



# Sanctions Guidance

Last updated 2 August 2019

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## Introduction

1. Social Work England's overarching objective is to protect the public. We do so by protecting, promoting and maintaining the health and wellbeing of the public; by promoting and maintaining public confidence in social workers in England; and by promoting and maintaining proper professional standards for social workers in England. Our fitness to practise powers enable us to deliver this overarching objective through proportionate sanctions where an individual social worker's fitness to practise is impaired.

## Purpose

2. The main purpose of any fitness to practise sanction is to protect the public. This includes direct protection from risk of harm, and it also includes maintaining confidence in the profession and setting the proper professional standards. In this guidance, these elements are referred to as 'public protection' and the 'wider public interest'.
3. This guidance is for use by decision makers (case examiners and adjudicators) in fitness to practise cases. It sets out the types of concern that may require Social Work England to restrict or remove a social worker's right to work, and the factors that should be considered when making these decisions. The guidance is designed to help decision makers deliver our overarching objective of public protection in a consistent and proportionate manner.
4. The guidance is also intended to help social workers, employers and members of the public understand the range of possible outcomes in response to proven concerns about a social worker's fitness to practise.
5. In operating our fitness to practise procedures we aim to protect the public as quickly and as efficiently as possible. In many cases, and where the social worker agrees with our proposed sanction, public protection can be effectively secured without holding a hearing. This guidance sets out when disposal without a hearing may be possible, and when we may need to refer a case to independent adjudicators for a hearing in the wider public interest.
6. Case examiners can propose any sanction for disposal without a hearing, except for a removal order. Case examiners must refer cases to the adjudicators where the social worker does not accept a proposed disposal, contests key facts, or where the case examiners decide that it is in the public interest to hold a hearing.

## Examples and other guidance

7. The examples in this document are not exhaustive and are used to illustrate the principles that decision makers should apply. Decision makers should also consider

guidance published by Social Work England and its predecessors about the standards expected of social workers which were in place when the alleged events occurred.

## Fairness

8. Social Work England has a statutory obligation to make sure that its processes for dealing with concerns about social workers are fair and proportionate. Any order imposed as a result of a fitness to practise investigation must be the minimum necessary to protect the public and the wider public interest.
9. To be appointed as a decision maker, a person must demonstrate a commitment to the Nolan principles for public life and meet each of the requirements set out in Social Work England's appointment rules. Once appointed, they must undergo a formal appraisal at least once a year and must undertake continuing professional development. They must also declare any actual or perceived conflicts of interest in any case they are asked to consider.
10. Social Work England is fully committed to impartiality and consistency in its decision making. This guidance supports and promotes this commitment.

## Impaired fitness to practise

11. A social worker is fit to practise when they are suitable to be registered without restriction. Registration can be restricted through conditions, suspension or removal. This suitability to be registered can be impaired by reason of misconduct, lack of competence or capability, a criminal conviction or caution, ill-health (physical and/or mental), an adverse finding by another regulator, being on a barred list, or not having the necessary knowledge of English.
12. Impairment is about whether a person is fit to practise today and in the future. The events giving rise to a concern will inform any decision about current and future risk to the public, but the purpose of regulation is not to blame or punish for past mistakes or poor behaviour. The sanction imposed must be the minimum needed to protect the public and the wider public interest.

## Available sanctions

13. Social Work England has a range of sanctions available. Our decision makers must select the least severe sanction necessary to protect the public and the wider public interest.
14. Even if proven matters are not considered serious enough to amount to impairment, warnings or advice may still be issued if it is felt that the matter could amount to impairment if repeated in the future.

15. For serious concerns where current impairment is found, the matter can be resolved with a warning or advice. Alternatively, we may require a social worker to comply with specific conditions or suspend them from practising whilst they address the issues that led to the concerns until their fitness to practise is no longer impaired. In the most serious cases we can remove the social worker's name from the register. The factors that may determine which sanction is appropriate are discussed below in this guidance.
16. It is possible that a social worker could be subject to two or more different sanctions at the same time. This may happen where multiple but entirely unconnected concerns have arisen. For example, a social worker might have received a warning in respect of a police caution for personal behaviour unrelated to their work, and they may also be subject to conditions in respect of concerns about the standard of their professional performance. In such a case, the decision makers should make clear that the warning does not affect the terms and duration of the conditions of practice order. However, if a suspension order is imposed then this would have the effect of overriding a conditions of practice order.

## Convictions

### *Automatic removal*

17. A social worker who commits the most serious criminal offences, for example murder, sexual offences or slavery, must be removed from the register immediately. Under our statutory regulations, such cases do not require a process for adjudication unless the social worker has grounds to challenge whether they have in fact been convicted of the offence.

### Other convictions and cautions

18. Convictions that do not qualify for automatic removal may still warrant removal of registration depending on the nature of the offence, however the purpose of sanctions is not to punish a social worker twice for the same offence. Decision makers must assess the conviction against what sanction is needed to deliver the overarching objective of protecting the public including the wider public interest.
19. Decision makers should be wary of regarding the criminal sentence imposed as a definitive indication of the seriousness of the offence. Sometimes the courts will impose a relatively lenient sentence in the expectation that the person's professional regulator will remove their registration.
20. Cautions are issued where a person has admitted committing a criminal offence and court proceedings were considered unnecessary. The issuing of a caution acknowledges the admission of guilt and suggests the offence is of a lower severity. Nonetheless, decision makers must consider the impact on public protection and the wider public

interest of the offending behaviour when deciding on impairment and the appropriate sanction.

21. Case law is to the effect that a registrant convicted of a serious offence should not normally be permitted to return to unrestricted registration while they are still subject to a criminal sentence. This includes any suspended custodial sentence or community order. See 'Fleischmann'<sup>1</sup>.

### Publishing sanctions

22. Where a social worker's fitness to practise is found to be impaired and a sanction imposed as a result, whether by the case examiners under the accepted disposal process or by the adjudicators after a hearing, the sanction must be included in the social worker's entry in the register while it remains in place. This includes warnings and advice issued after a finding of impairment. The reasons for the decision must also be published.
23. Sanctions of conditions and suspension imposed after a finding of impairment must continue to be included in the register for set periods after the sanction ceases to have effect, unless the sanction was as a result of impairment by reason of health. The periods are set out in the fitness to practise rules. A removal order will appear indefinitely in a person's register entry if their registration is subsequently restored.
24. Warnings and advice issued after a finding of no impairment are not included in the social worker's register entry, and the reasons for the decision are not published. Interim suspensions or conditions orders are only included in the register for as long as the order is in force.
25. Sanctions that are imposed because of the social worker's health will exclude any details that would disclose the medical condition involved.

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<sup>1</sup> *CHRP v (1) GDC and (2) Mr Fleishmann* [2005] EWHC87 (Admin)

## Impairment

### Factors that determine case seriousness and if it amounts to impairment

26. These factors are not exhaustive are often interdependent. For example risk of repetition is likely to be higher where insight is lacking or remediation is incomplete. Decision makers should also consider published guidance to social workers on the standards expected of them. Serious, deliberate or repeated breaches of guidance are likely to increase the seriousness of the fitness to practise concern.

### Risk

*To what extent did the social worker's actions pose a risk to the public?*

27. Risk of harm can be as important as actual harm caused. This is because continuing to act in a way that risks public safety could cause actual harm in the future, whether or not it has in the past. There is more detailed guidance on this below.

### Repetition

*Have actions that risked the safety of the public been, or could be, repeated?*

28. If so, this points strongly towards continuing risk of repetition now and in the future. It also raises serious questions about insight and the capacity to remediate. Decision makers are entitled to explore in depth why the social worker did not reflect and act on what had gone wrong after the first incident to prevent risk of repetition.

### Previous history

*Has the social worker been subject to adverse findings previously even if not directly related to the current concern?*

29. An adverse finding is one that following due process and determination has found fault in the social worker's acts or omissions. Previous adverse findings may raise serious concerns about the willingness or capacity of the social worker to observe their professional duties. It also raises wider concerns about confidence in the profession. Further concerns arising while the social worker is still subject to a previous sanction may be viewed particularly seriously.

## Insight

*Has the social worker correctly and fully recognised and acknowledged what they did wrong?*

30. The risk of repetition is higher where the social worker fails to understand fully what they have done wrong. Insight needs to be complete rather than partial if the risk of repetition is to be eliminated.
31. Decision makers should take care to assess the quality of any insight. Simple assertion that the social worker accepts they have acted wrongly is very unlikely to be sufficient to demonstrate genuine insight. Decision makers may wish to explore, for example, whether the social worker understands what led to the events leading to the concern, and how they might act or react differently if the same circumstances were to happen again.
32. Offering an apology may be evidence of insight, though it must not be treated as an admission of facts or impairment alone. Expressions of remorse may carry weight where they demonstrate genuine understanding of the impact on others as opposed to remorse for the impact on the social worker.
33. Decision makers should be aware that cultural differences may sometimes affect how insight is expressed. However, decision makers should not assume that a social worker has developed insight unless there is evidence of this that can be set out in reasons for their decision. For example, starting relevant remediation early may be good evidence of insight, even if other elements of insight are absent.
34. Insight is also demonstrated where the social worker makes full and early disclosure about what has happened to those impacted and to current and future employers. This includes full cooperation with any subsequent investigations and inquiries into the events.
35. Decision makers should bear in mind that social workers have a professional duty of candour which requires as a minimum that they tell the relevant person when something has gone wrong, apologise, explain what has gone wrong and the potential consequences, involve the affected person in deciding on an appropriate response, and remind the person of their right to complain. The social worker must also cooperate with any subsequent investigations into what has gone wrong. Decision makers should be wary of giving excessive credit to a social worker for meeting their core professional obligation to exercise duty of candour.
36. Decision makers should be cautious about giving credit for insight that has only emerged after investigations and inquiries have been completed. Insight should be rooted in the social worker's personal reflection and assessment of how they have

fallen short of the professional standards expected of them. It carries far less weight if the insight is led by or dependent on the conclusions and directions of others.

## Remediation

*Has the social worker put right any deficiencies or shortfalls in their practise or behaviour that led to the concerns?*

37. This is best shown by objective evidence such as successful completion of education or training courses, as well as satisfactory performance appraisals. Concerns that point to bad character such as dishonesty, breaches of trust or abuses of position may be harder to remediate. This is reflected in the greater difficulty of producing objective evidence of reformed character. Remediation can include steps the social worker has taken right a wrong, such as apologising.

*If there is no evidence of remediation, or the remediation is incomplete, is the social worker capable of successfully remediating?*

38. A social worker may be incapable of successful remediation until they develop insight. A social worker may also simply lack the skills to successfully complete a remediation programme.

*When did insight and remediation start?*

39. A social worker should immediately start to review what has gone wrong and what needs to be done to prevent repetition when events leading to a concern take place. This is a fundamental principle of professionalism. Except for the most serious cases, there is normally no need for regulatory sanctions if the social worker has understood the causes of and learnt from any mistakes or misjudgements, and there is no risk of repetition. Sanctions are usually only required where the social worker has not immediately and fully reflected on what has gone wrong and taken the necessary steps to put things right. This means the earlier the insight and successful remediation, the greater weight it will normally carry.

## Public confidence in the profession

40. Some concerns are so serious that action is required even if the social worker poses no current risk to the public. This is because a failure to sanction a social worker in such cases may undermine public confidence in social workers generally or may fail to maintain the professional standards expected of social workers. Abuses of trust, dishonesty or assaults are examples of cases that are likely to be viewed particularly seriously given the access social workers have into people's homes and lives. More information is given about specific types of concern later in this guidance.

## Admissions of alleged facts

41. Social Work England need to prove the case against the social worker, and the social worker is entitled to deny the facts alleged against them. However, accepted disposal outcomes will not normally be available to case examiners where the social worker does not accept the facts that are core to the question of impairment. Therefore, if the alleged facts can amount to impairment, such cases will be referred to a hearing for adjudication.
42. A social worker has a professional duty to cooperate with investigations into their fitness to practise. However, it does not make a concern more serious if they exercise their legal right to deny any allegations made against them. Likewise, any admission of the facts does not necessarily make a concern less serious. Admission of facts is not a mitigating or aggravating factor in itself.
43. Once the adjudicators have determined the facts, the question of whether the social worker admitted the facts is likely to be highly relevant to the questions of insight and remediation. The panel is entitled to approach with great caution subsequent claims of insight or remediation from a social worker who denied facts on which impairment has been found proved.

## Harm

44. Decision makers should exercise care when assessing the impact of actual harm caused by a social worker's actions on the seriousness of the case. The fitness to practise procedures' primary concern is risk to the public now and going forward. An action that, by good fortune, has not caused harm previously may still represent an unacceptable risk of causing serious harm if repeated. In such a case, there is no basis for regarding it as any less serious for the fact that actual harm did not occur.
45. Decision makers should assess the extent to which the risk of harm, or the actual harm caused, could and should have been foreseen by the social worker. They may be entitled to conclude that the more serious any actual harm caused, the more the risk of this should have been anticipated and managed in advance by the social worker. Exceptionally, actual harm caused may have been so serious that the case raises questions of public confidence in the profession as a whole.

## Testimonials

46. Testimonials that provide up to date credible information about the social worker's current practise or standing can be relevant to the question of current impairment. Case examiners and adjudicators should ensure that, where relevant, social workers have an opportunity to submit testimonials ahead of any decision about impairment.

47. A testimonial should state what the author knows of the concerns that have been raised, should explain the author's relationship to the social worker and declare whether there is any conflict of interest. It should also state whether the author is willing to give evidence in person in support of the testimonial. Decision makers should give little weight to testimonials from persons not aware of the fitness to practise proceedings.
48. Decision makers should be aware that there are many reasons beyond the control of the social worker why the quality and quantity of testimonials they can produce may vary. For example, a constraint at the case examiner stage could be that the social worker is unable to disclose details of the case to every potential referee because, at that point, the case is not in the public domain.
49. There may be cultural reasons why some social workers may be reluctant to seek testimonials, for example discussing the facts of the investigation may have professional consequences or may adversely impact their private life.
50. A social worker who is relatively new to the profession may find it harder to produce testimonials from professional colleagues than one with a more established career.
51. For the above reasons, decision makers should assess the content of each testimonial based on the knowledge of and relationship between author and social worker. It should also be based on whether the content is relevant to the specific findings in the case, the extent to which the views are consistent with other available evidence, how long the author has known the social worker, and the extent to which the testimonial offers a current view of the social worker's fitness to practise.
52. Testimonials might be offered at the fact-finding stage as to the likelihood of the social worker having acted in the alleged way. Whether such testimonials are admissible at the facts stage and the weight to be given to them are complex questions on which submissions and legal advice should be sought.

### Case examiner decision on impairment

53. At the end of an investigation, case examiners must decide whether there is a realistic prospect that the adjudicators would find that the social worker's fitness to practise is currently impaired. Impairment is where the protection of the public or the wider public interest requires action to be taken on the social worker's registration. The case examiners should apply the factors that determine the seriousness of a concern, set out in paragraphs 27-39 above.
54. In making this decision, the case examiners must consider any information that would be available to the adjudicators, both for and against the case for impairment.

55. The case examiners should not seek to resolve conflicts over facts that relate to the question of impairment. They do not hear evidence and are not able to assess credibility. They should base their assessment of the realistic prospect test on the assumption that any alleged facts supported by credible evidence may be found proven.
56. The case examiners should address all the factors that affect the seriousness of the case. They should carefully approach questions such as that of insight, given that they will only have written submissions to assess the evidence put forward by the social worker. They will not be able to assess things such as the demeanour of the social worker. This makes it especially important to have objective, verifiable evidence to support the submissions made.

### Referring cases to a hearing

57. Where possible and appropriate, case examiners will seek to resolve cases of impairment through accepted disposal. This is much quicker and more efficient than preparing and presenting a case to a fitness to practise panel.
58. Fitness to practise procedures require case examiners to refer cases to a hearing if, in their opinion, it would be in the public interest to do so, rather than resolve it through accepted disposal.
59. Case examiners must also refer cases of possible impairment to a hearing where they consider a removal order is required, where the key facts are disputed or where the social worker does not agree to the proposed accepted disposal of their case.
60. Where the case examiners or adjudicators determine that the social worker's fitness to practise is impaired and they impose an order or agree an accepted disposal, the decisions must be published with reasons. The order must be included on the social worker's entry in the register. Automatic removal of registration for serious criminal convictions which do not require a hearing must also be published.
61. In most cases, resolving a case through the accepted disposal process and publishing the decision with reasons will serve the wider public interest of maintaining confidence in, and the professional standards of, social workers.
62. In exceptional cases, a case may raise issues of such seriousness that not holding a public hearing would carry a real risk of damaging public confidence in the regulation of the profession. In these circumstances, the case examiners should refer the case to a hearing in the interest of the public.

## Impairment and sanctions guidance for case examiners and adjudicators

### Findings of no impairment, advice or warnings

63. If there is insufficient evidence to support the alleged facts then usually no further action is needed. The decision makers may consider offering advice to the social worker relevant to how the complaint or concern arose. An example might be if a complaint about professional practise arose because of misunderstandings which might have been avoided with clearer communication.
64. A warning may be appropriate where there has been a breach of professional standards, guidance or procedures which is not serious enough to amount to impairment, but which could do so in the future if repeated to form a pattern. The warning will note that repetition of the behaviour could amount to impaired fitness to practise. This may most commonly occur in cases of lack of competence or capability. It might also occur in cases of ill health where the social worker has recovered from the illness but did not self-manage to protect the public when the illness first presented.
65. Advice and warnings issued in cases of no impairment do not have a defined lifespan. They are not published but they can be considered if further fitness to practise concerns are received, particularly if those concerns are similar in nature.

## Sanctions following a finding of impairment

### Working through the sanctions

66. The sanction imposed should be the minimum necessary to protect the public, including the wider public interest. Decision makers must therefore start with the lowest sanction and then move through the sanctions in ascending order of seriousness, stopping at the sanction that is sufficient to protect the public.
67. Where the decision makers have determined that the social worker's impairment poses a current risk to safety, it may be reasonable to move beyond no action, advice or warnings on this basis alone since these outcomes will not protect the public.
68. It is good practice to test the appropriateness and proportionality of a proposed sanction by considering the next sanction up. It is particularly important to do so if considering advice or a warning as an outcome, bearing in mind that such outcomes do not restrict the social worker's practice.
69. The reasons why each sanction has been rejected or directed must be fully explained in the decision.

### No further action and advice or warning

70. Impairment is when a social worker is not suitable to be registered without restriction. The outcomes of no action, advice or warning after a finding of impairment do not restrict the social worker's registration. This means that these outcomes may only be appropriate where the concern is sufficiently serious to warrant restriction, but the mitigating factors put forward by the social worker in defence such as insight and remediation are strong enough that restriction is not required. These outcomes are therefore likely to be inappropriate where the social worker has not engaged with the fitness to practise proceedings.

#### *No further action*

71. This outcome means there is no restriction on the social worker's practice. The social worker's fitness to practise is impaired at the point the decision is made, but the finding of impairment has no duration – the social worker is regarded as fit to practise at the end of the proceedings. This outcome is likely to be exceptional and would be in cases where the finding of impairment itself is enough to protect the wider public interest. It may be appropriate where there has been a significant departure from professional standards or guidance, but which has been fully remediated with no risk of repetition.
72. An example might be where the social worker has received a caution. Bearing in mind that the purpose of the regulatory proceedings is not to punish for a second time, a

finding of impairment may be sufficient to mark the gravity of the offence without the need for any further action.

73. This outcome is very unlikely to be appropriate where there is any continuing risk to the public of the social worker behaving in the same way again.

*Advice or warning*

74. Advice or warnings issued following a finding of impairment are published on the Social Work England website and are included on the social worker's register entry. This means those engaging with the social worker professionally can be made aware of the concerns. The social worker's fitness to practise remains impaired while the advice or warning continues to be in effect.

75. These outcomes do not directly restrict practise and they cannot be reviewed before they expire, except in the case of a warning if new concerns are raised. They are therefore not appropriate where there is a current risk to the public.

76. An advice order should be regarded as a lower sanction than a warning and should be considered first. The advice is likely to be in terms that set out the steps the social worker should take to address any shortfall in their conduct or performance that contributed to the concern arising.

77. A warning order is a signal that any repetition of the behaviour that led to the concern is highly likely to result in a more severe sanction. A warning order implies a clearer expression of disapproval of the social worker's conduct or performance than an advice order.

78. Decision makers can direct that advice and warnings will stay on the social worker's register entry for periods of one, three or five years. If the decision makers decide that advice or a warning may be warranted, they should then decide a proportionate duration.

79. One year may be appropriate for an isolated incident of relatively low seriousness where the primary objective is to send a message about the professional standards expected of social workers.

80. Three years may be appropriate for more serious concerns to maintain public confidence and to send a message about the professional standards expected of social workers. The period also allows more time for the social worker to demonstrate that they have successfully addressed any risk of repetition.

81. Five years may be appropriate for serious cases that have fallen only marginally short of requiring restriction of registration, to maintain confidence in the profession and where it is necessary to send a clear signal about the standards expected. The

timeframe presents an extended period over which the social worker must demonstrate that there is no risk of repetition.

### Conditions of practice orders

82. The primary purpose of conditions of practice orders is to protect the public while the social worker takes any necessary steps to remediate their fitness to practise. In addition to any protective restrictions, the conditions may include remediation steps that the social worker must take as a minimum in order to regain fitness to practise, such as successful completion of relevant education or training.
83. Conditions are most commonly applied in cases of lack of competence or ill health. They are less likely to be appropriate in cases of character raising wider public interest concerns. For example, conditions would almost certainly be insufficient in cases of serious dishonesty, sexual misconduct or violence.
84. Conditions may be appropriate where public protection can be delivered by some restriction of practice, but it is not necessary for either public protection or wider public confidence grounds to suspend the social worker's registration.
85. Conditions can also be imposed on registration for a period of up to three years at a time. The order must be reviewed before it expires, and it can then be further extended or replaced with a different order if the social worker is still not fit to practise. The period of conditions should be sufficient to give the social worker a reasonable opportunity to successfully complete any necessary remediation.
86. Conditions must be proportionate and workable. Whether a condition is workable is by reference to the social worker and their working environment, and to any practical implications for employers. The conditions should be capable of being monitored, for example through management supervision, to ensure compliance.
87. Decision makers should bear in mind when setting conditions that the primary objective is to protect the public. It is not the role of the regulator to take responsibility for directing how the social worker remediates. It is the social worker's professional responsibility to restore their fitness to practise, and part of any assessment of successful remediation will be how they have identified and acted on this personal responsibility. A decision should give indications of what the regulator expects to see at future reviews by way of evidence of remediation in the form of recommendations. This can be included in the decision reasoning rather than in the body of the conditions.
88. Conditions should not normally be so restrictive as to be tantamount to suspension. They should be achievable and proportionate. Decision makers must also be satisfied that the social worker is willing and capable of complying with conditions. Previous breaches of guidance or protocols, especially where deliberate, may raise significant

doubt about whether the social worker could or would comply with conditions. On the other hand, early engagement with retraining and remediation may be strong indicators that conditions may be workable.

89. In some types of case such as ill health, it may be reasonable to include a condition that the social worker must cease practice if advised to do so by their treating physician. This enables the social worker to practise when fit enough to do so but protects the public should the social worker suffer a relapse of ill health. This will only be appropriate where the decision makers are satisfied that the social worker will fully engage with their treating physician and has insight regarding their health.
90. Similarly, a condition might be that the social worker must not work unless and until they have passed an assessment of their English language skills to the required standard. This effectively suspends the social worker until they have passed the assessment but enables them to start practising as soon as they have done so. However, this is likely to be insufficient protection if the social worker has previously practised when knowingly deficient in English language skills.

### Suspension orders

91. Suspension orders can be imposed for a period of up to three years. Suspension is appropriate where no workable conditions can be formulated that can protect the public or the wider public interest, but where the case falls short of requiring removal from the register or where removal is not an option.
92. In deciding on the period of suspension, decision makers should consider the need to protect the public and the wider public interest. They should balance this against the risk that prolonged suspension may result in deskilling. Where possible, it is in the public interest to support the return to practise of a trained and skilled social worker if this can be achieved safely. This means the risk of deskilling is a public interest consideration.
93. Decision makers should remember that the purpose of the proceedings is not to punish. It may be appropriate to impose a longer period of suspension where there is no reasonable prospect of the social worker regaining fitness to practise in the short term. This could arise, for example, where the social worker is subject to a criminal sentence and the suspension is imposed to cover the period of the sentence. It might arise where the social worker does not intend to remediate or practise in the short term but wishes to do so in due course.
94. In cases of chronic ill health, it may be in the interests of the social worker to impose a longer period of suspension. This avoids the stress for the social worker of a review hearing before the social worker has recovered to full health. If the social worker

makes an earlier recovery, then an early review hearing can be scheduled to consider lifting the suspension or allowing a phased return to practise through conditions.

95. As a general principle, longer periods of suspension may be appropriate where this is necessary to protect public safety. If the suspension is aimed primarily at maintaining confidence in the profession or setting the professional standards to be observed, then a sanction of suspension up to one year may be appropriate. Given the risk of deskilling, decision makers should consider whether a case warranting a period of suspension longer than one year on the grounds of public confidence might be more appropriately disposed of by means of a removal order.

### Removal orders

96. A removal order must be made where the adjudicators conclude that no other outcome would be enough to protect the public, maintain confidence in the profession or maintain proper professional standards for social workers in England. A decision to impose a removal order should explain why lesser sanctions are insufficient to meet these objectives.
97. Removal orders are not available in cases of ill health, language deficiency, or lack of competence or capability, unless the social worker's registration has already been subject to suspension or conditions on these grounds continuously for at least two years leading up to the making of the order.

## Further guidance on types of concern

### Lack of competence or capability cases

98. Usually lack of competence or capability must be demonstrated over a fair sample of a social worker's work. Single episodes of poor performance are normally insufficient to represent a pattern that could be called a fair sample. However, in exceptional circumstances, a single case could arise from a lack of knowledge of or competence in such a fundamental principle of social work that it raises wider issues of concern for public safety.
99. Poor performance and misconduct are two different aspects of impairment which do not overlap. For example, poor performance within the social worker's scope of practice may point to a competence issue. Performing poorly when knowingly practising outside the social worker's scope of practice may point to misconduct. Where an allegation of lack of competence or capability fails to meet the fair sample threshold, it cannot be reframed as misconduct in order to support an impairment allegation.
100. Single episodes of lack of competence or capability that do not satisfy the fair sample test for impairment may be marked by advice or a warning. For example, a warning may be appropriate where the lack of competence, if repeated, could meet the fair sample test for impairment.

### Abuse of trust

101. Social workers hold privileged positions of trust. Their role often requires them to engage with people over extended periods when those people may be highly vulnerable. It is essential to the effective delivery of social work that the public can trust social workers implicitly. Any abuse of trust by a social worker is a serious and unacceptable risk in terms of public protection and confidence in the profession as a whole.
102. Decision makers must assess each case on its merits and must apply proportionality considering any mitigating or aggravating factors present. However, most cases of serious abuses of trust are likely to require suspension or removal of registration. Decision makers should provide detailed reasoning to explain lesser sanctions in such cases.

### Sexual misconduct

103. Convictions for sexual assault or abuse of children through pornography are likely to require automatic removal of registration without adjudication.

104. Abuse of professional position to pursue a sexual or improper emotional relationship with a service user or a member of their family is a serious abuse of trust. Many people will be accessing social care for reasons that increase their vulnerability and that of their family. Pursuit of a sexual or improper emotional relationship with a vulnerable person is likely to require a more serious sanction against a social worker.

## Dishonesty

105. Social workers are routinely trusted with access to people's homes, and highly sensitive and confidential information. They are also routinely trusted to manage budgets including scarce public resources. Any individual dishonesty is likely to threaten public confidence in the proper discharge of these responsibilities by all social workers.

106. Financial dishonesty, whether in the course of professional work or in matters outside the social worker's practice, is likely to damage the trust the public places in social workers. Theft or fraud leading to losses of public funds that would otherwise have been used to deliver services, or losses of property by service users and their families, is particularly serious.

107. Dishonesty through misrepresenting qualifications, skills and experience, for example on a CV, is also particularly serious because it may lead to the social worker being appointed to roles and responsibilities that they cannot safely discharge. The public and employers must be able to trust the accuracy of such information provided by social workers.

108. Evidence of professional competence cannot mitigate serious or persistent dishonesty. Such conduct is highly damaging to public trust in social workers and is therefore usually likely to warrant suspension or removal from the register.

## Reasons for decisions

109. Any fitness to practise decision on which a finding of impairment is made and a sanction imposed is published. Decisions of the adjudicators are delivered in public, whether or not a finding of impairment is made or a sanction imposed.
110. It is therefore essential that the decision gives reasons that enable a third party with no prior knowledge of the case to understand the basis of the case against the social worker, and how and why the decision was reached.
111. To achieve this, decisions should include the following:
- A description of the events giving rise to the fitness to practise concern;
  - A summary of the key facts that raise a question of impairment;
  - An analysis of the reliability and credibility of the evidence in support of the key facts, including where appropriate the credibility of witness evidence;
  - A summary of where the key facts are contested;
  - Where appropriate, an explanation of how and why the adjudicators have resolved conflicts of evidence over key facts. Case examiners should not normally resolve conflicts of evidence but are entitled to reject challenges to evidence that is plainly undeniable;
  - The factors the decision makers have considered in assessing seriousness and impairment and the relative weight given to each factor. Care must be taken to address and explain all the factors both for and against the social worker; and
  - The reasons for the decision on impairment or sanction. These may include a summary of the facts and the factors as already set out. The reasons should explain the decision makers judgment on the current risk to public safety, including any risk to the maintenance of confidence in the profession and of standards of professional performance of social workers.
112. For cases disposed of by case examiners without a hearing, the impairment and sanction determinations may be combined. In hearings, the adjudicators may hear submissions on impairment and sanction together where the concern is so serious that in their view a finding of impairment is inevitable, or where the social worker has admitted impairment.
113. If impairment is denied it may be necessary for the adjudicators to hear submissions before going on to consider sanction if impairment is found. In such cases, the assessment of seriousness of the case is likely to have informed the impairment decision. It is not usually necessary to set out these factors again at point of sanction, provided the overall decision explains the submissions made and the weight given to those submissions in reaching the decision.

## Health cases

114. Published decisions in health cases must not include any information that can divulge the precise nature of the social worker's health condition. It may be necessary for decision makers to produce a confidential annex to the decision for the benefit of the social worker. The published decision should still cover in depth the issues relevant to the question of impairment, for example the extent of insight shown by the social worker into the impact of their condition on their fitness to practise.

## Reviews of orders

115. Social Work England must review a suspension order or a conditions of practice order before it expires.

116. A review must apply the same principles of protection and wider public interest, together with proportionality, when deciding whether the social worker is fit to practise and if not, what sanction should be imposed.

## Interim orders

117. Before deciding on the outcome of a case at the end of an investigation, the case examiners may refer a case to the adjudicators where they may consider an interim order necessary for the protection of the public or in the social worker's own interests.

118. When the adjudicators are hearing a fitness to practise case they may at any time consider whether to impose an interim order, provided they have given the social worker the opportunity to make representations on the question.

119. If the adjudicators make a final order they may go on, without needing to give notice to the social worker, to impose an interim order to cover the appeal period or the period before any appeal is heard.

120. Interim orders can be for suspension or conditions, and for a total period of 18 months. Social Work England must review the order after six months and at least every three months thereafter.

121. The adjudicators may make an interim order where they consider it necessary for the protection of the public or in the best interests of the social worker. Protection of the public can include wider public interest grounds, though regulatory case law is to the effect that there is a very high threshold for interim restriction on the grounds of wider public interest alone.

122. While cases remain under investigation, the adjudicators cannot make findings of fact when considering whether to make an interim order. They must assess what risks

would arise were any untested allegations found proved. However, they are entitled to accept as fact formal findings such as criminal convictions. Interim orders made after a final order must take account of all the facts found proved by the adjudicators.

123. As with substantive sanctions, adjudicators should consider first whether an order is necessary at all, then whether conditions would be sufficient and then whether suspension is required. Any order must be the minimum required to protect the public or to meet the interests of the social worker.
124. In deciding whether an order is required, adjudicators should consider the seriousness of the allegation, the weight of the supporting information, and the likelihood of further incidents occurring while the matter is investigated or concluded on appeal.
125. The adjudicators should also consider whether it is in the social worker's own interests to hold unrestricted registration. For example, a social worker with health issues may lack the insight to self-manage their practice to address any risk they pose of repeating their behaviour. Another example may be where the concerns have raised such public interest and scrutiny that it is not practical for the social worker to discharge their professional duties effectively while the matters are investigated.
126. The adjudicators may consider the interests of the social worker, such as financial hardship, if their registration is restricted or suspended. However, this must be balanced against the primary purpose of the need to protect the public.
127. In deciding whether to impose conditions or suspension, the adjudicators should consider whether conditions are workable and sufficient to protect the public. Evidence of whether the social worker has, or has not, complied with practise restrictions previously may be highly relevant.
128. The length of the order should depend on a realistic assessment of the time that may be needed to complete the relevant proceedings. Adjudicators should note that there are clear provisions for orders to be varied or revoked whenever the circumstances of the case change. Extending an order beyond the original length will require Social Work England to apply to the High Court.
129. The adjudicators should give reasons for their decisions on whether to impose an interim order. Given the specific nature of the decision, these reasons can be relatively concise. They should include the assessment of risk to the public, an explanation where relevant of why an order is in the social worker's interests, and reasons for the time period over which the order is to run. Clear reasons should be given if no order is imposed.

## Annex 1: Key case law

*Assessing current impairment:*

Cohen v GMC [2008] EWHC 581 (Admin)

At the impairment stage the tribunal should take account of evidence and submissions that the

conduct:

conduct:conduct:

) is highly unlikely to be repeated

The Cohen judgment was considered and expanded upon by the subsequent judgment:

CHRE v Grant and NMC [2011] EWHC 927 (Admin)

Para 76: Identified from the Fifth Shipman Report an appropriate test for impairment:

‘Do our findings in respect of the doctor’s misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

a) has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or

b) has in the past and/or is liable in the future to bring the medical profession into disrepute; and/or

c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or

d) has in the past acted dishonestly and/or is liable to act dishonestly in the future.’

*Relevance of current criminal sentences:*

CHRE v Fleishmann and GDC [2005] EWHC 87 (Admin)

Para 54: ‘I am satisfied that, as a general principle, where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence.’

*Relevance of confidence in the profession as a factor in determining sanction:*

Bolton v Law Society [1994] 1 WLR 512

‘The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price.’

*Test of dishonesty*

Ivey v Genting Casinos [2017] UKSC 67

‘The fact finding tribunal must first ascertain (subjectively) the actual state of mind of the individual’s knowledge or belief as to the facts. When once his actual state of mind as to his knowledge or belief as to the facts has been established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.’

*The difference between deficient performance and serious misconduct, and the thresholds for each:*

Calhaem v GMC [2007] EWHC 2606 (Admin)

Para 39:

(1) Mere negligence does not constitute ‘misconduct’ within the meaning of section 35C(2)(a) of the Medical Act 1983. Nevertheless, and depending upon the circumstances, negligent acts or omissions which are particularly serious may amount to ‘misconduct’.

(2) A single negligent act or omission is less likely to cross the threshold of ‘misconduct’ than multiple acts or omissions. Nevertheless, and depending upon the circumstances, a single negligent act or omission if particularly grave, could be characterised as ‘misconduct’.

(3) ‘Deficient professional performance’ within the meaning of 35C(2)(b) is conceptually separate both from negligence and from misconduct. It connotes a standard of professional performance which is unacceptably low and which (save in exceptional circumstances) has been demonstrated by reference to a fair sample of the doctor’s work.

(4) A single instance of negligent treatment, unless very serious indeed, would be unlikely to constitute ‘deficient professional performance’.

(5) It is neither necessary nor appropriate to extend the interpretation of ‘deficient professional performance’ in order to encompass matters which constitute ‘misconduct’.