



# Northern Ireland Social Care Council

## Disclosure Policy

April 2017  
V2.1  
FINAL


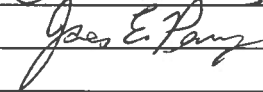
## DOCUMENT CONTROL SHEET

<b>Title</b>	Disclosure Policy
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<b>Date of ratification by Council</b>	26 April 2017
<b>Review Date</b>	April 2020 (every three years)

## VERSION HISTORY

Document Version	Date	Status	Reviewed by	Document Revision History
V0.3	02.01.2015	Draft	Information Governance Steering Group (08.01.2015)	Minor amendments. Witness anonymisation agreed.
V0.5	12.01.2015	Draft	Audit Committee	Minor amendments
V0.6	23.01.2015	Draft	Council (18.02.2015)	Approved
V1.1	07.07.2015	Draft	Information Governance Steering Group (29.07.2015)	Amendments to publication timescale – discussed and approved
V2.0	22.09.2016	Draft	Council	New Fitness to Practice terminology IMI Alert System
V2.1	28.02.2017	Draft	Council – reviewed 26.04.17	9.2 Information Disclosed Prior to a Fitness to Practise Hearing – changed from detailed allegations to type of case, ie misconduct. Publication of Undertakings changed to 5 years then archive instead of until expiry as some do not expire.

## APPROVALS

Date	Document Version	Approver Name and Title	Approver Signature
26.04.2017	V2.1	Colum Conway, Chief Executive	
		Jim Perry, Chair	

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## 1 Introduction

- 1.1 The Northern Ireland Social Care Council (NISCC) is the regulatory body for the social care workforce in Northern Ireland. Our role is to register social care workers, to set standards for their training & practice and to support professional development across the workforce.
- 1.2 NISCC is a non-departmental public body, sponsored by the Department of Health (NI) and founded under the Health and Personal Social Services Act (NI) 2001. Through workforce registration and regulation, we are helping to strengthen public protection and raise standards across the Northern Ireland Social Care workforce.
- 1.3 As a workforce regulator, the NISCC must act in the public interest and maintain public trust and confidence in its system of regulation. The publication of information serves to demonstrate the regulatory action being taken by the NISCC and the rationale for this.
- 1.4 This policy supersedes the previous NISCC Disclosure Policy, Version 1.1.

## 2 Key Principles

- 2.1 This policy outlines the information that the NISCC will disclose about registrants with regard to their NISCC registration.
- 2.2 The key principles adopted by the NISCC are consistent with the principles of good regulation identified by the Better Regulation Executive (2000), and the Professional Standards Authority for Health and Social Care (formerly Council of Healthcare Regulatory Excellence) 'Right Touch Regulation' (2010).
- 2.3 When making decisions on what to disclose, the NISCC adheres to:
  - **Its legal obligations** – We will comply with our legal responsibilities in relation to disclosure of information.
  - **Proportionality** – We are committed to ensuring that information that is disclosed is appropriate and proportionate. It is important to achieve the correct balance between the rights of the registrant and the need to consider what is in the public interest.
  - **Transparency** - The NISCC will be transparent about its processes, explain and publicise the decisions it makes.
  - **Accountability** - We will seek the views of stakeholders and consult before policy decisions are taken. We will justify and clearly explain our decisions which we expect to be open to public scrutiny.
  - **Consistency** - This policy has been developed to ensure consistency across the organisation and, where appropriate, with other UK healthcare regulators.
  - **Targeted** - We will ensure that our activity is focused on areas of greatest risk and / or what is deemed to be in the interests of public safety.

- **Agility** – The NISCC will endeavor to have a forward thinking regulatory response rather than simply looking to the past to prevent a past problem from happening again. We will make every attempt to foresee change in our field, anticipate risks and take timely action to mitigate these risks.

### **3 Legal Framework**

3.1 There are a range of statutory provisions that limit or prohibit the disclosure of information in specific circumstances and, similarly, a range of statutory provisions that require information to be disclosed.

3.2 This policy has been written in compliance with the following legal requirements and best practice guidance:

- Health and Personal Social Services Act (NI) 2001
- Public Interest Disclosure (Northern Ireland) Order 1998
- Data Protection Act 1998
- Freedom of Information Act 2000
- Human Rights Act 1998
- DHSSPSNI Code of Practice on Protecting the Confidentiality of Service User Information January 2012
- Common Law Duty of Confidentiality
- Information Commissioner's Office 'Anonymisation: Managing Data Protection Risk Code of Practice'
- NISCC Fitness to Practise Rules
- NISCC 'Standards of Conduct and Practice'.

3.3 Article 8 of the of the European Convention of Human Rights, incorporated in the Human Rights Act (1998), provides that everyone has the right to respect for his or her private life. A public authority can interfere with this right if it acts in accordance with law, for the protection of health or morals, or for the protection of the rights and freedoms of others. The publication of information about any sanctions imposed under the NISCC's Fitness to Practise Rules respects this balance of rights. It is essential for the effective protection of the public through the regulation process.

### **4 Common Law Duty of Confidentiality**

4.1 Common law is not written out in one document like an Act of Parliament. It is a form of law based on previous Court cases decided by judges; hence, it is also referred to as 'judge-made' or case law. The law is applied by reference to those previous cases, so common law is also said to be based on precedent. The general position with the common law duty of confidentiality is that if information is given in circumstances where it is expected that a duty of confidence applies, that information cannot normally be disclosed without the information provider's consent.

4.2 There are three exceptions to the common law duty of confidentiality, namely:

- Where disclosure is necessary to safeguard the individual, or others, or is in the public interest;
- Where the individual to whom the information relates has consented;
- Where there is a legal duty to do so, for example a Court Order.

4.3 The common law duty of confidentiality means that the NISCC will not normally disclose information which it holds on its registrants without the consent of a registrant. However, the NISCC will disclose information as an exception if it considers that it is appropriate to do so. Justifications for disclosure will be fully documented.

## **5 Public Facing Register / Online Register**

5.1 The role of the NISCC is to register and regulate all social workers and social care workers, and improve standards of education and training for the workforce. One of the ways this is achieved is by maintaining an online register of all social workers and social care workers who have been registered with the NISCC. The Register is accessible through our website at [www.niscc.info](http://www.niscc.info) and anyone can search to check that a social care worker is registered.

5.2 The Public Facing Register discloses the following Registrant details on the NISCC website:

- Surname
- First Names
- Town of Employment
- Registration Number
- Part of Register
- Status of Registration
- Other information (any sanction imposed ).

5.3 The NISCC website will contain details of decisions and any subsequent applicable sanctions against registrants whose fitness to practice is found to be impaired or who have had allegations against them considered by the Fitness to Practise Committee. This maintains transparency to the public.

## **6 Fitness to Practise**

6.1 When we talk about fitness to practise, we mean that a registered social worker or social care worker has the competence, character and health to do their job properly. All registrants must act in accordance with the NISCC 'Standards of Conduct and Practice'. Registration with the NISCC is taken as a declaration of compliance with these Standards. Copies of the Standards are available on the [Standards of Conduct and Practice](#) page of the NISCC website.

6.2 In cases where concerns about a registrant's fitness to practise are serious enough to call into question the registrant's suitability to work in social care, and the case meets the test as set out at Schedule 1, Paragraph 5 (2) of the Rules, the case will

be referred to a Fitness to Practise hearing, at which an appropriate sanction may be imposed.

- 6.3 More details on the fitness to practise process can be found in the Fitness to Practise section of the NISCC website:

<http://www.niscc.info/fitness-to-practise-and-hearings>

- 6.4 The Health and Personal Social Services Act (NI) 2001 provides the legal framework that allowed the NISCC to establish a set of Fitness to Practise Rules which we use to guide us through the process of dealing with allegations of impaired fitness to practise. The NISCC Fitness to Practise Rules can be accessed from the NISCC website.

## **7 Interim Orders**

- 7.1 If the Council believes that it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the registrant concerned, it may refer a case to the Preliminary Proceedings Committee to consider the imposition of an Interim Order (IO). This may result in the worker's suspension from the Register on a temporary basis (an Interim Suspension Order), or restrictions put on a registrant's practice (an Interim Conditions of Practice Order) while the allegation is being investigated, and the Order may remain in place until a final decision is made.
- 7.2 The hearing for an IO is held in private on the basis that it is interim, although it may be a public hearing if the Registrant so requests.
- 7.3 If an IO is imposed, this will be published on the Register and in the [Interim Orders](#) section of the NISCC website. Information will include the registrant's name, registration number, Part of Register and the date on which the IO was imposed. However, no other details pertaining to the investigation will be published at this time. Once the IO is no longer in effect, details will be removed from the website.

## **8 Information Disclosed Following Consensual Disposal**

- 8.1 The Council may, where it considers it appropriate to do so, issue a sanction to a registrant without the case proceeding to a Fitness to Practise hearing. This is a measure known as 'consensual disposal', and will only happen in circumstances where there is no public interest in holding a full hearing.
- 8.2 Sanctions, i.e. Warning, Undertakings and Removal by Agreement, imposed under consensual disposal will be published on the NISCC website in accordance with the timescales set out in Appendix 1.
- 8.3 The NISCC Fitness to Practise Rules require the publication of consensual disposal sanctions. The publication will contain the following information:
- Name of the registrant

- Registration number
- Register part
- The particulars of the allegation against the registrant (information may be limited if required to protect confidentiality of third parties)
- The decision and reasons (information may be redacted if required to protect confidentiality of third parties).

8.4 The particulars of the allegation and the decision and reasons will remain on the website according to the timescale set out in Appendix 1.

8.5 Where the particulars of the allegation relate to a health matter, a redacted decision will be published.

## **9 Information Disclosed Prior to a Fitness to Practise Hearing**

9.1 Article 6 of the European Convention of Human Rights, incorporated in the Human Rights Act (1998), enshrines in law the right of all citizens to a fair and public hearing. In accordance with the NISCC Fitness to Practise Rules, fitness to practise hearings are held in public. In some circumstances, such as a hearing being held under the Health Procedure, the hearing may be held in private. However, for the purpose of public protection, information pertaining to the hearing and the decision will be published.

9.2 Prior to a fitness to practice hearing, the NISCC will publish notice of the forthcoming hearing on the NISCC website at least seven days before the hearing is due to take place. The publication will include only the following information:

- Name of the registrant
- Registration number
- Register part
- Type of hearing e.g. public / private
- Place of hearing
- Date of hearing
- Time of hearing
- Type of case, ie (misconduct, lack of competence, physical or mental health, conviction or caution for a criminal offence, determination by a relevant regulatory body, inclusion on a list maintained by the Disclosure and Barring Service).
- Contact details for NISCC Committee Administrator.

9.3 In addition to publishing the information on the website, the following stakeholders will receive notice of a forthcoming hearing:

- Chair of NISCC
- Chief Executive of NISCC
- Council Members
- NISCC Staff



- Registrants' Committee
- Participation Group
- Government Liaison Officer, DoH
- RQIA
- Person making the allegation
- Registrant's employer
- University (if the Registrant is a student).

9.4 In the event of a postponement or an adjournment, the website is amended.

## 10 Information Disclosed Following a Fitness to Practise Hearing

### *Registrant Details*

- 10.1 Schedule 2, Paragraph 31 (1) of the NISCC Fitness to Practise Rules requires the publication of the decision of a fitness to practise hearing. Following all fitness to practise hearings, the NISCC will publish a Notice of Decision on the NISCC website once decision notices have been sent to the registrant and the person making the allegation. The Notice of Decision will include the following information:
- Name of the registrant
  - Registration number
  - Register part
  - The particulars of the allegation against the registrant (information may be limited if required to protect confidentiality of third parties)
  - Date(s) of hearing
  - Fitness to Practise Committee's determination and reasons (information may be redacted if required to protect confidentiality of third parties).
- 10.2 The particulars of the allegation and the Fitness to Practise Committee's determination and reasons will remain on the website according to the timescale set out in Appendix 1.
- 10.3 In relation to fitness to practise hearings held under the Health Procedure, a redacted decision will be published.

### *Witness Details*

- 10.4 The NISCC will customarily anonymise the names of the person making the allegation and any witnesses who give evidence during fitness to practise hearings.
- 10.5 The NISCC anonymisation of witness details will follow the Information Commissioner's Office Code of Practice on Anonymisation.
- 10.6 Details of a witness may be passed to another regulatory body, the Disclosure and Barring Service or to an appeal body on a confidential basis.

### ***Decision Distribution***

- 10.7 In addition to publishing the information on the website, the NISCC will notify the following stakeholders:
- Chair of NISCC
  - Chief Executive of NISCC
  - Council Members
  - NISCC Staff
  - Registrants' Committee
  - Participation Group
  - Government Liaison Officer, DoH
  - RQIA
  - Person making the allegation
  - Registrant's employer
  - University (if the registrant is a student)
  - Disclosure and Barring Service (if applicable)
  - If impaired fitness to practise has been found, and a sanction therefore applied, an email alert is also issued to a distribution group of social care employers and UK and Ireland social care regulators (SSSC, CCW, HCPC and CORU).

### ***Facts or Impaired Fitness to Practise Not Found***

- 10.8 As per Schedule 2, Paragraphs 23 (2) or 24 (6) of the NISCC Fitness to Practise Rules, if the Fitness to Practise Committee does not find the facts proved or does find the facts proved but does not find fitness to practice to be impaired, the case will be dismissed and the hearing concluded. This finding will be published on the NISCC website in the [Hearings and Decisions](#) section and the Register will be unaffected.

### ***Internal Market Information Centre Alert System (IMI Alerts) (only applicable to Social Workers)***

- 10.9 The Internal Market Information System (IMI) is a secure, multilingual online tool, facilitating the exchange of information between public administrations across the EEA that are involved in the practical implementation of EU law. IMI was initially conceived as a tool to help competent authorities to fulfil their obligations under the Services Directive and the Recognition of Professional Qualifications Directive. Since 18 January 2016, the EU Directive 2013/55/EU has required regulatory bodies to provide notification to all EU counterparts regarding regulatory decisions about social work registrants. Therefore, in relation to social workers, all decisions made by consensual disposal or by a Fitness to Practise Committee that are disclosed via the NISCC website will also be sent out as an IMI Alert, accessible by all EU regulatory counterparts. If you would like more information about the IMI Alert system, please see their website: [http://ec.europa.eu/internal\\_market/imi-net/about/index\\_en.htm](http://ec.europa.eu/internal_market/imi-net/about/index_en.htm).

## **11 Transcripts**

- 11.1 Upon application, the Council shall send to the registrant and the person making the allegation a record of any part of the proceedings at which the registrant or, as the case may be, the person making the allegation, was entitled to be present, as specified in Schedule 2, Paragraph 28 (2) of the NISCC Fitness to Practise Rules.

## **12 Deciding Not To Publish**

- 12.1 In exceptional circumstances, where the negative impact on individuals affected by full disclosure outweighs the public interest in doing so, limited information may be published on the website or press releases issued. This decision will be made by the Senior Management Team.

## **13 Internet Search**

- 13.1 Publications are removed from the NISCC website in accordance with this policy. However, many internet search engines, such as Google, Bing, Yahoo etc. manage information by 'caching', which involves storing a snapshot of a webpage in a database and then refreshing that snapshot periodically. In consequence, historical NISCC webpages may remain available on internet search engines (which are not within the NISCC's control) after they have been removed from the NISCC website.

## **14 Media Enquiries**

- 14.1 All media enquiries are dealt with by the NISCC Communications Department who can be contacted by email [comms@niscc.hscni.net](mailto:comms@niscc.hscni.net) or telephone on 028 9536 2600.

## **15 Endorsement and Review**

- 15.1 This policy was endorsed by the Council on 26 April 2017.
- 15.2 This policy will be reviewed every three years. The next review should take place by April 2020.

## **16 Equality**

- 16.1 This policy has been screened for equality implications as required by Section 75 and Schedule 9 and of the Northern Ireland Act 1998 and is not considered to require a full impact assessment. Equality Commission guidance states that the purpose of screening is to identify those policies which are likely to have a significant impact on equality of opportunity so that greatest resources can be devoted to these.

## APPENDIX 1

### Publication Timescale of Determinations

Committee	Published	Notice of Decision Published?
Admonishment	Until expiry	Yes
Warning imposed by Fitness to Practise Committee	Until expiry	Yes
Conditions of Practice Order	Until expiry	Yes
Suspension Order	Until expiry	Yes
Removal Order	For five years from the date of imposition of the Order	Yes
Successful Appeals	For one month	Yes
Facts not found or impaired fitness to practise not found	For one month	Yes
Interim Order	Until expiry	No

Consensual Disposal	Published	Notice of Decision Published?
Warning imposed under consensual disposal	Until expiry	Yes
Undertakings	For five years from the date of agreement	Yes
Removal by Agreement	For five years from the date of removal	Yes

Once the publication period is over, an archive will be retained on the website to continue to provide a historical record of the determination. The archive section of the website will only publish the following information about a determination:

- Name of registrant
- Date of determination
- Registration number
- Part of register
- Determination

Once archived, the full 'Notice of Decision' will no longer be available on the website, but is still accessible via a Freedom of Information request.