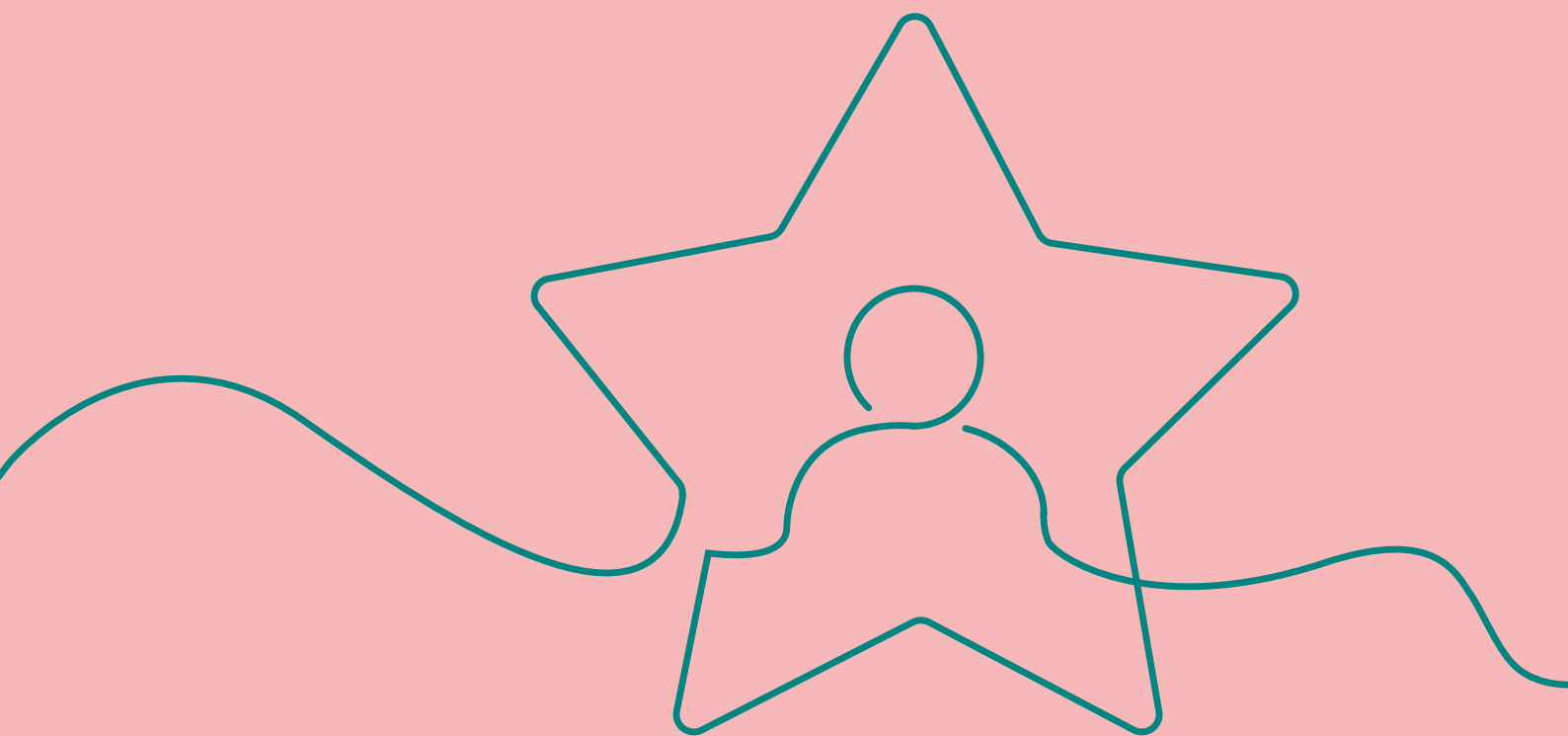


**Social
Work
England**

Fitness to Practise Rules 2019



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Part 1: Introduction

Citation and commencement

1. (1) Social Work England has made these Rules in accordance with regulation 3 of the Social Workers Regulations 2018.

(2) These Rules are made in exercise of powers conferred by regulation 25(5) of the Social Workers Regulations 2018.

(3) These Rules may be cited as the Social Work England (Fitness to Practise) Rules 2019 and come into force on the date on which section 39(1) of the Children and Social Work Act 2017 comes into force.

Interpretation

2. In these rules:

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

‘the Authority’ means 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’ means an individual appointed under regulation 25(7)(b).

‘electronic communication’ means telephone, video or other technology that facilitates verbal interaction.

‘health care professional’ means a person who is registered as a member of any profession to which section 60(2) of the Health Act 1999 applies.

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

‘lay person’ means 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’ means the adjudicators appointed under paragraph 10(2)(b) of Schedule 2.

‘registrant’ means a person who is currently a registered social worker registered with the regulator.

‘regulation’ means a regulation in The Social Workers Regulations 2018 and ‘regulations’ shall be interpreted accordingly.

‘regulator’ means 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’ means Schedule 2 to the Regulations.

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

‘Social Work England online account’ means 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 question about the fitness to practise of a registered social worker on any of the grounds listed in regulation 25(2), the regulator must determine whether there are reasonable grounds for investigating whether the registered social worker's fitness to practise is impaired by applying the following criteria:
 - (i) the seriousness of the concern by reference to the pursuit of the regulator's over-arching objective;
 - (ii) the likely availability of sufficient evidence to support an allegation of impaired fitness to practise;
 - (iii) the concern suggests the registered 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 of, and subsequent actions arising from, an investigation carried out by a body referred to in regulation 7;
 - (v) whether the registered social worker is taking, or has successfully completed, remedial actions in respect of the concern; and
 - (vi) whether the registered social worker has been subject to an adverse finding in any previous investigations by the regulator, its predecessors, or a body referred to in regulation 7, into matters relevant to the registered social worker's fitness to practise.
- (b) The regulator may conduct any further enquiries it sees fit including obtaining advice before making a determination under rule 3(a).
- (c) The regulator may defer making a determination under rule 3(a) until the concern has been investigated and determined by a body referred to in regulation 7.
4. (a) Where the provisions of paragraph 1(2) of Schedule 2 apply, the regulator must require the registered social worker to provide the details required under paragraph 1(3)(a) of Schedule 2 within 7 calendar days of when the requirement is deemed to have been served on the registered social worker in accordance with rule 45.
- (b) When notifying the registered social worker of the requirement under rule 4(a), the regulator must inform the registered social worker 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 calendar days of becoming aware that the registered social worker has been convicted of a listed offence.

(b) The regulator must specify a period of not less than 7 calendar days from when the notification is deemed to have been served within which the registered 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 registered 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 calendar days of the end of the time period specified by the regulator under rule 5(b); and
 - (ii) must serve the registered social worker with notice of the date, time and place of the hearing not less than 7 calendar 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 of fact.
7. (1) The date of the removal of a registered social worker under regulation 26(5)(a) is subject to regulation 26(7), in that an entry may not be removed from the register until such time that the period within which an appeal may be made has expired, or, if an appeal is made, is withdrawn or otherwise finally disposed of, pursuant to regulation 27.

(2) The date on which notification of removal under regulation 26(5)(b) is deemed to have been served on the registered social worker is in accordance with the provisions of rule 45.

Investigation

8. (a) The investigators must notify the registered social worker in accordance with the provisions of paragraph 4(1)(a) of Schedule 2 within 7 calendar days of a determination under rule 3(a) that there are reasonable grounds to investigate the registered social worker's fitness to practise.

(b) The investigators must require the registered social worker to provide the details required by paragraph 4(1)(b) of Schedule 2 within 7 calendar days of deemed

service of the notice issued under rule 8(a) (in accordance with the provisions of rule 45).

(c) In notifying the registered social worker of the requirement under rule 8(b), the investigators must inform the registered 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 calendar days within which the registered 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 calendar 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 calendar 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 registered 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 registered 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 calendar days and not more than 28 calendar days within which the registered social worker may state whether they elect to have their case disposed of without a hearing.

(b) The case examiners may extend the period specified in accordance with paragraph (a) 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 registered social worker of the dates:
- (i) on which they propose to make the order; and
 - (ii) by which the registered social worker must have:
 - (a) made written submissions; or
 - (b) stated that they intend to attend before the adjudicators and be represented, in order to make oral submissions.
- (b) The dates in paragraph (a)(ii) must be not less than 7 calendar days after notice of the proposal to make an order is deemed to have been served on the registered social worker in accordance with the provisions of rule 45, unless in the opinion of the adjudicators a shorter period is necessary to protect the public.
- (c) Where the registered social worker has not stated within the period specified by the adjudicators whether they intend to attend, or the registered social worker has stated that they do not intend to attend, 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 registered social worker under the provisions of paragraph 10(4) of Schedule 2 not less than 28 calendar days before the commencement of the fitness to practise hearing, unless the registered social worker consents to a shorter period.
- (b) The adjudicators may notify the registered social worker not less than 14 calendar 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 date, time 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 an order is reviewed under the provisions of paragraph 14 or 15 of Schedule 2, the regulator must inform the registered social worker of the respective dates:
- (i) on which it is proposed the order should be reviewed; and
 - (ii) by which the registered social worker must make any 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 calendar days after the regulator informs the registered 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 registered 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 registered 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 person making the application (“the applicant”) has successfully completed since the direction for removal was made;
 - (c) must provide details of any employment, paid or unpaid, undertaken by the applicant 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 to whom the regulator has referred the case for determination require a person other than the applicant to produce documents under the provisions of regulation 15(5)(b) they may specify a period of not less than 7 calendar 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 calendar 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 regulations 32(1)(b) and 33.
22. Where the applicant indicates that they do not wish to attend before the adjudicators or does not indicate whether or not they intend to attend, 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 its 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 registered social worker must be given not less than 7 calendar 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 registered 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 registered social worker, or relating to two or more registered social workers where the proceedings arise from common events, be 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 be given by means of a video link or telephone link.
- (g) that a particular witness of fact be treated as a vulnerable witness and 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 registered social worker intends to act in person, the regulator is to appoint a legally qualified person to cross-examine the alleged victim on behalf of the registered social worker.

(i) time limits for compliance with any of the directions.

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 calendar 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 need not be given by the person who hears the case.

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) Subject to Rule 32(c), 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, Schedules or Rules, the adjudicators or the regulator may:
 - (i) consolidate or hear together two or more sets of proceedings against the same registered social worker, or against two or more registered 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.

(c) The adjudicators or regulator must apply the following procedures:

- (i) (a) The adjudicators or regulator must first determine any disputed facts;
 - (b) The adjudicators or regulator must then determine whether the registered social worker's fitness to practise is impaired on the basis of facts admitted and found proved;
 - (c) If the adjudicators or regulator determine that the registered social worker's fitness to practise is impaired, they must then determine what, if any, sanction to impose.
- (ii) At each stage of rule 32(c)(i), the regulator must adduce evidence relevant to that stage and the registered social worker may respond by adducing evidence relevant to that stage.
- (iii) Before making a determination at each stage of rule 32(c)(i), the adjudicators may invite the regulator and the registered social worker to make closing submissions on the matter to be determined.

Legal advice at hearings

33. Where a case has been referred to an interim order or 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.

Panel membership

34. (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 and at least one registrant.

(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

35. (a) For the purpose of this Rule, previous history is an adverse decision relevant to the registered 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 registered 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 35(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

36. At any stage where the regulator is considering a case of fitness to practise by reason of the grounds of adverse physical or mental health, the investigators or adjudicators may request the registered social worker undergoes a medical assessment of their fitness to practise conduct by a healthcare professional nominated by the regulator.

Attendance of the public at hearings

37. Subject to rule 38, a hearing under these Rules shall be held in public.
38. (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 registered 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 presence and/or conduct in their opinion is likely to disrupt the orderly conduct of the proceedings.

Recording of proceedings

39. (a) The regulator must make arrangements to record by whatever means deemed most suitable oral submissions and witness evidence given in person under these Rules.

(b) 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.

(c) Subject to rule 39(d), the regulator must supply a transcript of any recording of proceedings on request to:

(i) any party to the proceedings; or

(ii) 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.

(d) A complainant is not entitled to the transcript of any proceedings conducted in private under the provisions of rule 38(a)(ii) in relation to the registered social worker's health.

Representation

40. At a hearing the registered social worker may be represented by:

(a) a solicitor or counsel;

(b) a representative from any professional organisation of which the registered 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 registered social worker's family or other suitable person.

41. A person who gives evidence at a hearing is not entitled to represent or accompany the registered social worker at that hearing.

42. (a) Where the allegation against the registered social worker is based on facts which are sexual in nature and:

(i) a witness is the alleged victim; and

(ii) the registered social worker is acting in person,

the registered 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 42(a), in the absence of the written consent of the witness, the regulator shall not less than 7 calendar days before the hearing, appoint a legally qualified person to cross-examine the witness on the registered social worker's behalf.

Absence of the registered social worker

43. Where the registered 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 registered social worker has previously indicated they wished to attend, if they are satisfied that the registered social worker has been served or all reasonable efforts have been made to serve the registered social worker with notice of the hearing in accordance with these Rules.

Service

44. (a) A notice or communication to the registered social worker under these Rules must be served:

(i) by being placed on the Social Work England online account where the registered social worker has agreed to accept notices or communications from the regulator via the Social Work England online account;

(ii) by being sent by next day delivery service or ordinary first class post to an address provided by the registered social worker to the regulator; or

(iii) by being sent by next day delivery service or ordinary first class post to the address of a solicitor, professional body, or trade union nominated by the registered social worker to accept service on their behalf.

(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 online account; and

(b) a certified copy of a message sent by electronic mail to the registered social worker informing the registered social worker of the placement of the notice or communication on the Social Work England online account;
- (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.

45. Where any notice or communication is served in accordance with these Rules, it must be treated as having been served:

- (a) where the notice or communication is placed on the Social Work England online account, on the day an electronic message is sent to the registered social worker informing them of the placement of the notice or communication on the Social Work England online account;
- (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 first class ordinary post, two days after it was sent.

46. (a) The registered 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 registered social worker makes a nomination under rule 46(a), service may be proved by delivery to the nominee under the provisions of rule 45.

Eligibility to act as an investigator, case examiner or adjudicator

47. (a) Where an investigator, case examiner or adjudicator becomes ineligible under the provisions of the Social Work 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 47(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

48. Where case examiners or adjudicators make a direction to give advice or a warning to a registered social worker under the provisions of paragraphs 9(3), 12(3)(a) 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).
49. Subject to rule 50 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 registered social worker who was subject to a removal order and is subsequently restored to the register, for as long as the registered 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 finding of impairment.
50. Where an interim order has been imposed and the fitness to practise proceedings are concluded without a finding of impairment or where a final order has been 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 registered social workers.

Part 2 makes provision for how information raising a concern about a registered 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 the registered 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 registered 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 effected, 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.