

## SCHEDULE 2

### Fitness to practise proceedings

## PART 2

### Investigation

#### **Commencement of investigation**

3.—(1) Where the regulator determines in accordance with paragraph 1(1) that there are reasonable grounds for investigating whether a social worker's fitness to practise is impaired, the regulator must—

- (a) appoint two or more investigators to carry out an investigation, and
- (b) appoint two or more case examiners to determine whether there is a realistic prospect that adjudicators would determine that the social worker's fitness to practise is impaired,

in accordance with this Part.

(2) Where paragraph 1(2) applies the regulator must appoint two or more case examiners to consider the case in accordance with paragraphs 8 and 9, and paragraphs 4 to 6 do not apply.

(3) Any step in the investigation under this Part must be taken within such period as is specified in rules made under regulation 25(5)(b).

#### **Notifying the social worker and the complainant**

4.—(1) The investigators must—

- (a) notify the social worker of the grounds for investigating whether their fitness to practise is impaired,
- (b) require the social worker to provide details of—
  - (i) any person by whom they are, or have been, employed to provide services as a social worker or in relation to social work,
  - (ii) any person with whom they have, or had, an arrangement to provide services as a social worker or in relation to social work, and
  - (iii) any regulatory body with which they are registered, and
- (c) invite the social worker to make written submissions.

(2) Where the fitness to practise proceedings were instigated following a complaint against the social worker, the investigators may—

- (a) provide the complainant with a copy of any written submissions made by the social worker, and
- (b) invite the complainant to make written submissions in response.

#### **Obtaining further information and referral to case examiners**

5.—(1) Subject to sub-paragraph (2), the investigators may require any person who, in their opinion, is able to supply information or produce any document which appears relevant to the discharge of their functions or to those of case examiners or adjudicators under this Schedule, to attend and give evidence, or produce documents, in the fitness to practise proceedings.

(2) Nothing in sub-paragraph (1)—

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- (a) requires or permits any disclosure of information which is prohibited by or under any other enactment, or
  - (b) requires the production of any document which a person could not be compelled to supply or produce in proceedings in the High Court on an appeal from a decision of case examiners or adjudicators under Part 5.
- (3) Any information required, and any representations made, under this Part must be provided to the investigators within such period as is specified in rules made under regulation 25(5)(b), or such longer period as the investigators may determine.
- (4) The investigators may take such steps as are reasonably practicable to obtain any further information relevant to the investigation, and must refer the case to the case examiners —
- (a) at any time during their investigation if they consider an interim order may be necessary for the protection of the public or in the best interests of the social worker, or
  - (b) at the conclusion of their investigation.

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

- 6.—(1) The case examiners must—
- (a) consider the information and any written submissions referred to them by the investigators, and
  - (b) determine whether there is a realistic prospect that adjudicators would determine, under Part 3, that the social worker’s fitness to practise is impaired.
- (2) Where the case examiners determine that there is no realistic prospect that adjudicators would determine that the social worker’s fitness to practise is impaired, the case examiners may—
- (a) give a warning to the social worker regarding their future conduct or performance,
  - (b) give advice to the social worker on any matter related to the investigation,
  - (c) take no further action.
- (3) Where sub-paragraph (2) applies, the case examiners must inform the following of their determination and the reasons for it—
- (a) the regulator,
  - (b) the social worker, and
  - (c) where the fitness to practise proceedings were instigated following a complaint against the social worker, the complainant.
- 7.—(1) Where the case examiners determine that there is a realistic prospect that adjudicators would determine that the social worker’s fitness to practise is impaired, the case examiners must notify the social worker of that determination and the reasons for it.
- (2) The case examiners must refer a case falling within sub-paragraph (1), or a case to which paragraph 1(2) applies, to a fitness to practise hearing if, in their opinion, it would be in the public interest to do so.
- (3) Where the case examiners do not refer the case to a fitness to practise hearing under paragraph (2) the case examiners may notify the social worker of the terms on which, and the time within which, the social worker may elect to have the case disposed of without a hearing in accordance with paragraph 9.
- (4) At any time before the case examiners determine that a case is to proceed to a fitness to practise hearing they may require the investigators to obtain, and supply to them, further information or submissions relevant to the investigation, provided that paragraph 5(2) and (3) applies to the provision of information under this sub-paragraph.

## **Interim orders**

**8.—(1)** Where the case examiners consider an interim order may be necessary for the protection of the public or in the best interests of the social worker—

- (a) they must notify the regulator accordingly,
- (b) the regulator must appoint two or more adjudicators to consider whether to make an interim order in accordance with this paragraph.

(2) Subject to sub-paragraph (3), the adjudicators may make any interim order they consider is necessary for the protection of the public, or in the best interests of the social worker.

(3) The adjudicators may not make an interim order unless they have first informed the social worker of the proposed order and given them the opportunity—

- (a) to make written submissions, or
- (b) to attend before the adjudicators and be represented, in order to make oral submissions.

(4) Where they make an interim order under sub-paragraph (2) the adjudicators must—

- (a) inform the following of the terms of the order—
  - (i) the regulator,
  - (ii) the social worker,
  - (iii) any person by whom the social worker is employed, or with whom they have an arrangement, to provide services as a social worker or in relation to social work (where known),
  - (iv) any regulatory body with which the social worker is registered (where known), and
  - (v) where the fitness to practise proceedings were instigated following a complaint against the social worker, the complainant, and
- (b) notify the social worker of their right to appeal to the High Court under Part 5.

(5) An interim order may—

- (a) suspend the social worker from practising (an “interim suspension order”), or
- (b) impose a restriction or condition with which the social worker must comply (an “interim conditions of practice order”),

for such period, not exceeding eighteen months, as is specified in the order.

(6) An interim order made under sub-paragraph (2) ceases to have effect before the expiry of the period specified in the order, or such period as is substituted by the court pursuant to paragraph 14(3)(a) (as the case may be)—

- (a) if the case examiners determine that there is no realistic prospect that adjudicators would determine that the social worker’s fitness to practise is impaired,
- (b) following a fitness to practise hearing, if the adjudicators determine that the social worker’s fitness to practise is not impaired,
- (c) where a case is disposed of under paragraph 9(3) by either of the means mentioned in paragraph 9(2)(a) or (b),
- (d) where a final order is made in respect of the social worker—
  - (i) if there is no appeal against that order, when the period for appealing expires,
  - (ii) if there is an appeal against that order, when the appeal is withdrawn or otherwise finally disposed of, or
- (e) where the social worker is removed from the register under regulation 26(5).

### **Disposal without hearing**

9.—(1) This sub-paragraph applies where—

- (a) the case examiners give the notification referred to in paragraph 7(3), or paragraph 1(2) (a) applies (social worker convicted of an offence, other than a listed offence), and
- (b) the case examiners determine that it would not be in the public interest for the case to proceed to a fitness to practise hearing.

(2) Where sub-paragraph (1) applies the case examiners may notify the social worker that they propose to dispose of the case without further investigation by—

- (a) taking no further action,
- (b) giving advice to the social worker on any matter related to the case, or
- (c) making a final order.

(3) If the social worker notified under sub-paragraph (2) notifies the case examiners that the social worker consents to the proposed disposal of the case and does not wish to proceed to a fitness to practise hearing, the case examiners must, provided that they remain satisfied that it would not be in the public interest for the case to proceed to a fitness to practise hearing—

- (a) dispose of the case accordingly, and
- (b) inform the following of the manner in which the case was disposed of—
  - (i) the regulator,
  - (ii) the social worker,
  - (iii) any person by whom the social worker is employed, or with whom they have an arrangement, to provide services as a social worker or in relation to social work (where known),
  - (iv) any regulatory body with which the social worker is registered (where known), and
  - (v) where the fitness to practise proceedings were instigated following a complaint against the social worker, the complainant.