

# Consultation on fitness to practise rules

Launch date 21 February 2019

Respond by 1 May 2019, 5pm



## Introduction

1. Social Work England is preparing to become the new regulator for social workers in England, taking over from the Health and Care Professions Council. Our purpose is to protect the public by setting and promoting high standards of education and professional conduct amongst social workers. Our ambition is to provide a smooth and seamless transition of regulation and to maximise the opportunities of being both new and specialist to engage with the sector and listen to the public.
2. We were established by the Children and Social Work Act (2017) and The Social Workers Regulations (2018). This legislation requires us to consult on the rules that govern the way we will work and the standards which we will expect social workers and education and training providers to meet. Over and above that, we see consultation as an important means of us talking to you about our approach to regulation and hearing your views. This consultation represents a significant milestone on our journey to becoming the new regulator for social workers in England.
3. This document is one of five setting out the rules and standards we need to establish before taking over the regulation of social workers in England. The other four documents address:
  - i. professional standards;
  - ii. qualifying education and training standards;
  - iii. education and training rules; and
  - iv. registration rules.

### What we are consulting on

4. Rules govern the way we work. They set out our processes and procedures and make clear what you can expect of us in regulating social workers in England. In simple terms, rules outline what we do, and standards set out what we expect those we regulate to do.
5. The fitness to practise rules set out how we will handle concerns raised to us about a social worker. The aim of these rules is to enable us to secure public protection through a proportionate and collaborative means of assessing a social worker's fitness to practise. Some of the fitness to practise requirements are already set out in The Social Workers Regulations (2018). You may find it helpful to read these regulations alongside the rules to understand how they relate to each other. You can find the regulations [here](#).

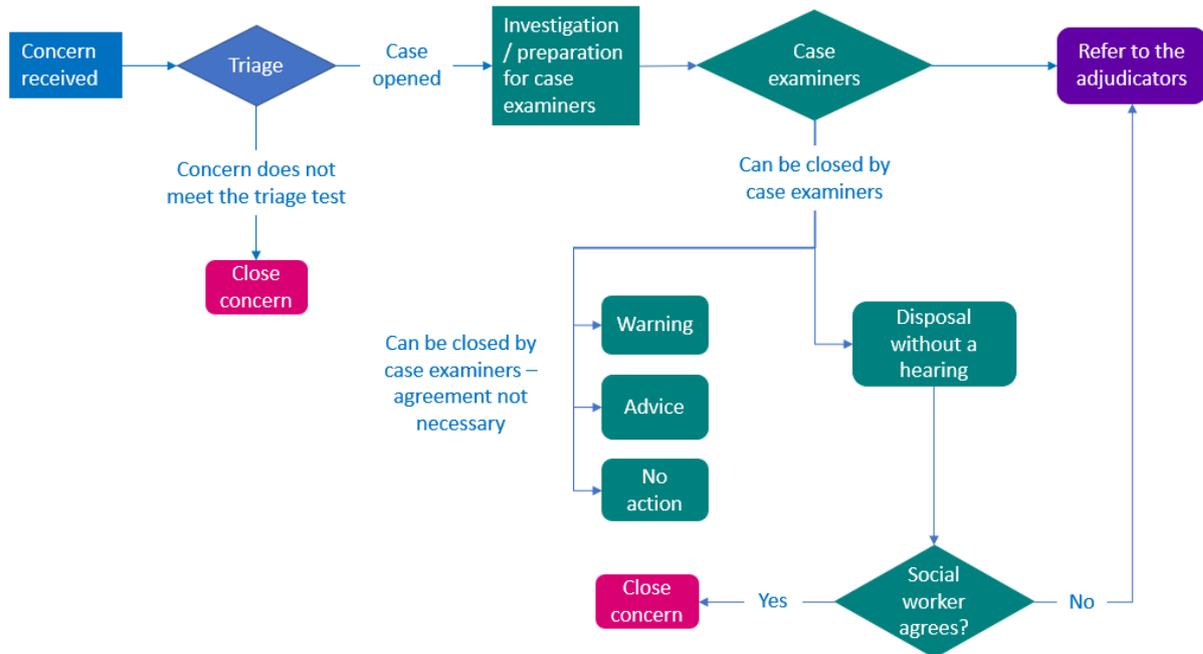
6. You can find an explanation of the rules at **Annex A**. We use some technical terms to describe fitness to practise processes and/or roles in this document, and a definition of these terms can be found at **Annex B**. The rules are at **Annex C**. You can also find detailed guidance on the application of the rules [here](#).
7. Our firm commitment is to protect the public and to ensure that the most severe infringements of our standards are addressed swiftly and decisively. We also understand that all concerns need to be reviewed, investigated and judged fairly. To do this, we need to consider what we are being told at the outset and determine whether a fitness to practise investigation is a necessary, and appropriate, course of action.
8. We want to make use of a range of regulatory tools, which means that we can offer a process that is specialised to social work and takes into account the complexities of the profession. What we mean by this is that social work is about people and relationships. Often, social workers are presented with complex legal and ethical dilemmas in the course of their work. The decisions they make, even if they are right and lawful, can be difficult and, sometimes, unwelcome. This presents a particular challenge for social work and, as the new specialist regulator, we understand the need for an approach to fitness to practise that can respond to this challenge.

We are proposing:

- i. responsive and thorough investigation of concerns raised about a social worker's fitness to practise;
  - ii. robust risk assessments, ensuring urgent action is taken in circumstances where evidence suggests there may be a risk to the public;
  - iii. a transparent approach to investigation, which promotes engagement with social workers and other people involved in the process;
  - iv. fair and proportionate adjudication in circumstances where there are concerns about a social worker's current fitness to practise;
  - v. support for complainants and witnesses involved in the process; and
  - vi. intelligence-led learning and evidence-based enhancement initiatives, working with the social work profession.
9. Our process is designed to have options to address most of the concerns we receive without the need for a final hearing. Following investigation, our independent case examiners will be able to resolve a case without a hearing in circumstances where the social worker accepts the concerns, and demonstrates that they have taken measures to improve their practice (also known as 'accepted disposal'). With the consent of the social worker, the case examiners can do almost everything that adjudicators can do (e.g. issue warnings, suspensions etc.), except remove someone from the register. This is designed

to avoid unnecessary hearings in circumstances where a social worker agrees with the resolution and where public protection has been upheld. This process is set out below:

**Graphic 1: Process of a case before referring to the adjudicators**



10. As part of our commitment to collaboration, we will also appoint regional engagement leads. As registered and practising social workers, they will work with a range of stakeholders, including employers, people with lived experience of social work, social workers, and education and training providers. They will raise awareness and ensure the consistent implementation of our standards, including sharing analysis of when social workers or education and training providers fall short of standards, and they will drive forward our engagement across the regions.

### What we're asking you

11. The aim of this consultation is to invite your feedback and to test our thinking on the proposed fitness to practise rules. We welcome feedback on all of the rules, but we have asked a number of targeted questions in an online survey, which you can find [here](#).
12. The survey makes use of open and scaling questions (1: strongly disagree - 5: strongly agree). The survey questions are reproduced below. Please see the 'How to respond' section for information about how to complete the online survey, or for assistance in responding to these questions.

## Survey questions

### Rule 3: Triage

1. To what extent do you agree with our criteria to accept a case?

### Rules 10-11: Obtaining further information

2. To what extent do you agree that a social worker and a complainant should be given further opportunity to comment on a case prior to referral to the case examiners in circumstances where an investigation reveals new evidence?

### Rule 13: Interim orders

3. To what extent do you agree that interim order applications may be agreed in a meeting rather than in a hearing, where the social worker does not request a hearing?

### Rules 14-15: Notice of fitness to practise hearing

4. To what extent do you agree that there should be different timeframes for issuing notices of hearings, with cases involving criminal convictions or straightforward concerns being given a shorter timeframe?

### Rule 16: Review of orders

5. To what extent do you agree that review hearings should be referred to the adjudicators for a decision, rather than being decided by employees of the regulator or the case examiners?

### Rule 32: Procedure at hearings or meetings

6. To what extent do you agree that the rules should allow panels to decide how to regulate the procedure followed at hearings?

### Rules 33-34: Legal advice at hearings

7. To what extent do you agree that Social Work England should be able to hold interim order and review hearings without a legal adviser or legally qualified panel chair in suitable circumstances?

### Rule 35: Quorum

8. To what extent do you agree that it is suitable to use lay panels (panels of adjudicators or case examiners that do not include a registered social worker) in certain types of cases?

**Rules 38-39: Attendance of the public at hearings**

9. To what extent do you agree that hearings should be held in public unless there is an accepted reason for all or part of a hearing to be held in private (e.g. to consider a health or family matter)?

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

10. To what extent do you agree that Social Work England should be able to replace an adjudicator during a hearing if one of the original adjudicators is unable to continue, rather than restart the hearing with a fresh panel?

**Rules 49-51: Period for which information must remain on the register**

11. To what extent do you agree with the timescales proposed for maintaining annotations on Social Work England's online register after the sanction has expired?
12. Do you have any other comments?

## Impact assessment

13. Our aim is to enable change and ultimately improve people's lives by providing clear, effective and responsive regulation of social workers. The proposals are designed with people who use social work services in mind, ultimately striving for better public protection and increased confidence in social work as a profession.
14. We expect that any impact would be beneficial, but will be felt most immediately by social workers and their employers, by education and training providers, by students and by people who use social work services.
15. The impact assessment questions can be found at the end of the online survey, but are also listed in the grey box below, for reference.

**Impact assessment questions**

Do you think that the proposed changes will:

1. bring particular benefits for your organisation or those you represent?
2. impact differently on people based on protected characteristics<sup>1</sup>?

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<sup>1</sup> The Equality Act (2010) lists nine protected characteristics: age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity

## How to respond

16. The consultation is open until 5pm on Wednesday 1 May 2019.
17. You can answer the questions via our online survey found [here](#).
18. Or you can email us at [consultation.responses@socialworkengland.org.uk](mailto:consultation.responses@socialworkengland.org.uk)
19. Or by post to: Consultation Responses, Social Work England, 1<sup>st</sup> floor, 1 North Bank, Blonk Street, Sheffield, S3 8JY.
20. If you need any reasonable adjustments to help you respond, please contact us at [consultation.responses@socialworkengland.org.uk](mailto:consultation.responses@socialworkengland.org.uk).

## What will happen next

21. Once the consultation period is completed, we will analyse the responses we have received. We will then publish a document that summarises the responses and explains the decisions we have taken as a result.
22. All standards require approval, and the rules are subject to review by the Secretary of State before publication. The final sets of rules and standards will be published on our website. The rules will govern how we operate as a regulator and will come into force on the day we assume regulatory responsibility. Social workers and education and training providers will be expected to meet the professional and qualifying education and training standards once we assume regulatory responsibility.



## Annex A

### Explaining the proposed fitness to practise rules

The information below is aimed at supporting you to understand what the rules mean and how we intend to use them.

<b>Part 1</b>	includes a glossary of key terms used and describes how they relate to the regulations.
<b>Part 2</b>	details how we will investigate concerns received about social workers.
<b>Part 3</b>	describes how decisions will be made about a social worker's fitness to practise.
<b>Part 4</b>	describes the supporting procedures we will apply during the investigation and adjudication of fitness to practise cases, including providing notice of hearings and publishing hearing outcomes.
Rules 3-4	set out the criteria we will use when determining whether a concern raised about a social worker meets the threshold for further investigation.
Rules 5-7	set out the process we will apply to automatically remove a social worker from the register in circumstances where they have been convicted of a listed offense. Details of listed offenses are provided in schedule 3 of the regulations.
Rules 8-9	set out the measures we will take to communicate with a social worker in circumstances where we initiate an investigation into a fitness to practise concern.
Rules 10-11	set out the measures we may take to obtain further information from the social worker, the complainant or a third party during our investigations.
Rule 12	describes the process the case examiners will follow if they determine it may be appropriate to dispose of a case under the accepted disposal route without a hearing.
Rule 13	sets out the process we will follow for notifying the social worker of a proposed interim order and, where necessary, scheduling an interim order hearing.
Rules 14-15	set out the process for notifying a social worker of a final hearing, including the details of the hearing event and further information about the case being brought against the social worker.
Rule 16	sets out how we will review certain fitness to practise orders, either at short notice where new information is received or prior to the expiry of that order in usual circumstances.
Rule 17	confirms that meetings may be conducted through electronic communication rather than by physical attendance.
Rules 18-24	set out the process that will be followed in circumstances where a social worker has been removed from the register following a removal order and has applied for restoration to the register.

Rules 25-30	set out the case management process we will use, including the range of actions that may be taken by the regulator or adjudicators in advance of a hearing to ensure the process operates effectively.
Rule 31	sets out the actions that the regulator or adjudicator may take in respect of a failure to comply with rules or directions.
Rule 32	sets out some of the actions the adjudicators may take to regulate hearings in order to promote fair and efficient progress.
Rules 33-34	describe who will be appointed to provide legal advice to the adjudicators and parties to a hearing at both final and review hearings.
Rule 35	sets out the requirements for the involvement of lay and professional advisers in fitness to practise decisions made by Social Work England, the case examiners and the adjudicators.
Rule 36	describes how decision-makers will deal with information about a social worker's previous fitness to practise history when making a decision on a case.
Rule 37	sets out the actions the fitness to practise investigators or adjudicators may take to obtain further evidence in cases involving adverse physical or mental health.
Rules 38-39	set out the procedure that will be followed to ensure that, where appropriate, evidence at final hearings is heard in public.
Rule 40	describes the arrangements we will make to ensure that a verbatim record of all evidence given at hearings is made.
Rules 41-43	explain the social worker's right to representation at a final hearing and the circumstances under which the right to representation or cross examination of witnesses may be restricted.
Rule 44	sets out the circumstances under which adjudicators may hold a hearing in the absence of the social worker concerned.
Rules 45-47	set out the requirements that must be followed to inform a social worker that a hearing is taking place before that hearing can go ahead.
Rule 48	sets out the measures that we may take to progress a case in circumstances where an investigator, case examiner or adjudicator involved in the matter is ineligible to continue.
Rules 49-51	describe the circumstances in which we will publish information relating to decisions made by the case examiners and the adjudicators on our register, including the length of time that information will remain in publication.

## Annex B

### Glossary of fitness to practise terms and roles

<p><b>Investigator</b></p>	<p>Investigators are responsible for looking into concerns raised about social workers. They carry out an investigation into a social worker’s ‘fitness to practise’, assess the risks around the concern and obtain all relevant information to come to a recommendation.</p> <p>At the end of the investigation, they present a report with a recommendation to either close the concern or open a case for further action. The report and recommendations prepared by the investigator are considered by the case examiners.</p>
<p><b>Case examiner</b></p>	<p>Case examiners are responsible for deciding whether a case passed to them by an investigator should be referred to a panel. The case examiner makes an independent decision based on the investigator’s report and recommendations, together with any information that the social worker provides.</p> <p>The case examiner may decide to close the case if there are no outstanding concerns, or refer it to a final hearing, where the case will be considered further. They have other options available to them, including closing the case in circumstances where the social worker accepts the concerns raised and recommendations made (‘accepted disposal’).</p>
<p><b>Adjudicator</b></p>	<p>Adjudicators consider cases at final hearings. They usually sit as a panel of three adjudicators and have input from a legally qualified person. As part of a panel, they examine evidence provided by the investigators and by the social worker before and during the hearing. They use this evidence to determine whether the social worker’s fitness to practise is currently compromised or ‘impaired’.</p> <p>The adjudicators have a range of decisions available to them:</p> <ol style="list-style-type: none"> <li>i. Take no further action;</li> <li>ii. Issue a warning;</li> <li>iii. Place conditions of practice on the social worker’s registration;</li> <li>iv. Suspend a social worker for a period of time; or</li> <li>v. Remove a social worker from the register.</li> </ol>
<p><b>Triage</b></p>	<p>A point in the process of us handling a concern that has been raised to us about a social worker. At triage, we will consider a concern and decide whether it is something that Social Work England can, and should, take forward, taking into account a number of different factors.</p>

<b>Interim order</b>	These are emergency orders for suspension or conditional registration of a social worker to ensure that the public, or sometimes the social worker themselves, is protected. They can be obtained quickly and are reviewed regularly to ensure they remain appropriate and necessary at all times.
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## Social Work England

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### Rules

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#### The Social Work England (Fitness to Practise) Rules 2019

### PART 1

#### Citation, commencement and Interpretation

##### Citation and commencement

- (1) Social Work England has made the Social Work England (Fitness to Practise) Rules 2019 in exercise of powers conferred by regulation 3 of the Social Workers Regulations 2018.
- (2) These Rules may be cited as the Social Work England (Fitness to Practise) Rules 2019.
- (3) These Rules come into force on date TBC.

##### Interpretation

- In these Rules -

‘adjudicator’ refers to an individual appointed under regulation 25(7)(c).

‘the Authority’ refers to the Professional Standards Authority for Health and Social Care established by Section 25(1) of the National Health Service Reform and Health Care Professions Act 2002.

‘case examiner’ refers to an individual appointed under regulation 25(7)(b).

‘investigator’ refers to an individual appointed under regulation 25(7)(a).

‘lay’ refers to a person who is not and never has been registered as a social worker in the UK, and does not hold qualifications that would entitle them to be so registered.

‘panel’ refers to the adjudicators appointed under paragraph 10(2)(b) of Schedule 2.

‘registrant’ refers to a person who is currently a social worker registered with the Regulator.

‘Regulations’ refers to The Social Workers Regulations 2018 and ‘regulation’ shall be construed accordingly.

‘Regulator’ refers to Social Work England or a person carrying out the functions of the Regulator set out in the regulations.

‘removal order’ has the meaning given in paragraph 13(1)(a) of Schedule 2.

‘Schedule 2’ refers to Schedule 2 of the regulations.

‘social worker’ has the meaning given in regulation 2(5).

'Social Work England Portal' refers to a tool delivered via the Social Work England website that provides a secure communication channel for Social Work England to communicate with the registered social worker.

## PART 2

### INITIAL INVESTIGATION

#### Triage

3. (a) Where the Regulator is in receipt of information raising a concern about the fitness to practise of a social worker on any of the grounds listed in regulation 25(2), the Regulator must apply the following criteria to determine whether there are reasonable grounds for investigating whether the registered social worker's fitness to practise is impaired:
  - (i) the seriousness of the concern by reference to the pursuit of the Regulator's overarching objective;
  - (ii) the likely availability of sufficient evidence to support an allegation of impaired fitness to practise;
  - (iii) 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;
  - (iv) the outcome and subsequent actions arising from an investigation carried out by a body included in regulation 7;
  - (v) whether the social worker is taking, or has successfully completed, remedial actions in respect of the concern; and
  - (vi) whether the social worker has been subject to an adverse finding in any previous investigations by the Regulator, its predecessors, or a body included in regulation 7, into matters relevant to the social worker's fitness to practise.
- (b) The Regulator may conduct further investigations including obtaining advice before making a determination under Rule 3(a).
- (c) The Regulator may defer making a decision under Rule 3(a) until the concern has been investigated and determined by a body included in regulation 7.
- 4.(a) Where the provisions of paragraph 1(2) of Schedule 2 apply, the Regulator must require the social worker to provide the details required under the provisions of paragraph 1(3)(a) of Schedule 2 within 7 days of when the requirement is deemed to have been served on the social worker in accordance with the provisions of Rule 46.
- (b) When notifying the social worker of the requirement under Rule 4(a), the Regulator must inform the social worker of the provisions of Regulations 16(4) and (5), 32(d) and 33 in respect of a failure to comply with the requirement.

#### Automatic Removal

- 5.(a) The Regulator must notify a registered social worker in accordance with the provisions of regulation 26(2) within 7 days of becoming aware that the social worker has been convicted of a listed offence.
- (b) The Regulator must specify a period of not less than 7 days from when the notification is deemed to have been served within which the social worker may make written submissions and indicate whether they wish to attend before the Regulator to make oral submissions, under the provisions of regulation 26(2).
- 6.(a) Where the social worker indicates within the time specified by the Regulator in Rule 5(b) that they wish to attend before the Regulator to make oral submissions that the proposed removal is based on an error of fact, the Regulator:
- (i) must arrange for a hearing to take place within 14 days of the end of the time period specified by the Regulator under Rule 5(b); and
  - (ii) must serve the social worker with notice of the date, time and place of the hearing not less than 7 days before the date of the hearing.
- (b) The Regulator may adjourn or postpone the hearing to a later date, including for the purposes of investigating further whether the proposed removal is based on an error fact.
7. The date of the removal under regulation 26(5)(a) must be the date on which the notification under regulation 26(5)(b) is deemed to have been served on the social worker in accordance with the provisions of Rule 53.

### **Investigation**

- 8.(a) The investigators must notify the social worker in accordance with the provisions of paragraph 4(1)(a) of Schedule 2 within 7 days of a determination under Rule 3(a) that there are reasonable grounds to investigate the social worker's fitness to practise.
- (b) The investigators must require the social worker to provide the details required by paragraph 4(1)(b) of Schedule 2 within 7 days of deemed service of the notice issued under Rule 8(a) (in accordance with the provisions of Rule 46).
- (c) In notifying the social worker of the requirement under Rule 8(b), the investigators must inform the social worker of the provisions of Regulations 16(4) and (5), 32(1)(d) and 33 in respect of a failure to comply with the requirement.
- (d) The investigators must specify a period of not less than 14 days within which the social worker may make written submissions under paragraph 4(1)(c) of Schedule 2.
9. If the investigators invite comments from the complainant, they must specify a period of not less than 7 days within which the complainant may make written submissions under paragraph 4(2)(b) of Schedule 2.

### **Obtaining further information**

- 10.(a) The investigators may require information or documents to be produced to them under the provisions of paragraph 5(1) of Schedule 2 within 14 days or such longer period as the investigators may determine in accordance with paragraph 5(3) of Schedule 2.

(b) A notification under Rule 10(a) must include information about the provisions of Regulations 32(1)(e) and 33 in respect of a failure to comply with the requirement.

11. The investigators may invite the social worker or complainant to comment on:

(a) any further information received or obtained by the investigators, including under the provisions of Rule 10(a); or

(b) a report by the investigators summarising the findings of their investigation and if so the provisions of Rule 8(d) and Rule 9 apply.

#### **Determination by case examiners**

12.(a) Where the case examiners notify the social worker under the provisions of paragraph 7(3) of Schedule 2 that they propose to dispose of a case without a hearing, they must specify a period of not less than 14 days and not more than 28 days within which the social worker may state whether they elect to have their case disposed of without a hearing.

(b) The case examiners may extend the period within which the social worker may state whether they elect to have their case disposed of without a hearing where they consider it reasonable to do so.

### **PART 3**

#### **ADJUDICATION**

##### **Interim orders**

13.(a) Where the adjudicators propose to make an interim order under the provisions of paragraph 8 or paragraph 11(1)(a) of Schedule 2, they must inform the social worker of the dates:

(i) on which they propose to make the order; and

(ii) by which the social worker must make written submissions or state whether they intend to attend before the adjudicators and be represented in order to make oral submissions.

(b) The dates in Rule 13(a)(ii) must be not less than 7 days after notice of the proposal to make an order is deemed to have been served on the social worker in accordance with the provisions of Rule 46, unless in the opinion of the adjudicators a shorter period is necessary to protect the public.

(c) Where the social worker does not state within the period specified by the adjudicators whether they intend to attend before the adjudicators, the adjudicators may determine whether to make an order by means of a meeting.

##### **Notice of fitness to practise hearing**

- 14.(a) Subject to Rule 14(b) the adjudicators must notify the social worker under the provisions of paragraph 10(4) of Schedule 2 not less than 28 days before the commencement of the fitness to practise hearing, unless the social worker consents to a shorter period.
- (b) The adjudicators may notify the social worker not less than 14 days before a fitness to practise hearing that relates to a matter considered under paragraph 1(2) of Schedule 2.
15. The notice of hearing must include:
- (a) the dates, times and place of the hearing; and
  - (b) a statement of case setting out those matters that are agreed between the parties, those matters that are not agreed, and the basis for alleging impairment of fitness to practise.

### **Review of Orders**

- 16.(a) Where the Regulator proposes that an order should be reviewed under the provisions of paragraph 14 or 15 of Schedule 2, the Regulator must inform the social worker of the respective dates:
- (i) on which it is proposed the order should be reviewed; and
  - (ii) by which the social worker may make written submissions or state whether they intend to attend before the Regulator and be represented in order to make oral submissions.
- (b) The date in Rule 16(a)(ii) must be not less than 7 days after the Regulator informs the social worker of the proposal to review the order, unless in the opinion of the Regulator a shorter period is necessary to protect the public or is in the public interest.
- (c) Where the social worker does not state within the period specified by the Regulator whether they intend to attend before the Regulator, the Regulator may determine whether to make an order by means of a meeting.
- (d) Where the social worker makes written submissions and states that they do not intend to attend before the Regulator, the Regulator may direct that the question of whether an order should be made is determined by means of a meeting.

### **Meetings**

17. For the purposes of these Rules, meetings may be held by means of electronic communication.

### **Restoration after a removal order**

18. An application for restoration after a removal order made under paragraphs 12(3), 15(2)(d) or 16(3) of Schedule 2:

- (a) must be made in writing;
  - (b) must include certificates of any relevant education or training courses, from those included in the list kept under the provisions of regulation 20(4)(a), which the applicant has successfully completed since the direction for removal was made;
  - (c) must provide details of any employment, paid or unpaid, undertaken since the direction for removal was made;
  - (d) must indicate whether the applicant wishes to attend before the adjudicators and be represented in order to make oral submissions; and
  - (e) may include any testimonial or other supporting evidence on which the applicant intends to rely.
19. Where the adjudicators require a person other than the applicant to produce documents under the provisions of regulation 15(5)(b) they may specify a period not less than 7 days within which the person must provide the relevant information.
  20. Where the applicant indicates that they wish to attend before the adjudicators, or where the adjudicators require a person other than the applicant to attend and give evidence, the adjudicators must give the relevant parties not less than 7 days notice of the date, time and place of the hearing.
  21. A notice to require a person other than the applicant to attend and give evidence or to produce documents must include reference to the provisions of regulation 32(1)(b) and 33.
  22. Where the applicant indicates that they do not wish to attend before the adjudicators and the adjudicators do not require a person other than the applicant to attend and give evidence, the adjudicators may determine the application by means of a meeting.
  23. The adjudicators must determine an application that complies with the provisions of Rule 18 within 56 days of it being made unless the applicant applies for or consents to a postponement of the determination.
  24. The applicant may withdraw their application at any time prior to the opening of the meeting or hearing at which the application is to be determined.

### **Case management**

- 25.(a) An adjudicator or the Regulator may conduct a case management meeting in respect of:
  - (i) a fitness to practise hearing;
  - (ii) a fitness to practise review hearing where new information is to be considered under the provisions of paragraph 15(2) of Schedule 2; or
  - (iii) a restoration hearing.
- (b) A case management meeting must be conducted by an adjudicator where the hearing is to take place before adjudicators.

- 26.(a) A case management meeting may be conducted by such method as agreed between the parties or, where the parties fail to agree, by such method as determined by the Regulator or adjudicator.
- (b) Unless the parties agree otherwise, the social worker must be given not less than 7 days notice of any case management meeting.
27. Directions given by the adjudicator or Regulator may include, but are not limited to:
- (a) that each party disclose to the other by such date as the adjudicator or Regulator may direct:
- (i) any documentary evidence in their possession or power relating to the case;
- (ii) details of the witnesses on whom they intend to rely and signed witness statements setting out the substance of their evidence; and
- (iii) skeleton arguments.
- (b) that each party provides a bundle of the evidence in the case that can be disclosed to the panel for the purposes of pre-reading ahead of the opening of the hearing or meeting.
- (c) that each party provides an estimate as to the likely length of the hearing and the date or dates on which they propose the hearing should take place.
- (d) that the social worker indicates as far as possible:
- (i) whether they admit their fitness to practise is impaired;
- (ii) which facts are admitted and which remain in dispute; and
- (iii) which witness evidence is admitted and which witnesses are required for cross examination.
- (e) that two or more matters relating to the same social worker, or relating to two or more social workers where the proceedings arise from common events, are listed for consideration and determination by the same fitness to practise panel.
- (f) that having taken account of the views of the parties that the oral evidence of a witness is to be given by means of a video link or telephone link.
- (g) that a particular witness of fact may be treated as a vulnerable witness and directions as to how the evidence of such a witness should be obtained or presented to the fitness to practise panel.
- (h) that in a case based on facts of a sexual nature where the social worker intends to act in person that the Regulator is to appoint a legally qualified person to cross examine the alleged victim on behalf of the social worker.
- (i) time limits for compliance with any of the directions listed above.

28. The adjudicator or Regulator must serve on the parties a record of the directions issued as soon as possible and in any event in not more than 7 days after the conclusion of the case management meeting.
29. Case management directions are binding on the parties and on any fitness to practise panel subsequently considering the case unless the panel considers that:
  - (a) there has been a material change of circumstances; or
  - (b) it is not in the interests of justice for that to be the case.
30. The directions of the adjudicator or Regulator are not invalidated if the adjudicator or Regulator does not subsequently determine the matter that is the subject of the case management meeting.

### **Powers of a fitness to practise panel in respect of a failure to comply with Rules or directions**

31. Where a party fails to comply with these Rules or a case management direction, the fitness to practise panel or the Regulator may:
  - (a) draw adverse inferences; and
  - (b) refuse to admit evidence where the failure relates to the admissibility of that evidence.

### **Procedure at hearings and meetings**

- 32.(a) The adjudicators or the Regulator may regulate their own procedures and must conduct the hearing or meeting in the manner they consider fair.
- (b) In particular, and without prejudice to any other provision in the regulations, Schedule 2 or the Rules, the adjudicators or the Regulator may:
  - (i) consolidate or hear together two or more sets of proceedings against the same social worker, or against two or more social workers where the proceedings arise from common events;
  - (ii) provide for a particular matter to be dealt with as a preliminary issue;
  - (iii) decide the form of any hearing or meeting;
  - (iv) adjourn or postpone a hearing or meeting of their own motion or on application of a party to the proceedings;
  - (v) determine whether to treat a witness as vulnerable;
  - (vi) receive witness evidence by electronic means; and
  - (vii) admit evidence where they consider it fair to do so, whether or not such evidence would be admissible before the courts.

### Legal advice at hearings

33. Where a case has been referred to a fitness to practise hearing or a restoration after removal hearing, the Regulator must:
  - (a) appoint a legally qualified adjudicator to chair the hearing; or
  - (b) appoint a solicitor or barrister of not less than 10 years standing to act as a Legal Adviser.
34. Where a case has been referred to a hearing or meeting to review an order or to make an interim order, the Regulator may make an appointment under Rule 33 (a) or (b) where the Regulator considers it necessary in the interests of fairness to do so.

### Quorum

- 35.(a) Where a case is to be considered under these Rules by the adjudicators or the case examiners, the Regulator must appoint at least one lay person.
  - (b) Where a case is to be considered by the Regulator under these Rules, the person or persons appointed to determine the case must include at least one lay person.
  - (c) The chair of any hearing or meeting must be a lay person.

## PART 4

### MISCELLANEOUS

#### Previous history

- 36.(a) For the purpose of this Rule, previous history is an adverse decision relevant to the social worker by the Regulator, its predecessors, or a body included in regulation 7.
  - (b) At any time that a case is being considered under these Rules, the Regulator, investigators or case examiners may take into account a social worker's previous history, provided that the Regulator, investigators or case examiners, as the case may be, are satisfied that it is fair and reasonable to do so.
  - (c) (i) Subject to Rule 36(c)(ii), the adjudicators may not receive information about previous history before they have determined any disputed facts;
    - (ii) On application by a party to the proceedings, the adjudicators may receive and take into account previous history in determining disputed facts, provided they are satisfied that it is fair and reasonable to do so.

#### Health Assessment

37. At any stage where the Regulator is considering a concern of adverse physical or mental health, the investigators or adjudicators may request the social worker to undergo a

medical assessment of their fitness to practise by a registered medical practitioner nominated by the Regulator.

### **Attendance of the public at hearings**

38. Subject to Rule 39, a hearing under these Rules shall be held in public.
- 39.(a) A hearing, or part of a hearing, shall be held in private where the proceedings are considering:
- (i) whether to make or review an interim order; or
  - (ii) the physical or mental health of the social worker.
- (b) The Regulator or adjudicators as the case may be may determine to hold part or all of the proceedings in private where they consider that to do so would be appropriate having regard to:
- (i) the vulnerability, interests or welfare of any participant in the proceedings; or
  - (ii) the public interest including in the effective pursuit of the Regulator's over-arching objective.
- (c) The Regulator or adjudicators as the case may be may deliberate in camera, in the absence of the parties and of the public, at any time.
- (d) The Regulator or adjudicators may exclude from any hearing any person whose conduct in their opinion is likely to disrupt the orderly conduct of the proceedings.

### **Recording of proceedings**

- 40.(a) The Regulator must make arrangements to record oral submissions or witness evidence given in person under these Rules.
- (b) (i) The Regulator may access a transcript of any recording of proceedings, including for the purposes of audit and training and must supply a transcript of any recording on request of the Authority;
- (ii) Subject to Rule 40(c), the Regulator must supply a transcript of any recording of proceedings to:
- (aa) any party to the proceedings; or
  - (bb) a complainant where the proceedings were instigated following a complaint, at which the party or complainant (as the case may be) was entitled to be present.
- (c) A complainant is not entitled to the transcript of any proceedings conducted in private under the provisions of Rule 39(a)(ii) in relation to the social worker's health.

## Representation

41. At a hearing the social worker may be represented by:
  - (a) a solicitor or counsel;
  - (b) a representative from any professional organisation of which the social worker is a member; or
  - (c) at the discretion of the Regulator or adjudicators conducting the hearing as the case may be, a member of the social worker's family or another suitable person.
42. A person who gives evidence at a hearing is not entitled to represent or accompany the social worker at that hearing.
- 43.(a) Where the allegation against the social worker is based on facts which are sexual in nature and:
  - (i) a witness is the alleged victim; and
  - (ii) the social worker is acting in person,  
the social worker shall not without the written consent of the witness be allowed to cross-examine the witness in person.
- (b) In the circumstances set out in Rule 43(a), in the absence of written consent, the social worker shall not less than 7 days before the hearing appoint a legally qualified person to cross-examine the witness on his behalf and, in default, the adjudicators shall appoint such person on behalf of the social worker.

## Absence of the social worker

44. Where the social worker does not attend a hearing and is not represented, the Regulator or adjudicators, as the case may be, may proceed to determine the matter, including in circumstances where the social worker has previously indicated they wished to attend, if they are satisfied that notice of the hearing has been served in accordance with these Rules.

## Service

- 45.(a) A notice or communication to the social worker under these Rules must be:
  - (i) placed on the Social Work England Portal where the social worker has agreed to accept notices or communications from the Regulator via the Social Work England Portal; or
  - (ii) sent by next day delivery service or ordinary post to an address provided by the social worker to the Regulator.
- (b) Service of any notice or communication may be proved by:

- (i) (a) A signed statement from a person causing the notice or communication to be placed on the Social Work England Portal; and
    - (b) A certified copy of a message sent by electronic mail to the social worker informing the social worker of the placement of the notice or communication on the Social Work England Portal.
  - (ii) a confirmation of posting issued by or on behalf of the Post Office, or other postal operator or delivery service; or
  - (iii) a signed statement from the person sending by ordinary post or delivering the notice or document in accordance with this rule.
46. Where any notice or communication is sent or otherwise served under these Rules, it must be treated as having been served:
- (a) where the notice or communication is placed on the Social Work England Portal, on the day an electronic message is sent to the social worker informing them of the placement of the notice or communication on the Social Work England Portal;
  - (b) where the notice or communication has been left at an address, on the day it was left;
  - (c) where the notice or communication has been sent by next day delivery service, the day after the date it was sent; or
  - (d) where the notice or communication has been sent by ordinary post, two days after it was sent.
- 47.(a) The social worker may, in writing, nominate a solicitor, professional body, or trade union to accept service on their behalf of any notice or communication sent under these Rules.
- (b) Where the social worker makes a nomination under Rule 47(a), service may be proved by delivery to the nominee under the provisions of Rule 46.

#### **Eligibility to act as an investigator, case examiner or adjudicator**

- 48.(a) Where an investigator, case examiner or adjudicator becomes ineligible under the provisions of the Social Worker England (Investigators, Case Examiners, Adjudicators and Inspectors) Rules 2019, or if they are suspended or removed from office under the Social Work England (Appointment and Functions of Advisers and Constitution of Panel of Advisers) Rules 2019, the Regulator may replace them with another investigator, case examiner or adjudicator as the case may be.
- (b) Where the Regulator makes a replacement under Rule 48(a), a registrant must be replaced with a registrant and a lay person must be replaced by a lay person.

#### **Period for which information must remain on the register**

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49. Where case examiners or adjudicators make a direction to give advice or a warning to a social worker under the provisions of paragraphs 9(3), 12(3) or 13(1)(d) of Schedule 2, they must specify a period of 1, 3 or 5 years for which the warning or advice must remain on the register in accordance with the provisions of regulation 9(5)(b).
50. Subject to Rule 51 after the expiry of an interim order, conditions of practice order or suspension order, or after restoration following a removal order, the longer period for which information must remain on the register is:
- (a) in the case of a social worker who was subject to a removal order and is subsequently restored to the register, for as long as the social worker is registered;
  - (b) in the case of a suspension order or a conditions of practice order, for 5 years from the point at which the suspension or conditions of practice order ends;
  - (c) in the case of a finding of impairment with no sanction, for 1 year from the date of determination of impairment.
- 51.(a) Where an interim order has been imposed and the fitness to practise proceedings are concluded without a finding of impairment; or
- (b) where a final order is made in relation to a finding of adverse physical or mental health;
- the Regulator must remove the information about the order from the register when the order ceases to be in force.

## EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules are made pursuant to The Social Workers Regulations 2018. They make provision for fitness to practise proceedings in respect of social workers.

Part 2 of the Rules makes provision for how information raising a concern about a social worker's fitness to practise is to be initially considered and, where appropriate, investigated by the Regulator. This part includes timeframes, as required by the regulations, within which certain stages must be completed or information provided.

Part 3 makes provision for the procedures by which cases that are referred for adjudication must be considered. This includes for the purposes of considering making or reviewing interim orders, the fitness to practise of a social worker either initially or on review, and applications for restoration after a removal order. It sets timeframes for serving notices of hearings, and it enables cases to be considered at meetings unless the social worker requests a hearing. There are also case management provisions to facilitate efficient hearings processes.

Part 4 makes provision for how service of notices must be affected, how previous history may be taken into account when considering current fitness to practise, and circumstances in which proceedings may be conducted in public or private. This part also sets out requirements for how long expired sanctions must remain in the register.