

Social Work England

Consultation Response: Appointment Rules

January 2019

1. Introduction

Social Work England will be the new specialist regulator for social work in England, taking over regulatory responsibility from the Health and Care Professions Council. Like all the existing health and care professional regulators, our central focus will be on public protection. As part of building a new regulator, we are, rightly, required to consult on the rules that will govern the way we work.

This first set of rules focuses on the appointment of people to fulfil a number of important roles. This includes inspectors whom we may appoint in connection with the approval or re-approval of any course, qualification or test in relation to social work, which includes:

- courses of education and training, operated and delivered in England, for persons who wish to become social workers in England (“initial education and training”);
- qualifications granted following success in an examination, or other appropriate assessment, taken as part of an approved course of initial education or training;
- tests of knowledge of English which are operated and delivered in England; and
- courses for persons who are, or wish to become, approved to act as approved mental health professionals.

The rules also cover the appointment of, and requirements and restrictions around, three roles in our fitness to practise process – the process that regulators use where there are concerns about the ability of a registrant to practise. These roles are:

1. investigators, who will undertake enquiries and gather evidence about individual cases;
2. case examiners, who will determine whether a case should be taken forward following an investigation, and can (in certain circumstances) agree case outcomes with registrants; and
3. adjudicators, who will run hearings where they are required to determine the final case outcome, including deciding whether fitness to practise is impaired and, if so, what sanction is appropriate. Adjudicators may also make interim orders to suspend or impose a restriction or condition on a social worker’s practice with immediate effect.

Finally, these rules also deal with the appointment of advisers, who may be appointed to any of the above roles. Advisers will not be members of our staff, but our governing legislation allows for us to appoint them to fulfil these roles or advise us on matters relating to our functions, and in particular to provide us with information, specialist or expert advice, or recommendations.

2. The consultation

The consultation opened on 8 November 2018 and closed on 19 December 2018. The consultation sought views on our proposed rules for:

- the appointment of advisers by Social Work England;
- the establishment of panels of advisers;
- the role of inspectors appointed to inspect courses of education and training; and
- requirements and restrictions in relation to those appointed as case examiners, investigators and adjudicators for fitness to practise proceedings.

It consisted of an online survey, which was published on the Social Work England website and across our social media channels. We also talked about the consultation with our professional expert group and experts by experience group to encourage feedback from social workers, professional bodies, employers and people with lived experience of social work. A summary list of members for these groups can be found at Annex A.

We received a total of 61 responses to the survey - 19 from organisations and 42 from individuals. This document summarises the results of the consultation and sets out the actions we propose to take in response. Some of the respondents who commented on the draft rules also provided wider comments on the way in which we will operate as a regulator including how concerns raised about registrants will be dealt with. While these comments fall outside of the scope of this consultation, we also have rule-making powers to set out our operational procedures and processes. We are required to consult when making these rules, and we would hope that respondents will welcome the opportunity to contribute further to any future consultation to help shape the way Social Work England operates.

3. Who responded?

Respondents came from a range of interested stakeholders. Most respondents (71%) described themselves as coming from social work, social care or health settings. The 19 responses from organisations included employers, professional bodies, regulators and one 'other'.

Table 1: Breakdown of consultation respondents¹

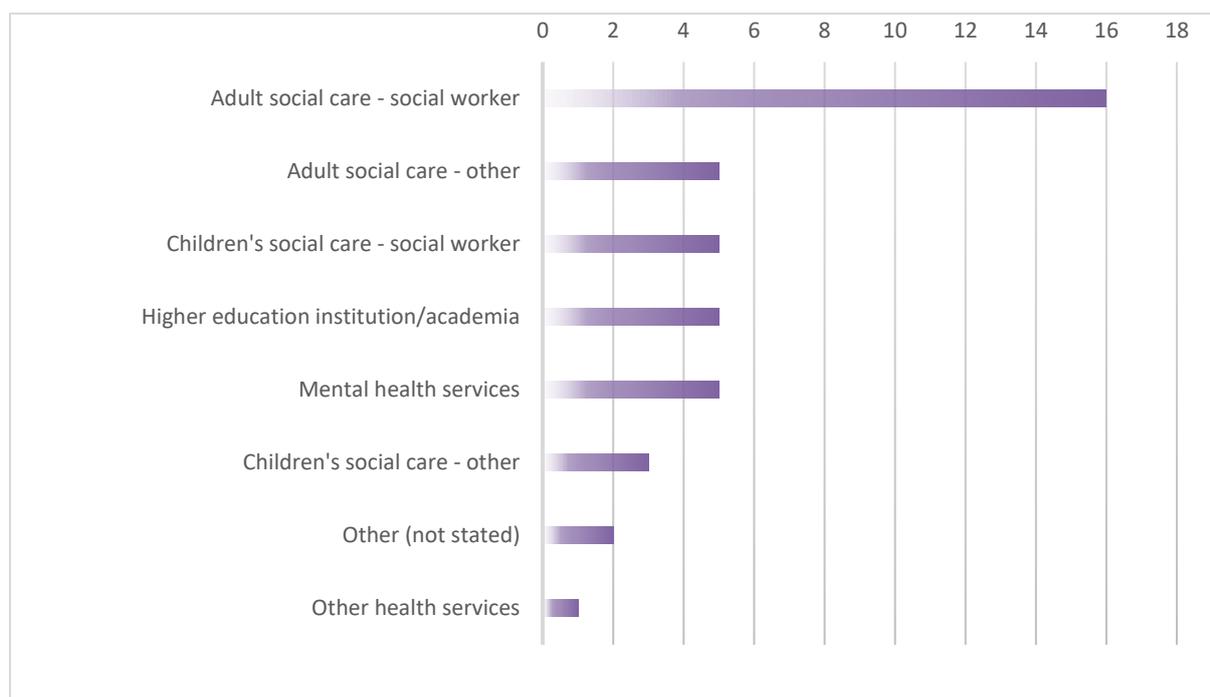
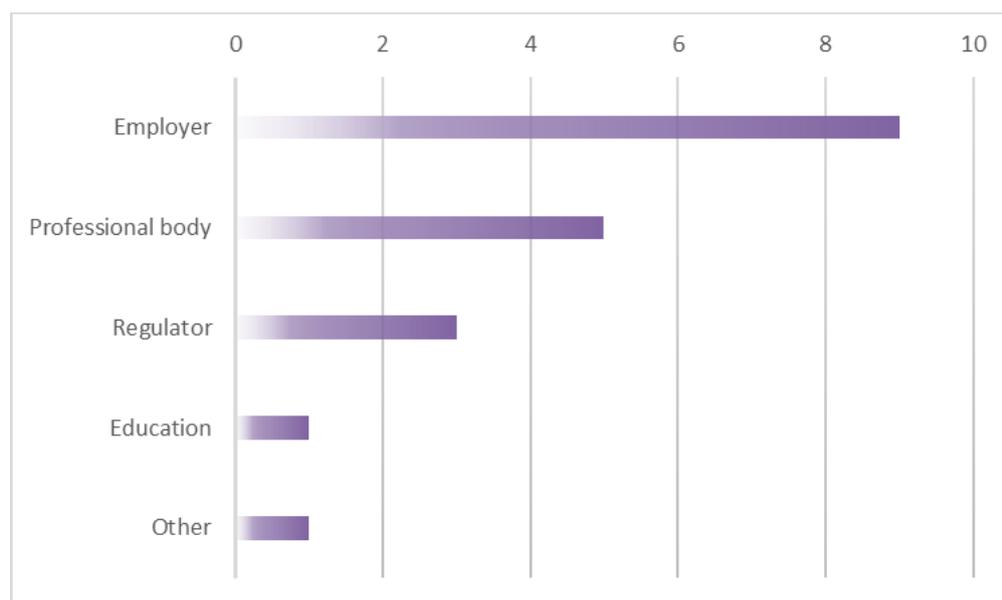


Table 2: Breakdown of organisations



¹ 41 respondents answered this question

4. The analysis

This section sets out the views of those who responded to the consultation survey. We have structured the analysis around the questions included in the survey. The consultation included 10 questions about appointment rules and respondents could choose to answer all, or just some of the questions. All questions used a rating scale (from 1, disagree to 10 agree) and provided the opportunity for respondents to make further comments in the free text section of each question. We reviewed every response to each question.

What did people say?

In the main, respondents agreed with the proposed appointment rules. The average rating across all the questions was 8 out of 10.

Question	Average rating
To what extent do you agree with the minimum criteria for advisers in rule 3(3)?	7.7
To what extent do you agree with the minimum criteria for panel members in rule 11(2)?	8.1
To what extent do you agree with the minimum criteria for panel chairs in rule 12(2)?	8.2
Please review our proposed requirements for appraisal and continuing professional development of advisers (rules 6 and 7). To what extent do you agree with our proposed approach?	7.9
To what extent do you agree with the minimum criteria for investigators in rule 4(2)?	7.8
To what extent do you agree with the minimum criteria for case examiners in rule 5(2)?	7.7
To what extent do you agree with the minimum criteria for adjudicators in rule 6(2)?	7.9
To what extent do you agree with the minimum criteria for inspectors in rule 10?	7.8
To what extent do you agree with the categories of person who may not act as investigators, case examiners or adjudicators in rule 8?	8.4
To what extent do you agree with the categories of person or circumstances that should preclude people from acting as inspectors in rule 12?	8.3

5. Main themes

The comments section under each question generated a range of responses. There were several themes that emerged, as well as conflicting views and opinions. Below is a summary of the main themes:

Minimum criteria for appointments

- Generally, most respondents felt that the minimum criteria for advisers was fair and balanced and left enough discretion for Social Work England to further articulate more detailed requirements in its recruitment and HR policy;
- In the rules where "and/or" criteria are listed, there was strong feedback to make all criteria mandatory requirements;
- There was a desire for more clarity around a number of recruitment and dismissal procedures;
- Across roles, respondents typically wanted to see a greater emphasis on the role of qualified social workers in regulation;
- There was feedback about criminal convictions and how these should be viewed in relation to appointments;
- Several respondents stated that not all social workers are able to make judgements or sufficiently understand the complexities of all social work specialisms;
- Some respondents suggested that case examiners and adjudicators should be 'legally qualified';
- Several respondents thought that all advisers should be social workers;
- A number of respondents suggested using the number of years of social work experience post-registration as a minimum criterion for roles;
- There were divergent views on the necessary make up and experience of panel members, including the composition of members with lay/social work/lived experience; and
- Some respondents felt that all adjudicators should be required to meet the minimum requirements of the chair in case they were required to step in.

Requirements for appraisal and continuing professional development of advisers

- Several respondents felt strongly that advisers should be required to keep their continuing professional development up to date and be subject to regular training and appraisal; and
- Several respondents felt that there was limited detail in the rules as to what these requirements would be.

Categories of person who may not act as investigators, case examiners or adjudicators. Categories of person or circumstances that should preclude people from acting as inspectors

- Generally, it was accepted by most that the categories of persons or circumstance that should preclude someone from acting as advisers were broadly correct;
- Conflict of interest generated several responses, most of which called for clarity and/or strengthening of the rules;
- Conversely, several respondents felt that the rules relating to conflict of interest were too broad and could narrow advisers' ability to engage with different cases;
- Several respondents gave strong feedback on the rights of the post-holder;
- Several respondents noted there should be clarity around who could carry out which posts to ensure there was separation of function; and
- There were a lot of responses in relation to criminal convictions and how these may unfairly preclude someone from holding a role.

Other comments

- There was a strong appetite for continued consultation with the sector as rules and guidance are developed.
- Respondents encouraged Social Work England to consider a review point for these rules and to retain a degree of flexibility to consult again.
- Although not probed through a question, there was thought provoking feedback received in relation to inspectors and the remit of their role and this will be considered further as part of the specific rules relating to inspectors and the inspection of institutions.

6. Consultation action

Minimum criteria for appointments

1. The majority of respondents wanted to see a greater presence of social workers in the rules governing fitness to practise procedures. **We will aim to reflect this in our rules governing quorum of panels of advisers and case examiners in the upcoming fitness to practise rules and in the role profiles for professional advisers.**
2. The majority of respondents felt that the requirements for investigators, case examiners, inspectors and adjudicators should include all of the skill/knowledge requirements rather than 'one or more'. **These are the minimum requirements of appointment; however, we will include all the criteria in our job descriptions for each role with all of the listed criteria as 'essential criteria'. This allows us flexibility to add further requirements should we wish in the future without needing to change the rules.**
3. Some suggested that case examiners and adjudicators should be legally qualified. **We have considered this and concluded that it would not be helpful to prescribe a legal qualification and believe this could preclude people from being appointed to the role who have relevant knowledge, skills and experience of social work.**
4. Further clarity on using advisers to fill the roles outlined such as investigators, case examiners, adjudicators and inspectors. **Our recruitment process will detail specific requirements and ensure there are no additional conflicts of interest. Role holders will be required to declare conflicts upon appointment but also routinely when in post.**
5. Some respondents suggested using a minimum number of years of social work experience post-registration as a requirement for the roles. **We have considered amending the rules but our recruitment policy does not use a minimum number of years' experience for roles. That is because we believe it could exclude applicants with a range of relevant skills, knowledge and experience acquired in a range of contexts.**
6. Some respondents felt advisers should all be social workers. **We have considered this response and feel that there should be a diverse mix of both social workers and lay advisers. Lay involvement is intended to help Social Work England maintain public confidence in social workers in England. Further rules to be consulted on shortly will address this point.**

7. Some respondents felt that all adjudicators should be required to meet the minimum requirements of a chair. **We will ensure there are a sufficient number of adjudicators that are trained as chairs to meet projected and contingent needs. We will run regular chair training and development throughout the year in order to facilitate the continued smooth running of our hearings function.**

Requirements for appraisal and continuing professional development of advisers

8. Some respondents felt that post-holders must be required to have up to date continuing professional development (CPD). **As part of the appointment process, social workers holding these roles will be expected to be compliant with their registration requirements for CPD. Any failure to meet future CPD declarations are likely to call into question their suitability to hold the role. This will be detailed in their terms of appointment. We have also added a specific requirement in the appointment rules to engage with CPD relevant to the adviser roles, as determined by Social Work England.**
9. A lot of respondents felt that induction, continual training and development and ongoing appraisal was important to ensure advisers carry out their role to a high standard. **We have a strong commitment to ongoing training and development and will be running extensive training and induction for our advisers, as well as routine training throughout the year and annual appraisal and regular feedback.**

Categories of person who may not act as investigators, case examiners or adjudicators. Categories of person or circumstances that should preclude people from acting as inspectors

10. Respondents had several views about the impact criminal convictions would have on suitability to be appointed to the roles. **The rules have been amended to make this area clearer. We will draft policy about what will be taken into consideration if an adviser declares a conflict, caution/conviction or criminal or regulatory investigation. Decisions will be made on a case by case basis. Our decision making will be informed by our public protection duties as a regulator.**
11. The rules regarding conflicts of interest were felt to be restrictive and unclear. **We have amended the rules to leave discretion to Social Work England, following declaration from the advisor, about what conflicts will be**

incompatible with carrying out the role. Further policy and procedure will be published in due course.

12. In relation to concerns around separation of function between advisors, this is reflected in *The Social Worker Regulations 2018*, regulation 25(7) and (8). **This will also be covered in the fitness to practise rules and operational procedures that will be consulted on during 2019.**

Other

13. There was a strong appetite for continued consultation with the sector as rules and guidance are developed and reviewed. **Our engagement with the sector is ongoing, both through the professional expert group and experts by experience group as well as through various sector events. As part of our forthcoming consultation on rules and standards, we will be running a series of consultation events and an online survey.**
14. Respondents encouraged Social Work England to consider a review point for these rules and to retain a degree of flexibility to consult again. **We will be reviewing rules, guidance and standards as we learn and grow and there will be regular engagement and consultation opportunities.**

What happens next

Rules:

The changes set out in this response have been incorporated into the rules and reviewed by the Secretary of State. A summary of the changes to rules is at Annex B. The final sets of rules have been published on our website.

Implementation and development of Social Work England:

We will use all the consultation feedback to further engage with the sector and other key stakeholders to gain a better understanding of how this will support more effective regulation. In particular, we will be able to take forward the more general comments that fell outside the scope of the consultation questions, ensuring continued effective consultation with the sector.

We will continue to work closely with key stakeholders including the social work profession and representative organisations, employers, education providers, regulatory experts, people with lived experience of social work and the Social Work England board in the development of Social Work England.

Annex A: stakeholder groups

The professional expert group

The professional expert group includes key organisations from across the social work sector, employer representatives, education providers and people with lived experience of social work.

- Association of Directors of Adult Social Services
- Association of Directors of Children's Services
- Association of Professors of Social Work
- Become
- British Association of Social Workers
- Cafcass
- Chief Social Workers for Adults and for Children and Families
- Frontline
- Goldsmiths University
- Joint University Council - Social Work Education Committee
- Local Government Association
- Northern Ireland Social Care Council
- NSPCC
- Principal Adult Social Worker Network
- Principal Child and Family Social Worker Network
- Professional Standards Authority
- Scottish Social Care Council
- Shaping Our Lives
- Skills for Care
- Social Care Wales
- Think Local Act Personal
- University of Central Lancashire
- University of Sheffield
- University of Bradford
- Unison
- Youth Justice Board

Experts by experience group

The experts by experience group are comprised of people with a wide variety of lived experience of social work. The group is facilitated by us and its purpose is to inform and challenge our thinking, increase communication and understanding of different perspectives and create real opportunities for engagement in order to make effective change happen.

Annex B:

Summary of rule changes

Investigators, Case Examiners, Adjudicators and Inspectors Rules

Rule	Change
5(1)(c)(2)	Additions to reflect that disposals without a hearing are a core part of the case examiner role.
5(2)	These changes are to ensure standards expected of case examiners mirror those expected of adjudicators, to reflect that in disposals without hearings case examiners are exercising the same adjudicatory powers.
6(2)	As above, changes are to ensure consistency of standards for case examiners and adjudicators.
7	Strengthen the conflict of interest requirements, and to set out potential consequences.
8	Amendments ensure there is discretion where appropriate for the regulator to decide under Rule 7(2) whether an investigator, case examiner or adjudicator can continue to act.
11	To enhance the conflict of interest provisions, ensuring consistency with those applying to be investigators, case examiners and adjudicators under the new rule 7.
12	Amendments ensure there is discretion where appropriate for the regulator to decide under Rule 11(2) whether an inspector can continue to act. This rule is now consistent with the provisions applying to investigators, case examiners, and adjudicators under rules 7 and 8.

Appointment and Functions of Advisers and Constitution of Panels Rules

Rule	Comment
3	Additions to reflect the requirement of the regulations that the appointment process must be set out in rules, and that it is necessary to set out provisions for conflict of interest here as well as in the rules for investigators etc.
6	Additions to meet the requirements of the regulations to provide specifics about appraisal and CPD.
9	Redrafted to make the provisions easier to read – no change to the substance of these provisions.
11	Sets out a minimum quorum, without constraining further the regulator's discretion as to the precise composition of each panel.