



Pre-Hearing Case Management Guidance

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Introduction

Purpose

The purpose of pre-hearing case management is to facilitate the effective and efficient running of fitness to practise panel hearings.

From receipt of a concern, Social Work England will take a tailored approach to investigation which is fair and proportionate. Case streaming will be used where appropriate to maximise the potential for suitable and efficient progression of investigations. As a result, many cases considered by Social Work England's case examiners will have already been investigated thoroughly and, should the case examiners refer the case to a hearing, the evidence relied upon at the hearing is unlikely to change significantly.

Hearings are effective and efficient when they run to schedule, have minimal downtime, and hear witnesses at prearranged time slots to minimise wait time. Effectiveness also relies upon hearings being completed within the listing, without adjourning part heard and requiring a further listing for completion. This all helps ensure that cases are completed as quickly as possible, in the interests of all the parties and participants.

This is achieved ahead of the hearing by:

- narrowing down the case to the questions about the social worker's fitness to practise that are not agreed between the parties, and on which the panel must therefore make decisions;
- by identifying the nature and volume of evidence (witness and documentary) to be presented to the panel by each party, including advance reading;
- by resolving legal and procedural issues in advance so they do not take up panel time at the hearing; and
- by scheduling a hearing timetable based on the reasonable time each party needs to present its evidence and submissions.

In the majority of cases, pre-hearing case management will be by agreement between the parties, overseen by a hearing case management officer from Social Work England's adjudications team. The parties are encouraged to liaise in advance of an initial case management hearing wherever possible to establish whether there are any areas of disagreement and to maximise the use of available time during the meeting. The fitness to practise rules provide for formal pre-hearing case management directions to be given to the parties by a case manager. The hearing case management officer will appoint a case manager where the parties do not accept their proposed directions.

Case management directions may include how a witness may give evidence, for example by video link, and whether a witness should be treated as vulnerable and the implications of

this for how they give evidence. Directions may also be given on legal arguments, for example about admissibility of evidence.

Case management directions are normally binding on the parties and on the fitness to practise panel that hears the case unless there is a significant unforeseen change in circumstances. This means, for example, that a party may be prevented from calling evidence at the hearing which they failed to mention during case management. Such additional unexpected evidence can be highly disruptive to the smooth progress of a hearing within its allotted hearing schedule. This principle applies equally to Social Work England as it does to the respondent social worker. Case management seeks to ensure hearings run as scheduled, in the interests of all the parties involved.

Case management cannot review the merits of the case. The hearing case management officer and the case manager have no power to revisit the decision to refer the case to a hearing.

The social worker does not have to take part in case management. However, they should bear in mind that it is their professional duty to cooperate with investigations into their fitness to practise, and that case directions are normally binding on the panel that hears the case. This means that if the social worker does not participate in case management, they may be restricted in how they can present their case at the hearing, and the panel may take their failure to engage into account when assessing their current fitness to practise.

Roles and responsibilities

Following referral to a hearing, cases will immediately be assigned to a hearing case management officer at Social Work England who will arrange the initial case management meeting. Before doing so, the hearing case management officer will establish a listing window for the case, based upon the estimated time required in Social Work England's post-referral case plan. This listing window will be communicated to parties in advance of the meeting and should form the basis for initial discussion.

The hearing management officer or, where necessary, the case manager will give directions to the parties to facilitate the smooth running of the hearing. This includes identifying the length of time required by each side to prepare for the hearing, and the availability of the parties and those witnesses whose evidence is to be called. As an adjudicator, the case manager may approve the terms of the notice of hearing, which must include the dates, times and place of the hearing, and a statement of case setting out the matters agreed, the matters in dispute and the basis for alleging impaired fitness to practise.

The adjudications team uses the information produced from case management to identify available options for hearing dates within Social Work England's service targets, and to select the adjudicators to hear the case.

Cases requiring directions

Case management directions can be requested by either party or can be sought by Social Work England's adjudications team.

Case management directions may not be needed in every case. The more complex a case and the more issues in dispute, the more likely directions will be needed. By contrast where the issues are straightforward formal case management directions may be unnecessary, for example if the facts and impairment are admitted by the social worker.

In general, cases that are likely to need more than two days of hearing time should be subject to case management. If a case appears to require one or two hearing days, it will be assumed that the standard directions for the exchange of evidence apply and the adjudications team will not usually engage the case management process unless requested to do so by either of the parties.

How the case management process works

Where the case management process is engaged, the adjudications team will arrange a case management meeting, usually by means of telephone conference between the parties, chaired by a hearing case management officer. The social worker must be given at least seven calendar days' notice of the case management meeting, unless they agree to shorter notice.

Social Work England's fitness to practise team will be represented by an officer or lawyer with detailed knowledge of the case. For example, this might be an investigator who prepared the case for case examiner decision, or it might be the lawyer or officer responsible for presenting the case at the hearing. Social Work England's fitness to practise team will normally be represented by one person only.

The social worker may join and/or attend the conference and/or be represented.

The hearing case management officer will ensure the smooth running of the conference and will advise on availability for hearings in the adjudication schedule.

The case management meeting will go ahead whether or not all parties join the conference.

Standard directions

Standard directions are common to every case that requires case management. They relate to exchange of evidence, hearing bundles, witness attendance, admissions, and the hearing timetable. Full details of the standard directions are set out in annex A.

Where no problems are anticipated in complying with the standard directions and no additional directions are required, it may not be necessary to engage the conference stage of the case management process.

Agenda for case management

Wherever possible, the parties are encouraged to communicate in advance of an initial case management meeting to establish whether draft directions can be agreed. At the case management meeting the parties should be ready to discuss the following items.

The current status of Social Work England's case

Social Work England should prepare a realistic estimate of how much time they need to complete case preparation and disclosure of any further evidence to the social worker. They should also finalise a proposed statement of case and draft opening submissions. This should be case specific. It should not be formulaic, for example that a certain number of witnesses warrants a certain number of weeks of preparation. Enquiries should have already been made about the likely availability of key witnesses, and, where possible, appointments scheduled to take the statements. Formal requests for documents should have been lodged, quoting Social Work England's powers to require production of evidence.

In most cases, Social Work England will have collected its evidence during the investigation stages and so there should be little or no need for further preparation time. However, there may be some cases, for example where the case examiners' decision relied on the report of a local inquiry, where Social Work England needs to obtain direct witness statements or original documentation.

In light of the information about the current status of Social Work England's case, agreement should be reached on the timeframe within which Social Work England must complete its evidence gathering and disclosure. The timeframe should be realistic whilst being fair to the social worker and serving the requirement for the case to be heard as quickly as possible. Social Work England will always aim to disclose evidence as soon as possible and in all cases within three months of referral by the case examiners. However, occasionally additional time may be required, for example where a required witness is unavailable to assist with an investigation for a period of time.

Social Work England should indicate whether they intend to make any legal or procedural arguments. If so, they should present and disclose skeleton arguments. Agreement should be reached on the timeframe within which the social worker or their representative should produce skeleton arguments by way of response. Directions on the legal or procedural issue will then be made by a case manager.

The current status of the social worker's case

At the case management meeting, the social worker or their representative should indicate what aspects of Social Work England's latest version of its statement of case are accepted and which are denied. They should also indicate whether impairment of fitness to practise is accepted or denied. This may have been apparent from the social worker's response at the case examiner stage, but the social worker is entitled to review their position, and so the status of any admissions should be regularly visited if necessary.

The social worker or their representative should set out what evidence they need to collect, with a realistic and specific timetable for completing evidence collection. As with Social Work England, agreement should be reached about the timeframe within which the social worker should complete disclosure of their case.

The social worker will have been on notice about the fitness to practise concern and the evidence to support it from when Social Work England first opened the investigation, if not before. Where Social Work England needs to conduct further investigation, ongoing disclosure of new evidence as it becomes available will be applied where it is helpful and appropriate to do so. As highlighted above, Social Work England's investigation strategy will result in robust investigation being conducted at the outset for cases that are likely to be referred to a hearing. In most cases, therefore, the issues will be very well known to the social worker by the stage of hearing case management, and any further disclosure will be ongoing. This should be reflected in the time needed for the social worker to prepare their case.

The social worker may need time to review their case in the light of Social Work England's final disclosure of its statement of case and supporting evidence, but for the most part, the social worker's case preparation time should run concurrently with that of Social Work England.

The social worker or their representative should indicate whether they intend to make any legal or procedural arguments. If so, they should present and disclose skeleton arguments. Agreement should be reached on the timeframe within which Social Work England should produce skeleton arguments by way of response. The case manager will then give directions on the issue.

The hearing timetable

Each party should prepare a hearing timetable, setting out the proposed elements of the hearing by each hearing day. At first, they may only be able to provide information about those parts of the hearing for which they are the presenting party. However, the timetable is a living document which will evolve to become a finalised comprehensive agenda for the hearing. The parties are expected to liaise closely about the content of the hearing timetable throughout case management.

The hearing timetable sets out the proposed elements of the hearing by each hearing day. For example:

Day 1: Opening submission by Social Work England, witness 1 (am), witness 2 (pm).

Day 2: Social Work England's witness 3 (am), social worker's opening submission, witness 1 (am), witness 2(pm).

Day 3: Social worker's witness 3 (am), witness 4 (am). Closing submissions on facts by both parties (pm), panel in camera on facts.

Day 4: Panel announces findings of fact (am), submissions on impairment (if required) by both parties, panel in camera on impairment (pm).

Day 5: Panel announces finding on impairment, submissions on sanction (if impairment found), panel in camera on sanction (am), panel announces sanction (pm).

Careful consideration should be given to the complexity of the subject matter in the case, the amount of evidence that is contested and the decision making time likely to be needed by the adjudicators.

It is extremely important to the efficient running of hearings that a realistic and detailed hearing timetable is produced and agreed. This enables the overall hearing length to be assessed accurately. More importantly, it enables witnesses to be scheduled and called within a reasonable window to minimise disruption to them and to make the hearing run as efficiently as possible.

The case manager may give directions to the parties to ensure this timetable is produced and is realistic and reliable. If necessary, the case manager may direct the final terms of the timetable.

Identifying witnesses to be called and preparing an evidence bundle

As and when each party discloses its case to the other, each party should indicate which of the other party's witnesses they require to be called and should also agree the content of an evidence bundle. This evidence bundle should be accompanied by draft opening submissions setting out the basis on which Social Work England alleges impaired fitness to practise and the basis of the social worker's position by way of response. The bundle will be disclosed to the panel shortly before the hearing, so that hearing time is not lost while the panel reads the bundle.

If the social worker admits that their fitness to practise is impaired, then Social Work England should prepare a draft submission on proposed sanction. The social worker should prepare a draft submission in response on the question of sanction.

The parties should consult with each other about any redactions that may be required to the evidence bundle to ensure fairness of the proceedings—the burden is on both parties to ensure the content of the bundle does not include prejudicial material. It is especially important that Social Work England reviews the bundle carefully in cases where the social worker is not represented.

The hearing case management officer or the case manager may review the content of the evidence bundle and may give directions, including about redactions and the admissibility or otherwise of specific evidence.

In more complex cases, the hearing case management officer or the case manager may direct the parties to prepare an evidence matrix as an annex to the evidence bundle. This should identify the specific part of the statement of case to which each piece of evidence relates. The matrix is not binding on the parties or the panel but will be a useful guide at the hearing to aid navigation around the evidence.

The hearing timetable should be revisited in the light of any developments in the way each party intends to present its case, including on the question of which witnesses need to be called to give live evidence.

While the hearing timetable is being finalised, the parties should ensure that they have up-to-date information about witness availability.

Provisional hearing dates

It is usually preferable to agree hearing dates as soon as possible in the case management process to enable parties and witnesses to fix dates in diaries and so secure their availability. The length of the hearing can be adjusted as the hearing timetable is refined. The precise dates of the hearing are not fixed until the notice of hearing is issued. Parties should be ready at each case management meeting with details of availability and any dates to avoid.

The case manager may give directions about the date of the hearing, balancing the interests of the parties with the need, in the public interest, to hear the case quickly and within Social Work England's service targets.

Other directions

Vulnerable witnesses

On application of either party, or of their own motion, the case manager may give directions about whether a witness is to be treated as vulnerable, and if so, what measures should be taken to facilitate the witness giving their evidence.

Witnesses in cases of a sexual nature

If the social worker is not represented and intends to act in person at the hearing on their own behalf, and the case involves an allegation of a sexual nature, the case manager can direct Social Work England to appoint a legally qualified person to cross examine the alleged victim on behalf of the social worker.

Evidence by video or telephone

Where a witness is unable to attend the hearing in person, the case manager may instruct that a witness give their evidence from a remote location by means of video link or telephone. Before making such a direction, the case manager must seek the views of the parties. It is preferable for witnesses to give evidence in person and this should be the default position, unless the parties agree otherwise. In deciding whether to direct that a witness can give evidence remotely, the factors that the case manager may take into account include the importance of the evidence to the case, the extent to which it is challenged, the extent to which it is corroborated by other evidence, and the impact on the scheduling of the hearing if remote evidence is not directed. The case manager should also take into consideration any personal circumstances that may make it difficult for a witness to attend a hearing in person such as health issues.

Joinder

The case manager may direct that two or more matters relating to the same social worker, or relating to two or more social workers where the proceedings arise from the same events, are listed for one panel hearing. Where the case relates to two social workers, the arrangements for case management will be adapted accordingly. This is subject to any necessary protections for each social worker in terms of restricting disclosure of their case to the other social worker.

Expert evidence

Where expert evidence is needed, the case manager may direct that a single expert report, agreed by both parties, is prepared, or that experts for each party discuss and prepare a single joint expert report.

Further case management meetings and directions

Several case management meetings may be required before the hearing timetable can be completed, the evidence bundle agreed, and hearing dates finalised.

Once the case management process has concluded, the parties must notify the adjudications team immediately if it becomes apparent that anything has changed that will impact on progress to or at the hearing. This includes any changes they wish to make to the evidence they will be presenting, any changes to admissions by the social worker, and any legal arguments that either party intends to present.

Bearing in mind that case directions are normally binding on the parties, the fitness to practise panel will be entitled to refuse to hear evidence or submissions that could have been presented to the case management process but were not.

Annex A: Standard directions

Exchange of evidence

Social Work England shall complete disclosure to the social worker of witness statements and the documents it intends to rely on at the fitness to practise hearing as soon as possible and within three months of referral from the case examiners.

The social worker shall complete disclosure to Social Work England of the witness statements and documents they intend to rely on at the hearing not later than 30 days before the hearing is scheduled to open.

Hearing bundle of evidence

Not later than 21 days before the hearing is scheduled to open, the parties must raise with the adjudication team any objection to disclosure of the other party's witness statements and documents to the panel in advance of the hearing.

Requiring witnesses to give evidence in person

Not later than 21 days before the hearing is scheduled to open, each party must notify to the other whether they wish a witness to be required to attend the hearing and give oral evidence (and so be available for cross examination). If no such notification is made, the other party is taken to accept the truth of the statement, and there shall be no requirement to call the witness.

Admission of facts

Not later than 28 days before the hearing the social worker must indicate which parts, if any, of the statement of case are admitted, including on the question of whether the social worker admits their fitness to practise is impaired.

Hearing timetable

Not later than 28 days before the hearing opens, the parties must prepare jointly a hearing timetable, setting out the proposed agenda for each day of the hearing and including the time required for opening and closing submissions at each stage, and time required for each witness including cross examination.