

Fitness to Practise Thresholds Policy

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1. Introduction

The Scottish Social Services Council (the SSSC) is required to promote high standards of conduct and practice among social service workers. This duty is set out in the Regulation of Care (Scotland) Act 2001. An important part of that work is investigating and making decisions about allegations made about registered workers. Our focus is to ensure that workers are fit to practise. This means taking action if their fitness to practise is impaired because of their conduct, professional practice or health.

This policy sets out:

- what applications for registration will be referred to the Fitness to Practise Department for further investigation
- what referrals we will investigate
- what we consider when a case is closed before we reach an outcome (see page 9 for examples).

It also explains why we may impose a Temporary Order in certain situations. The core principles underpinning this policy are that the SSSC should:

- uphold high standards in the social service workforce
- ensure that the safety and welfare of those using care services is protected and enhanced
- act in the public interest
- balance risk against proportionality
- maintain confidence in the SSSC as a regulator.

2. What we consider when a worker is applying for registration

2.1 Applying for registration

The public relies on us to make sure social service workers are fit to practise.

We ask workers applying for registration to declare certain disciplinary, criminal and health matters to us.

When we process applications we can take the following into account.

- Information declared on the application.
- Information provided by an individual who is endorsing the application
- Information we already hold which was either given to us by a previous employer (if the applicant was dismissed/resigned before the conclusion of a disciplinary process from a social



service role) or from a previous case which we concluded before an outcome (see page 9 for examples).

A small proportion of applications are referred to the Fitness to Practise Department for further investigation. When this happens, we'll send the applicant a letter explaining why.

Our Fitness to Practise Department investigates cases to ensure workers applying for registration are suitable to be on our Register. When an application is referred to us, we will decide whether the information suggests the applicant's fitness to practise may be impaired.

The information about applicants is screened against the investigation thresholds we use when we receive fitness to practise referrals about registered workers.

Not all applications referred to the Fitness to Practise Department will result in an investigation. If we decide the information does not affect the applicant's fitness to practise, we will take no further action and process the application in the usual way. There may be a slight delay in completing applications in these cases.

If the information may affect the applicant's fitness to practise, we will open a case and allocate it to a case holder to begin an investigation.

You can use the information in section 2.2 to find out if an application is likely to be referred to the Fitness to Practise Department. The information on page 6 shows the kind of things we consider would call into question an applicant's suitability to be on our Register and when we are likely to begin an investigation.

We record all information we hold on an applicant's record. We do this so we know what matters we have already considered and if they become relevant in any future consideration of an individual's fitness to practise.

Being under investigation by the SSSC does not necessarily mean that an applicant cannot work in the social service sector. They can continue to work while we are processing their application, although an employer may take other steps depending on the outcome of their own risk assessment and/or on the advice of their allocated Care Inspector. SSSC registration cannot be completed until the fitness to practise investigation is complete. This means applications are likely to take longer than our standard 60 days to process.

2.2 Disciplinary matters

If an applicant (or an endorser of an application) declares any of the following, the application will be referred to us for screening and possible further enquiries or investigation (unless the behaviour falls below our thresholds for investigation – see page 6):



- the applicant is currently subject to an investigation and/or currently suspended by their employer
- the applicant has been dismissed by an employer in the last five years
- the applicant has resigned from a post before the conclusion of their employer's investigation within the last five years
- the applicant has had a finding made against them by another regulator.

An application may also be referred to us if we hold information on file that may call into question the applicant's fitness to practise (i.e. non-registered worker information or information from a previous fitness to practise investigation), and/or if there is a concern about the accuracy of the information in the application.

2.3 Offences and other orders

Applicants need to tell us about any relevant criminal convictions, but they do not need to tell us about all criminal convictions.

Applicants and their employers can check our Criminal Convictions Guidance <https://www.sssc.uk.com/knowledgebase/article/KA-01093/en-us> to find out what applicants should tell us. Applicants are required to tell us if they have been the subject of certain orders or if they have had children removed from their care.

If an applicant has declared one of the following, we will record the information, but it is unlikely to be referred to the Fitness to Practise Department and the application will progress as normal:

- admonishment
- absolute discharge
- fiscal fine
- police warning.

However, even if the above applies, we will refer any offences to the Fitness to Practise Department if they involve either of the following:

- a child and/or vulnerable adult was a victim or was harmed by the offence, or
- the offence was committed in the course of your employment in social services, or in the course of any employment or voluntary work closely linked to social services.

2.4 Health

We ask applicants to declare any newly diagnosed health condition or any changes to an ongoing health condition, where the condition has or may affect their ability to carry out their job safely and effectively. Where an individual has declared a health condition or if an endorser notes any concerns about an



applicant's ability to carry out their role because of their health, these applications will be referred to us for further investigation. We do not need to know about every health condition an applicant may have, we only need to know about those which may affect their ability to practise safely and effectively.



3. What referrals we investigate about registered workers

We do not investigate all the information, complaints and referrals we receive about registered workers. This policy explains which referrals we will investigate to ensure that we:

- deal with referrals that are within our jurisdiction
- consider referrals about workers appropriately
- use our resources effectively
- manage our caseload in line with our duty as a responsible regulator.

We may decide to investigate a referral even if it does not meet our thresholds. This may be because action is needed to protect the public, it is in the public interest or is in the interests of the worker. Sometimes we hold information the person making the referral is not aware of and the additional information we receive may mean our referral criteria is now met.

3.1 What matters we consider

The Scottish Social Services Council (Fitness to Practise) Rules 2016 set out the grounds on which a worker's fitness to practise may be impaired. These are:

- misconduct
- deficient professional practice
- health
- a decision by another regulator
- a conviction.

Alleging that a worker's fitness to practise is impaired is a serious matter. It is not simply they have done something wrong but that they have done something which raises doubts about their fitness to practise.

Workers do sometimes make mistakes or errors in judgement both outside and in work. These don't always mean the worker's fitness to practise is impaired and it would not be in the public interest for us to investigate all situations where a worker's judgement or decision could have been different. This guidance helps us focus on serious cases.



3.2 What information we need

We must be able to identify the worker that the allegation is about and have enough information to suggest that their fitness to practise may be impaired.

The information must be about a worker who can be identified

We expect the referral to state the name of the worker. There may be some situations where a person does not know the name of a worker. In these cases we will make reasonable efforts to trace them. To do this we need details about the date and place of the alleged incident and information to help us identify the worker.

The information must suggest that the worker's fitness to practise may be impaired

We would not expect the person making the referral to understand the definition of impairment or fitness to practise, or to word the referral in technical language.

However, the information must be clear about what has happened and what the concerns are to allow us to decide if the worker's fitness to practise may be impaired.

The person making the complaint (complainant) does not need to provide all the evidence. We will investigate to find out if there is sufficient evidence that is of a high enough standard. This may include asking the complainant for more information. If we decide not to investigate it does not mean we don't believe the person who made the referral, it simply means there is not enough information to allow us to investigate.

Finally, allegations can be made in any format, including by phone. However, we encourage referrals using the form on our website. This helps us gather as much information as possible at the start of the process to help us decide whether to investigate.

3.3 Employer referrals and notifications

Any person or organisation can raise a referral, complaint or matters of concern. However, there are special arrangements in place for employers and universities.

What an employer must tell us about

Employers **must** tell us:

- where a worker has been suspended, dismissed, or demoted



- where a worker resigns during a disciplinary investigation and the employer would have dismissed
- where the employer is aware of a matter which would be referred to Disclosure Scotland
- where a worker has been charged or convicted of a criminal offence
- any other circumstances where the behaviour or actions of a worker raise a concern about their fitness to practise – see page 6.

Regulatory action may be required if the concern relates to the following:

1. Misconduct – behaviour towards service users, colleagues or other people which is serious and is:
 - physically, sexually, emotionally or financially abusive
 - reckless or negligent and likely to cause harm
 - an improper relationship or breach of boundaries
 - dishonest or lacks integrity
 - discriminatory
 - a breach of confidentiality.
2. Deficient professional practice – serious and/or persistent failure to carry out the duties of their role competently and meet the Codes of Practice.
3. Health which is not being managed and puts people who use services at risk of harm.
4. Behaviour that is fundamentally incompatible with registration, such as serious criminal acts, or bringing the profession into disrepute.

If an employer has taken action which is less than suspension, dismissal or demotion, we ask that they take time to consider if the actions of a worker raise a serious concern about their fitness to practise (as listed above). A pattern of behaviour may be an indicator of seriousness.

If the allegations against a worker are serious and meets our thresholds, the employer **must** still make a referral to us, even if they have undertaken an investigation and found no case to answer. Employers should make a referral to us regardless of any evidence they may have to suggest the behaviour did not occur.

Matters that do not need to be referred

We are unlikely to investigate some matters regardless of the outcome of any disciplinary, performance or criminal process. This is because even if the allegation is proved, it is unlikely the worker's fitness to practise will be impaired and it would be disproportionate to take action.



We will not investigate anything that falls below our thresholds laid out above. If a worker is referred, we may need to make enquires to decide if the allegation falls into this list, but we will not investigate unless we have information that there is a public protection or public interest reason to.

When should you make a referral?

In the following circumstances you should make a referral immediately.

- The behaviour is serious (for example, the matters set out above).
- The worker is suspended (see additional notes below regarding allegations that are below SSSC thresholds).
- The worker resigns and dismissal was the likely outcome.
- The worker is charged with a criminal offence.

In other circumstances you should make the referral at the end of the employer's disciplinary, or performance/capability process.

Note: If an employer suspends a worker for concerns that **do not** meet our thresholds (for example, unacceptable absences), the employer can tell the SSSC by updating the worker's record on MySSSC (providing a short but detailed summary of why they consider the behaviour does not meet our thresholds), rather than submitting a Fitness to Practise referral. The formal requirements on employers of social service workers are set out in The Regulation of Care (Scotland) Act 2001 and the SSSC Codes of Practice for Social Service Workers and Employers (the Codes).

3.4 Non employer referrals

Anyone may make a referral if they are concerned that a worker's fitness to practise may be impaired. This can be a person who uses services, a colleague, whistleblower, other public body or a member of the public.

We will make initial enquiries to understand if the matter is something we will investigate under this policy. In certain cases we will decide not to investigate after making initial enquiries because the referral falls below our thresholds (see page 6). This is because these matters are unlikely to mean a worker's fitness to practise is impaired. Even if we decide not to investigate, we still understand that the complainant may have been affected by the behaviour and the matter is serious and important to them.

Complaints about the service

This may be about how the service is provided or a service being withdrawn. Unless the concern is that a worker has failed to give proper advice or obtain funding, this is likely to be a matter for the service and we will direct the person to take it up with them. If the complaint is about a regulated social service and not a worker, we may direct the complaint to the Care



Inspectorate which is the independent body responsible for regulating care services in Scotland.

Decisions made by social service workers

Social service workers make professional decisions, judgements and recommendations and give opinions that not everyone will agree with. They also have to work within the resources available to them. Workers are trained to make these decisions using their knowledge, skills and experience and considering the circumstances of each case. Normally concerns about a worker's decision should be made to the employer.

Deciding whether an allegation is about a professional decision or a worker's conduct or professional practice can be difficult. For example, an allegation about a worker who was dishonest when making a decision would be investigated as a conduct concern. If they did not consider information they should have, this would be about their professional practice. Normally the decision itself is not something we will look at, unless there is information they have made a decision that no reasonable worker would have come to.

Change of worker

We understand that in some cases relationships break down or that a person who uses services or their relative, carer or friend may prefer that another worker is allocated. We cannot ask an employer to change the allocated worker. This is a matter for the service and we will suggest that you raise this with them.

4. What we consider when we close a case before reaching an outcome

Some workers we are investigating may no longer be eligible to stay on the Register. For example, they:

- are no longer employed in a relevant care service (this means we would remove them from the Register because they are on a part of the Register which requires them to be carrying out a specific job)
- have applied to be removed from the Register voluntarily (for workers on a part of the Register which does not require them to be carrying out the role, for example social workers).

In these cases, we may decide to close the investigation and remove the worker from the Register. As there is an outstanding case, we must be satisfied that it is appropriate to remove the worker from the Register before closing the case and we consider the factors below in making this decision.



When a worker is removed from the Register under this policy, the removal takes effect when the worker is notified of our decision not to take any action in relation to the allegations. We will make clear to the worker that we will keep the information on file and may be take it into account in future, for example if there is an application for registration or following any grant of registration.

4.1 The public interest, which includes public protection and public confidence

If the allegation is not fully investigated and a conclusion reached when it is made, it may be difficult to consider it for the first time when any new registration application is made. For example, documents may be destroyed, we may not be able to trace witnesses and memories may be less reliable. It is also a risk that a worker can work in the sector unregistered for six months.

If the matter is serious, it may be in the public interest to conclude it when it is referred. This means imposing an officer decision or referring the matter to a Panel. If the worker was formally removed from the Register, not simply removed because they were not eligible, there is a safeguard against them returning to the sector as it's three years until they can apply to be restored to the Register.

It may also be in the public interest to refer the matter to a Fitness to Practise Panel and to publish the decision, for example to avoid a lack of confidence in the SSSC where there has been a criminal conviction and associated publicity.

If the case is closed because the worker is no longer eligible for registration, there would be no remit to refer to a Fitness to Practise Panel and we wouldn't publish this decision.

4.2 The seriousness of the allegations

The seriousness of the allegation will depend on the circumstances of the case but would be likely to include the types of concerns listed on page 6 as follows.

1. Misconduct – behaviour towards service users, colleagues or other people which is serious and is:
 - physically, sexually, emotionally or financially abusive
 - reckless or negligent, and likely to cause harm
 - an improper relationship or breach of boundaries
 - dishonest or lacks integrity
 - discriminatory
 - a breach of confidentiality.
2. Deficient professional practice – serious and/or persistent failure to carry out the duties of their role competently and meet the Codes of Practice.



3. Health which is not being managed and puts people who use services at risk of harm.
4. Behaviour that is fundamentally incompatible with registration, such as serious criminal acts, or bringing the profession into disrepute.

4.3 The possibility of the worker returning to social services

If there is information that a worker intends to return to the workforce, we may prefer to finish any investigation we are currently carrying out. If we do not conclude the investigation, we would need to re-open it when the worker applies for registration.

4.4 The imposition of conditions as the likely outcome

We can impose conditions when the worker makes a future application. This means we can close the case and impose the condition(s) when they reapply if necessary.

4.5 Whether the facts or impairment are admitted

In some cases the worker may admit the facts happened and/or that their fitness to practise is impaired. If there is no risk to public protection or the public interest, we may conclude the case at that point on the basis that the facts are admitted. We will consider whether the worker is currently impaired if they make any future application.

5. Temporary orders if a worker is suspended by their employer or is in custody

We may decide to ask for a Temporary Order (TO) in cases where it may seem that the public is already protected because, for example, the worker is suspended by their employer or in custody. However, these facts are only some of the elements which we need to consider when deciding whether to ask for a TO.

We may impose a TO where there may be impairment of the worker's fitness to practise which:

- poses a real risk to members of the public
- or adversely affects the public interest
- or adversely affects the interests of the worker.



We base our decision on all the circumstances, which includes consideration of the possibility that a worker may, for example:

- find other work in the sector with their current or another employer (it's more likely than not that suspension by an employer would not be enough to satisfy us the public is adequately protected)
- be released from custody before our proceedings conclude (where the worker is in prison, we will consider the chance of release from custody and proportionality).

6. More information

More information is available on the Fitness to Practise pages of our website <https://www.sssc.uk.com/fitness-to-practise>, including information about our:

- referral process, including access to all referral guidance documents
- investigation process, including access to our Decisions Guidance and Fitness to Practise Rules
- guidance on employing workers under investigation
- Fitness to Practise Panel hearings
- guidance on being a witness
- outcomes of investigations.

We also have factsheets on these topics:

<https://www.sssc.uk.com/knowledgebase/category/?id=CAT-01326>





Scottish Social Services Council
Compass House
11 Riverside Drive
Dundee
DD1 4NY

Tel: 0345 60 30 891
Email: enquiries@sssc.uk.com
Web: www.sssc.uk.com

If you would like this document in another format,
please contact the SSSC on 0345 60 30 891