions, conditions of practice and suspension. Due to the nature of the conduct, it would be difficult to envisage any specified conditions that would be proportionate and workable. The social worker is not currently in practice, so any conditions could not be effectively formulated as there would be no process of monitoring them.

The case examiners have seriously considered a suspension order given the nature and seriousness of the alleged assault. Suspension is appropriate where no workable conditions can be formulated and where the case falls short of requiring a removal order. They have concluded that while there might be a public appetite for a suspension order in this case; the protection of the public can be achieved by a more proportionate sanction. The social worker has already shown some attempts at personal remediation and has chosen to engage in changes in their personal life to avoid any future risk of repetition. It is not the regulator's role to punish the social worker. The use of suspension as a sanction is considered by the case examiners, in all the circumstances and given the isolated nature of this case, to be unnecessarily punitive.

The case examiners are of the view that a warning order would offer a safe deterrent effect to the social worker, which would ensure that they are mindful that such conduct should not be repeated. It would also allow the social worker to develop full insight over a longer period, while satisfying the public interest outcome in this case.

In deciding the sanction of a warning order, an appropriate duration must be considered. One year may be appropriate for an isolated incident of relatively low seriousness where the primary objective is to send a message about the professional standards expected of social workers. The nature of the alleged misconduct was not at the lower end of the continuum, having caused actual physical harm to the complainant, which has in turn caused damage to the reputation of the social work profession; the duration of one year is unlikely to reduce any risk of repetition, allow the development of further insight, or satisfy the public interest in this case.

Three years may be appropriate for more serious concerns to maintain public confidence and to send a message about the professional standards expected of social workers. The

period also allows more time for the social worker to demonstrate that they have successfully addressed any risk of repetition should they choose to return to practice. However, the case examiners are of the opinion that an actual and sustained assault is a very serious matter and that a three-year period would not mark a sufficient period to ensure public confidence is fully met. It would also not allow time for the social worker to show that they have fully addressed any risk of repetition.

A five-year sanction may be appropriate for serious cases that have fallen only marginally short of requiring restriction of practice. This is applicable in this case as there was serious consideration of a suspension order, and the case examiners considered that there was a risk of repetition. A warning of five years would help to maintain public confidence and highlight the required professional standards, and that domestic violence by a social worker is completely unacceptable, even by way of an isolated incident. The social worker should use this extended period to ensure there is no risk of future repetition. The case examiners have decided to propose to the social worker a warning order of five 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 remind the social worker of the importance of adhering to the following professional standards:

I will not:

5.1 Abuse, neglect, discriminate, exploit or harm anyone, or condone this by others.

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.

I will:

6.1 Report allegations of harm and challenge and report exploitation and any dangerous, abusive, or discriminatory behaviour or practice.

The case examiners formally warn the social worker that it is not acceptable to engage in violent behaviour. This has caused actual harm and likely distress to a specific individual

and serves to undermine public confidence in the professional standards expected of social workers.

Any further matters 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 examiners have had sight of an email and a signed accepted disposal form completed by the social worker, dated 04 July 2023. The form states that they have read the case examiners' decision and the accepted disposal guide. They understand the terms of the proposed disposal of their fitness to practise case and accept them in full.

Case examiners' response and final decision

Considering the social worker's acceptance of the warning order of five years, the case examiners have again considered whether there would be a public interest in referring this matter to a public hearing. They remain of the view that a hearing remains unnecessary for the reasons previously set out.

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 years remains the most appropriate means of disposal for this case.

The case examiners have reviewed their decision, paying 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 upholding professional standards. Having done so, they remain of the view that their proposal is a fair and proportionate disposal and is the minimum necessary to protect the public and the wider public interest.