

**Indicative Sanctions
and use of
Interim Orders:
Guidance for Sub-committees**

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INTRODUCTION

The Guidance

This Guidance has been produced by the Scottish Social Services Council (the SSSC) to assist its Conduct Sub-committees (CSCs) in determining which sanction to impose where a Sub-committee has made a finding of Misconduct and to assist its Preliminary Proceedings Sub-committees (PPSCs) when considering whether an interim order, being Interim Suspension Orders or Interim Conditions Orders, should be imposed. It sets out the principles and factors which a Sub-committee considers when reaching its decision on sanction and interim orders.

The Guidance is a 'living document'. It will be reviewed annually and updated and revised in the light of experience and any relevant case law. This document is designed to guide the Sub-committee; it is not intended to restrict the Sub-committee from exercising its own judgement.

The Guidance considers:

- general principles to be taken into account
- mitigating and aggravating factors
- disposals available
- factors to be taken into account when considering particular sanctions
- interim orders

This Guidance was informed by the work of the General Social Care Council, General Medical Council and Health Professions Council.

The statutory purposes of the SSSC

The statutory purposes of the SSSC are to promote high standards of conduct and practice among social service workers and high standards in their education and training. The safety and welfare of all persons who use, or are eligible to use, care

services are to be protected and enhanced. The SSSC has four main functions in terms of the Regulation of Care (Scotland) Act 2001 (the 2001 Act).

- maintaining the Register of social service workers
- producing, publishing and keeping under review Codes of Practice
- approving and quality assuring social work and social service work training courses
- managing referrals in a robust and fair way in relation to social service workers whose suitability to be registered has been called into question.

The role of the SSSC in setting standards

The SSSC has a statutory role in providing guidance to social service workers on the standards of conduct and practice expected. Section 53 of the 2001 Act makes it mandatory for the SSSC to prepare and publish codes of practice laying down these standards. There was wide consultation on the Codes of Practice for Social Service Workers and the Codes of Practice for Employers of Social Service Workers (the Codes). The Codes set out the standards of conduct and practice expected of social service workers and the standards of conduct and practice of employers in relation to social service workers.

The Codes of Practice for Social Service Workers is a list of statements that describe the standards of professional conduct and practice required of social service workers inside and outside work. The intention is to confirm the standards required in social service work and ensure that workers know what standards of conduct employers, colleagues, users of services, carers and the public can expect of them.

Equality and diversity statement

The SSSC is a public authority for the purposes of the Human Rights Act 1998. The SSSC will seek to uphold and promote the principles of the European Convention on Human Rights in accordance with the 1998 Act.

The SSSC has made a commitment to equal opportunities and diversity and has an agreed strategy for delivering on this commitment. The SSSC will uphold its equalities and diversity policy in the administration of the conduct procedures and expect its Sub-committees to do the same.

Social service workers practise social work and social service work in order to serve the interests of people who use services. It is a central function of a Sub-committee to consider the interests of people who use services and protect them by ensuring the suitability of Registrants. The SSSC is committed to promoting equality and valuing diversity and to operating procedures and processes that are fair, objective, transparent and free from discrimination. Promoting equality is also a requirement under current and emerging equality legislation. Everyone acting for the SSSC is expected to adhere to the spirit and letter of this legislation.

The SSSC also has a positive duty to promote equal opportunities for service users and carers and to respect diversity of different cultures and values.

Social service workers are required not to discriminate unlawfully or unjustifiably against users of services, carers or colleagues, as set out in parts 5.5 and 5.6 of the Code of Practice.

PART I: INDICATIVE SANCTIONS GUIDANCE

1. PURPOSE

- 1.1 The primary reasons for the SSSC to provide Indicative Sanctions are to provide guidance to its Conduct Sub-committees about the SSSC's views on conduct and for there to be consistency in the approach of the imposition of sanctions by Conduct Sub-committees. This is aligned with the requirement on the SSSC to maintain professional standards and protect the public and service users.
- 1.2 While each case will turn on its own particular facts, the Sub-committee members should refer to the Guidance at the stage of considering what sanction to impose after making a finding of misconduct. The Guidance sets out the relevant criteria to be applied in assessing the appropriate sanction to be imposed. This helps to ensure consistency of approach over time.
- 1.3 The particular advantage of the Guidance is that it demonstrates to the profession as a whole and the wider public that they can have confidence in the SSSC and the sanctions which may be imposed by its Conduct Sub-committees. It also means that the Conduct Sub-committees, the Registrants and all representatives appearing before the Sub-committee know what to expect when assessing the gravity of the particular case and considering the sanction to be imposed.
- 1.4 This Guidance will be useful to those involved personally or professionally in conduct cases, including:
 - people who use services who are considering making a complaint to the SSSC about a social service worker
 - social service workers who are subject to conduct procedures

- employers considering making a referral to the SSSC
- factual and expert witnesses
- those representing the SSSC and Registrants
- Legal Advisers and Medical Advisers
- other regulatory bodies.

1.5 A Sub-committee is expected to confirm that in reaching its decision the Guidance was referred to. If the Guidance was not used, a Sub-committee is expected to explain why not.

2. GENERAL PRINCIPLES REGARDING SANCTION

2.1 The role of a Conduct Sub-committee in reaching its decision on a sanction involves a two-stage process. Under the Conduct Rules a Sub-committee shall:

- make findings of fact and consider whether the findings amount to Misconduct
- decide whether any action should be taken against the social service worker's registration.

Public interest

2.2 The public should have confidence that the SSSC as the regulator of social service workers will uphold proper standards of behaviour and conduct. The public interest requires that the public and social service users are protected from unsafe practice and confidence in the profession of social work and the social services workforce in general is maintained. It is part of the SSSC's role to maintain standards and to protect the public from the risk of practice by social service workers who for any reason whether competence, character or conduct are incompetent or not fit to practise. Any social service worker registered with the SSSC agrees to abide by the Code of Practice for Social Service Workers.

- 2.3 In serving the public interest, the primary purpose of sanction is to ensure, firstly, that the social service worker does not have the opportunity to repeat the Misconduct and secondly, to maintain the reputation of the profession (see also section 4, 'SANCTIONS').

Fairness

- 2.4 There is a duty on Sub-committees to act fairly. What constitutes the standards of fairness in any proceedings is not fixed and may change over time and depends on the circumstances of each case.

Proportionality

- 2.5 The principle of proportionality requires that the consequences of the sanction which a Sub-committee imposes must not be disproportionate to the harm from which the sanction is intended to protect the public and social service users. The interests of the public and social service users have to be weighed against those of the Registrant. There is a wider public interest to be served in the approach to sanctions. A Sub-committee ought not to have only a particular client or client group in mind.
- 2.6 A Sub-committee must ensure that measures taken to limit the fundamental right to practise one's profession are no more than is necessary in all the circumstances.

Approach

- 2.7 A Sub-committee should approach the task of deciding which sanction to impose in all the circumstances of the particular case by starting with the least restrictive sanction and working upwards from there. At each stage a Sub-committee should state why a particular sanction was not sufficient to protect the public and then move to the next sanction (see 'Reasons', at 2.8 below). A Sub-committee should continue in this way until it reaches the

sanction it considers is sufficient and satisfactorily addresses all areas of concern while effectively protecting the public.

Reasons

- 2.8 A Sub-committee must give reasons for the imposition of the particular sanction in every case. The reasons must be adequate and allow a Registrant to understand why a particular sanction was chosen in preference to other sanctions which were available (see 'Approach', at 2.7 above).
- 2.9 The reasons should indicate why the decision taken by a Sub-committee is considered to be proportionate in all the circumstances. By setting out intelligible and adequate reasons, the Registrant, the SSSC, the public and those who gave evidence to a Sub-committee, will be able to see and understand why a particular decision has been reached.
- 2.10 As the Registrant has the right to appeal to the Sheriff, a proper explanation of the reasons for the decision will assist the Registrant in deciding whether or not to exercise their right to appeal and, if that right is exercised, will help the Sheriff in determining any such appeal.
- 2.11 The reasons for the decision of a Sub-committee should cover:
- the factual basis of the decision
 - the legal basis of the decision
 - the conclusions reached on the principal important controversial issues, disclosing how any issue of law or fact were resolved
 - confirmation or otherwise that a Sub-committee has accepted any legal advice given to it by the independent Legal Adviser (and a particularly full explanation will be required where a Sub-committee has decided not to accept the Legal Adviser's advice)

- a Sub-committee's conclusions on the submissions made to it by the parties or their representatives
- the reasons for any sanction imposed explaining the extent to which this Guidance was taken into account, whether it was followed, and, if not, why not.

Guidance on considering conviction cases and findings of facts by other regulators and tribunals

- 2.12 Convictions refer to a determination by a criminal court in the United Kingdom, or elsewhere which, if committed in the UK, would constitute a criminal offence.
- 2.13 The findings of fact by any of the regulatory bodies or tribunals referred to in the Conduct Rules shall be *prima facie* evidence of the facts found. The Registrant is entitled to adduce evidence in rebuttal of this presumption.
- 2.14 Where a Sub-committee receives the findings of fact and certificate of conviction of any UK criminal court, unless it also receives evidence that the social service worker is not the person referred to in the conviction or findings of fact then the Sub-committee is to accept the certificate as conclusive evidence of the offence having been committed.
- 2.15 A Sub-committee should be concerned to establish whether the offence amounts to Misconduct and to take due account of any mitigating circumstances.
- 2.16 A Sub-committee should not take into account in its consideration that a Registrant may already have suffered personally or professionally for their Misconduct in prior criminal proceedings. The Sub-committee's function is to protect members of the public and to maintain the high standards and reputation of social services.

- 2.17 A Sub-committee should bear in mind that the sentence or sanction previously imposed is not necessarily a definitive guide to the seriousness of the offence. There may have been circumstances that led the court or regulatory body to be lenient. For example, despite sentencing guidelines, judges differ in their approach to sentencing. There are also different sentencing powers available to the courts. Similarly, the range of sanctions and how they are applied may vary significantly between regulatory bodies.
- 2.18 A Sub-committee's role is to balance the nature and gravity of the offence/s, mitigating factors such as remorse and length of time since the offence (see 'MITIGATING and AGGRAVATING FACTORS' at section 3) and their bearing on the Registrant's suitability to practise as a social service worker, against the need for the imposition of a sanction and its consequences upon the ability of the Registrant to practise his or her profession.

3. MITIGATING AND AGGRAVATING FACTORS

- 3.1 Following the completion of the two-stage process set out in the Conduct Rules, in any case before it where 'Misconduct' is found, a Sub-committee will require to be addressed by the Registrant or their representative in mitigation. A Sub-committee is also likely to hear from the SSSC's Presenter on aggravating factors. A Sub-committee is to weigh the mitigating factors against the aggravating factors relevant in each case. (See also section 4.5 below)

Mitigating factors

- 3.2 The following is a list of possible mitigating factors, although a Sub-committee should bear in mind this list is not exhaustive:

- length of time since the incident/s and any good practice in the meantime
- co-operation with the investigation by the SSSC
- compliance with any previous assessment or conditions
- early admission of facts alleged
- insight
- behaviour was an isolated incident, which was not deliberate or premeditated
- genuine expression of regret/apologies
- acting under duress
- previous good history
- character and previous history of the Registrant
- evidence that rehabilitative/corrective steps have been taken
- relevant and appropriate references and testimonials
- circumstances leading up to the incident/s
- minimal impact on victim – to include both harm and potential harm.
- evidence that the behaviour would not have caused direct or indirect harm to a service user
- whether the offence was committed at work or outside work
- the Registrant's physical or mental ill (the onus being on the Registrant to provide evidence of their ill health).

If a Sub-committee takes the view that an employer may have had an impact on the practitioner's behaviour or competence, this could also be considered as a mitigating factor, albeit that Registrants ultimately remain personally responsible for their own standards of professional conduct and practice. Individuals who are both employers and social service workers are subject to the Code of Practice for Employers and the Code of Practice for social service workers.

Where a Sub-committee is addressed on mitigating factors, it should consider the relevance of those factors and the weight to be given to them in accordance with the terms of section 4 "SANCTIONS" in each case.

Aggravating factors

3.3 The following is a list of possible aggravating factors although a Sub-committee should bear in mind this list is not exhaustive:

- dishonesty
- abuse of trust
- concealment of wrong-doing
- pre-meditated actions
- lack of insight
- lack of regret
- risk posed to and/or impact on victim/s
- failure to co-operate with an investigation by the SSSC
- circumstances leading up to the incident/s
- serious disregard for the SSSC's Code/s of Practice
- offending in the light of previous findings of Misconduct, officer imposed warnings/conditions or reminders of the code of practice
- previous convictions
- whether the offence was committed at work or outside work.

Where a Sub-committee is addressed on aggravating factors, it should consider the relevance of those factors and the weight to be given to them in accordance with the terms of section 4 "SANCTIONS" in each case.

Guidance on considering references, testimonials and medical reports supplied by the Registrant

3.4 In mitigation, the Registrant may present references, testimonials and medical reports as evidence of their mental or physical ill-health. In

considering these, a Sub-committee should explore and take into account the following factors:

- how recent they are
- the "expertise" of the writer
- the actual level of knowledge the writer has of the Registrant and, where relevant, the Registrant's recent practice
- whether the writer is aware of the allegations
- whether the writer is aware that their letter is to be put to a Sub-Committee as mitigation evidence
- whether the reference/testimonial is genuine.

3.5 A Sub-committee must be convinced of the validity of a document before it can be accepted as part of mitigation.

3.6 If provided in advance of the hearing, references or, testimonials or medical reports may not stand as an accurate portrait in light of the facts/Misconduct found proved.

3.7 All the factors outlined above should be considered when looking at references, testimonials and medical reports.

3.8 The absence of references or testimonials may not necessarily count against a Registrant.

3.9 The Sub-committee may take into account the absence of a medical report when considering any claim by a Registrant that ill health substantially contributed to the Misconduct.

3.10 Registrants may present references and testimonials as to their standing in the community or profession. These need to be weighed appropriately against the nature of the incident. The quantity, quality, and spread of

references and testimonials will vary from case to case. This will not necessarily depend on the standing of a Registrant. There may be cultural reasons for not requesting references or testimonials. In addition, acquiring references and testimonials may pose a difficulty for newly arrived overseas-qualified social service workers.

Expressions of regret and apology

- 3.11 The social work and social service work profession and the public have a number of expectations, including that people who use services should be protected from similar events recurring, and social service workers should take positive steps to learn from their mistakes, or when things go wrong.
- 3.12 The insight of the social service worker is an important factor. Insight can be defined as the expectation that a social service worker will be able to stand back and accept that, with hindsight, they should have behaved differently, and that it is expected that he or she will take steps to prevent a recurrence. There may be cultural differences in the way that insight is expressed for example, how an apology or expression of regret is framed and delivered and the process of communication.
- 3.13 Cross-cultural communication studies show that there are great variations in the way that individuals from different cultures and language groups use language to code and de-code messages. This is particularly the case when using a second language, where speakers may use the convention of their first language to frame and structure sentences, often translating as they speak and may also be reflected in the intonation adopted. As a result, the language convention, subtleties, or nuances of the second language may not be reflected.
- 3.14 In addition, there may be differences in the way that individuals use non-verbal cues to convey a message, including eye contact, gestures, facial

expressions, and touch. These issues may also apply to individuals with a sensory impairment. Awareness of and sensitivity to these issues are important in determining the following:

- how a Registrant frames his or her insight
- how a Registrant offers an apology
- the Registrant's demeanour and attitude during the hearing.

3.15 The main factor is that the Registrant has recognised that steps are required to be taken to remedy the failures and it is not simply the form in which this may be expressed that is relevant.

3.16 A Sub-committee should take account only of evidence actually put before it, for example, testimonials. A Sub-committee should not draw any adverse inferences from an absence of such evidence because:

- there may be cultural or other reasons why a Registrant would not solicit testimonials from colleagues or user of services, and
- in any event, such inferences would be likely to be influenced by assumptions about the sort of references that might have been produced, assumptions that are untested.

3.17 If a Registrant's conduct shows they are fundamentally unsuitable for registration as a social service worker, no amount of remorse or apologies – or indeed positive personal qualities in other respects – can "mitigate" the seriousness of that conclusion and its impact on registration. Persuasive evidence of rehabilitation and a credible commitment to high standards in the future will be directly relevant to the question of suitability to practise, to the Registrant's credit, even though there may have been a lapse in the past, possibly a serious one.

3.18 Evidence of mitigating circumstances surrounding proven misconduct can be helpful in forming a picture of how a Registrant has responded to stresses in life and professional practice, which may be significant in relation to the question of misconduct. Evidence that lapses have been associated with extreme circumstances that no longer exist may give some degree of reassurance. But the risk of recurrence of stressful circumstances may be relevant to the evaluation of risk (and hence to the sanction).

4. SANCTIONS

4.1 Misconduct is defined in the Conduct Rules as:

“conduct, whether by act or omission, which falls short of the standard of conduct expected of a person registered with the Scottish Social Services Council, having particular regard to the Code of Practice for Social Service Workers issued by the Council under Section 53(1)(a) of the Act and the Scottish Social Services Council (Registration Rules 2012, both as amended or substituted from time to time”.

4.2 The level of seriousness of the Misconduct will be a very significant factor in determining the sanction to be imposed.

4.3 The sanctions available to the Sub-committee are:

- Warning
- Conditions
- Warning and Conditions
- Suspension
- Suspension and Conditions
- Removal

- 4.4 A Sub-committee should refer to this Guidance and take into account of the principles set out in it when coming to its decision on sanction.
- 4.5 The sanctions which a Sub-committee may impose are set out in the Conduct Rules.
- 4.6 The primary purpose of sanctions is to protect the public by ensuring, so far as possible that the Registrant does not have the opportunity to re-offend and also to maintain the reputation of the profession. Punishment is not the primary purpose. Rather the primary focus of the Sub-committee is on the protection of the public - service users in particular and the maintenance of public confidence in the integrity of the profession. There may be a punitive element, perhaps because the Registrant can no longer work in their chosen profession possibly resulting in a change in their financial position. The case law makes clear this inevitably 'punitive' element is not one which a Sub-committee can shy away from when imposing the appropriate sanction. A profession's most valuable asset is its collective reputation and the confidence which that inspires. Since orders made by a Sub-committee are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect than in criminal cases. However, a punitive element does not make, for example, suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual Registrant. Membership of a profession brings many benefits, but that is a part of the price.

Warning

- 4.7 A warning may appear to be the least severe sanction as it permits the Registrant to continue working. However a warning could remain on the Registrant's entry for up to 5 years. It could have more impact than a short period of suspension. 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 will be recorded against their entry for up to five years, and can be disclosed to any Preliminary Proceeding Sub-Committee or Conduct Sub-Committee in the future if further complaints are received about the Registrant. A warning may be appropriate where the behaviour is at the lower end of the spectrum of misconduct; where the Sub-committee wish to mark that the behaviour was unacceptable and must not happen again.

4.8 If a Sub-committee is minded to issue a warning, it should consider whether the sanction provides adequate public protection as far as the Registrant's suitability is concerned, bearing in mind that the Registrant will be entitled to work as a social service worker. This sanction may be appropriate if the Registrant's character and circumstances are such that, whatever the history, a Sub-committee is confident that there is no risk to the public or people who use services.

4.9 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.

4.10 This sanction 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
- evidence 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

- no repetition of behaviour since incident
- evidence that rehabilitative/corrective steps have been taken
- relevant and appropriate references and testimonials.

Conditions

- 4.11 The purpose of the imposition of conditions is to protect users of services and the public interest. Conditions may be appropriate in cases involving particular areas of a Registrant's performance, for instance, following a single incident, or where there is evidence of shortcomings in a specific area or areas of the Registrant's work, but where a Sub-committee is satisfied that it is appropriate for an individual to remain on the Register. A Sub-committee should be satisfied that the Registrant has displayed insight into their behaviour and that there is potential for the Registrant to respond positively to remediation/re-training, a health assessment where that is relevant and to supervision of their work. Conditions can only be imposed on a Registrant's current period of registration.
- 4.12 The purpose of the conditions is, for example, to enable a Registrant to remedy any deficiencies in their work and, where relevant and appropriate, to deal with their health issues while in the meantime protecting service users from harm. In such circumstances, conditions might include requirements to undertake specific training e.g. alcohol awareness programmes or attaining specific Scottish Vocational Qualifications (SVQs).
- 4.13 In formulating appropriate conditions a Sub-committee should take into account the following questions:
- i. Are the conditions sufficiently specific, realistic and achievable?
 - will the Registrant be able to comply with these conditions?
 - are the conditions proportionate and do they provide the necessary level of public protection?

- will they be enforceable if the Registrant changes jobs?

For example, if the conditions require the Registrant to undertake specific training they should only be set at the standard reasonably required of and obtainable by a worker registered in that part of the Register.

- ii. Are the conditions directed at the right person and enforceable?
 - do the conditions clearly impose obligations on the Registrant?
 - are any conditions mistakenly directed at someone else?
 - are the conditions such that it is possible to determine when they have and have not been satisfied?

4.14 It is for the Registrant to comply with the conditions which have been imposed and in drafting conditions, care must be taken not to inadvertently impose a condition on a third party, such as an employer, which will not be enforceable.

4.15 This sanction may be appropriate when most or all of the following factors are present (this list is not exhaustive):

- particular areas of Registrant's practice in need of review, retraining or assessment
- evidence of willingness to and potential to respond positively to further training and assessment
- no evidence of harmful deep seated personality or attitudinal problems
- insight
- users of services will not be put at risk even directly or indirectly as a result of continued registration with conditions
- the conditions will protect users of services during the period they are in force
- it is possible to formulate realistic achievable and enforceable conditions to impose on registration.

Warning and Conditions

- 4.16 In situations where a warning is appropriate but does not effectively address a particular area of concern (for example in a Registrant's practice/knowledge) then a combined sanction of warning and conditions may be imposed. This sanction may be appropriate when a combination of the factors at 4.10 and 4.15 are present

Resumed hearing – review of conditions

- 4.17 Under the Conduct Rules the SSSC can request that a Sub-committee review conditions which have been imposed on a Registrant's registration and which have not been fulfilled. A Sub-committee shall not review conditions unless in its opinion there has been a material change of circumstances since the conditions were imposed. A Sub-committee may confirm, vary or revoke the conditions.

Suspension Order

- 4.18 Where registration is a legal requirement, suspension from the relevant part of the Register prevents a Registrant from practising under that title during the period of suspension. Suspension from the Register gives a clear message to the public and the profession about what is or is not appropriate conduct for a social service worker. Under the Conduct Rules, a Sub-committee may suspend a Registrant for a period of up to two years.
- 4.19 Suspension from the Register may be an appropriate sanction for Misconduct that is very serious, although not at the most serious end of the spectrum and is not so serious as to justify removal from the Register; for example, where there has been an acknowledgment of failings and where a Sub-committee is satisfied that the behaviour is unlikely to be repeated, and where the Registrant has no psychological or other difficulties preventing them from understanding and seeking to remedy the failings and

the failings are realistically capable of being remedied, then suspension may be appropriate.

4.20 Where there is evidence that the Registrant has insight into the failings and has the potential to be rehabilitated if they are prepared to undergo further training and assessment, or undertake other suitable remedial actions a period of suspension may be appropriate. In such cases a Sub-committee may wish to impose a period of suspension and recommend further training that the Registrant might undergo during suspension and/or the remedial actions they should undertake. In practice, any training or courses might have to be organised and funded by the Registrant, since it is not in the SSSC's power to order employers to provide training for suspended social service workers. The SSSC has no powers to enforce any such recommendation for further training and assess compliance, for example, a review at the end of the suspension period. If the Sub-committee want to ensure that further training is carried out by the Registrant they should consider imposing a condition or suspension and conditions.

4.21 Suspension may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):

- serious incident of Misconduct where suitability is impaired and where a lesser sanction is not sufficient, but removal is not warranted
- behaviour is not fundamentally incompatible with continuing to be a registered social service worker in the long term
- interests of service users and the public are sufficiently protected by suspension
- no real risk of repeating the behaviour
- no evidence of harmful deep-seated personality or attitudinal problems
- no evidence of a repetition of the behaviour since the incident/s
- insight

- where the evidence demonstrates that the Registrant will be able to resolve or remedy the cause of the Misconduct during the period of suspension.

4.22 A Suspension Order must specify the period for which it has effect. It will cease to have effect at the end of that period. However, a Sub-committee may review a Suspension Order while it is in force. The length of the suspension may be for a period of up to two years and is a matter of a Sub-committee's discretion taking account of all of the circumstances of the

Suspension Order and Conditions

4.23 In situations where a Suspension Order is an appropriate sanction but does not effectively address a particular area of concern for example, in a Registrant's practice or knowledge then a combined sanction of a Condition and Suspension Order may be imposed. This would allow for more effective protection of the public. This combined sanction may be appropriate when a combination of the factors at 4.15 and 4.21 are present.

Resumed hearing – review of Suspension Orders

4.24 Under the Conduct Rules the Registrant or the SSSC can request that a Suspension Order is reviewed before the end of the period for which it has been ordered. A Sub-committee will agree to this review only where in its opinion there has been a material change of circumstances since the Order was imposed. A Sub-committee may revoke the Suspension Order.

Removal

4.25 This is the most serious sanction which a Sub-committee can impose. This sanction is likely to be appropriate when the Registrant's behaviour is fundamentally incompatible with being a social service worker and involves **any** of the following (this list is not exhaustive);

- serious and/or deliberate and/or grossly negligent or reckless act/s or omission/s
- there has been a breach of trust such as: sexual abuse, dishonesty
- persistent lack of insight into seriousness of actions or consequences
- a serious departure from the relevant professional standards set out in the Code of Practice for Social Service Workers.

4.26 Removal should be used where there is no other way to protect the public, for example, where there is a lack of insight, continuing problems and a pattern of unacceptable behaviour or denial and there is no evidence that there is likely to be satisfactory remediation and where confidence in the social services profession would be undermined by allowing the Registrant to remain on the Register.

4.27 Removal may be appropriate where some or all of the following factors are apparent (this list is not exhaustive):

- doing serious harm to others (people who use services or otherwise), either deliberately or through gross neglect and particularly where there is a continuing risk to users of services
- 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)
- persistent lack of insight into seriousness of actions or consequences
- blatant disregard for the Code of Practice or the system of registration which is designed to safeguard the interests of service users, the public and the reputation and standards of the social services profession.

4.28 A Sub-committee should have regard to the examples of Misconduct in section 5, below, in reaching its decision.

5. EXAMPLES OF MISCONDUCT RELEVANT TO SANCTION

5.1 There are some examples of misconduct where the Privy Council has upheld decisions to remove individuals from other statutory registers despite strong mitigation. This is because it would not have been in the public interest to do otherwise, given the circumstances concerned. The three most serious areas of concern are:

- sexual misconduct
- dishonesty
- failing to provide an acceptable level of care.

5.2 Whether removal from the Register is sought in cases of this kind will depend on the particular facts of each case and other relevant factors.

5.3 However, the safety of people who use services and their right to protection from neglect and abuse is more important than the fortunes of any individual Registrant.

Sexual misconduct

5.4 This encompasses a wide range of conduct and can include, but is not limited to criminal convictions for sexual assault and sexual abuse of children (including child pornography), sexual misconduct with people who use services, their carers and relatives, or with colleagues. The Misconduct is particularly serious however, where there is an abuse of the special position of trust that a Registrant occupies, or where a Registrant has been subject to notification requirements as a sex offender.

5.5 The risk to people who use services is an important consideration. In such cases removal from the relevant Register has been judged the appropriate sanction to uphold public confidence in social services. In these cases removal from the Register was not found to be unreasonable, excessive or disproportionate, but necessary in the public interest.

Sex offenders and child pornography offences

- 5.6 A Sub-committee should take account of the serious effect continued registration of those convicted of sexual offences has on the public and service users. Such offenders will include those who are 'registered sex offenders', that is those convicted of an offence listed in Schedule 3 to the Sexual Offences Act 2003 and who are required to notify the police under section 80 of that Act. Continued registration of convicted and/or registered sex offenders can seriously undermine public trust.
- 5.7 The ease with which child pornography can be downloaded from the internet has resulted in a significant increase in cases involving child pornography before both the courts and regulatory bodies.
- 5.8 In determining the appropriate sanction in such cases, Sub-Committees need to be aware that the English Court of Appeal (in *R v Oliver* [2003] 1 Cr. App. R. 463) established a test for determining the seriousness of offences involving downloading child pornography from the internet by reference to (1) the nature of the activity undertaken and (2) the nature of the images involved. In relation to the nature of the activity, consideration needs to be given to:
- proximity to, and responsibility for, the original abuse
 - taking the original photographs is more serious than downloading images, which, in turn, is more serious than merely locating images on the internet; and
 - any element of commercial gain or activity, which although not for gain, fuels demand for such images (e.g. swapping of material).

The decision in *Oliver* influenced the introduction of the Definitive Guideline on the Sexual Offences Act 2003 issued by the Sentencing Guidelines

Council. The guideline sets out a scale from 1 to 5 based upon the harm caused to the children involved in producing those images.

Level 1: erotic posing with no sexual activity

Level 2: non-penetrative sexual activity between children, or solo masturbation by a child

Level 3: non-penetrative sexual activity between adults and children

Level 4: penetrative sexual activity involving a child or children or both children and adults

Level 5: sadism or penetration of, or by, an animal.

- 5.9 Sub-committees should ensure that in child pornography cases they obtain and take account of the appropriate guidance on the *Oliver* criteria. The SSSC considers that all child pornography involves some degree of exploitation or abuse of a child and the viewing, downloading and reproduction of such images creates further demand for them. Therefore any conviction for such an offence is considered a serious matter which undermines trust in a Registrant and the profession. It is highly likely that in such a case the only proportionate sanction will be removal from the Register.

Dishonesty

- 5.10 The Code of Practice states that social service workers must be honest and trustworthy (Code of Practice 2.1) and must recognise and use responsibly the power that comes from their work with people who use services and their carers (Code of Practice 3.8).
- 5.11 Dishonesty is particularly serious because it may undermine trust in social services. Examples could include cases of theft, fraud or embezzlement, lying to a manager about whether a work task has been undertaken,

improperly amending records relating to people who use services, falsifying evidence or submitting or providing false references and information on a job application. The public must be able to place complete reliance on the integrity of Registrants.

- 5.12 Research misconduct is an example of dishonesty. This term is used to describe a range of misconduct, for example, presenting misleading information in publications. Such behaviour undermines the trust that both the public and the profession have in social work and other social service work, regardless of whether this leads to direct harm to users of services. Since it has the potential to have far reaching consequences, this type of dishonesty is serious.
- 5.13 Those who use services, employers, colleagues and others have a right to rely on the professional integrity of social service workers. Sometimes, life-changing choices about the options available to someone who uses services and significant financial decisions are made on the basis not only of the skill of Registrants but also of their honesty. Dishonesty, particularly when associated with professional practice, is so damaging to a Registrant's suitability and to public confidence in social services that removal may be considered to be the appropriate outcome.

Failing to provide an acceptable level of care

- 5.14 Cases in this category are those where a Registrant has not acted in a service user's best interests and has failed to provide an adequate level of care, falling well below expected professional standards. A particularly important consideration in such cases is whether or not the social service worker has, or has the potential to develop, insight into these failures. Where insight is evident, it is likely that another sanction may be appropriate or sufficient.

Other abuse/s of position/trust (particularly involving vulnerable users of services) or violation of the rights of users of services.

- 5.15 Social service work relies on the existence of an intimate professional relationship, in circumstances in which users of services have little choice but to be trusting. Users of services rely upon the professional's trustworthiness, which they are entitled to assume because of the professional's training and registration. People who use services have the right to be protected from a social service worker who seriously abuses the trust placed in them not only for sexual purposes as referred to above but also for financial gain, or for some other purpose contrary to the interests of the person using the services.

Other serious abuse/s of the privileged position enjoyed by registered professionals

- 5.16 In addition to the responsibilities that come with the caring relationship, Registrants have other privileges which society has given them on the understanding that they will be used responsibly and for legitimate professional purposes. A social services professional who abuses the trust which society places in them should forfeit the privileges which come with registration.

Misconduct caused by lack of competence such as to call into question the continued ability of the practitioner to practise safely

- 5.17 A commitment to continuous development of knowledge and ongoing competence is an essential aspect of professional life. A Sub-committee should seriously consider whether a Registrant who is proven to have neglected this responsibility should be permitted to remain on the Register.

Behaviour that is fundamentally incompatible with professional registration.

- 5.18 In a small number of cases, a Registrant's behaviour or the attitudes they demonstrate identify them as being unfit to be a member of a caring and responsible profession. This problem could be evidenced by serious or persistent contempt for the safety, rights and dignity of others or by serious criminality such as violent behaviour.

PART II: INTERIM ORDERS

1. PURPOSE

In some cases the SSSC will seek Interim Order/s (IO), being an Interim Suspension Order (ISO) and/or an Interim Conditions Order (ICO), prior to a full hearing by a Conduct Sub-Committee and Part II of this document has been produced to assist the Preliminary Proceedings Sub-committees (PPSCs) in making decisions on the imposition of an IO. The aim is to promote consistency and transparency in the decision-making process. The principles and factors which the PPSC requires to consider when reaching its decision on an IO are set out.

2. THE LEGAL TESTS TO BE APPLIED

- 2.1 Under the Conduct Rules the PPSC may impose an IO if satisfied that such action 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.
- 2.2 When making a decision on an IO the PPSC is making that decision based on the evidence and information before it. The PPSC should consider, on the evidence before it, the seriousness of the risk of harm to the public, in particular to service users and/or to the Registrant if the IO is not imposed.

Public interest

- 2.3 In considering what constitutes the public interest, the PPSC should take account of the fact the public should have confidence in the SSSC as a regulator of the social service workers registered with it by upholding proper standards of behaviour and conduct. The public interest requires that the public and social service users are protected from unsafe behaviour or practice and that confidence in the profession of social work and the social services workforce in general is maintained. It is part of the SSSC's role to maintain standards and to protect the public from the risk of behaviour or

practice by social service workers who for any reason whether competence, character or conduct are incompetent or not fit to practise.

Fairness

- 2.4 There is a duty on the PPSC to act fairly and in accordance with the Regulation of Care (Scotland) Act 2001, and the Rules and the Code of Practice made under the Act when reaching a decision on an IO. What constitutes the standards of fairness in any proceedings is not fixed, may change over time and will depend on the circumstances of each case.

Proportionality

- 2.5 The principle of proportionality requires that the consequences of the IO which the PPSC imposes must not be disproportionate to the harm from which the IO is intended to protect the public and social service users. An IO therefore requires to be a proportionate response to the alleged conduct and the risks which that conduct creates. The interests of the public and social service users have to be weighed against those of the Registrant. In doing this the PPSC will require to take account of the potentially very serious effect of an IO on the Registrant both financially and professionally. It will also require to take account of the wider public interest to be served in the approach to imposing an IO. In reaching its decision the PPSC ought not to have only a particular client or client group in mind.
- 2.6 The standard of proof is the balance of probabilities.

3. GENERAL PRINCIPLES TO BE TAKEN INTO ACCOUNT

- 3.1 The decision as to whether or not to impose an IO will depend on the particular facts and circumstances of each case. However, the following are relevant factors which the PPSC must take into account in reaching its decision:

- the seriousness of the allegations
- the likelihood of the conduct alleged being repeated before the final determination in the case
- the severity of the harm or risk of harm if the alleged conduct was to be 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 Registrant's previous character and employment history
- the hardship which may be caused to a Registrant by an IO
- the assurance that may be taken by a prospective employer or service user if the Registrant remains on the Register about the good character, conduct and competence of the Registrant.

Examples of alleged conduct to be taken into account in assessing risk of harm

3.2 As one of the principal factors the PPSC requires to take into account is the assessment of harm or risk of harm to service users and/or the public, the PPSC should have particular regard to the seriousness of the following examples of alleged behaviour:

- allegation/s of inappropriate relationship/s with service users
- allegation/s of sexual or violent or indecency offences
- allegations of alcohol and/or drug abuse
- allegations of dishonesty
- any convictions relating to the above
- allegations of one or more serious incident of poor practice
- allegations of consistently poor practice including poor record-keeping over a period of time usually involving several different cases.

This list is not exhaustive and the PPSC may have particular regard to other types of serious behaviour.

4. DECISION

- 4.1 Where the PPSC is satisfied that in all the circumstances there may be:
- i. behaviour which poses a real risk to the public, may otherwise adversely affect the public interest and/or the interests of the Registrant; and
 - ii. after balancing the interests of the Registrant and the public, the IO is necessary to guard against that risk

the PPSC should impose an ICO and/or ISO. In doing so the PPSC should take account of the legal tests to be applied as set out in Section 1 (above) and the general principles set out in Section 2 (above).

Type of IO to impose

- 4.2 In deciding whether to impose an ISO and/or an ICO the Sub-committee should first consider whether the imposition of an ICO is possible. An ICO is less restrictive than an ISO and the purpose of it is to permit the Registrant to carry on working until final determination of the case. The PPSC should consider whether conditions can be imposed which are workable and enforceable (where relevant taking into account the Employer's views on workability and enforceability) and which will protect the public and/or the wider public interest or the Registrant's own interests until final determination of the case. If an ICO would not achieve these ends then the Sub-committee should consider imposing an ISO.
- 4.3 It may be that in exceptional circumstances both an ICO and an ISO are considered appropriate. The Sub-committee should be mindful of the interests of the Registrant and only impose both IOs when they are satisfied

that the imposition of both is the only way to protect the public and/or the wider public interest, or the registrant's own interests until final determination of the case.

Reasons

- 4.4 The PPSC must give reasons for the imposition of the particular sanction in every case. The reasons must be adequate and allow a Registrant to understand why the IO has been imposed.
- 4.5 The reasons should indicate why the decision taken by the PPSC is considered to be proportionate in all the circumstances. By setting out intelligible and adequate reasons, the Registrant, the SSSC, the public and any person who gave evidence to the PPSC, will be able to see and understand why a particular decision has been reached.
- 4.6 As the Registrant has the right to appeal to the Sheriff, a proper explanation of the reasons for the decision will assist the Registrant in deciding whether or not to exercise their right to appeal and, if that right is exercised, will help the Sheriff in determining any such appeal.
- 4.7 The reasons for the decision of the PPSC should cover:
- the factual basis of the decision
 - the legal basis of the decision
 - the conclusions reached on the principal important controversial issues
 - confirmation or otherwise that the PPSC has accepted any legal advice given to it by the independent Legal Adviser (and a particularly full explanation will be required where the PPSC has decided not to accept the Legal Adviser's advice)
 - the PPSC's conclusions on the submissions made to it by the Parties or their representatives

- the reasons for the imposition of the IO, explaining the extent to which this Guidance was taken into account, whether it was followed, and, if not, why not.

