

Northern Ireland

Social

Care

Council

Indicative Sanctions for Consensual Disposal: Guidance for Fitness to Practise Officers

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Provision for Consensual Disposal

- 1.1 The Fitness to Practise Rules (2016) make provision for the Council in certain circumstances to dispose of cases consensually. Consensual disposal is a means by which NISCC and the Registrant can seek to conclude a case without the need for a contested hearing, by agreeing a sanction of the kind which a Fitness to Practise Committee would have been likely to make in any event.
- 1.2 In every case it should be remembered that the primary role of NISCC is to protect the public from poor or unsafe standards of care and as such consensual disposal should only be pursued as an option where it is considered that:
- the appropriate level of public protection is being secured;
 - public confidence in the profession and NISCC as the regulatory body is maintained;
 - proper standards of conduct and practice for registrants are maintained;
 - there is no public interest in the case being heard in public.

The Public Interest

- 2.1 The Public Interest incorporates three elements:
- a. The protection of service users and the public generally from Registrants whose fitness to practise is impaired;
 - b. The maintenance and promotion of public confidence in the social care workforce, including the declaring and upholding of professional standards;
 - c. The maintenance and promotion of public confidence in NISCC as a workforce regulator.

2.2 There is a public interest in allegations of impaired fitness to practise being properly scrutinised in public, as this allows professional standards to be seen to be upheld. Furthermore, some allegations are so serious that public confidence would suffer if they were not dealt with at a public hearing. NISCC will consider the extent of harm caused to service users in each allegation. Where there is reason to believe that the actions of the Registrant may have caused significant harm to the service user, there is a strong indicator that consensual disposal will not be appropriate.

Key Considerations

3.1 The Council will only consider resolving a case by consent if the following factors are met:

- Where a proper assessment has been made of the nature, scope and viability of the allegation including a robust risk assessment. The investigation does not need to be as thorough as would be required for a Committee hearing, but there must be sufficient evidence to support the decision making process;
- Where it is considered that there is a realistic prospect of a finding of impaired fitness to practise;
- Where the Registrant is willing to admit the allegation in full. A Registrant's insight into, and willingness to address, failings are key elements in the fitness to practise process and it would be inappropriate to dispose of a case by consent where the Registrant denies or disputes the allegations made against them;
- Where there is no public interest in the case being heard by a Fitness to Practise Committee;
- Where there is a likelihood that a Fitness to Practise Committee would impose a sanction similar to the one deemed appropriate under Consensual Disposal.

Fitness to Practise/Impairment of Fitness to Practise

- 4.1 Fitness to practise means that the Registrant has the 'skills, knowledge and character to practise their profession safely and effectively.
- 4.2 A Registrant's fitness to practise may be impaired by reason of one or more of the following:
- i. Misconduct;
 - ii. Lack of competence
 - iii. Physical or mental health
 - iv. A conviction or caution in the UK for a criminal offence or a conviction elsewhere for an offence, which, if committed in the UK, would constitute a criminal offence
 - v. A determination made by a relevant regulatory body (**see Appendix 1**)
 - vi. Inclusion on a list maintained by the Disclosure and Barring Service
- 4.3 Fitness to practise is a 'dynamic' concept which focuses on the here and now rather than past misconduct.

Realistic prospect test

- 5.1 Before agreeing to dispose of a case by consensual means, NISCC must satisfy itself that there is a realistic prospect of a finding of impaired fitness to practise. In making this decision, it may be helpful to consider the key issues a Committee will consider in making a determination in relation to impairment.
- i. Has the Registrant acted so as to pose a risk to service users?
 - ii. Has the Registrant brought the profession into disrepute and/or is liable to do so in the future?
 - iii. Has the Registrant breached one of the fundamental tenets of the profession and/or are they liable to do so in the future?
 - iv. Can the Registrant's integrity be relied upon?
 - v. Is the conduct which led to the allegation easily remediable or has it been remedied and how likely is it to be repeated (see NISCC Guidance on Remediation).

Purpose of sanction

- 6.1 It is important to bear in mind that the primary purpose of a sanction is not to be punitive, but to protect the public, although a sanction may have a punitive effect.

Means of Disposal

- 7.1 There are three options that may be imposed under Consensual Disposal:
- a. a Warning;
 - b. Agreed Undertakings;
 - c. Removal by Agreement.

Warnings

- 8.1 A warning may be imposed for a period of 1 to 5 years and will be recorded on the Registrant's entry on the Public Facing Register (PFR). A warning will not be imposed for a period of less than one year. In order to ensure a fair and consistent approach is adopted, Fitness to Practise Officers should regard 3 years as the 'benchmark' for a warning and only increase or decrease that period if the particular facts of the case make it appropriate to do so. An explanation for the particular period of the warning should be included in the Notice of Hearing issued to the Registrant.
- 8.2 A warning does not directly affect a Registrant's ability to practise, but is disclosed if an employer enquires about the Registrant's entry on the Register. It can also be disclosed to any Preliminary Proceedings or Fitness to Practise Committees in the future if further allegations are received about the Registrant.
- 8.3 A warning may be appropriate where the behaviour is at the lower end of the spectrum of impairment; where NISCC wishes to mark that the behaviour was unacceptable and must not happen again.

- 8.4 It may also be the appropriate sanction for cases where there may be a low risk of recurrence and where the lapse has been corrected and was of itself of a minor nature and does not involve serious wrong-doing.
- 8.5 A warning may be appropriate when most or all of the following factors are present (this list is not exhaustive).
- Evidence that the behaviour would not have caused direct or indirect harm to service users;
 - Lack of insight into failings and of willingness to change the behaviour;
 - Behaviour was an isolated incident, which was not deliberate;
 - Genuine and timely expression of regret/apologies;
 - Acting under duress;
 - Previous good history and good character;
 - No repetition of behaviour since incident;
 - Evidence that rehabilitative/corrective steps have been taken;
 - Relevant and appropriate references and testimonials.

A checklist to assist with the decision-making process in relation to warnings can be found in **Appendix 2**.

Undertakings

- 9.1 Undertakings are an agreement between NISCC and the Registrant about the Registrant's future practice.
- 9.2 Such undertakings may include:
- Restrictions on the Registrant's practice
 - Restrictions to the Registrant's behaviour
 - Commitments to practise under supervision
 - Commitments to undergo training
- 9.3 Undertakings are likely to be appropriate in cases:
- Involving the Registrant's health
 - Involving issues around the Registrant's performance

- Where there is evidence of shortcomings in a specific area of the Registrant's practice

9.4 Undertakings are likely to be workable where:

- The Registrant has insight that they need to restrict their practice
- A period of retraining and/or supervision is likely to be the most appropriate way of addressing any shortcomings
- NISCC is satisfied that the Registrant will comply with them
- The Registrant has the potential to respond positively to remediation, or retraining or to their work being supervised

9.5 Cases can only be disposed of by agreed undertakings where the Registrant:

- a. admits the allegation; and
- b. admits that the actions amount to impaired fitness to practise.

9.6 NISCC may wish to see evidence that the Registrant has taken responsibility for, or has taken steps to mitigate their actions, before agreeing undertakings.

9.7 In agreeing undertakings, FTP Officers should refer to the Undertakings Bank. The agreed undertakings should seek to address the specific concerns about the Registrant. Where the wording of a bank undertaking meets the requirements of the FTP Officer, that wording should be used. Where there is no undertaking in the bank that meets the requirement of the Officer, they should create their own undertaking.

A checklist to assist FTP Officers determine whether undertakings may be appropriate can be found in **Appendix 3**.

Removal by Agreement

10.1 Removal by agreement is the process by which a Registrant who is the subject of a fitness to practise allegation may be removed from the Register.

- 10.2 Removal by agreement is distinct from voluntary removal where a Registrant without any actual or potential fitness to practise issues can ask to be removed from the Register under the terms of the NISCC Registration Rules (2016).
- 10.3 The primary purpose of Removal by Agreement is to allow those Registrants who admit that their fitness to practise is impaired and do not intend to continue practising, to be permanently removed from the Register without the need for a full public hearing. NISCC must determine that the public interest does not warrant a public hearing and the public will be best protected by the Registrant's immediate removal from the Register.
- 10.4 The same thresholds apply in imposing a Removal by Agreement at investigation stage and removal stage. There should be no distinction between the significance attached to the imposition of either at their respective stage.
- 10.5 Removal by Agreement is the most serious sanction within the consensual disposal process and is likely to be appropriate when the Registrant's behaviour is fundamentally incompatible with being a social worker or social care worker.
- 10.6 Removal by Agreement should be used where there is no other way to protect the public. It may be appropriate where some or all of the following factors are apparent (this list is not exhaustive):
- doing serious harm to service users either deliberately or through gross neglect and particularly where there is a continuing risk to service users;
 - abuse of position/trust (particularly involving vulnerable people who use services) or the violation of the rights of people who use services;
 - dishonesty (especially where persistent or covered up);

- a serious departure from the relevant professional standards set out in the Standards of Conduct and Practice for Social Workers and Social Care Workers

10.7 A range of factors may require to be considered under the option of Removal by Agreement. These include:

- the Registrant's health
- the stage of the Registrant's career
- the likelihood of the Registrant seeking restoration to the Register
- the length of time since the Registrant last practised
- the genuineness of the Registrant's desire to cease to be registered
- any evidence that the Registrant has no intention to practise in the UK or anywhere else in the future

10.8 In general, if NISCC considers that the Registrant is likely to seek restoration to the Register in the future, it will not be appropriate to grant Removal by Agreement.

Generally, the longer the time since the Registrant last practised, the less likely they are to seek restoration to the Register.

10.9 NISCC will also consider any plans the Registrant may have to work in another regulated sector (e.g. teaching, law, nursing, pharmacy) as public confidence may be harmed if the Registrant is allowed to remove themselves from the Social Care Register and then seek work in another related area.

In what sort of cases might Removal by Agreement be appropriate?

10.10 Removal by agreement may be most likely to be appropriate where:

- the allegations relate to the Registrant's long-term mental or physical health and there are no outstanding fitness to practise issues to consider
- the allegation relates to lack of competence and the Registrant accepts that their fitness to practise is impaired, has already ceased practising and has no intention of returning to any practice

10.11 Where the allegations involve a combination of misconduct, lack of competence, conviction or health, NISCC will need to look at all the allegations and consider whether, in all the circumstances, Removal by Agreement may be appropriate.

10.12 Removal by Agreement will only be granted where the Registrant:

- a. admits the allegation
- b. signs an agreed Statement of Facts
- c. admits that the facts amount to impaired fitness to practise
- d. provides written confirmation of the matters set out above

A checklist to assist with the decision-making process in relation to Removal by Agreement can be found in **Appendix 4**.

Appendix One - Relevant Regulatory Bodies Policy

Regulatory bodies whose determinations may be considered by NISCC for the purpose of Rules 4 (1) e and 19 (1) b of the NISCC Fitness to Practise Rules 2016:

British Pharmaceutical Society

Care and Social Services Inspectorate Wales

Care Council for Wales

Care Quality Commission (replaced CSCI in March 2009)

Commission for Social Care Inspection (CSCI)

General Dental Council

General Medical Council

General Social Care Council

General Teaching Council for England

General Teaching Council for Northern Ireland

General Teaching Council for Scotland

General Teaching Council for Wales

Health and Care Professions Council

Health Professions Council

Nursing and Midwifery Council

Pharmaceutical Society of Northern Ireland

Regulation and Improvement Authority

Scottish Commission for the Regulation of Care

Scottish Social Services Council

Secretary of State for Education in England under Part 3, Section 8 of the Education Act 2011

Appendix Two
Issuing a Warning as part of Consensual Disposal Process
Checklist for Fitness to Practise Officers

Question	Answer
1. Is there a realistic prospect that the Registrant's fitness to practise is impaired?	Yes/No
2. Is the impairment at the lower end of the spectrum of behaviour?	Yes/No
3. Is there a low risk of recurrence?	Yes/No
4. Is a warning sufficient to protect the public?	Yes/No
5. Is a warning sufficient to protect the public interest?	Yes/No
6. Is the case one which is likely to have resulted in a warning if it proceeded to hearing?	Yes/No
7. Is the Registrant willing to accept a warning?	Yes/No

If the answer to all of the above questions is **Yes**, the Officer may decide that a warning is the most appropriate sanction.

Appendix Three
Agreeing Undertakings as part of Consensual Disposal Process
Checklist for Fitness to Practise Officers

Question	Answer
1. Is there a realistic prospect that the Registrant's fitness to practise is impaired?	Yes/No
2. Has the Registrant admitted the allegation/s?	Yes/No
3. Has the Registrant admitted that their actions amount to impaired fitness to practise?	Yes/No
4. Are undertakings sufficient to protect service users/the public?	Yes/No
5. Are undertakings sufficient to protect the public interest?	Yes/No
6. Will the proposed undertakings address the concerns about the Registrant?	Yes/No
7. Are the proposed undertakings specific, measurable, attainable and realistic?	Yes/No
6. Are you satisfied that the Registrant has sufficient insight to abide by the written undertakings and that there is no other reason to suggest that they will not comply with them?	Yes/No
7. Does the Registrant agree that NISCC shall disclose details of the undertakings (save those relating exclusively to the Registrant's health), to their employer?	Yes/No
8. Does the Registrant agree to provide NISCC with any relevant information requested in relation to compliance with any agreed undertakings?	Yes/No

If the answer to all the questions above is **Yes**, the Officer may decide that undertakings are sufficient, that is, as an alternative to imposing any sanction.

Appendix 4
Agreeing Removal by Agreement as part of Consensual Disposal Process
Checklist for Fitness to Practise Officers

Question	Answer
1. Has a full investigation been completed?	Yes/No
2. Is there a realistic prospect that the Registrant's fitness to practise is impaired?	Yes/No
3. Is the case one where removal would be the likely sanction imposed by a Fitness to Practise Committee?	Yes/No
4. Has the Registrant indicated that they are unlikely to work in social care again?	Yes/No
5. Has the Registrant indicated that they are unlikely to seek restoration to the Register?	Yes/No
6. Would the public interest be sufficiently served by the case not being heard by a FTP Committee?	Yes/No
7. Is the Registrant willing to make an application for removal?	Yes/No
8. Does the Registrant admit the allegation?	Yes/No
9. Does the Registrant admit that their fitness to practise is impaired?	Yes/No
10. Is the Registrant willing to sign an agreed statement of facts?	Yes/No

If the answer to all of the above questions is **Yes**, the Officer may decide that Removal by Agreement is an appropriate sanction.