

Guidance on the application of Social Work England Fitness to practise regulations and rules

Regulation 25, Rules 3 and 4 - Triage

1. On receipt of a complaint or information about a registered social worker, Social Work England must decide whether there are reasonable grounds to investigate the fitness to practise of the social worker. These decisions will be made by staff who are trained and assigned specifically as triage officers for this purpose.
2. The triage officer must decide whether a complaint or information raises a concern under one or more of the categories of fitness to practise, namely:
 - i. Misconduct;
 - ii. Lack of competence or capability;
 - iii. Conviction or caution in the UK for a criminal offence;
 - iv. Conviction elsewhere which would be a criminal offence if committed in England or Wales;
 - v. Physical or mental health that stops the social worker from practising safely;
 - vi. A decision by another regulator that the social worker is not fit to practise;
 - vii. Being included on the barred list of the Disclosure and Barring Service or the equivalent lists in Northern Ireland or Scotland;
 - viii. Not having the necessary knowledge of English to practise safely.
3. When deciding whether there are reasonable grounds to investigate further, the triage officer must apply the criteria set out in the rules, as follows:

The seriousness of the concern by reference to the pursuit of Social Work England's over-arching objective

4. The over-arching objective is the protection of the public and includes to protect, promote and maintain the health, safety and well-being of the public; to promote and maintain public confidence in social workers in England; and to promote and maintain proper professional standards for social workers in England.
5. In assessing seriousness, the triage officer may take into account the age of the events in question. The fitness to practise powers are engaged if the social worker's fitness to practise is currently impaired. This means the more recent an event, the more relevance it may have to the social worker's current fitness to practise. However, age will not of itself be a determining factor - some concerns may be so serious that they raise issues of current impairment regardless of their age.

The likely availability of sufficient evidence to support an allegation of impaired fitness to practise

6. The triage officer may take into account whether the concerns are based on facts that can be supported by witnesses or documentary evidence. The triage officer may be slower to find grounds to investigate concerns based solely on assertion or speculation, or disagreement with a reasonable exercise of professional judgment.

Whether the concern suggests the social worker may have breached any relevant published professional or ethical guidance, rules, regulations, procedures or laws in place at the time of the events giving rise to the concern

7. The seriousness of any breach must be assessed, and not all breaches will necessarily reach the threshold of impaired fitness to practise; but of itself failing to comply with requirements raises issues of concern.

The outcome of any investigation by another body such as an employer, or the police

8. Social Work England is not necessarily bound by the outcome of such an investigation but the triage officer may take it into account in assessing, for example, the seriousness of a concern and whether it is likely to be supported by credible evidence.

Whether the social worker is taking or has successfully completed remedial actions in respect of the concern

9. If any risk to current public safety arising from the concern has been addressed then the triage officer may take this into account. This is likely to be particularly relevant in respect of concerns about lack of competence and capability. A social worker who, after an event giving rise to a concern, has successfully completed relevant training and development may pose no risk to the public and as such an investigation into their current fitness to practise may not be warranted. Social Work England may require objective evidence of successful remediation, such as certificates of courses undertaken and passed.

10. Before deciding whether to close a concern on the basis of successful remediation, the triage officer must be satisfied that to do so does not risk public confidence or the maintaining of proper professional standards of social workers. The triage officer will be slower to take remediation into account in respect of concerns about a social worker's conduct because of the greater challenge in objective assessment of whether remediation is complete in issues of character. For example, it is unlikely the triage officer would be justified in closing a concern at triage of alleged serious dishonesty on the basis of successful remediation.

11. Social Work England will not normally need to investigate a social worker's health if the social worker is engaging with treatment and/or is limiting their practice so as to protect the public.

Whether the social worker has been subject to a previous adverse finding

12. This may be particularly relevant to concerns about competence and capability. A pattern of such concerns is usually required before a wider question about fitness to practise arises. It is therefore important that the triage officer considers whether a concern about competence or capability is isolated, which may weigh towards closure, or part of a wider pattern, which may weigh towards formal investigation.

13. In assessing whether the above factors are or may be relevant, the triage officer may seek further information from, for example, the complainant or referrer of the concern, an employer, or the social worker.
14. The triage officer may also seek advice, for example from an expert or professional adviser.
15. If the triage officer decides that a concern is sufficiently serious to raise a question about a social worker's current fitness to practise, they must also decide whether there is or is likely to be credible evidence to support the concern. Social Work England's investigators have powers to require disclosure of evidence, so any potential difficulty in securing evidence should not weigh heavily in this decision. However, the triage officer may assess whether the concern is based on facts that potentially can be evidenced, or whether it is based on assertion for which there is limited or no supporting objective proof. This may be relevant where, for example, the concern is based on a disagreement with a social worker's reasonable exercise of professional judgement.
16. If a concern is being investigated by another body, such as an employer, the triage officer may await the outcome of that investigation. This will usually be for the purposes of assessing the availability or credibility of evidence in support of the concern, or evidence of remediation. Before deciding whether to await an investigation, the triage officer must assess whether the seriousness of the case is such that there may be an immediate risk to public safety that may require a decision by an interim orders panel on whether to restrict or suspend the social worker from practising. If so, the triage officer must open an investigation so that case examiners can be appointed to decide whether to refer the case to an interim orders panel. (See paragraphs 41-45 for further information about interim order hearings.)
17. When making a triage decision, the triage officer must explain in the reasons for the decision what factors they has taken into account. The decision will be communicated to the person or body raising the concern. A decision to open an investigation will be communicated to the social worker by the investigators (see paragraph 24).

Paragraph 1(2) of Schedule 2 and Rule 4 - Convictions

18. Rule 4 relates to convictions that have attracted a custodial sentence (including a suspended sentence) but which do not fall under the category of a listed offence, or convictions which occurred before the Rules took effect which would otherwise have qualified as a listed offence. The rule requires the social worker to provide employer details to Social Work England within 7 days.
19. Convictions falling under the terms of Paragraph 1(2) of Schedule 2 must be referred by the triage officer direct to the case examiners. The case examiners may exercise their powers under paragraph 7(4) of Schedule 2 to ask the investigators to obtain further information, such as a Judge's sentencing remarks.

Regulation 26 and Rules 5 and 6 - Automatic removal

20. The triage officer will normally action automatic removal cases immediately. Rule 5 allows for up to 7 days for notification in the event of bank holidays or other unavoidable delays. Rule 5 does not require that Social Work England is in receipt of official confirmation of a conviction before starting action under this rule; but there should be reasonable grounds for believing that the information about the conviction is accurate.

21. Rule 6 and regulation 26(2)(c) is likely to apply only where the social worker has been incorrectly identified as the subject of the conviction, or the conviction is not of a type that qualifies for automatic removal. A pending or proposed appeal by the social worker against the criminal conviction does not amount to an error of fact for the purposes of this process. This means that the process to automatic removal must continue even if an appeal has been lodged. A person is entitled to be restored after automatic removal where on appeal the conviction is subsequently overturned.

Part 2 of Schedule 2 - Investigation

22. Where an investigation is opened following triage, paragraph 3(1)(a) of schedule 2 requires Social Work England to appoint two or more investigators to carry out an investigation. Social Work England will normally appoint two investigators but may replace one or both with other investigators where this is necessary to facilitate the fair and expeditious progress of the investigation.

23. The investigation may be carried out by one investigator under the direction of a second investigator.

Paragraph 4 of Schedule 2 and Rule 8(a) – Notification of opening an investigation

24. The investigators will notify social workers as soon as possible after a triage decision is made to open an investigation. The period of up to 7 days is intended to allow for bank holidays or other unavoidable delays.

Paragraph 4(1)(b) of Schedule 2 and Rules 8(b) and 8(c) – Requiring employer details from the social worker

25. Engagement with employers is a key part of the regulatory framework. It is essential for the protection of the public that social workers provide details of their employers as soon as they are asked to do so. The 7 day timeframe in Rule 8(b) reflects this.

26. Rule 8(c) relates to Social Work England's powers under regulation 16(4) to suspend or remove a social worker's registration where they fail to provide information about their employers. Where a social worker refuses or, in responding to Social Work England's correspondence, fails without explanation to provide employer details, Social Work England is likely to invoke this process immediately. Where a social worker fails to respond at all to correspondence, Social Work England will usually first make further enquiries to see if there is a reason why they have not responded or if there is another address at which they might be contacted.

27. Unless the social worker has refused or failed without explanation to provide employer details, it will normally be preferable to allow the investigators to complete any ongoing investigation before invoking this process. This is so that evidence does not go stale in the event that a social worker is removed from the register for not providing employer details and later applies for restoration.

Paragraph 4(1)(c) of Schedule 2 and Rule 8(d) – Timeframe for written submissions for the social worker

28. The investigators may specify a longer period than 14 days. This may be, for example, by reference to ongoing investigations by other bodies, where it may be reasonable to await the outcome of those investigations before the social worker comments.

29. If the social worker comments at this stage, the investigators may take the comments into account in reviewing whether the concerns could result in a finding of impaired fitness to practise. For example, if the social worker provides satisfactory evidence of remediation that was not available when the triage decision was made, the investigators may decide to refer the concern to the case examiners without gathering further evidence. The case examiners may then determine the case, or may require the investigators to obtain further information. Another example would be where the social worker is able to rebut the complaint, for example by showing they were not at work on the day in question. Communications to the social worker will explain the way in which the comments they provide at this stage may be taken into account.

Paragraph 4(2) of schedule 2 and Rule 9 – Complainant comments

30. The regulations give the investigators the option of inviting comments from a complainant on the social worker's comments. The investigators will normally exercise this option where the social worker's comments suggest a conflict of evidence on a fact that is potentially determinative of whether or not the social worker is fit to practise unrestricted. Social Work England will give every encouragement to complainants to provide all the information they have at the start of the fitness to practise process. However complainants should be given the chance to comment where their version of the facts is contested by the social worker, and the disputed fact is central to the question of fitness to practise. The usual timeframe of 7 days is intended to minimise delay at this stage of the process, but the investigators can extend the time if necessary.

Paragraph 5 of Schedule 2 and Rule 10 - Obtaining further information

31. Regulation 32(1)(e) makes it an offence to fail to produce documents when required to do so by the investigators. The timeframe in this rule of 14 days or longer acknowledges the administrative constraints that may affect collation of the relevant material.

Rule 11 – Invitation to comment at the end of an investigation

32. Paragraph 4(1) of schedule 2 requires Social Work England to notify the social worker at the commencement of an investigation of the grounds for investigating whether their fitness to practise is impaired, and to give them an opportunity to comment. Rule 11 is intended to give the investigators an option to seek further comments from the social worker at the conclusion of the investigation so as to inform the case examiners' decision. This may be desirable where the investigation has secured new evidence that casts a fresh light on the nature or seriousness of the concern, or on the credibility of the evidence. The process may not be needed where the evidence gathered in the investigation has served to confirm the initial grounds for investigating the social worker's fitness to practise, or where it is obvious after investigation that the case examiners are likely to close the case.

33. Social Work England's communications to the social worker will emphasise that information and comments should be provided at the earliest possible opportunity so that they may be taken into account in deciding how and whether the investigation progresses. They will also make clear that the investigators may decide it is not necessary to invite comments at the conclusion of the investigation before referring the case to the case examiners, so the social worker should not wait for the outcome of the investigation before submitting their comments.

Paragraph 7 of Schedule 2 and Rule 12 – Referral to hearing or disposal without a hearing

34. At the conclusion of an investigation by the investigators, the case examiners must decide whether there is a realistic prospect that the adjudicators would determine that the social worker's fitness to practise is impaired. If so, they must then decide whether to refer the case to a hearing in the public interest. The public interest includes maintaining confidence in the profession, and its regulation.

35. Where the case examiners consider it appropriate to dispose of a case without a hearing, they must decide on the appropriate disposal by reference to Social Work England's sanctions guidance. The proposal must then be put to the social worker.

36. The timeframe of 14 to 28 days in rule 12(a) is to allow a reasonable period within which the social worker may decide whether to accept the proposed disposal, without causing undue delay to the case.

37. Rule 12(b) may apply where, for example the social worker is unwell such that they cannot respond within the timeframe of Rule 12(a), and an extension of time may enable them to recover. It may also apply where the social worker is minded in principle to elect for disposal without a hearing, but where they may contest the exact terms of the determination. The case examiners will seek to avoid undue extension of this stage of the process for such negotiation, and will usually limit the engagement to one round of correspondence. If agreement is not reached after this exchange then the case examiners will usually refer the case to a fitness to practise hearing without further delay.

38. Paragraph 7(3) of Schedule 2 enables the case examiners to notify the social worker of the terms on which the social worker may elect to have their case disposed of without a hearing. This will be included in the notice sent under the provisions of rule 12(a). The terms will normally include the proposed determination to be published on the register – regulation 9(2)(b) requires publication of any advice given or order imposed on disposal without a hearing.

39. The social worker must agree to the terms of the determination as part of the election for the case to be disposed of without a hearing. It is open to the case examiners to agree to amend the terms of the proposed determination, for example to reflect where the social worker disputes facts that are not determinative of the issue of impaired fitness to practise. Where facts that are determinative of impairment are contested, it will normally be appropriate for the case examiners to refer the case to a fitness to practise hearing to adjudicate on the disputed facts. The case examiners should not resolve conflicts of evidence that go directly to the question of whether the social worker's fitness to practise is impaired.

40. Where the social worker does not intend to practise again, the case examiners may take this into account in deciding what disposal to propose. If the social worker undertakes in writing to apply for voluntary removal on completion of the fitness to practise proceedings, it may be appropriate to propose disposal with a finding of impairment but with no further action. Before proposing such an outcome, the case examiners must be satisfied that the social worker intends to leave the profession permanently, and that a hearing is not required on public interest grounds. Case examiners may wish to ask investigators to seek a complainant's comments before proposing this course, except in cases relating to the social worker's health.

Paragraphs 8 and 11 of Schedule 2 and Rule 13 - Interim orders

41. Cases may be referred by the case examiners to the adjudicators to consider whether to impose an interim order while the fitness to practise process continues; or the adjudicators may themselves determine whether to impose an order.

42. The regulations require the adjudicators to give the social worker notice of the proposed order and to allow the social worker an opportunity to make written representations or to attend before the adjudicators and be represented to make oral submissions.

43. Normally, the adjudicators must give 7 days notice of the day on which they propose to make the order. However, they may give shorter notice where they consider it necessary to protect the public. This is likely to apply in exceptionally serious new concerns, and also if the adjudicators consider it necessary to make an order during a fitness to practise hearing, for example if the hearing is likely to be adjourned part-heard.

44. Where the adjudicators are making a final order, they may make an interim order and are not required to give notice of the proposed order.

45. Rule 13(c) allows for cases to be disposed of by means of a meeting rather than a hearing where the social worker does not request a hearing.

Part 3 of Schedule 2 - Fitness to practise hearing

Paragraph 10(2) of Schedule 2 and Rules 14 and 15 - Notice of fitness to practise hearing

46. Rule 15 allows for different timeframes for issuing notices of hearings. Cases involving criminal convictions are given a shorter timeframe, reflecting the relatively narrow issues to be determined by the adjudicators.

47. The rules do not make specific provisions for the notice to include disclosure of evidence. This is covered by general principles of fairness in any quasi-judicial processes. Under these principles, the social worker is entitled to have received in advance of the hearing copies of the evidence relevant to the concern.

48. Rule 15(b) requires the adjudicators to serve a statement of case, to enable the social worker to understand the factual basis on which Social Work England brings its case that the social worker's fitness to practise is impaired. The statement of case should clearly set out the reasons for referring the case to a fitness to practise hearing, including any areas of factual dispute on which adjudication is required, and the basis on which it is alleged that fitness to practise is impaired. The statement of case will usually be based on the case examiner decision, updated by the adjudicators to reflect any developments in the case after case examiner referral to a hearing.

Paragraphs 14 and 15 of Schedule 2 and Rule 16 - Review of orders

49. Rule 16 (b) allows for short notice of a review hearing in exceptional circumstances where it may be necessary to change the order urgently. An example might be where Social Work England receives new information to the effect that a social worker is breaching a conditions of practice order in a way that puts public safety at risk.

50. Rule 16(c) is likely to apply where the probable outcome of the review is non-contentious, for example in reviews of interim orders while an investigation is continuing.

51. Review orders may be conducted by a member or members of Social Work England's staff assigned and trained for the purpose, or by the adjudicators. In practice, staff are likely to make decisions where the issue to be determined in the review is non-contentious – for example where it is proposed and accepted by the social worker that the order in place should be extended. The staff may also decide that a final order may lapse where the final order was imposed for public interest reasons only, and there has been no adverse information received since the order was directed. However, it is otherwise likely to be preferable for the adjudicators to make decisions on whether a social worker's fitness to practise remains impaired, or to adjudicate on new facts that Social Work England has investigated.

Rule 17 – Meetings

52. Meetings are where the matter to be determined is considered in private on the basis of documents, and in the absence of the parties. This rule allows members of staff or adjudicators as the case may be to make decisions on cases in meetings by electronic means, in the interests of efficiency. This reflects the fact that meetings may only be held where there is no evidence to be heard and where the social worker has not exercised their right to a hearing.

Regulation 15 and Rules 18-24 – Restoration after removal order

53. These rules are under the provisions of regulation 15(11). They set out detailed provisions for the information required in support of an application for restoration of a removal order.

54. Under regulation 15(4) a person may not submit an application for restoration until at least five years after the date on which their name was removed from the register. Social Work England must reject an application that is submitted early or which does not comply with the requirements of rule 18.

55. Regulation 15(3)(a) requires Social Work England to refer an application to the adjudicators for determination. Rule 35 - Quorum – applies to restoration hearings or meetings.

56. Where an application for restoration is rejected, the person cannot submit a fresh application until 12 months after the date on which the previous application was submitted (regulation 15(4)(b)).

57. Rule 23 sets a timeframe within which the application must normally be determined. This is so that the minimum periods for which removal orders must apply is not unduly and artificially extended by Social Work England.

58. Rule 24 allows the person making the application to withdraw it before it is heard. This is so they can preserve their right to submit a fresh application rather than be prevented from so doing for 12 months if their application is determined and rejected.

Rules 25-30 - Case management

59. These rules are intended to support the efficient management of hearings. They enable members of staff or adjudicators to narrow the issues in a case to those that remain in dispute. They allow for applications that might have been made at the hearing, such as that a witness should be treated as vulnerable or that evidence be given by video-link, to be determined ahead of the hearing. They support the production of a reliable timetable against which the hearing generally and witness attendance specifically can be scheduled. The provisions for such aspects as disclosure of evidence, witness statements and skeleton arguments apply equally to Social Work England as they do to the social worker.

60. Social workers have a professional obligation to assist and engage when concerns are raised about their fitness to practise. The case management provisions reflect this professional duty. Social Work England must act fairly and transparently in how it brings its case.

61. Rule 29 confirms that case management directions are normally binding on the subsequent hearing unless there has been a material change of circumstances such as to invalidate the previous directions or it is not in the interests of justice for the relevant direction to be enforced. Such situations are likely to be exceptional. A disagreement with the previous direction would not normally be sufficient to overturn the binding effect of the directions.

Rule 32 – Procedure at hearings and meetings

62. The rules require that hearings are conducted in a fair manner but that otherwise the procedures are at the discretion of the adjudicators or the member(s) of Social Work England's staff determining the case.

63. Preliminary matters that can be determined by the adjudicators or staff include the admissibility of evidence, the content of evidence bundles, conflicts of interest, whether witnesses need to be called, whether some or all of the proceedings should be in private, and any other legal points that may affect the course of the hearing. It is usually preferable for the efficiency of the hearing to resolve these issues before the hearing formally opens.

64. Conducting the proceedings in a fair manner must encompass the usual format for proceedings of any quasi-judicial process. For hearings this will normally be as follows:

65. The burden is on Social Work England to prove the case. Social Work England must therefore first bring its case including by calling witnesses where necessary. Social Work England may be represented by a legally qualified person and/or by a member of staff.

66. Witnesses may be required to take an oath or affirmation when giving evidence. They may be cross examined by the social worker and the adjudicators may also ask questions.

67. At the conclusion of Social Work England's case, and before hearing from the social worker, the adjudicators may determine of their own motion or on application of the social worker whether sufficient evidence has been brought on which disputed facts are capable of being found proved and/or whether those facts on which there is sufficient evidence are capable of supporting a finding of impairment. The adjudicators may refuse to hear an application from the social worker at this stage if they are of the view that there is sufficient evidence on which the facts and impairment are capable of being found proved.

68. If a case is not closed at this stage, the adjudicators will proceed to hear the social worker's case. The social worker may call witnesses who may be cross examined by Social Work England's representative, and the adjudicators may also ask questions.

69. After the social worker has put their case, each party may be invited to make closing submissions on any facts that remain in dispute.

70. The adjudicators will then determine any disputed facts and provide reasons for their decision.

71. Unless the adjudicators are of the view that the facts found proved could not support a finding of impairment, they must proceed to invite submissions on impairment. In so doing they may first invite the social worker to indicate whether, in the light of the facts found proved, they admit that their fitness to practise is impaired. Where they admit impairment, or where the adjudicators consider that the facts found proved make a finding of impairment inevitable, the adjudicators may proceed to hear submissions from Social Work England and then the social worker on both impairment and sanction together and may issue one determination covering both questions. Otherwise, the adjudicators will normally hear submissions on impairment and then, if they find impairment, on sanction.

72. Regulating their own procedures includes that the adjudicators may postpone or adjourn the fitness to practise hearing at any stage before making a determination on the case. This may be for any reason provided that it is fair to all parties to do so.

73. Paragraph 10(5) of Schedule 2 enables the adjudicators to require the investigators to obtain further information or submissions relevant to the fitness to practise hearing, and it may be that this will necessitate postponement or adjournment of the fitness to practise hearing.

Rules 33 and 34 - Legal advice at hearings

74. These rules require legal advice to be available at new fitness to practise hearings or hearings to consider applications for restoration via a legally qualified chair or via an appropriately experienced solicitor or barrister

75. Rule 34 allows for review or interim order hearings or meetings to take place without a legally qualified person designated to give legal advice. These hearings or meetings are invariably procedurally routine, and it is rare for any specific legal advice to be needed. This means that requiring the presence of a legal adviser is inefficient. Decision-makers will be provided with a collection of the legal advice and case law that is routinely raised in such cases. The decision-makers have the option to adjourn for legal advice if, exceptionally, advice is required.

76. Social Work England is likely to make an appointment under Rule 34 where substantive new concerns are to be considered at a review of a final order.

Rule 35 - Quorum

77. This rule sets minimum requirements for lay involvement, including that the chair of any hearing or meeting must be a lay person.

78. The rule otherwise gives Social Work England flexibility about the composition of panels. In practice Social Work England will normally assign three persons to determine substantive new concerns at a fitness to practise hearing, and two persons to determine less complex issues such as interim orders and most review hearings or meetings. A three person panel will normally include at least one registrant.

Rule 36 – Previous history

79. This rule provides that a previous adverse finding may be taken into account when making decisions at any stage of the fitness to practise procedures. The purpose of the rule is to support Social Work England’s over-arching objective to protect the public. It enables a decision to take into account any information that may be relevant to the determination on the facts and on whether those facts may amount to impairment of fitness to practise.

80. The person or persons making the decision must be satisfied that it is fair and reasonable to be told of previous history at the relevant stage of the proceedings. Where adjudicators are determining disputed facts it will normally only be fair to hear about previous history at this stage if the social worker denies propensity to act in the way alleged when previous history suggests otherwise. Rule 36(c) requires a party to make an application for previous history to be introduced at the facts stage. Otherwise, previous history will not be made known to the adjudicators until after they have made their findings of fact.

Rule 37 - Health assessment

81. The purpose of health assessment is primarily to establish the extent to which a current health condition is impairing a social worker’s fitness to practise. In other words, it is not to find out whether the social worker is unwell, but rather the extent to which the ill-health impacts on their fitness to practise safely.

82. The rule provides for a minimum level of assessment, namely by one registered medical practitioner of Social Work England’s choosing. If the social worker accepts a request to undergo assessment, Social Work England will select a registered medical practitioner by reference to the presenting health condition. Nothing in this rule prevents agreement between Social Work England and the social worker that, for example, a second medical practitioner is instructed to assess the social worker, selected by Social Work England or nominated by the social worker. The intention of this rule is that the health assessment process should be the least onerous as possible, while facilitating Social Work England’s overarching objective of ensuring public safety.

Rule 38 and 39 – Attendance of the public at hearings

83. Hearings will normally be conducted in public, but there are important exceptions to protect individuals and to help deliver the primary purpose of the proceedings.

84. There are well-established protocols for protecting vulnerable witnesses in judicial proceedings, and the rule enables those protocols to apply for Social Work England hearings. There are also protections where the panel is considering confidential information about the health of the social worker.

85. Beyond this, many members of the public are unfamiliar with, and understandably anxious about, giving evidence in public. In Social Work England hearings, this evidence may be about deeply personal and sensitive issues that the witness would not choose to air in a public

forum. These factors can often adversely affect the quality of the evidence given, and in extreme cases may mean the witness refuses to give evidence at all.

86. The purpose of the proceedings is to conduct a fully comprehensive inquiry into the allegations raised, in the public interest, on the question of whether the fitness to practise of the social worker is impaired. Anything that could inhibit the panel in conducting such an inquiry is a risk to the public interest. The rule allows the panel to hear evidence in private where it considers it appropriate to do so, including with regard to the public interest in the panel receiving all relevant evidence. The wishes and concerns of potential witnesses will be particularly relevant to whether a panel conducts some or all of its proceedings in private.

87. Whether or not proceedings are in private, all determinations must be published with sufficient reasons to enable someone not present at the hearing to understand what the decision was and why it was reached.

Rule 40 - Recording of proceedings

88. This rule requires Social Work England to ensure a recording of the proceedings is made from which a transcript can be produced if required. The purpose of the rule is to facilitate audit and quality control both internally and by the Professional Standards Authority or in appeals, and to support the complainant's direct interest in the course of the proceedings.

89. The timing of when Social Work England may supply a transcript on request may depend on the application of wider legal principles. For example Social Work England would usually have to defer meeting a complainant's request for a transcript where the complainant is a witness of fact and they have not yet given their evidence. For this reason, the rule does not specify a timetable within which transcripts should be provided.

Rules 41-43 - Representation

90. Rule 41(c) entitles those conducting a hearing to exercise discretion in who might represent a social worker. They might exercise this discretion, for example, where it appears to them that a person is or will conduct themselves in a way that threatens the effective and efficient management of the hearing.

91. Rule 43 confirms the legal principle about the circumstances in which an alleged victim of a sexual assault may or may not be cross-examined by the social worker.

Rule 44 - Absence of the social worker

92. The regulations give the social worker the right to attend a hearing. This must be balanced by the need, in the public interest, for Social Work England to arrange expeditious disposal of cases. This rule entitles the proceedings to continue where the social worker fails to attend notwithstanding any earlier indication of a wish to attend, provided service of the notice has been properly effected.

Rules 45 – 47 - Service

93. These rules reflect that Social Work England’s preferred route of communication with all registered social workers is by secure portal. This is a safer means of sending confidential information direct to the social worker than, for example, by registered mail, where documents may not be left securely and could be accessed by people other than the social worker.

94. The rules require the same level of confirmation of sending across all forms of communication, whether electronically or by post. In this, the rules reflect case law to the effect that Social Work England’s responsibility is to evidence the *sending* of formal notices and documents to an effective address. It is not a requirement that Social Work England can evidence that the correspondence has been *received* by the social worker. It is therefore the social worker’s responsibility to ensure Social Work England has an effective address to which all communications concerning the social worker’s registration, including relating to fitness to practise, can be sent.

95. Rule 47 allows for the social worker to nominate a suitable person to receive communications on behalf of the social worker. This is intended to increase the range of options by which fitness to practise communications can be effectively delivered to the social worker.

Rule 48 – Eligibility to act as an investigator, case examiner or adjudicator

96. This rule references the rules on appointment of advisers and the rules enabling suspension or removal of advisers from office.

97. Rule 48(b) ensures that the rules on quorum are adhered to and that the registrant/lay balance of decision-makers is maintained.

Regulation 9 Content of the register and Rules 49 – 51 – Period for which information must remain on the register

98. Any finding of impairment and any final order, warning or advice issued as a result of such a finding must be published in the register, as must any final order, warning or advice imposed without a hearing by the case examiners. Regulation 9(5)(a) and (6) requires the rules to state the longer period after expiry that final orders must stay on the register. Regulation 9(5)(b) and (6) requires the rules to state the period for which warnings or advice issued after a finding of impairment should stay on the register.

99. Case examiners can also issue warnings or advice if they conclude that there is no realistic prospect the adjudicators would find the social worker’s fitness to practise impaired. Adjudicators can also issue warnings or advice if they find the social worker’s fitness to practise is not impaired. However, these outcomes are not published.

100. Rule 49 provides for period of 1, 3 or 5 years for which advice or warnings after a finding of impairment must stay on the register. These periods are intended to support proportionate decision-making according to the seriousness of the relevant concern. The three options are intended to avoid the potentially disproportionate effects of a one size fits all approach while also mitigating the risks of inconsistency from an open ended range of timeframes.

101. Rule 50(a) is derived from regulation 9(3) which empowers Social Work England to publish any information in the register it considers appropriate. The rule is based on the principle that, in the public interest, it will always be appropriate to publish in the register information about a previous removal order in the event the social worker successfully applies for restoration.

102. Rule 51 reflects that where fitness to practise proceedings conclude with no finding of impairment, or were related to the social worker's health, there are no grounds for publication of information about previous sanctions beyond the expiry of the relevant order.

Glossary

Adjudicator – a person who is not a member of Social Work England's staff, who is appointed to make decisions on interim orders, final orders, reviews of orders or applications for restoration.

Case examiner – a person appointed by Social Work England to undertake the role of case examiner, with responsibility for making decisions about whether to refer concerns to an interim orders panel, whether to direct the investigators to obtain more evidence in the case, and disposal of cases at the conclusion of an investigation.

Complainant – a member of the public who, in a private capacity, raises a concern with Social Work England about the fitness to practise of a social worker.

Investigator – a person appointed by Social Work England to undertake the role of investigator, with powers to obtain evidence relating to a concern about a social worker's fitness to practise.

Regulations – the Social Workers Regulations 2018 which set out the legal framework within which Social Work England must operate its fitness to practise procedures

Rules – the Social Work England Fitness to Practise Rules 2019 which follow the requirements of the regulations to specify the details of how the fitness to practise procedures must be operated.

Triage officer – a member of Social Work England's staff assigned to decide whether there are grounds to open an investigation into a social worker's fitness to practise.