

# Decisions Guidance

**for Fitness to Practise Panels and Scottish Social Service  
Council staff**



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# **Part A – General**

## **1. Introduction**

The Scottish Social Services Council (SSSC) is the regulator for the social service workforce in Scotland. Our work means the people of Scotland can count on social services being provided by a trusted, skilled and confident workforce.

We protect the public by registering social service workers, setting standards for their practice, conduct, training and education and by supporting their professional development. Where people fall below the standards of practice and conduct we can investigate and take action.

This guidance:

- helps decision makers reach proportionate and fair decisions
- makes sure that the decision making process is transparent and consistent
- helps those involved in the process understand how a decision will be reached.

This guidance is an authoritative statement on our approach to decision making and the panel and SSSC staff must refer to it when making a decision.

However, this guidance does not restrict or bind a panel in exercising its own judgement when reaching a decision. Each case is assessed on its own facts. If a panel decides not to follow the guidance then it must explain its reasons for doing so in its decision.

This guidance is a living document and we will update it from time to time in light of developments in the social service sector and the law.

## **2. Equality and diversity statement**

In all that we do, we have a duty to consider the need to:

- eliminate discrimination, harassment and victimisation
- advance equality of opportunity
- foster good relations.

We are committed to promoting equality and valuing diversity and have an action plan for delivering on this commitment. Anyone acting for us, including our panels is expected to uphold this commitment to delivering processes that are fair, transparent, objective and free from discrimination.

Decision makers should be aware of the impact that cultural differences and personal circumstances, like health, may have on a person's ability to communicate. For example, where a worker is communicating in a second language they may face difficulty in how they express insight or an apology.

There may also be differences in how a worker uses non-verbal communication such as eye contact, gestures and facial expressions. For example, a worker with a sensory impairment may have difficulties in making eye contact with panel members.

Decision makers should keep equality and diversity in mind when considering important issues such as demeanour, insight and apologies.

### **3. Human Rights**

We are a public authority for the purposes of the Human Rights Act 1998. We aim to uphold and promote the principles of the European Convention on Human Rights in accordance with the Act.

### **4. What are the SSSC's key functions?**

Our key functions include:

- maintaining a register of social service workers
- setting and improving standards of practice in the social service profession
- taking action where there are concerns about a worker's fitness to practise.

### **5. What standards do we expect of social service workers?**

We expect social service workers to meet the standards set out in the SSSC Codes of Practice for Social Service Workers and Employers (the Codes).

The Codes are statements that describe the standards of conduct and practice required of social service workers. Workers are expected to use their judgment in applying the Codes to the different situations they face in and outside of work.

### **6. What are the key purposes of our decisions?**

We make decisions:

- to protect the public
- to uphold the public interest
- in the interests of the worker.

Public protection is closely linked to public interest. For example, removing a worker from the Register because they have abused someone, will protect people who use services and will also uphold public confidence in the profession.

The purpose of the decision is not punishment. However some decisions may have a punitive effect on a worker. This is because it may interfere with their

ability to practise their chosen profession. We are aware that the actions we take can have an adverse impact on the worker involved.

Our decisions send a message to the profession and the wider public about the standards expected and may also discourage other workers from behaving in a similar way.

## **6.1 Protecting the public**

We aim to protect and enhance the safety and welfare of people who use, or may use, services. When making a decision we must make sure, insofar as is possible, that the worker does not have an opportunity to repeat the behaviour.

A decision made on the grounds of public protection should take into account the risk of harm and any actual harm caused. When considering the risk of harm, many factors will influence the decision maker, including the risk of repetition, the values a worker displays or how they have reflected on their behaviour.

## **6.2 Upholding public interest**

Public interest includes the following:

### **Maintaining public confidence in the profession and the SSSC as the regulator**

People who use services and their families trust social service workers with their health, safety and welfare, often at vulnerable times in their lives. The care that workers deliver and the behaviour they display must uphold the trust placed in them by people who use services and the wider public.

The profession's most valuable asset is its reputation and the confidence that inspires. Decisions must take into account that the reputation of the profession is more important than the interests of any individual worker.

The public should have confidence in us as the regulator to take appropriate action when necessary and decisions should also take account of their impact on the public's view of the SSSC.

### **Promoting and maintaining standards**

The Codes set out the standards workers should maintain. Failure to follow the Codes may present a risk to public protection and damage the reputation of the profession. Repeated or serious failures are more likely to do this.

Our decisions uphold the standards set out in the Codes. Decisions illustrate how the Codes are applied. This helps the workforce, people who use services and their carers and the wider public understand what falls below the standards expected of workers.

## **Interests of the worker**

In some cases, we make decisions to protect the interests of the worker. For example, where continuing to be on the Register with the responsibilities this brings would be detrimental to their health.

## **7. What approach should be taken when making a decision?**

### **7.1 Standard of proof**

We operate to the civil standard of proof, which is the balance of probabilities. At Temporary Order hearings, the test is whether or not, on the face of it, there is a case to answer. This is known as the prima facie test.

### **7.2 Fairness**

There is an overarching duty to act fairly when making a decision. Fairness is not a fixed concept; it may change over time and will depend on the facts and circumstances of each case

### **7.3 The seriousness of the behaviour**

The seriousness of the behaviour is an important factor. It will depend on the facts and circumstances of a particular case and the values the behaviour indicates.

Some particular types of behaviour are likely to indicate that more serious action should be taken. Further guidance is at paragraph 10.

### **7.4 Proportionality**

Decisions must be proportionate. The principle of proportionality needs the decision maker to carry out a balancing exercise between:

- the interests of the worker to practise in their chosen profession
- the interests of the wider public.

When carrying out this balancing exercise, the decision maker should have regard to the seriousness of the behaviour and the aggravating and mitigating factors relevant to the case.

Any decision that restricts a worker's ability to practise their profession must be no more than is necessary to protect the public and the public interest. When considering the decisions available, the decision maker should start at the decision that is least restrictive to the worker. If this decision does not adequately address the public protection and public interest concerns the decision maker should move onto the next least restrictive decision.

Having considered the interests of the worker and the interests of the wider public, a decision maker must take the course of action considered appropriate, even though this may lead to reputation or financial difficulties for the worker.

## 7.5 Reasons

The decision maker should give reasons for the decision in every case. The reasons must be clear and allow a worker to understand why the decision was made. The decision should be written so that the worker **and** the SSSC are in no real doubt as to how the decision was reached.

Our legislation provides that certain decisions can be appealed. A worker can appeal to the Sheriff Court. To help decide whether to do so, a worker needs to understand the reasons for the decision. If a worker does appeal, the reasons are essential for the Sheriff to understand how the decision was reached.

The reasons should cover:

- the factual basis of the decision, except in Temporary Order cases
- the legal basis of the decision
- the reasons for the decision and/or sanction, explaining the extent to which this guidance was taken into account, whether it was followed and, if not, why not.

Where a panel has made a decision the reasons should also cover:

- confirmation or otherwise that the panel has accepted any legal advice given to it by the independent legal adviser (and a full and detailed explanation will be required where the panel has decided not to accept the legal adviser's advice)
- how the panel resolved particular points of controversy
- the panel's conclusions on the submissions made to it by the worker and/or their representative and the SSSC.

## 8. Mitigating and aggravating factors

Decision makers must consider and balance any mitigating factors (factors in favour of the worker) against any aggravating factors (factors not in favour of the worker).

Public protection and upholding the public interest are the overriding aims. Mitigating factors are less likely to influence a decision maker where there are greater public protection and public interest concerns.

Seriousness of the behaviour is also important. In some circumstances the behaviour of a worker is so serious that it indicates they are fundamentally unsuitable to be registered. It may be that no number of mitigating factors will change that conclusion.

Mitigating and aggravating factors must be considered when deciding:

- if a worker is fit to practise or if their fitness to practise is impaired
- what sanction or outcome is appropriate.

A decision maker should decide if:

- the factor is present or absent
- the factor is relevant to the matter

- the factor mitigates or aggravates the matter.

The decision maker should keep in mind that the absence of certain factors is not always aggravating. For example, see the section on references and testimonials on paragraph 8.7.

Some common factors are:

- insight, regret and apology
- previous history
- circumstances leading up to the behaviour
- length of time since the behaviour and subsequent practice
- conduct inside or outside of work
- duress
- references or testimonials
- cooperation with the SSSC
- isolated incident or a pattern of behaviour
- consequences of the behaviour
- abuse of trust
- concealing wrongdoing.

This list shows examples but other factors may be relevant. For further detail on each factor, see below. For factors relevant to a Temporary Order see paragraph 12.

### **8.1 Insight, regret and apology**

It is important that people who use services should be protected from similar events recurring, and that social service workers should take positive steps to learn from their mistakes. The insight shown by the worker is an important factor in this. Insight is the expectation that a social service worker will be able to stand back and accept that, with hindsight, they should have behaved differently. It is also expected that he or she will take steps to prevent a recurrence. In considering this the decision maker should also bear in mind that the worker has the right to deny any allegations.

A worker is likely to have insight if they:

- have taken steps to address the concern(s) such as training and learning
- have apologised at an early stage of the process and admitted the facts
- accept they should have behaved differently (particularly when a worker refers to a lack of experience) and show reflection, understanding and empathy.

A worker who lacks insight may:

- fail to apologise or accept their mistakes, including failing to be open and honest during the SSSC's processes, including during a hearing
- offer to take steps to address the concerns but fail to do so, or only do so when prompted immediately before or during a hearing
- fail to develop insight at the right time, for example insight is only displayed immediately before or during a hearing.

The decision maker should keep in mind the equality and diversity statement set out at paragraph 2 when considering insight, regret and apology.

## **8.2 Previous history**

It is a mitigating factor that the worker has not previously been found to have committed misconduct or had their fitness to practise impaired.

A decision maker is likely to consider previous criminal or regulatory findings (whether by the SSSC or another regulatory body) as an aggravating factor.

## **8.3 Circumstances leading up to the behaviour**

A decision maker should carefully examine the circumstances leading up to an incident. Evidence that behaviour has occurred in extreme circumstances that no longer exist may provide a decision maker with some reassurance. However, the risk of extreme circumstances arising in the future will still be relevant to evaluating risk.

These are some examples of factors that may be mitigating.

- The behaviour was spontaneous.
- A lack of experience. Whether a worker's experience level is a mitigating factor will depend on the nature of the behaviour. It also depends on whether the behaviour is something that is likely to improve with experience or reveals an underlying issue with the worker's values.
- A lack of support at work such as training or supervision may be a mitigating factor. Any failure by the employer should be considered against the nature of the behaviour and any underlying concern about the worker's values. It is also important to remember that workers remain personally responsible for their own behaviour.
- Personal circumstances such as work issues, family life or health problems. For these to be mitigating, the worker would be expected to show the impact of the issue on their behaviour. The worker has the responsibility for establishing this and may provide medical evidence. Health can be a mitigating factor but only if in itself it does not impair fitness to practise.

These are some examples of factors that may be aggravating.

- The degree of disregard for the Codes shown in the worker's behaviour.
- If the behaviour was premeditated (planned) or deliberate.
- A failure to raise concerns. Workers have a responsibility to raise concerns, particularly where the concern presents a risk of harm to people who use services or the concern has been present for a long time.
- If the worker is experienced, well trained or holds a senior position it is likely to be an aggravating factor.
- If the case is about a worker applying to be registered, it will likely be an aggravating factor if the behaviour took place while they were working in a social service role. This is because all social service workers are expected to comply with the Codes.

## **8.4 Length of time since the behaviour and subsequent practice**

A decision maker may take some reassurance if the behaviour occurred in the distant past and consider the length of time to be mitigating. What constitutes the distant past since the behaviour will vary depending on the seriousness of the behaviour.

Any evidence the worker can show of good practice since the behaviour, with particular reference to the Codes, will be significant. If a worker has been subject to a Temporary Suspension Order and therefore prevented from demonstrating good practice in the sector, the lack of good practice is not aggravating. The decision maker should simply find this factor is not present.

## **8.5 Conduct inside or outside of work**

### **Inside work**

Most behaviour that a decision maker considers will have taken place at work. Therefore the fact the behaviour took place at work is not automatically aggravating. For it to be aggravating, the behaviour needs to be sufficiently serious.

It is unlikely that the fact that behaviour that took place in work will be mitigating.

### **Outside work**

The fact that behaviour took place outside work will not usually be mitigating.

A decision maker is likely to consider that certain behaviour that occurs outside of work or in a worker's personal life is aggravating where the behaviour is so serious as to affect the reputation of the profession.

A decision maker should carefully consider the facts and circumstances of the behaviour, where it took place, any underlying issues about the values displayed by the behaviour and how that relates to the worker's role.

## **8.6 Duress**

To be mitigating there will need to be evidence that the worker was forced, induced or coerced into a particular behaviour.

## **8.7 References or testimonials**

A worker may present references and testimonials to support their professional standing or their standing in the wider community. A decision maker should consider what weight, if any, to give to these documents taking the following factors into account.

- Whether the reference or testimonial is genuine. If the reference is genuine it is likely to be:
  - signed
  - on headed paper (where appropriate)
  - in the language and style expected of the author.

- Whether the author was fully aware of the nature of the allegations faced by the worker.
- The extent the views expressed are supported by other evidence.
- The length of time the author has known the worker.
- How recently the author has had experience of the worker's behaviour or practice at work.
- The relationship between the author and the worker. For example, is the author a senior member of staff or does the author have a potential conflict in providing a testimonial?

The decision maker should be aware that the quantity and quality of references or testimonials will vary from case to case. Not all workers will produce references and testimonials and there may be legitimate reasons for this. So, it should not be an aggravating factor if a worker does not provide references and testimonials.

The equality and diversity statement should be kept in mind when a decision maker approaches references and testimonials.

## **8.8 Cooperation with the SSSC**

Cooperation with the SSSC's processes is a mitigating factor. There will be different levels of cooperation in each case. Cooperation includes:

- providing substantive (full and considered) comments to any allegations
- making early admissions
- engaging in any meaningful way with the process.

If a worker fails to be open and honest during the SSSC's investigation or otherwise disrupts an investigation, for example, putting pressure on witnesses not to cooperate, or failing to comply with a Case Management Meeting direction, this is likely to be aggravating.

As a worker has a right to deny allegations, it is possible that a worker can cooperate with the process without admitting the allegations.

## **8.9 Isolated incident or a pattern of behaviour**

A decision maker should consider whether the worker's behaviour is an isolated incident or part of a pattern of behaviour.

Generally, if the behaviour was isolated this is mitigating. Some isolated behaviours will be so serious that the most severe action needs to be taken.

A pattern of behaviour is likely to be aggravating especially if the same type of behaviour is repeated. A significant pattern of low level behaviour can also lead to serious action being taken.

## **8.10 Consequences of the behaviour**

The consequences of behaviour are relevant. To decide if this factor is mitigating or aggravating a decision maker should consider the impact on the victim, including the level of harm and potential harm. If there is evidence the behaviour would not have caused direct or indirect harm then this is likely to be a mitigating factor.

A decision maker should understand that some cases may involve serious behaviour but cause no harm while other cases may involve less serious behaviour that causes significant amounts of harm.

In cases where the public interest is acute, this factor may be aggravating and carries significant weight even where the worker's behaviour is relatively minor.

### **8.11 Abuse of trust**

People who use services, their families, employers and the public trust workers to provide an acceptable standard of care to those who use services.

In assessing this factor, decision makers should consider:

- whether the behaviour amounts to a fundamental failure to follow the Codes
- the nature and extent of the relationship between the worker and the people who were affected by the behaviour
- the vulnerabilities of any person, or group of people, affected, or potentially affected, by the behaviour.

### **8.12 Concealing wrongdoing**

If a worker has taken steps to conceal their wrongdoing, such as changing records, accessing premises or systems when instructed not to do so, this should be considered an aggravating factor.

## **9. Criminal convictions**

A decision maker should not rely on the sentence imposed in a criminal court as a definitive or reliable guide to the seriousness of the behaviour.

There may have been specific personal mitigation considered in the criminal court that carries less weight in a professional regulatory context due to the different public interest test that applies.

## **10. Cases where more serious action may be required**

Certain types of cases may need more serious action. This is because the overarching need to protect the public and/or the public interest (which includes the reputation of the profession) means that mitigation is less important in these types of cases. The following cases are considered to be at the more serious end of the scale, and are more likely to lead to refusal of an application to register, Temporary Orders being imposed and removal. This list shows examples but will not include every possible type of case.

### **10.1 Sexual misconduct**

This covers a wide range of conduct including sexual assault, sexual abuse of children, indecent images of children and sexual misconduct with people who use

services, their carers and relatives, or with colleagues. It is particularly serious if the worker betrays a position of trust.

## **10.2 Sex offenders and offences involving indecent images of children**

The panel must pay specific attention to behaviour that led to a worker being subject to notification requirements in relation to sexual offences. This is because there is not only a risk to public protection but also an impact on public confidence in having such a worker on the Register.

Any conviction for indecent images of children is a matter of serious concern because it breaches public trust and undermines public confidence in the profession. For this reason any involvement in indecent images of children may lead the panel to consider removal as being the only proportionate sanction.

## **10.3 Dishonesty**

Dishonesty is particularly serious because it may undermine trust in social services. The public, including those who use services, must be able to place complete reliance on the integrity of workers. Dishonesty, particularly when associated with professional practice, is so damaging to a worker's suitability and to public confidence in social services that the panel may consider removal to be the appropriate outcome.

Examples of dishonesty include:

- theft
- fraud or embezzlement
- lying about whether a work task has been done
- falsifying or improperly amending records relating to people who use services
- providing false references
- inaccurate or misleading information on a CV or application form
- plagiarism.

## **10.4 Failing to provide an acceptable level of care**

Cases in this category are where a worker has not acted in the best interest of a person who uses social services and has provided care that falls well below the professional standard expected.

A particularly important consideration is whether or not the worker has shown insight into these failures or has been able to improve their practice by taking remedial steps. Where insight is present and/or remedial steps have been taken, it is likely that a sanction other than removal may be appropriate.

There are some cases where a worker's failings cannot be remedied. This is because they are so serious or persistent that, despite steps subsequently taken, action is needed to maintain public confidence. This might include when a worker knew or should have known they were causing harm to someone who uses services and should have taken steps earlier to prevent this.

## **10.5 Abuse of a position of trust or violation of the rights of people who use services**

Social service work relies on a caring and professional relationship in circumstances in which people who use services have little choice but to be trusting. People who use services rely on the worker being trustworthy. They have the right to be protected from a worker who abuses this trust. This abuse may be for sexual purposes, financial gain, or for some other purpose against the interests of the person using the service.

Workers have privileges which society has given them on the understanding that they will be used responsibly and for legitimate professional purposes. A social service worker who abuses the trust which society places in them should forfeit or lose the privileges that come with registration. (For example, the respect gained from that position, the right to work with vulnerable people and the ability to be employed in the profession).

Workers must not use their professional position to pursue a sexual or improper emotional relationship either with someone who currently or recently used services or with someone close to them.

## **10.6 Behaviour that is fundamentally incompatible with professional registration**

A worker's behaviour, values or attitudes may identify them as being unfit to be a member of a caring and responsible profession such as violent behaviour or physical or emotional abuse. This may be demonstrated by a serious or persistent contempt for the safety, rights and dignity of others or by serious criminality such as violent behaviour.

## Part B - Types of Decision

### 11. Applications to register

This section is about people **applying** to register with the SSSC. The decision maker needs to consider the general principles in Part A and take the following matters into account.

The SSSC must carefully consider applications to make sure only the right people are on the Register. Although public protection concerns are important to application decisions, application issues may be more likely to be about historic behaviour which means that public interest may be the more important consideration.

The decision maker needs to keep in mind the values underlying the behaviour and whether any mitigation minimises the risk of repeated behaviour so that the public protection concern is reduced. The decision maker should also consider any circumstances that led to the behaviour occurring and whether a recurrence of these circumstances mean the person would be at risk of repeating the same or similar behaviour.

Some behaviour, even if historical, may be so serious that it is still damaging to the reputation of the profession and to the confidence people have in social services. In these cases it may be appropriate to refuse a person's application to register.

The decision maker should consider that:

- the profession's most valuable asset is its reputation
- the reputation of the profession is more important than the interests of any individual worker
- of all the interests that need to be weighed up when determining a worker's fitness to practise, the overriding interest is maintaining public confidence in the profession
- when deciding if a worker's fitness to practise is impaired, the same standards should be applied to a worker applying to join the Register as would be applied to someone who is already registered
- the passage of time might reduce public protection concerns.

#### 11.1 Possible outcomes

SSSC staff can:

- grant registration
- grant registration subject to condition(s)
- refer an application for registration to a panel.

A panel can:

- grant registration
- grant registration subject to condition(s)
- refuse registration.

## **11.2 Grant registration**

A decision maker can only grant registration when they are satisfied that a worker is fit to practise.

The decision maker needs to be satisfied when granting registration that any risk to public protection is low or being managed. The decision maker also needs to be satisfied that, despite the behaviour, there would be minimal damage to the reputation of the profession if the person was registered.

It is likely that a worker's insight and remedial steps since the behaviour will be key factors in deciding whether to grant registration. A worker who shows limited or no understanding of the concerns is unlikely to be granted registration.

## **11.3 Grant registration subject to condition(s)**

A decision maker may decide a person is fit to practise subject to conditions that protect members of the public and/or maintain the public interest.

Detailed guidance on conditions is at paragraph 15.

## **11.4 Refuse registration**

A panel must refuse an application if it is not satisfied that a worker is fit to practise and there are no conditions that protect members of the public and/or maintain the public interest.

Refusal of a worker's application will prevent them from working in their chosen role. Following a refusal of registration a worker cannot apply to register for a period of three years unless the only reason for refusing the application was that the person was not fit to practise due to their health.

## **11.5 Qualification conditions**

Some parts of the Register require workers to achieve certain qualifications. If the worker does not have a required qualification(s), their registration can only be granted subject to the condition that they achieve the qualification(s) within their first period of registration. These conditions may be additional to any other condition required. The decision maker must be aware of any qualification requirement before making a decision.

## 12. Temporary Orders

This section applies to workers **registered** with the SSSC.

The SSSC may receive information about a registered worker that raises serious concerns about their fitness to practise. In these cases a Temporary Order restricting the worker's practise may be required while the SSSC carries out the investigation.

The decision maker needs to consider the general principles in Part A, apart from the aggravating and mitigating factors at paragraph 8, as sanction is not being considered at this stage.

### 12.1 Amount of information

A decision to impose a Temporary Order is likely to be made at an early stage in the case. Often a decision maker will need to make a decision on much less information and evidence than will be available when making a final decision. The decision maker must decide, on the face of it, whether there is a case to answer and then assess the risk based on the information available at the time.

### 12.2 Factors to be taken into account

The decision about a Temporary Order will depend on the particular facts and circumstances of each case. The decision maker should consider:

- the seriousness of the allegations
- the likelihood of the alleged behaviour being repeated
- the severity of the harm or risk of harm if the alleged behaviour is repeated
- the effect on public confidence in the integrity of the regulation of the social service profession
- the other steps which could be taken to protect against the risk of the harm
- the hardship which may be caused to a worker by a Temporary Order
- the assurance about the worker that may be taken by a prospective employer or person who uses services if the worker remains able to practise without restriction.

This list shows examples but there may be other factors a decision maker takes into account.

When imposing a Temporary Order the decision maker should be satisfied that:

- a. in all the circumstances there may be impairment of the workers 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; and
- b. after balancing the interests of the worker and the interests of the public, that an order is necessary to protect against such risks.

## 12.3 Possible outcomes

### No order

If a decision maker decides there is not enough information to make an informed assessment or that a Temporary Order would be disproportionate to the harm that is being protected against, then they should not impose an order.

### Temporary Conditions Order

If a decision maker decides it is necessary to impose a Temporary Order they should first consider the least restrictive Temporary Order. This is a Temporary Conditions Order. This order would allow the worker to continue working until the final outcome of the case.

Detailed guidance on conditions is at paragraph 15.

### Temporary Suspension Order

A Temporary Suspension Order will prevent a worker from practising until the outcome of the case. This may lead to the worker suffering from financial and/or reputational damage but often a Temporary Suspension Order will be the only way to protect the public, maintain the public interest or act in the worker's best interests.

### Temporary Conditions and Suspension Order

There may be exceptional cases where both types of Temporary Orders are appropriate. A decision maker should clearly detail in their reasons why they have imposed both orders.

## 12.4 Length of Temporary Order

When imposing a Temporary Order the decision maker should consider the impact the order will have on the worker and the length of time needed to complete the investigation.

The length of the order will depend on the facts of the case and the decision maker should consider:

- how much information is currently available
- how much information is likely to be needed in order to fully consider the allegations
- the likely number of witnesses that require to be spoken to
- the likely length of time any investigations by other bodies, such as the police, will take to complete
- the time needed to proceed to a final hearing
- the prejudice to the worker.

## 12.5 Reviews of Temporary Orders

A case may not conclude within the duration of a Temporary Order and in these cases the SSSC may seek a further order. This may be because:

- further allegations have emerged during the investigation
- the level of detail and information received is greater than expected at an earlier stage
- there have been difficulties in securing information or cooperation of witnesses
- investigations by other bodies have still to conclude.

A review of a Temporary Order is intended to be a different exercise from the initial consideration of whether a Temporary Order is necessary.

It is not the intention that a decision maker reviewing a Temporary Order will need to reconsider the evidence available. This is because it was decided initially that there was enough evidence to decide that, on the face of it, there was a case to answer.

A decision maker should only review the evidence available if further information has been received that suggests the original Temporary Order decision was made on information that was unfounded, unreliable or exaggerated.

The decision maker will need to re-consider the factors at paragraphs 12.2 to 12.5 and decide whether the Temporary Order is still needed.

## 13. Impairment cases

This section applies to workers **registered** with the SSSC.

When a worker's fitness to practise has been impaired, the SSSC will decide what action, if any, is necessary to protect the public and maintain the public interest.

The guidance contained in Part A applies to impairment cases.

### 13.1 Temporary Orders

A worker may have a Temporary Order imposed that lasts throughout the case. This happens if the SSSC receives information about a worker that raises serious concerns about their fitness to practise. In these cases a Temporary Order restricting the worker's practise may be needed while the investigation is being carried out. This factor should not influence the decision maker.

### 13.2 Possible outcomes

A decision maker may:

- take no further action
- impose a warning of up to five years
- impose condition(s)
- impose a warning and condition(s)
- impose a Suspension Order for up to two years
- impose a Suspension Order and condition(s)
- impose a Removal Order.

The decision maker must start by considering the least restrictive outcome first and working upwards until they reach the least restrictive decision that adequately addresses the behaviour. Reasons must be given why each outcome was not appropriate.

The stage a worker is at in their period of registration is not relevant to the decision. If the sanction is considered appropriate the fact that the worker may be at the end of their period of registration is not relevant.

Further information about each outcome is below.

#### **No further action**

Where a worker's fitness to practise is impaired, it will usually be necessary to take action to protect the public, in the public interest or in the interests of the worker.

The decision maker will have taken account of the worker's level of insight and any remediation (action to correct behaviour) when deciding if their fitness to practise is impaired. Therefore, these mitigating factors are unlikely on their own to lead to taking no further action.

There may be exceptional circumstances to justify a decision maker taking no further action. Exceptional circumstances are unusual, special or uncommon, so such cases are likely to be very rare. The decision maker must be able to fully and clearly explain:

- what the circumstances are
- why they are exceptional
- how the exceptional circumstances justify taking no further action.

## **Warning**

A warning is the least restrictive sanction. It does not restrict the worker's ability to practise, but is recorded on the Register and published on the SSSC's website. It can be imposed for a period of up to five years and is disclosed to an employer enquiring about the worker's fitness to practice history.

A warning may be appropriate:

- where the behaviour is at the lower end of the scale of impairment and the decision maker wishes to mark that the behaviour was unacceptable and must not happen again
- if the worker's character and circumstances are such that, whatever the history, there is no risk to the public or people who use services
- where the worker has shown insight
- where the behaviour has been corrected.

In cases that are restricted to a worker's health, a warning is unlikely to help manage the health condition meaning it is unlikely to be appropriate. If a warning is given the decision maker should clearly set out their reasons and explain how public protection will be achieved

## **Conditions**

The purpose of conditions is to protect people who use services and the public interest. Conditions restrict a worker's practice or require them to do something.

In many cases, the purpose of conditions is to help the worker to deal with their health issues and/or remedy any deficiencies in their practice, while protecting the public.

Detailed guidance on conditions is at paragraph 15.

## **Warning and conditions**

Where a warning is appropriate but does not effectively address a particular area of concern (for example with a worker's practice/knowledge) then a combined sanction of warning and conditions may be imposed.

## **Suspension**

Suspension from a particular part of the Register prevents a worker from working in that role while suspended. The decision maker can use suspension to

send a message to the worker, the profession and public about behaviour that is not appropriate for a social service worker.

A Suspension Order may also have a punitive effect, in that it prevents the worker from practising during the suspension. This is not the intention of the order but may be one of the effects.

A panel can suspend a worker for a period of up to two years. A Suspension Order must state how long it will last.

A Suspension Order may be appropriate:

- where the impairment is serious, the departure from the Codes is marked or the risk of harm to public protection or public interest is significant although not so serious as to justify removal
- where the worker's failings or health condition are realistically capable of being remedied by temporarily being restricted from practising
- where there are no underlying issues about the worker's values and they have shown a significant and developed sense of insight.

### **Suspension and Conditions Order**

If a Suspension Order is an appropriate sanction but it does not effectively address a particular area of concern with a worker's practice or knowledge, then a combined sanction of a Suspension and Conditions Order may be imposed. This may allow for more effective protection of the public.

### **Removal on grounds of health**

Although usually reserved for the most serious matters removal may also be appropriate where fitness to practise is impaired by health only. A Removal Order allows the worker the opportunity to return to health without the pressure and stress that may be caused in having to comply with conditions or the time pressure of a Suspension Order. A removal in these cases allows the worker to leave the profession to focus on their recovery without the pressure of fixed review dates.

Ordinarily, a removed worker's entry will show on our Register as removed and they will be unable to apply to be restored to the Register until three years have passed. In health only cases the details behind the decision to remove a worker will not be available to the public to avoid any stigma being attached to the worker, and the worker can apply to be restored to the Register at any time.

### **Removal**

Removal is the most serious sanction. A Removal Order results in the removal of the worker's name from the Register. A Removal Order should be used where there is no other way to protect the public or where confidence in the social service profession would be undermined by allowing the worker to remain on the Register. Even if the worker does not present a risk to the public a Removal Order may be necessary to maintain public confidence in the profession.

A Removal Order may be appropriate when the worker's behaviour is fundamentally incompatible with being a social service worker and involves **any** of the following.

- Serious, deliberate, grossly negligent or reckless act(s) or omission(s).
- A significant abuse of trust.
- Persistent lack of insight into seriousness of actions or consequences.
- A serious departure from the relevant professional standards set out in the Codes.
- A pattern of unacceptable behaviour.
- No evidence that there is likely to be remediation (action to correct behaviour).

See paragraph 10 for the types of cases that may indicate removal is the appropriate sanction.

### **13.3 Temporary Orders following an impairment case**

A decision to place a sanction on a worker's registration will not come into force until the appeal period has expired or until an appeal is heard by the court, unless the sanction is a Suspension Order. The panel should consider if a Temporary Order is needed during this period. Guidance on this is available at paragraph 12.

If a decision maker decides that a Temporary Order is not needed then consideration should be given to revoking any current Temporary Orders imposed on the worker.

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## **Part C - Applications to be restored to the Register**

### **14. Restorations**

This section applies to people the SSSC has removed from the Register. The general principles at Part A apply to applications to be restored to the Register.

Where a person was removed only on the grounds that their fitness to practise was impaired due to health they can apply to be restored at any time. The person must be able to produce satisfactory evidence that the health matter has been resolved and there are no longer public protection or public interest concerns.

In all other cases a person cannot make an application until after three years from the date of removal.

#### **14.1 Material change**

To restore a worker to the Register, the decision maker must be satisfied that a material change has taken place.

A material change must be:

- relevant
- significant.

The decision maker should:

- identify if there has been a material change and what that change is
- explain how any material change addresses the previously significant public protection and public interest concerns.

#### **14.2 Additional considerations**

The decision maker should keep in mind that the removal order was issued on the basis that there was no other way to protect the public or confidence in the social service profession. This is a clear indication that the behaviour was considered to be extremely serious or that there was no other way to safely manage a worker's health condition.

The decision maker must consider the original decision but the application for restoration is not an opportunity to revisit the facts that were previously decided. The decision maker cannot change what was previously found and should resist any temptation to look behind the factual basis for the decision.

The mitigating and aggravating factors outlined in Part A may be relevant but the decision maker should look at whether these factors were present before. The term material change suggests any mitigating factors would need to be present to a significant degree and more so than previously. If factors were mitigating in the past and weren't enough to lead to a sanction less than

removal at the time then it is unlikely the passage of time alone will have changed this situation. The length of time since the person was removed is not likely, on its own, to be considered a material change.

In addition, when considering material change in a case restricted to health, the decision maker will likely need to focus on the current nature and extent of the health condition, how this health condition is currently, or can be, managed and the risk of any relapse.

In restoring a worker to the Register, a decision maker must also be satisfied as to the level of any ongoing public protection or public interest concerns. A decision maker should remember that the public interest in restoring someone to the Register who was previously found to be so unsuitable that they had to be removed is likely to be considerable.

### **14.3 Possible outcomes**

SSSC staff can:

- restore to the relevant part of the Register
- restore with conditions
- refer the case to a panel.

A panel can:

- restore to the relevant part of the Register
- restore with conditions
- refuse the application for restoration.

### **14.4 Qualification conditions**

Some parts of the Register require workers to achieve certain qualifications. If the worker does not have a required qualification(s) their registration can be granted subject to the condition that they achieve the qualification(s) within their first period of registration. This may be additional to any other condition required. The decision maker must be aware of any qualification requirement before making a decision.

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## Part D - Conditions

### 15. Introduction

A condition allows a worker to stay on the Register and puts measures in place to protect the public, uphold the public interest, or that are in the interests of the worker. For example, a condition may require the worker to reflect on their practice, attend training or may restrict their practise.

#### 15.1 When is a condition appropriate?

A condition should only be considered when other less restrictive outcomes are not appropriate. It must adequately address the public protection and public interest concerns. Subject to the aggravating and mitigating factors, a condition may be the most appropriate outcome in cases:

- about a worker's health
- about a worker's performance, or specific areas of it.

Conditions may also be appropriate when the following factors are present.

- The worker shows insight.
- A period of retraining and/or supervision is the most appropriate way of addressing any failings.
- There is potential to respond positively to remediation (action to correct behaviour), or retraining, or to work being supervised.
- There are no underlying value issues.
- People who use services will not be put at risk while the worker is in the process of carrying out the condition.
- The decision maker is satisfied that the worker will comply with the conditions.

Conditions may **not** be appropriate when the following factors are present.

- Dishonesty.
- No insight or lack of reflection.
- Denial of wrongdoing.
- Serious breach of trust.
- Serious and persistent failings.
- Violent or abusive behaviour.

#### 15.2 Are the conditions enforceable and workable?

All conditions, including Temporary Conditions Orders, must:

- be enforceable
- be workable
- protect the public
- protect the wider public interest.

To achieve this, the decision maker should consider the following SMART criteria.

- **Specific** – the conditions should set out clearly what it is the worker must do to comply with the conditions. The condition should be specific to the worker and not be an excessive burden on other parties.
- **Measurable** – if a condition is not measurable then it will be impossible to assess whether the worker has complied with it.
- **Achievable** – a condition must be realistic and set at the right level. This takes into account any existing qualifications, the worker's role and their experience. A condition set below the standards expected of the worker is meaningless but a condition set excessively beyond that standard may be unfair and difficult to comply with. The condition must not be extreme. Decision makers should take steps to satisfy themselves that if a condition needs cooperation from an employer or other party that they are willing and able to do so.
- **Relevant** – the condition must be relevant to the concern. It must be written in a way that clearly sets out the benefits of the condition.
- **Time-bound** - a condition has to be set within a reasonable timeframe. The worker can work while undertaking the condition and the risks may not be fully addressed until the condition is complied with. A condition should not be so long as to create an unnecessary public protection risk but not too short as to make it difficult for the worker to comply with the condition.

Decision makers must keep in mind that the worker may have to fund any training condition on their own. The SSSC cannot require an employer to provide training.

### 15.3 Types of conditions

Examples of the types of condition a decision maker may consider (this is not a complete list, you can consider other options).

- **Supervision** – for example, requiring a worker to be closely monitored by a line manager, submit regular supervision notes etc.
- **Training** – for example requiring a worker to complete further training in a particular area, or complete a qualification.
- **Counselling and/or medical treatment** – this is likely to be appropriate in cases involving a health matter and could include, for example, alcohol or drug treatment, anger management counselling etc.
- **Disclosure** – this is also likely to be relevant in health matters and may require a worker to disclose to their employer and/or the SSSC if a health matter recurs or gets worse.
- **Reflective account** – if decision makers feel that a worker may be fit to practise, but has failed to show sufficient insight into the matter being considered, they may consider asking the worker to complete a reflective account to remedy this.

## 15.4 Temporary Conditions Order

The sections above are relevant to Temporary Conditions Orders and the following matters should also be considered.

A Temporary Conditions Order should be considered before a Temporary Suspension Order as it is less restrictive, allowing the worker to carry on in employment during the investigation. Decision makers should keep in mind the difference in procedure at this stage. The focus is not on fitness to practise but on **risk**. No decision has been made at this stage on the facts or impairment. The Temporary Order is to protect the public, maintain the public interest or the interests of the worker while the SSSC carry out the investigation.

The following may be appropriate types of Temporary Condition Order.

- Limit contact with people who use services.
- Make sure that a prospective employer is aware of the Temporary Order.
- Limit the type of work that can be carried out.
- One that addresses the practical arrangements needed where there is a health concern.

If a Temporary Condition Order is not enforceable or workable and does not protect the public or the public interest then the decision maker must then consider a Temporary Suspension Order. Decision makers should be careful to make sure a Temporary Condition Order does not have the same practical effect as a Temporary Suspension Order. If it does, then the Temporary Suspension Order is the appropriate order.



Scottish Social Services Council  
Compass House  
11 Riverside Drive  
Dundee  
DD1 4NY  
Telephone: 0345 60 30 891/01382 207101  
Fax: 01382 207215  
Email: [enquiries@sssc.uk.com](mailto:enquiries@sssc.uk.com)  
[www.sssc.uk.com](http://www.sssc.uk.com)

If you would like to request this document in another format  
please contact the SSSC on 01382 207101.

Published November 2022

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