Scottish Social Services Council

Council
20 August 2020
Agenda item: 10
Report no: 45/2020

Title of report	Fitness to Practise Thresholds
Public/confidential	Public
Action	For decision
Summary/purpose of report	To review the thresholds for fitness to practise investigations and propose revised thresholds
Recommendations	The Council is asked to: 1. approve the revised thresholds
Responsible Officer	Maree Allison Director of Regulation Tel: 01382 721865
Link to Strategic Plan	The information in this report links to Outcome 1: People who use services are protected by ensuring the regulated workforce is fit to practise.
Link to the Risk Register	Risk 1: We fail to ensure that our system of regulation meets the needs of people who use services and workers.
Equality Impact Assessment (EIA)	1. An EIA was developed No specific impact was identified in the proposed changes to thresholds. Previous research has identified that men are over-represented in fitness to practise referrals. This mirrors findings of other regulators. This is likely, at least partially, due to men being over-represented in the criminal justice system. We will be in a position to examine this issue when the performance management system enables us to interrogate our data appropriately.
Documents attached	Appendix 1 – Existing thresholds and revised thresholds Appendix 2 – Summary of other regulator's thresholds

1. INTRODUCTION

1.1 Along with all health and social care professional regulators, the SSSC has a threshold which sets out the types of matters which may affect a worker's fitness to practise and we will investigate. This acts as a gateway which ensures that we focus our resources on the right issues and provides clarity for those considering making a referral.

1.2 We have reviewed the thresholds regularly over the last 20 years, using data from our outcomes and caselaw. The last review was in 2016 when we moved from a misconduct model to a fitness to practise model of regulation.

1.3 In March, as part of our COVID-19 measures, we made a temporary change to the thresholds to focus on high risk behaviour. The temporary measures cannot continue indefinitely. We planned to carry out a general review of our current thresholds later in this financial year. Rather than revert to our pre-COVID-19 thresholds, to then move to new thresholds a short time after, we have brought the general review forward.

2. CURRENT THRESHOLDS

2.1 Our current thresholds are set out at Appendix 1. Currently 10% of the referrals we receive result in a sanction. If we could decrease the referrals that do not result in regulatory intervention it would minimise impact on workers, witnesses and complainants and enable us to focus our resources more effectively.

2.2 However, we have to ensure that we do not frame our thresholds in a way which closes the door on referrals that require regulatory intervention.

3. RESEARCH

3.1 The COVID-19 changes highlighted to us that our current thresholds are framed in a way that is overly prescribed, which is likely contributing to us receiving such a high percentage of cases which result in no sanction.

3.2 We reviewed the following:

- the approach that other health and social care regulators take (Appendix 2)
- the relevant caselaw that has developed since November 2016
- the sanction decisions made under the fitness to practise model
- all cases we received since November 2016 which we classified as high risk when received but did not end in a sanction.

3.3 The information from the review informed the revised thresholds.

4. REVISED THRESHOLDS

4.1 The revised thresholds set out at Appendix 1 focus on the key issues that require regulatory intervention and aligns them with the three key grounds of impairment (misconduct, deficient professional practice and health).

4.2 We have reviewed all sanction decisions made under the fitness to practise model to ensure that they fall within the revised thresholds.

4.3 If Council approves the revised thresholds, we will work with stakeholders to develop guidance and examples which help them to understand what falls within our remit and when to refer.

4.4 One requirement we intend introducing is to ask service users or their family members to raise their issues directly with the service in the first instance. Our experience is that complaints from service users or their family members often have at their heart unhappiness with service provision and decisions, rather than the fitness to practise of individual workers. Our investigations are lengthy and can raise expectations that we will resolve these issues when we cannot. Many of our corporate complaints arise from these cases. The Care Inspectorate, and other professional regulators already adopt this approach.

4.5 Should the complainant still come to us after the service has looked at the issue, it should enable us to make a much swifter decision. Of course, we would always accept a referral about a matter which may require a temporary suspension order.

5. INDEPENDENT CARE REVIEW

5.1 The Independent Care Review made recommendations about how regulation has to change. The revised thresholds do not inhibit that work as they are flexible to support changes in practice.

6. OPTIONS

6.1 If Council approves the revised thresholds we will work with stakeholders to develop supporting guidance and plan to implement in October.

6.2 If Council does not approve the revised thresholds, we will carry out further work as directed, and will revert to our existing thresholds in October.

7. RESOURCE IMPLICATIONS

7.1 The intention of thresholds is to reduce the number of referrals we receive which do not require regulatory action. We anticipate that the revised thresholds will reduce referral numbers, which will generate staff time savings. We will monitor this in order that we can provide a quantification of any saving.

8. LEGAL IMPLICATIONS

8.1 The SSSC has a statutory requirement to ensure that the safety and welfare of people who use services is protected and enhanced. In changing the threshold for fitness to practise investigation we have to ensure that we are not excluding cases which require regulatory action.

9. STAKEHOLDER ENGAGEMENT

9.1 We have engaged with staff in the Fitness to Practise Department.

9.2 We have not engaged with stakeholders in the sector for their views on the proposed revised thresholds. As the regulator the thresholds are a tool, based on the outcome of hearings and referral data, that enables us to set a gateway for investigations.

9.3 Where engagement is essential is in developing the guidance that goes alongside the thresholds to help service users, workers, employers and the public generally understand our thresholds, and at what point in a process a referral should be made.

9.4 If Council approves the revised thresholds then we will undertake engagement with service users, employers, unions, representative bodies and workers to obtain feedback on the challenges with the current arrangements and how we can improve and make them clearer and work more effectively.

10. IMPACT ON PEOPLE USING SOCIAL SERVICES AND CARERS

10.1 Taking regulatory action when a worker's fitness to practise is impaired is one of the most important ways we protect people who use services. By limiting unnecessary referrals we will be able to focus our resources on the issues that do affect people who use services.

10.2 Our fitness to practise investigations have an effect on the workforce, both in terms of time spent providing us with information and giving evidence, and in terms of the impact on workers we investigate. This can affect service provision. If we can reduce the number of unnecessary investigations this will improve service provision.

11. CONCLUSION

11.1 Our current thresholds have been in place for over three years. With such a high percentage of referrals resulting in no regulatory action, we recommend implementing the revised thresholds.