



# Triage Guidance

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## Introduction

### Purpose

This guidance is for Social Work England triage officers. Triage officers are trained and authorised to make decisions under the law as set out in The Social Worker Regulations 2018 ('the regulations') and the Social Work England (Fitness to Practise) Rules ('the rules'). There are specific criteria Social Work England must apply in deciding whether there are reasonable grounds to investigate a social worker's fitness to practise. This guidance explains how these criteria should normally be applied.

At the triage stage, in accordance with schedule 2 paragraph 1(1) of the regulations, Social Work England must decide 'whether there are reasonable grounds for investigating whether the fitness to practise of a registered social worker is impaired'. Rule 3 of the rules sets out the criteria that must be applied to determine whether there are reasonable grounds for investigating whether a social worker's fitness to practise is impaired.

A social worker's fitness to practise is impaired if they pose a risk to public safety if they continue to practise without restriction, or if their conduct or performance undermines public confidence of social workers in England. A social worker's fitness to practise might also be impaired where what they have done makes it necessary to send a public signal about the standards expected of social workers. This reflects Social Work England's overarching objectives, which are:

- to protect, promote and maintain the health, safety and wellbeing of the public;
- to promote and maintain confidence in social workers in England; and
- to promote and maintain proper professional standards for social workers in England.

The guidance is not exhaustive and each case must be considered on its individual merits.

The balance should be exercised in favour of opening an investigation, unless there are no reasonable grounds to investigate impairment.

## What is fitness to practise?

There is no agreed legal definition but it is generally understood to mean the current suitability of the social worker to hold registration and practise without restriction. Fitness to practise involves assessing the position today and going forward. This position may be different from what it was when the event or events occurred. In the triage test set out in rule 3 of the rules, this is evidenced in the phrase '...for investigating whether the registered social worker's fitness to practise is impaired'.

Fitness to practise is about protecting the public and the wider public interest in social work now and in the future. A question about fitness to practise can arise from any situation, whether in the course of a social worker's professional work or from their personal conduct.

It is not about apportioning blame or punishment for past mistakes. This means a concern might raise questions about a social worker's actions in the past, but this might not pass the triage test because of what the social worker has done since then to regain their fitness to practise.

## The pre-triage test

On receipt of a new referral, we must firstly establish if the concern raised falls within our fitness to practise remit.

A concern will fall within the remit if it relates to a social worker in England and:

1. it relates to a statutory ground of impairment;
2. it does not amount to registration fraud;
3. there is no duplicate fitness to practise case; and
4. it does not relate to a conviction for a listed offence.

If the concern does not relate to a social worker in England, we will consider whether it raises a protection of title issue as only those registered with Social Work England can use the title 'social worker'. If it does, the matter will be referred to our legal team for action. If the subject of the referral is registered with another regulator, the matter will be referred to the appropriate body for consideration.

If the triage officer determines that the concern amounts to registration fraud, the matter will be referred to our registration department who will take the appropriate action.

If a duplicate concern is received, we will not open a new fitness to practise case. The concern will be added to the existing case which, if closed, will not be reopened unless significant new information has been provided. We cannot look into the same concern more than once.

Under regulation 26 of the regulations, Social Work England can automatically remove any social worker who has been convicted of a 'listed offence' (set out in schedule 3 of the regulations) from the register. If we are notified that a social worker has been convicted of a listed offence, the matter will be referred for automatic removal rather than progressing through the standard fitness to practise process.

During the pre-triage test, we will consider whether a social worker's fitness to practise is impaired as a result of them having been convicted of an offence (other than a listed offence) in respect of which a custodial sentence has been imposed, or where they have been convicted of a listed offence, but have not been removed from the register under regulation 26(5). In such circumstances, there are reasonable grounds for investigating whether that social worker's fitness to practise is impaired and there is no requirement to apply the triage test outlined below. If the concern does fall within the remit of fitness to practise, we will then move on to apply the triage test.

## Types of impairment

Fitness to practise can be impaired under one or more of eight types of impairment. When assessing whether a question of impairment arises, the triage officer should first identify the relevant type of impairment. These are:

1. Misconduct
2. Lack of competence or capability
3. A conviction or caution in the United Kingdom for a criminal offence
4. A criminal conviction elsewhere which would be a criminal offence if committed in England or Wales
5. Adverse physical or mental health
6. A determination by another body that the social worker's fitness to practise is impaired
7. Being included in the Disclosure and Barring Service barred list or the Scottish Ministers children's or adults' lists
8. Not having the necessary knowledge of English

Assuming the concern falls into one of the impairment types and relates to a currently registered social worker, the triage officer should then move on to the next triage test.

If the concern relates to a person who is not currently registered, there are no powers under fitness to practise to investigate further. However, depending on the seriousness of the concern it may be prudent to invite the referrer to provide as much detail as possible so that this may be considered if the person applies for registration in the future.

### Specific issues

#### *Misconduct*

To reach the threshold of impairment, the alleged misconduct must be serious. This is reflected in the application of the overarching objective of public protection. The misconduct must represent a risk to the public or to the wider public interest aspects of confidence in, or maintaining standards of, social workers. Misconduct may be directly or indirectly connected with the social worker's professional practice. The social worker's conduct in their private life may also be professional misconduct if the concerns raise fundamental questions about their trustworthiness as a registered professional. Examples of misconduct include dishonesty or sexually motivated misconduct.

Misconduct should not be confused with poor performance. A concern arising from professional performance could give rise to a misconduct concern, but this must be based on more than the performance being substandard. For example, an error of judgement may be a performance issue whereas making the wrong judgement due to failing to ask for all relevant information first may be a misconduct issue. This is relevant even for professional misjudgements with very serious consequences—the scale of error cannot turn a performance case into one of misconduct. The triage officer should try to identify the features of a concern that characterise it as misconduct as far as possible.

#### *Lack of competence or capability*

Impairment due to lack of competence or capability must be evidenced by a ‘fair sample’ of the social worker’s work. There is no set definition of ‘fair sample’, but it suggests a sample sufficient enough to show the social worker’s usual standard of work. A single episode of incompetence could not normally amount to impairment unless it was exceptionally serious.

However, at the triage stage we may not know if there is a wider pattern of competence or capability issues. This is especially so if the concern is raised by a member of the public about a self-contained set of events. By contrast, referrals from employers are far more likely to give an overview of the social worker’s general standard of recent performance.

At the triage stage, the triage officer should assess whether the concern in isolation is serious enough to raise a question about the social worker’s overall competence. If the concern in isolation is not so serious, then the officer should refer to Social Work England’s professional standards and assess whether the concern could become serious if there was a further similar incident, and the likelihood of such repetition. If the matter could not become serious even if there was a further similar incident, then this suggests the threshold for an investigation into lack of competence or capability is not met.

#### *Conviction or caution in the United Kingdom for a criminal offence, or for an offence elsewhere which would be a criminal offence if committed in England or Wales*

If a social worker receives a conviction or caution for a criminal offence, this will invariably provide reasonable grounds for investigating their fitness to practise. The only question at the triage stage is about confirming the identity of the social worker who is said to be the subject of the conviction or caution.

In theory, the finding might have been notified to Social Work England some time after the event, perhaps raising a question about whether it is sufficiently recent to call into question current fitness to practise. However social workers have a duty to notify Social Work England if, for example, they are the subject of a caution. Therefore if Social Work England was not previously aware of the finding, this may raise a separate misconduct concern.

Pending or proposed appeals against conviction are not grounds to defer opening an investigation.

While the triage officer must assess each case on its merits, closure of caution and convictions at triage will be exceptional. Any decision to close a caution or conviction at triage must explain the reasons fully.

#### *Adverse physical or mental health*

Having a health condition alone does not impair a social worker's fitness to practise. The key question is whether the social worker is managing their health condition and has sufficient insight to limit their practice as necessary to protect the public when they are ill. We may need to explore this through investigation but if the social worker is complying with treatment and is restricting their practice appropriately, then it is unlikely that an investigation into their fitness to practise is warranted.

Some mental health conditions are recurring and episodic. The key question is whether the social worker is capable of recognising and acting on an onset of a new episode. If this has not yet been tested, or if the social worker has previously failed to recognise and act in response to the onset of an episode, then it may be necessary to open an investigation—even if the social worker's health condition is currently in remission.

The triage officer may well need to seek expert advice about the nature of the condition, including whether it is episodic and the risk to the public if the condition is not managed appropriately. As with all concerns, the triage officer should err on the side of public protection if in doubt, but investigations cause social workers stress and so can make health concerns worse. Investigations into adverse health are not required or in the public interest if the health condition is being managed safely and appropriately.

#### *A determination by a regulatory body to the effect that a person's fitness to practise is impaired*

This is most likely to arise where the social worker holds registration with another UK social work regulator or equivalent overseas body. The finding by the body must make some reference to impairment or equivalent. Where such a finding is made, then, as with convictions and cautions, the threshold for investigation will invariably be met and the question for triage is primarily about confirming the identity of the social worker.

#### *Being included by the Disclosure and Barring Service in a barred list or by the Scottish Ministers in the children's list or the adults' list*

A person will be on such a list because of serious concerns. Such cases will be sufficiently serious to amount to reasonable grounds for investigation of the social worker's fitness to practise.

### *Not having the necessary knowledge of English*

Social Work England has powers to require registered social workers to undergo an English language assessment test, but only if evidence has been received of a concern to have justified opening a fitness to practise investigation. This means that the triage decision must be based on some objective evidence of knowledge of English that might fall below the required standard. Triage officers should carefully assess the objective evidence in support of the allegation. For example, evidence of the social worker's written English may justify further investigation but a concern that the social worker's verbal communication was sometimes hard to follow might not, unless there was clear evidence of how this had adversely affected the social worker's professional performance.

The triage officer should check whether Social Work England holds recent evidence of an English language assessment test. For example, if the social worker has passed such a test within the previous 12 months, perhaps at the point of registration, this may be strong evidence against the need to open an investigation into current knowledge of English.

### *Is the social worker's fitness to practise is impaired?*

We must make a triage decision when information we receive raises a question about whether a social worker's fitness to practise is impaired. In other words, is the information about the fitness to practise of a registered social worker in England? In this guidance we refer to such information or complaint as a concern.

## The triage test

*Are there reasonable grounds for investigating whether the social worker's fitness to practise is impaired?*

In applying this test, the triage officer must determine whether there are reasonable grounds and whether the concern suggests current impairment.

The fitness to practise rules set out criteria which the triage officer must apply in assessing whether there are reasonable grounds to investigate if the social worker's fitness to practise is impaired.

In some types of impairment, the fact of a finding by another body is almost certainly sufficient to require an investigation on grounds of seriousness, usually including the public interest. These types of impairment are convictions and cautions in the UK, convictions elsewhere that if committed in England and Wales would be criminal offences, determinations of impaired fitness to practise by other bodies, or inclusion in a barred list [categories c, d, f and g]. The key question at triage is likely to be to confirm the identity of the social worker who has been subject to another body's finding. There is unlikely to be any need to apply triage criteria other than seriousness.

For other cases, the triage officer must consider each criterion individually and collectively. Often, the criteria will overlap, for example the seriousness of a concern may be affected by whether the social worker has subsequently fully remediated.

## The triage criteria

Rule 3(a) of the rules states that ‘where the Regulator is in receipt of information raising a question about the fitness to practise of a 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’:

1. (i) the seriousness of the concern by reference to the pursuit of the regulator’s overarching objective;
2. (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.

The criteria are discussed below, however, the triage officer must first understand the principles contained within this test.

### What are ‘reasonable grounds’?

A concern should be, as far as possible, either supported by direct evidence or capable of being so.

There must also be a basis for calling into question the social worker’s actions. It would not be right to open an investigation based entirely on speculation, just in case it happened to find evidence of impairment.

For example, social workers often have to take actions which may be necessary and appropriate, but which can have very profound and sometimes damaging consequences for individuals or families. It is essential to the effective and safe delivery of social care that social workers act with professionalism and integrity when taking such actions. It is equally essential that a social worker who acts with professionalism and integrity should be able to

do so without fear of scrutiny by their regulator. A complaint based solely on disagreement with a social worker's actions might be entirely speculative as to whether the social worker has acted improperly. In complaints such as this, the triage officer may seek guidance from the professional advisor as to whether there is a cogent concern that the social worker has acted improperly. In their decisions, triage officers should identify and explain what it is about the social worker's actions that give reasonable grounds for investigating their fitness to practise.

The evidential burden is on Social Work England to prove the facts to support a case of impairment, however this burden is applied at the conclusion of the investigation. At the triage stage, there is an obligation on Social Work England to apply the triage criteria. In doing so triage officers should resolve any doubt in favour of progressing to an investigation. If the possibility of impairment cannot be excluded having applied the triage criteria, then the triage officer should open an investigation.

Triage officers must bear in mind that it is not in their remit to decide whether the social worker's fitness to practise is in fact impaired. Their role is to assess whether there are reasonable grounds for Social Work England to investigate whether the social worker's fitness to practise is impaired. It is then for the case examiners or adjudicators to determine, following investigation, this question of impairment. However, triage officers are entitled to conclude that there are no reasonable grounds for investigating, including on the basis that there is clear evidence that the social worker's fitness to practise is not currently impaired.

Triage officers should identify the type of impairment that it appears at the triage stage is raised by the concern. However, this does not bind the investigators, case examiners or adjudicators from identifying other types of impairment in the concern in the light of information obtained later in the case.

## Applying the rule 3 criteria

The triage officer must consider each of the criteria both individually and collectively. In some cases, some or all of the criteria may point one way—either to open an investigation or not to. In other cases, some criteria may point towards opening an investigation, while others may point away from it. The decision on whether to open an investigation then becomes more complex.

For example, one of the criteria is whether the social worker is taking or has successfully completed remedial actions in respect of the concern. This raises the possibility that a concern may engage one of the other criteria in a way that suggests an investigation should be opened, but the remediation means there are no reasonable grounds for investigating whether the social worker's fitness to practise is impaired today. The fact that one or more criteria may be satisfied does not necessarily mean an investigation must be opened.

These are potentially complex issues and further guidance about each of the criteria is provided below. However, the core questions will always be: 'are there reasonable grounds to investigate? And, if so, are they in respect of whether there is current impairment today and looking forward?'

Triage officers must favour opening an investigation unless it can be shown conclusively that there are no reasonable grounds for investigating whether the social worker's fitness to practise is impaired.

### **The first criterion: rule 3(a)(i)**

*The seriousness of the concern by reference to the pursuit of the regulator's overarching objective;*

Social Work England's overarching objective is the protection of the public. This involves the pursuit of the following objectives:

- To protect, promote and maintain the health, safety and wellbeing of the public.
- To promote and maintain confidence in social workers in England.
- To promote and maintain proper professional standards for social workers in England.

*Professional or personal?*

Our overarching objectives are more likely to be engaged by events arising from a social worker's professional conduct than from their conduct in their personal lives. However, a professional standard for social workers is 'not to behave in a way that would bring into question my suitability to work as a social worker while at work, or outside of work'. Another professional standard is 'not to abuse, neglect, discriminate, harm or exploit

anyone, or condone this being done by others'. So, for example, a concern that a social worker condoned racial discrimination through posts on social media is very likely to warrant an investigation into their fitness to practise.

#### *Minor misdemeanour*

The triage officer is entitled to close without further action or assessment any concern that could not conceivably – either on its own or if repeated – result in a finding of impairment. This might arise, for example, in minor complaints about personal conduct that are completely unconnected with the social worker's professional practice, such as a dispute between neighbours. It could also arise in professional work, for example, in inaccurate record keeping about relatively minor matters such as recording annual leave where there is no evidence of dishonesty.

#### *How serious if repeated?*

On the other hand, a single concern may not appear sufficiently serious in itself to suggest impairment, but the triage officer should ask whether the concern would be capable of amounting to impairment if repeated. If so, this could weigh strongly towards investigation. Employer disclosure during an investigation might reveal further episodes of concern, or at the least the case examiners may decide to issue advice or a warning with the aim of reducing the risk of repetition, or so that the concern can be taken into account if further similar concerns arise in the future.

#### *The relevance to seriousness of harm*

Any concern that suggests the social worker might have put the public at unnecessary risk of harm, or might have caused actual unnecessary harm, will almost invariably meet the seriousness test. Harm should be interpreted in its ordinary meaning, of physical or emotional injury and may also include psychological and financial harm

Some actions by social workers may cause harm, such as emotional distress, but are unavoidable in the context of the proper delivery of a social worker's professional duties. In assessing whether the harm or risk of harm was unnecessary, the triage officer should take into account whether it was foreseeable *and* avoidable. The social worker's actions must be assessed against what was known at the time or should have been foreseen. Actions that lead to consequences, including harm, that could not have been foreseen, are very unlikely to justify an investigation.

Social workers also have very clear responsibilities to protect the public by intervening when others may be putting people at risk of unnecessary harm. Triage officers may regard a social worker's failure to intervene in response to specific evidence of risk of harm by others, including fellow professionals, as being as serious as if they had committed those acts themselves.

Any decision not to open an investigation in cases where there has been a risk of harm or actual harm must explain the reasoning with extreme care. It is possible that where a social worker has successfully remediated so there is no current or future risk to public safety, an investigation of their fitness to practise may be unnecessary. However, the triage officer should consider carefully whether confidence in social workers generally, or the setting of standards for social work, nonetheless requires an investigation.

*If public interest arises, an investigation will normally be warranted*

As a general principle, if the concern is sufficiently serious that it is capable of undermining confidence in social workers in England, or one where action might be necessary to promote and maintain standards across all social workers, then an investigation should normally be opened. This applies even if the social worker has fully remediated any deficiency in their practice that gave rise to the concern. Personal remediation is unlikely to offset the wider public interest issues where confidence in the profession is at risk, or where a signal needs to be sent about the standards social workers must observe.

*Relevance to seriousness of breaches of guidance, rules etc.*

Assessment of the seriousness of the concern should take into account whether the social worker has breached any guidance, rules, regulations, procedures or laws in place at the time of the events. If the concern suggests the social worker has in fact applied these correctly, this will weigh heavily against opening a case on seriousness grounds. There is further guidance about assessing the seriousness of breaches of rules and guidance below.

*Concerns about exercise of professional judgement*

The triage officer should carefully assess whether complaints about the exercise of professional judgement engage the seriousness criterion. Social workers often have to make difficult decisions with far reaching consequences for people and families. A complaint about the impact of a reasonable decision, properly arrived at, does not of itself amount to a concern, serious or otherwise. The triage officer should assess what it is about the exercise of judgement that may raise an issue of concern. For example, did the social worker take account of all relevant information? Was the exercise of judgement within the range of reasonableness and at a level commensurate with the social worker's level of capability? Expert advice may be required— see below.

***The second criterion: rule 3(a)(ii)***

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

At the end of an investigation, the burden is on Social Work England to prove the facts to support an allegation of impairment. The standard of proof is the civil standard, on the balance of probabilities.

Social Work England has powers to investigate and can require disclosure of evidence. Therefore, the triage officer should not speculate on the quality of evidence which might be obtained on further investigation. The triage officer should consider what type of evidence would be required to substantiate the concern, and whether such evidence is likely to be available at all.

In many cases, the only evidence may be the person who raised the concern or the referrer's version of events against that of the social worker. The triage officer must not speculate on the credibility of either version of events. They may, however, take into account if a version is plainly irrational or demonstrably untrue.

The following are examples of where the triage officer might conclude that evidence is so unlikely to be available that the case should be closed:

*The events have already been formally investigated by another body and no evidence was found to support the concern*

Another body might include a social worker's employer. The triage officer must look at what and how the other body investigated in order to decide whether a Social Work England investigation might come to the same, or a different, outcome. The triage officer must carefully review the evidence obtained and considered by the other body, rather than focus on the outcome of the other body's investigation.

For example, the triage officer should be slow to close a case where another body resolved conflicts in evidence based on their judgement about its credibility— a Social Work England investigation might reach a different conclusion. Also, the triage officer should be confident that the other body was able to, and did, exhaust all possible routes of investigation— Social Work England's investigation powers might enable it to obtain evidence not obtainable by other bodies. The triage officer should also be careful to review what the other body investigated, for example, a police investigation may have found no evidence of criminality but may have exposed evidence of unethical conduct.

*The concern is speculative*

An example might be a concern that the social worker gave a dishonest opinion in family court proceedings. If the basis of the concern is limited to disagreement with the opinion by a disadvantaged party, and if the opinion was within the range of reasonable professional practice and accepted by the court, then the assertion of dishonesty might be viewed as without evidence, with no likelihood of an investigation finding such evidence. The triage officer should be careful to ensure that an unsubstantiated allegation of dishonesty does

not obscure another aspect of the case, such as that the social worker failed to take into account all relevant factors when giving the opinion.

#### *The concern is plainly irrational*

It can be the case that vulnerable service users may make allegations that are serious in theory but could have no basis in reality. The triage officer is justified in closing such concerns without investigation on the grounds that there is no prospect of obtaining supporting evidence. 'Irrational' should be interpreted in its literal sense. Triage officers should not close apparently irrational allegations on the basis of speculation about the credibility of the person raising the concern. Cases may be closed on irrationality grounds only if the allegations could not possibly be true.

#### *The concern is old*

The age of a concern may impact on likely availability of evidence of current impairment. An example might be a concern that is not sufficiently serious on its own to suggest impairment but could be if repeated. The older the concern, the more an absence of other adverse information may weigh towards closure.

The age of events may make it harder to obtain evidence but triage officers should not speculate about what an investigation might find. The age of a concern may be more relevant to the question of how serious the concern is in the context of impaired fitness to practise today, rather than to whether there is likely to be evidence to support it.

Triage officers should not speculate on whether witnesses are likely to be able to recall events from several years ago or more. This is a question that can be addressed through investigation. However, if the person raising the concern is the only possible source of evidence and is vague about details of events that occurred some years ago, then the triage officer may conclude that there is no prospect of an investigation obtaining sufficient evidence.

#### *Relevance of delayed complaint*

There are many reasons why a person may not be willing or able to bring a complaint at the time of events. Therefore, delay in raising a concern is not a reason to close the case. The triage officer must assess whether the age of the events affects the decision on whether to investigate, whatever the reasons why the concern was not raised previously.

#### **The third criterion: rule 3(a)(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;*

The triage officer should be careful to note the difference between guidance promoting best practice on the one hand, from standards, rules, regulations and laws setting out baseline restrictions which must be observed on the other. Some codes of practice have combinations of best practice and baseline standards. Not all breaches of guidance about best practice will be sufficiently serious to suggest impaired fitness to practise.

Social Work England's professional standards guidance explains the standards necessary for safe and effective practice. They set out what a social worker in England must know, understand and be able to do to stay on the register. The guidance is the primary source document for decision makers on whether the fitness to practise of the social worker is impaired.

It follows that often a breach of the professional standards guidance will be sufficient to provide reasonable grounds for investigation of current impairment. This may be on public protection grounds, but also because the guidance is the key document in setting standards for social workers in England, meaning action may be needed to promote and maintain proper standards for social workers in England.

However, the professional standards guidance is not a rule book. The fact of a breach of a particular paragraph of the guidance does not necessarily mean the social worker's fitness to practise is likely to be impaired, or that a message needs to be sent about the standards to be observed. For example, standard 5.2 is to 'maintain clear, accurate and up-to-date records, documenting how I arrive at my decisions'. A single episode of overlooking to update a record or of making an error (such as entering the wrong date), may not be serious enough to justify opening an investigation. The triage officer must still assess whether the breach is sufficiently serious to suggest current impairment. Whether the social worker is remediating or has already remediated any breach of the guidance may also be relevant.

***The fourth criterion: rule 3(a)(iv)***

*The outcome of, and subsequent actions arising from, an investigation carried out by a body referred to in regulation 7;*

Regulation 7 of the regulations lists various public bodies that either employ social workers or are involved in regulating them. It includes bodies such as the police. Social Work England is not bound by the outcome of an investigation by one of these bodies, but the evidence gathered and the conclusions reached may inform the decision about whether there are reasonable grounds to investigate the social worker's fitness to practise.

*Where another investigation does not uphold the case against the social worker*

An investigation that finds the available evidence does not support the allegation may point strongly towards there being no likelihood of an investigation by Social Work England producing evidence of impaired fitness to practise. However, the triage officer should assess

whether the investigation obtained all possible evidence. The triage officer should also assess whether the investigation has resolved conflicts of evidence and, if so, on what basis. For example, if the investigation accepted one person's word over another, was this based on hearing live testimony, and was it based on incontrovertible corroboration of one version of events? Bearing in mind that Social Work England is not bound by another body's investigation, the triage officer should be slow to close a concern based on the body's assessment of witness credibility.

Where a criminal investigation has been closed without prosecution, the triage officer should review what was investigated, and why a prosecution was not brought. A criminal investigation might have focussed on criminality without considering ethical issues— for example, borrowing money from a service user might not have been theft but could have been exploitative of a vulnerable person. A Social Work England investigation is unlikely to be able to obtain more evidence than the police of those matters the police investigated, but triage officers should bear in mind that the test for prosecuting criminality applies the criminal standard of proof, as well as other principles about public interest.

#### *Where another body finds against the social worker*

Where another body has found facts proved against the social worker, the triage officer should assess whether there is any reason to question the strength of those findings. For example, was the social worker allowed to give evidence and call witnesses? Were they entitled to be represented?

Another body's decision about sanctions arising from their investigation does nothing more than show how seriously the matter was viewed by that body. Social Work England must exercise its own judgement about seriousness by reference to the overarching objective and impaired fitness to practise.

This is particularly important because there is unlikely to be consistency of outcome across different bodies, whereas Social Work England must apply a consistent approach to assessing fitness to practise and sanctions. Sometimes local factors may have impacted on the local investigation. For example, it is not uncommon in health and social care generally for whistleblowing to have either led, or be a response to, a dispute between employer and employee. Such disputes can escalate, including through disciplinary investigation, without this necessarily pointing to a need for us to investigate fitness to practise.

In short, the triage officer should not give any weight to the fact there was a local investigation or that this investigation resulted in an adverse outcome. However, the triage officer is entitled to assess the content of what was investigated, the weight of evidence obtained, and the issues raised in deciding whether there are reasonable grounds for Social Work England to conduct its own investigation.

### *Relevance of engagement*

A social worker's engagement with an investigation may point to their level of insight and remediation. Where there has been good engagement with the local investigation and the social worker has already successfully remediated any deficiencies in their practice identified by the investigation, then this may be relevant to the question of current impairment. By contrast, if, for example, the social worker has not engaged with the investigation or only began remediation after initially denying fault, this may call into doubt the quality of insight and whether remediation is complete.

### *Outcomes of criminal prosecutions*

In criminal cases, a conviction or caution will almost inevitably require an investigation.

If the outcome of a criminal prosecution is acquittal, the triage officer should assess the reasons for the acquittal. Lack of sufficient evidence may well mean there are no reasonable grounds for Social Work England to investigate, though the triage officer should bear in mind that Social Work England applies the civil standard of proof, which is on the balance of probabilities. Nonetheless, there may well be no reasonable grounds to investigate a matter that has been fully tested through criminal trial and found not proved. But triage officers should assess the facts of the criminal trial to see if there was unethical conduct which may suggest a breach of professional standards, even if a criminal offence was not committed.

#### ***The fifth criterion: rule 3(a)(v)***

*Whether the registered social worker is taking, or has successfully completed, remedial actions in respect of the concern; and*

### *Relevance of wider public interest to remediation*

If the concern is sufficiently serious to engage the wider public interest, maintaining confidence in social workers generally or maintaining standards of social workers, then an investigation of impairment is almost certainly indicated regardless of whether the social worker may have remediated. Any remediation may still be a highly relevant factor for sanction at the case examiner or adjudication stages after an investigation.

### *Importance and impact of remediation if no public interest issues*

Social workers have a duty of candour to be open and honest when things go wrong, including by apologising and taking steps to put things right. Social workers also have a professional duty to maintain their own fitness to practise, including through retraining or other continuing professional development, especially in response to specific events when they have failed to meet the required standards.

It is very much in the public interest that when things go wrong, as they inevitably do from time to time, social workers take immediate steps to apologise, put things right and take all

steps to prevent a recurrence. They should not wait for remedial action to be directed by their employer or by Social Work England. As far as possible within the overarching objective, a social worker who has successfully remediated should expect this to be considered in any assessment of their current fitness to practise.

At the triage stage, we do not let the social worker know that we have received a concern. This means we cannot contact third parties, such as an employer, because this discloses the fact that we have received a concern, which could be prejudicial to the social worker.

Therefore, we may not necessarily know whether the social worker has complied with their duty of candour or otherwise remediated. The triage officer may explore this with the person raising the concern, especially if the referrer is the social worker's current employer. However, the triage officer should not assume remediation is complete and successful without positive evidence. The social worker will have full opportunity to provide evidence of remediation during an investigation, and in some cases doing so may result in shortening the investigation stage.

#### *Deferring triage to allow remediation*

In some cases, remediation may be ongoing. It may be reasonable to defer the triage decision pending completion of a local remediation programme. However deferment is only appropriate for relatively short durations (a maximum of three months), where no public interest issues are raised by the case, where there is no current risk to public safety, and where there is no reason to believe that the social worker will not successfully remediate. The triage officer must bear in mind that a social worker who has not yet completed a remediation programme may be currently impaired. There may only be no reasonable grounds to investigate if the social worker is close to completing remediation, there is no doubt they will do so successfully, and the concern raises no public interest issues.

#### *Harder to remediate bad character (misconduct)*

In general, the question of remediation is more likely to be relevant to issues of competence and capability, health and language. It is harder to remediate issues arising from character, such as dishonest conduct, and therefore unlikely that sufficient evidence of successful remediation could be available at triage to justify not opening an investigation. It is highly unlikely that there will be circumstances in which a concern of dishonesty could be closed at triage based on successful remediation.

### *Health related concerns*

For health related concerns, the term 'remediation' might be considered to mean 'successful management'. It is not a requirement that the social worker be cured of their illness, only that they are capable of managing it so that the public is not at risk. The triage officer may need to seek specialist advice about whether the social worker's condition is episodic in nature and, if so, whether the social worker has sufficient insight to manage their condition in a way that protects the public if they suffer a relapse.

#### ***The sixth criterion: rule 3(a)(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.*

Previous adverse findings may be relevant, especially if the new concern is about similar matters. A social worker who has been subject to a previous finding should have a heightened awareness of the standards expected, so fresh concerns raise issues about insight and capacity to remediate. Repetition of concerns where the social worker's previous expressions of insight and remediation were accepted is very likely to warrant investigation of current fitness to practise.

Repeated episodes of impairment, even on unrelated issues, can also undermine the confidence of the public in social workers.

## Further enquiries and deferring decisions

### Further enquiries

#### *Rule 3(b)*

*The regulator may conduct any further enquiries it sees fit including obtaining advice before making a determination under rule 3(a).*

#### *When we can—and when we cannot—ask for further information*

At the triage stage, we cannot disclose to a third party who would not otherwise know about the concern, that we are looking at information about the social worker because this might be prejudicial to the social worker's interests. For example, in response to a complaint from a member of the public, we could not ask an employer whether they have investigated the concern.

However, if a referrer can show that a third party has investigated the concern, then we can approach the third party for further details of the investigation.

The purpose of further enquiries is to help inform the triage decision by reference to the six triage criterion. This means Social Work England should only conduct further enquiries that could affect the triage decision. For example, if the concern is sufficiently serious and cogent to raise wider public interest issues then it will be appropriate to open an investigation without conducting further enquiries.

In general, the more serious a concern the less it may be appropriate to conduct further enquiries, unless there is room for doubt about whether the concern can be supported through evidence. The triage officer must bear in mind immediate risk to public safety—if an interim order might be required then an investigation should be opened. An interim order is a measure to protect the public by preventing a social worker from practising, or placing limits on their practice, until their case is heard. If we get an interim order, it will apply immediately.

#### *Expert advice*

The triage officer may seek advice from Social Work England's advisers. For example, they might seek advice from a professional advisor about whether a concern suggests a breach of guidance and, if so, how seriously it might be viewed. Or they might seek an expert medical view on the risks posed by a social worker's reported health condition.

## Deferring decisions

### *Rule 3(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.*

This rule is intended to support local resolution of concerns if this can be achieved safely and appropriately. It may also be used to await criminal investigations and prosecutions, provided there is no need for an interim order.

Ideally, a social worker will identify when something has gone wrong, apologise, make redress, co-operate with their employer's investigation, and engage with and successfully complete a remediation programme. Other than for very serious concerns that raise wider public interest issues, this local action should mean there is no need for Social Work England to be involved. It means concerns are addressed as quickly as possible, and risk of repetition addressed.

In deciding whether to defer a decision pending local investigation the triage officer should consider the following:

- a) The seriousness of the concern. If the concern is sufficiently serious to suggest current risk to public safety and there are no, or no sufficient, local restrictions, then it is likely to be necessary to open an investigation and to decide on referral for an interim order.
- b) Whether the social worker is engaging with the local investigation. If there is limited engagement this may call into question insight and risk of repetition.
- c) Previous history. This means any finding against the social worker by Social Work England or its predecessors, including resulting in informal advice. It does not include investigations that resulted in no action or concerns closed at triage. If the current concern suggests a pattern, then an investigation may be required to consider the social worker's fitness to practise as a whole. This may be the case in particular if the previous history known to Social Work England is not necessarily known to the employer.

## Previous complainant history

Social Work England, like any public sector body, will sometimes receive concerns from people that cannot be substantiated and may sometimes be driven by improper personal motives. If the principles in this triage guidance are applied correctly, then such concerns are likely to be closed for lack of evidence.

However, each new concern must be considered on its own merits, even if received from a person who has raised previous unsubstantiated concerns. The triage officer should check to make sure the concern is not one that has already been raised and considered previously, but beyond this the officer should not make any assumptions based on previous concerns about the likelihood of the latest concern being true.

Sometimes, the term 'vexatious complaint' is heard. It is important to understand that this term applies to the concern, not the person submitting the concern. It may be that an individual concern might be classed as vexatious and closed on the basis that no sufficient evidence to support it would be available, but the person submitting the concern should not be regarded as 'vexatious' for the purposes of assessing any future complaints they may make.

Once a decision has been taken to close a concern, this cannot be reopened if referred again, unless significant new information has been received. This information would have to support the concern to such an extent that it justifies the reconsideration of the triage decision.

## Events outside the UK or when the social worker was not registered

If the events giving rise to the concern took place outside the UK, or occurred when the social worker was not registered, then Social Work England may only investigate where we decide it is in the public interest to do so (regulation 25(2)).

In such cases, the triage officer should assess whether confidence in social workers generally might be at risk if an investigation was not conducted. They should also assess whether the concern is such that it may justify sending a signal about the standards to be maintained by social workers in England. The triage decision in these cases must set out how the public interest test has been applied.

For concerns about when the social worker was not registered, the triage officer may consider whether the concern points to information that the social worker failed to disclose at the point of registration. If so, this may warrant an investigation of misconduct or, in extreme cases, whether registration was obtained fraudulently.

## Reasoning

Although triage decisions are not published, they should be expressed in terms that would enable a third party, unfamiliar with the content of the concern, to understand what the concern is about and why the decision has been taken. Apart from it being good practice to ensure the reasons fully reflect all relevant points that have been considered by the decision maker, this also helps others such as auditors to review the case. It also helps if there is follow up correspondence, or if a further concern is raised about the social worker in the future.

The decision should begin with a summary of the concerns raised. This does not need to repeat the content of the concern, but it should demonstrate that the triage officer has fully understood and addressed the basis of the concern.

Usually, more detailed reasons should be given where the decision is to close the concern because this will represent a final outcome for the case. However, the triage officer does not need to give lengthy reasons where the decision is obvious, for example where the concern is clearly so serious it must be opened.

It should be clear how each of the decision making criteria has been applied, the relative weight given to each, and how they have impacted on each other. It should be clear whether a closure is because of lack of evidence, because the concern is not sufficiently serious, because the social worker is no longer impaired even if they were at the time of the events, or for some other reason.

## Social workers with current open cases

Where a case is currently open, or where the social worker is already subject to a current finding of impairment and associated sanction, the triage officer should first consider whether the new concern is of similar type to the open case.

If the new matter is similar, and the alleged events occurred after the events of the open case were first under investigation, this may be viewed as increasing the seriousness of the new concern.

It is essential to urgently consider the impact the new concern, if promoted to an investigation, could have on the status of the open case. If the new concern needs to be joined to the open case this may have to happen quickly, for example if the open case is coming up for a review hearing.

## Voluntary removal applications

In some cases, we may receive a voluntary removal application from the social worker while we are considering the concern at triage. A voluntary removal application cannot be granted while the social worker is subject to fitness to practise proceedings. This includes cases under consideration at triage.

If the concern warrants an investigation by reference to the triage criteria, then a voluntary removal application cannot affect this decision. If no investigation is warranted, then the removal application can be granted once the triage closure decision has been confirmed.

Once a case has been investigated, there is an option for the case examiners to find impairment but take no further action so that a voluntary removal application can then be granted. This means the concern will have been investigated and evidence gathered, which could be considered if the social worker subsequently applied to restore their name to the register.