

Fitness to Practise Thresholds Policy



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Fitness to Practise Thresholds Policy

1. Introduction

The Scottish Social Service 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 is impaired because of their conduct, professional practice or health.

This policy sets out:

- what referrals we will investigate
- what we consider when a case is closed before an outcome is reached

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 referrals we investigate

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

- we are dealing with referrals that are within our jurisdiction
- we consider referrals about workers appropriately
- we use our resources effectively
- the Fitness to Practise caseload is managed in line with the SSSC's duties 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. In some cases we hold information that the person making the referral is not aware of and the additional information we receive may mean that the referral criteria is now met.

2.1 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 that they have done something wrong but that they have done something that raises doubts about their fitness to practise.

Workers do sometimes make mistakes or errors in judgement both outside and in work. These will not always mean that 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 to focus on serious cases.

2.2 What information we need

We must be able to identify the worker that the allegation is about and have enough information that suggests 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 will 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 carry out an investigation 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 that we do not believe the person who made the referral, but simply that 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 to be made on the forms available on our website. This is to help us gather as much information as possible at the beginning of the process to help us decide whether or not to investigate.

2.3 Employer referrals

Referrals, complaints or matters of concern can be raised by any person or organisation. However there are special arrangements in place for employers and universities.

When a referral should be made

Employers must refer workers to us in the following circumstances.

- Where a worker has been suspended, dismissed, or downgraded.
- 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 list A.**

List A. Matters that raise a concern

This is a list of behaviours or actions that are likely to raise a concern that a worker's fitness to practise may be impaired and that should be referred to the SSSC. These behaviours and actions raise a concern **regardless of the outcome of any disciplinary, performance or criminal process.**

The behaviour or action must raise a concern that fitness to practise may be impaired. For example, a single incident to fail to respect a service user's rights concerning a relatively minor matter which the employer is managing by additional training would be **unlikely** to be impairment. However, a serious incident **or** a pattern of minor failures may be.

List A

- a. Dishonesty, fraud, abuse of trust.
- b. Exploitation of a vulnerable person.
- c. Failure to respect the rights and choices of people who use services.
- d. Health which is not being managed and affects the safety of people who use services.
- e. Hiding mistakes/blocking investigation.
- f. Improper relationship with a person who uses services.
- g. Reckless or deliberately harmful acts.
- h. Serious or persistent failure to meet standards.

- i. Sexual misconduct or indecency (including child pornography).
- j. Substance abuse or misuse.
- k. Violence or displayed threatening behaviour.
- l. Other serious activities which affect public confidence.

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 that the worker's fitness to practise will be impaired and it would therefore be disproportionate to take action.

We will not investigate any of the matters in List B and referrals should not be made about them. 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 for doing so.

List B.

- a. Lateness, poor timekeeping or abandoning post unless it has a direct impact on people who use services.
- b. Personality conflicts provided there is no evidence of bullying or harassment.
- c. Sickness or other absence provided there is no impairment of fitness to practise and the registrant is managing their health.
- d. Misuse of social media where it does not relate to the worker's practice or display discriminatory views or raise any other serious concern.
- e. Smoking tobacco contrary to an employer's policy.
- f. Misuse of work property for personal use.
- g. Minor student plagiarism.
- h. Removal from course for academic reasons.
- i. Fixed penalty notices unless people who use services are involved.
- j. Medication failings which are minor and/or administrative.

The time when a referral should be made

Referrals should be made immediately in the following circumstances.

- The behaviour is **serious** (for example the matters set out in List A).
- The worker is **suspended**.
- The worker **resigns** and dismissal was the likely outcome.
- The worker is **charged with a criminal offence** (unless it relates to the matters set out in List B).

Otherwise, the referral should be made **at the end** of the employer's disciplinary, or performance/ capability process.

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).

2.4 Non employer referrals.

Anyone may make a referral if they are concerned that a worker's fitness to practise may be impaired. This may 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 one we will investigate under this policy. In certain cases we will decide not to investigate after we have made initial enquiries. These are some examples of the cases we will not investigate.

a. Referrals about one of the matters in List B

This is because these matters are unlikely to mean that 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 that the matter is serious and important to them.

b. Complaints about the service

This may be about how the service is provided or about a service being withdrawn. Unless the concern is that a worker has failed to give proper advice or obtain funding then this is likely to be a matter for the service. We will direct the person to take this up with the service. 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.

c. Decisions made by social service workers

Social service workers have to 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. We will normally direct that concerns about a worker's decision should be made to the employer.

Deciding whether an allegation is about a professional decision or is about 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 take into account information that they should have, this would be about their professional practice. Normally the actual decision

itself is not something that we will look at unless there is information that they have made a decision that no reasonable worker would have come to.

d. Change of worker

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

3. What we consider when we close a case before an outcome is reached

Introduction

If after initial enquiries we decide not to investigate a matter under this policy we will inform the person who made the complaint. We normally inform the worker but may decide not to, where for example the complaint is about the service and not the worker.

If we decide to investigate an allegation the case is assigned to a case holder who carries out an investigation. At the end of the investigation, we may decide to take no further action. The information will be kept on the worker's file and may be taken into account in future. If we decide that a sanction should be imposed on the worker's registration we may do this with the worker's consent or refer the case to a Panel for a hearing and decision. Information about how these decisions are made is set out in the Decisions Guidance.

Registrants not eligible to stay on the Register

Some workers who are being investigated may no longer be eligible to stay on the Register. For example they:

- are no longer be employed in a relevant care service (this means that they would be removed from the Register because they are on a part of the Register which requires them to be carrying out the 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, eg 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.

Where a worker is to be removed from the Register under this policy, the removal will take effect when the worker is notified of the decision that we will not take any action in relation to the allegations. The SSSC will make clear to the worker that the information will be kept on file and may be taken into account in future. It may be taken into account if there is an application for registration or following any grant of registration.

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

If the allegation is not fully investigated and concluded at the time when it is made, it may be difficult to consider the allegation for the first time when any new 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 therefore be in the public interest to conclude it at the time it is referred. This would mean imposing an officer decision with the worker's consent or referring the matter to a Panel. If the worker was formally removed from the Register and not simply removed because they were not eligible, there is a safeguard against them returning to the sector as a worker cannot apply to be restored to the Register for three years.

It may also be in the public interest to refer the matter to a Panel, for example to avoid a lack of confidence in the SSSC where there has been a criminal conviction and attendant publicity. If the case is closed because the worker is ineligible there is no public decision.

3.2 The seriousness of the allegations

The seriousness of the allegation will depend on the circumstances of the case but would be likely to include:

- an instance of serious harm or risk of serious harm to another individual, whether a service user or not (including, but not limited to, physical harm) and whether deliberate or not
- a pattern of harm or risk of harm to vulnerable people (including, but not limited to, physical harm) and whether deliberate or through negligence
- serious abuse of a position of trust
- sexual assault, attempted sexual assault, or indecency or other sexual misdemeanour
- child pornography
- improper sexual or emotional relationship or other improper relationship with a service user
- an instance of serious dishonesty or serious theft
- a pattern, being at least two incidents, of dishonesty/theft.

3.3 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.

3.4 The imposition of conditions as the likely outcome

Conditions can be imposed when the worker makes a future application. This means the case can be closed and the condition(s) imposed at that stage if necessary.

3.5 Whether the facts or impairment are admitted

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

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

In some cases 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 need to be considered when we are 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 for example that a worker may:

- find other work in the sector (whether with their current or another employer). However, it should be considered more likely than not that the suspension by an employer would not be enough to satisfy us that the public is adequately protected.
- be released from custody before our proceedings are concluded. Where the worker is in prison, the chance of release from custody and proportionality will need to be considered.



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