

Northern Ireland

**Social**

**Care**

**Council**

# Standard of Acceptance

**Fitness to Practise Allegations**

# Introduction

**1.1** The Health and Personal Social Services Act (2001) provides that the Northern Ireland Social Care Council's primary function is to set and maintain standards for the social care workforce with the objective of protecting the public. An important part of this function is the investigation and adjudication of allegations which are made against registrants.

**1.2** It is important that every stage of the Social Care Council's Fitness to practise process is focused on protecting the public and maintaining confidence in the social care workforce and system of regulation.

**1.3** Our primary concern as a regulator is that registrants are 'fit to practise' with the knowledge, skills and character to practise safely and effectively. Our proceedings are designed to protect the public from those whose fitness to practise is impaired. Impairment can be on the basis of:

- **Misconduct**
- **Lack of competence**
- **Physical or mental health**
- **A conviction or caution for a criminal offence**
- **A finding by another regulatory body**
- **Inclusion on a list maintained by the Disclosure and Barring Service**

**1.4** Fitness to practise is not just about professional performance. It also encompasses acts by registrants in both their professional and personal life which may have public interest implications, including:

- **Protecting service users**
- **Maintaining public confidence in the profession and regulatory process**
- **Declaring and upholding proper standards of conduct and behaviour**

**1.5** Alleging that a registrant's fitness to practise is impaired is a serious matter. It is not simply a suggestion that a registrant has done something wrong but, in essence, that they have done something which is serious enough to raise doubts about whether they should be allowed to continue to practise, either on a restricted basis or at all.

**1.6** Fitness to practise is a current test, which means that the concern must be about the registrant's current ability to practise safely and effectively. The process is not meant to punish registrants for past acts but will take past acts into account when considering their current and future ability to practise.

**1.7** Registrants do sometimes make mistakes or errors of judgement and it would not be in the public interest for the Social Care Council to pursue every minor lapse.

# Introduction

**1.8** The Social Care Council's Fitness to Practise Rules (2019) provide the grounds for defining what constitutes an allegation. Information will only be considered to be capable of amounting to an allegation where the information:

- **Relates to an identifiable registrant**
- **Forms the basis of an allegation of impaired fitness to practise against a registrant**
- **Meets the Social Care Council Standard of Acceptance**

**1.9** This policy outlines the Social Care Council's Standard of Acceptance, the aim of which is to provide a proportionate threshold which allegations must meet before they will be investigated by us. The purpose of this policy is to ensure that the Social Care Council undertakes its duties as a responsible regulator effectively and efficiently. It is not intended to act as a barrier to the making of an allegation, but simply to act as a filter to ensure that resources are not expended on pursuing matters which do not raise credible cause for concern.

**1.10** While allegations are only made against a small minority of the Social Care Council registrants, investigating them properly is a resource-intensive process. Therefore it is important to ensure that the available resources are used effectively to protect the public and are not diverted into investigating matters which do not raise cause for concern. The Standard of Acceptance is an important safeguard against the diversion of resources, but as the Social Care Council's primary concern is public protection, it is not a rigid and unbending rule.

**1.11** The core principles underpinning this policy are that the Social Care Council will:

- **Ensure the protection of those using social care services**
- **Promote and uphold high standards in the social care workforce**
- **Maintain confidence in the social care profession**
- **Adopt a proportionate, risk based approach to regulation**

# Making an Allegation

**2.1** Anyone can make an allegation about a registered social care worker – service users, carers, employers or the general public. The Social Care Council will endeavour, through its website and other published information, to ensure that any person wishing to make an allegation is clear about our role and remit and the thresholds for referral. The Social Care Council will determine whether the information received constitutes an allegation as defined in paragraph 1.7 above.

**2.2** We may also act on information that comes to our attention by other means, for example, through the press or notification by the police or the courts if a social care worker has been arrested or convicted.

**2.3** Each allegation received by the Social Care Council will be considered on its own merits. As our main objective is public protection, there will be a presumption in favour of making further enquiries about an allegation unless it clearly does not meet the Standard of Acceptance.

**2.4** In some cases, it is clear from the outset, that there is no need for the Social Care Council to investigate because the allegation:

- **Is about matters that do not raise public protection concerns**
- **Relates more to a service provided by a health and social care organisation**
- **Relates more to a decision made by another body**
- **Would be more appropriately dealt with by another body (e.g. the Regulation and Quality Improvement Authority (RQIA) as the Service Regulator)**

**2.5** Where an allegation falls outside the Social Care Council's jurisdiction or can be more suitably handled elsewhere, we will endeavour to signpost the person making the allegation to the appropriate body.

**2.6** Allegations must be made in an acceptable format. This will normally be in writing, to assist in obtaining all relevant information from the person making the allegation. Where the initial contact with the Social Care Council is by other means, we will assist the person to submit their allegation in writing.

# Non - Registered Workers

The Social Care Council can only investigate allegations about a registered worker. In line with General Data Protection Regulations (GDPR), the Social Care Council cannot process or retain data unless we have a lawful basis for doing so. The Social Care Council will not therefore accept referrals in relation to non-registered workers unless:

- **The worker is in the process of applying to be registered**
- **The worker is in a post for which registration is required but has not yet applied to be registered**
- **The worker is in a post for which registration is required but has not yet applied to be registered and is dismissed by an employer prior to registration for a reason which may affect any subsequent decision to register that worker**

The Social Care Council will advise such workers that a non-registered referral has been received about them and provide an opportunity to respond to the allegation/s if they wish to do so.

Where a worker in any the categories outlined above does not subsequently apply for /achieve registration, the Social Care Council will retain the non-registered information for a period of two years, after which it will be disposed of in line with our Retention and Disposal Policy.

In all other situations, where the Social Care Council cannot act upon or store information, we will advise the referrer of our policy in relation to non-registered workers and signpost them to the worker's employer or to an alternative body to whom that information may be provided.

Where any information provided to the Social Care Council falls into the category of a serious offence, we will report that matter to the PSNI unless it we have reasonable excuse not to do so, for example the matter has already been reported.

# What Types of Cases Can We Not Consider?

**3.1** The Social Care Council is not able to:

- Consider allegations about social care workers who are not registered with us
- Consider complaints about the level or quality of social care services (concerns about the level or quality of a social care service should be directed to the social care organisation responsible for providing the service, or to the RQIA which regulates and reviews social care services in Northern Ireland)
- Get involved in a service user's care
- Deal with customer-service issues
- Resolve disputes between registrants and service users

## Resolving Matters at a Local Level

**3.2** The Social Care Council will normally direct a person wishing to make an allegation to the registrant's employer in the first instance. In most cases, it is best to raise concerns with the employer first because they can resolve issues quickly and fairly without the need for our involvement. If the employer decides to refer the case to us, they can send us all the information from their investigation, which will speed up the process.

**3.3** Often, issues may have been satisfactorily resolved at a local level before they are brought to the attention of the Social Care Council. In such cases, it is unlikely that there will be evidence to suggest that the fitness to practise of the registrant concerned is impaired and, therefore, the standard of acceptance will not be met.

# Allegations About Professional Decisions

**3.4** In the course of their professional duties, Social Care Council registrants often have to make difficult decisions, particularly when performing statutory functions, and not everyone will agree with those decisions or the consequences that may result from them. Understandably, those affected by a professional decision may disagree with it (for example, an adverse comment about them in a report, a decision that they are not eligible for some form of special assistance or benefit or a recommendation made to a court in relation to a child care matter). The fitness to practise process is not an appropriate mechanism for challenging the content of professional reports or the exercise of statutory powers and it is unlikely that allegations which seek to do so will meet the Standard of Acceptance.

**3.5** The Social Care Council is not able to consider cases which are subject to ongoing court proceedings.

**3.6** Cases which have been before the courts and have already been adjudicated upon by a Judge, are unlikely to meet our Standard of Acceptance.

## What Types of Cases Can We Consider?

**4.1** The Social Care Council's role is to investigate those allegations which, if proven, call in to question a registrant's suitability to remain on the Social Care Register. This is likely to involve those cases where the registrant has:

- **Been dishonest, committed fraud or abused someone's trust**
- **Exploited a vulnerable person**
- **Failed to respect service users' rights to make choices about their own care**
- **Had an improper relationship with a service user**
- **Carried out reckless or deliberately harmful acts**
- **Seriously or persistently failed to meet standards**
- **Been involved in sexual misconduct or indecency**
- **Been violent or displayed threatening behaviour**

# Time Limits for Making an Allegation

**5.1** There is normally a five year time limit in relation to making an allegation however, the Social Care Council can consider cases where events may have taken place several years beforehand if it is in the public interest to do so. However to enable us to secure the best evidence possible, it is preferable if the allegation is made as close to the time of the incident as possible.

## Anonymous Complaints

**6.1** Allegations about a social care worker may on occasion be made by a person whose identity is unknown to the Social Care Council or by a person who has asked that their identity is not disclosed. We will make clear to any person making an allegation who asks for their identity to be withheld, that failure to agree to the disclosure of the allegation, may prevent the matter progressing further. Telephone callers will be encouraged to make their allegation in writing.

**6.2** Anonymous allegations raise both practical problems in terms of following up information and also issues of fairness in that a registrant is entitled to know, not only what allegations are being made against them, but also the identity of the person making them.

**6.3** In the interests of public protection however, the Social Care Council cannot completely ignore allegations against registrants from anonymous sources and may take action in the following circumstances:

- **The allegations are of a particularly serious or significant nature**
- **It is deemed that the public interest would be best served by referring the allegation for further investigation or other action**
- **There is a good reason why the allegation is being made on an anonymous basis, e.g. where there might be potential adverse consequences for the person making the allegation**
- **The allegations can be properly substantiated by third party witnesses or by documentary or photographic evidence provided with the allegation without the need for further contact with the person making the allegation**

**6.4** Where the Social Care Council is unable to progress an investigation, the registrant and their employer will be notified of the allegations received and advised of our policy on anonymous allegations.

# Vexatious Complaints

**7.1** In making allegations to the Social Care Council, most people act entirely reasonably and in good faith. However a small minority of people make allegations that are vexatious, in that they persist unreasonably with allegations or make allegations other than genuinely to resolve a concern.

**7.2** Vexatious allegations unnecessarily divert valuable Social Care Council resources from their true purpose; public protection, and therefore it is important that such allegations are properly identified and managed.

**7.3** Each allegation will be considered on its own merits, however an allegation may be regarded as vexatious where the person making the allegation:

- **Persists in pursuing an allegation which has already been investigated by the Social Care Council and provides no new and material information**
- **Continually raises further concerns or questions whilst the allegation is being addressed**
- **Fails to clearly identify the substance of an allegation or the precise issues which may need to be investigated, despite reasonable efforts by the Social Care Council to assist the person making the allegation to do so**
- **Makes allegations solely about trivial matters to an extent which is out of proportion to their significance**
- **Makes excessive contact with the Social Care Council or seeks to impose unreasonable demands or expectations on resources, such as responses being provided more urgently than is reasonable or necessary**

**7.4** In cases where it is decided that an allegation is vexatious, the Social Care Council will not proceed with an investigation and will inform the person making the allegation in writing of the decision.

# Employer Referrals

**8.1** The Standards for Employers of Social Workers and Social Care Workers, require employers to inform the Social Care Council about any fitness to practise issues that would call into question a registrant's registration and to cooperate with any the Social Care Council's investigations and hearings, including providing requested documents or information in a timely manner.

**8.2** The Social Care Council requires employers to make a referral to us in the following circumstances:

- **Where the worker has been dismissed, regardless of any intention to appeal**
- **Where the worker resigns during a disciplinary investigation**
- **Where the employer becomes aware of a criminal charge or conviction against the worker**
- **In any other circumstances which the employer feels may have a bearing on the worker's registration**

**8.3** Where a worker has been suspended or redeployed as a precautionary measure, the Social Care Council will only require employers to make a referral where:

- **The matter is assessed to be high risk, i.e. where immediate protective measures need to be put in place**
- **There is an ongoing Adult Safeguarding and/or Police investigation**
- **The worker is known to have more than one social care employer**

In all other circumstances, a referral should only be made where one of the criteria listed at 8.2 is met.

**8.4** The Social Care Council recognises that employers deal with situations regarding the misconduct, lack of competence and ill health of their staff every day, and that will include situations with our registrants. We do not need to be told about:

- **Lateness or poor time-keeping (unless it has a direct impact on service users, such as delaying handovers or leaving service users at risk)**
- **Personality conflicts, provided that there is no evidence of bullying or harassment**
- **Sickness or other absence from work, provided that there is no impairment of fitness to practise and the registrant is managing his or her health.**

**8.6** In most cases, these situations can be resolved quickly and proportionately through local procedures without any need for referral to the Social Care Council. Referral to the regulator should be regarded as a position of last resort where regulatory measures put in place by the employer at individual, team and organisational levels are not deemed to offer sufficient safeguards in relation to ensuring safe and effective practice to service users and carers.

# Employer Referrals

**8.7** Where the concerns about a registrant relate to competence, we would normally expect the employer to have exhausted their internal capability processes and procedures before making a referral to the Social Care Council.

**8.8** If in doubt as to whether a matter should be referred to the Social Care Council, it is better to check with us. Our Fitness to Practise Officers will be happy to offer advice on a case by case basis.

## Common Law Police Scheme

**9.1** Under the terms of Common Law Police Disclosure, the Police will inform the Social Care Council of any conviction, caution, reprimand or warning about a social care worker. This information will only be used for its designated purposes, which is to assess whether the issues raised call into question the worker's suitability to remain on the Social Care Register.

**9.2** Under the terms of registration, registered workers are also expected to inform the Social Care Council directly of relevant changes in their circumstances, including convictions and other disciplinary findings.

**9.3** All serious criminal convictions will be referred directly to the Fitness to Practise Committee. All other convictions, other than those for minor road traffic offences, will be risk assessed by the Council and will normally be referred for the consideration of a Preliminary Proceedings Committee.

# Case Closure

**10.1** A decision not to proceed with an allegation on the basis that it does not meet the Standard of Acceptance will only be taken after consideration of all the available information. Any doubt will be resolved in favour of public protection, by allowing the allegation to proceed.

**10.2** In establishing whether any information received is capable of amounting to an allegation, the Fitness to Practise Rules make provision for the Social Care Council to make what preliminary enquiries it considers necessary. Preliminary enquiries will depend on the nature of concerns raised, but may include seeking further documentation from an employer or confirming the circumstances of a conviction with the PSNI.

**10.3** Where an allegation is found not to meet the Standard of Acceptance, clear reasons for the decision will be recorded and this will be communicated in writing to the complainant.

**10.4** Where an allegation does not proceed at this stage, it will not form part of a registrant's formal Social Care Council record (i.e. affect their registration status) or be made public. The information may however be taken into account if a further allegation is made about that person.

**10.5** All allegations which are deemed to meet the Standard of Acceptance will be subject to a full risk assessment to determine the appropriate action to be taken.

## Further Information

A step-by-step guide to making a referral to fitness to practise about a registered social worker or social care worker can be found at [niscc.info](http://niscc.info).

For more information, contact the Fitness to Practise Department;

**Phone:** 028 95 362 940

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