

# **Decisions Guidance**

for Fitness to Practise Panels and Scottish  
Social Services Council staff

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# Part A - General

## 1. Introduction

- 1.1 The Scottish Social Services Council (SSSC) is the regulator for the social work, social care and children and young people workforce in Scotland. Our work means the people of Scotland can count on social services being provided by a trusted, skilled, confident and valued workforce.
- 1.2 We protect the public by registering this workforce, setting standards for their practice, conduct, training and education and by supporting their professional development. Where a social service worker (worker) falls below the standards of practice and conduct required, we can investigate and take action.
- 1.3 This guidance:
  - helps decision makers reach proportionate and fair decisions
  - makes sure that the decision making process is transparent and consistent
  - helps those involved in the process understand how a decision will be reached.
- 1.4 This guidance is intended to be used by those personally or professionally involved in fitness to practise cases, including:
  - individuals using social services who are considering raising a concern with the SSSC about a worker
  - workers who are subject to fitness to practise proceedings
  - employers who are considering making a referral to the SSSC
  - factual and expert witnesses involved in the fitness to practise process
  - staff working in the Fitness to Practise Department at the SSSC
  - those representing the SSSC and workers during fitness to practise proceedings
  - SSSC Fitness to Practise panels.
- 1.5 This guidance states our approach to decision making and Fitness to Practise panels and SSSC staff must refer to it when making a decision.
- 1.6 This guidance does not stop SSSC staff or Fitness to Practise panels exercising their own judgement when reaching a decision. Each case must be assessed on its own facts and circumstances. If a decision maker decides not to follow the guidance, then they must explain their reasons for doing so in their decision.
- 1.7 We will update this guidance from time to time in light of developments in the social service sector and the law.

## **2. What standards do we expect of workers?**

- 2.1 We expect workers to meet the standards set out in the SSSC Codes of Practice for Social Service Workers and Employers (the Codes).
- 2.2 The Codes are statements that describe the standards of conduct and practice required of workers. Workers are expected to use their judgement in applying the Codes to the different situations they face in and outside of work.

## **3. Equality, diversity and inclusion statement**

- 3.1 As a non-departmental public body, the SSSC has specific duties under the Equality Act 2010 (the 2010 Act), including the Public Sector Equality Duty. This duty means we need to ensure that we take steps to:
  - eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the 2010 Act
  - advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it
  - foster good relations between people who share a relevant protected characteristic and people who do not share it.
- 3.2 The relevant protected characteristics set out within the 2010 Act are:
  - age
  - disability
  - gender reassignment
  - marriage and civil partnership
  - pregnancy and maternity
  - race
  - religion or belief
  - sex
  - sexual orientation.
- 3.3 We are committed to promoting equality and valuing diversity and inclusion. Anyone acting for us, including as part of our panels, is expected to uphold this commitment to delivering processes that are fair, transparent, objective and free from discrimination. Decision makers must also be aware of the impact that cultural differences and personal circumstances, like health, may have on a person's ability to communicate.
- 3.4 There may also be differences in how a worker uses non-verbal communication such as eye contact, gestures and facial expressions. For example, a worker with a sensory impairment may have difficulties in making eye contact with panel members.

- 3.5 Decision makers must keep equality, diversity and inclusion in mind when considering important issues such as demeanour, insight and apologies. For example, where a worker is communicating in a second language, they may face difficulty in how they express insight or an apology.

## **4. Human Rights**

- 4.1 The SSSC is a public authority for the purposes of the Human Rights Act 1998. We uphold and promote the European Convention on Human Rights (ECHR).
- 4.2 These articles of the ECHR are of relevance to fitness to practise processes.
- The right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law (Article 6).
  - The right to respect for private and family life (Article 8).
  - The right to freedom of thought, conscience and religion (Article 9).
  - The right to freedom of expression (Article 10).
  - The prohibition of discrimination (Article 14).
- 4.3 Decision makers must keep in mind the wider concepts of proportionality and fairness when making decisions.
- 4.4 As a public authority, the SSSC is also required to protect children's human rights in its decision making, with reference to the United Nations Convention on the Rights of the Child (UNCRC).

## **5. Trauma-Informed Practice**

- 5.1 The SSSC is committed to ensuring that the fitness to practise process is conducted in a trauma-informed way. We recognise that parties involved in the fitness to practise process may have experienced trauma.
- 5.2 Those involved in fitness to practise investigations and hearings should experience a process that takes into account the principles of:
- safety
  - trustworthiness
  - choice
  - collaboration
  - empowerment.
- 5.3 Decision makers must always keep in mind the importance of adopting a trauma-informed approach during fitness to practise proceedings. This means:
- being able to recognise when someone may be affected by trauma
  - adjusting their approach to take this into account

- responding in a way that supports recovery, does no harm and recognises and supports people's resilience.

## **6. What are the key purposes of our decisions?**

6.1 We make decisions:

- to protect the public
- to uphold the public interest
- in the interests of the worker.

6.2 Public protection is closely linked to public interest. For example, removing a worker from the Register because they have abused someone will protect individuals using social services and will also uphold public confidence in the profession.

6.3 The purpose of the decision is not to punish the worker. However, some decisions may have a punitive effect on a worker. This is because it may interfere with their ability to practise their chosen profession.

6.4 Our decisions send a message to the profession and the wider public about the standards expected and may also discourage other workers from behaving in a similar way.

### **6.5 Protecting the public**

6.5.1 We aim to protect and enhance the safety and welfare of individuals using, or who may use, social services. A decision made on the grounds of public protection must take into account the risk of harm and any actual harm caused.

6.5.2 When considering the risk of harm, many factors will influence the decision maker, including the risk of repetition, the values a worker displays and how they have reflected on their behaviour.

### **6.6 Upholding public interest**

6.6.1 Individuals using social services and their families trust workers with their health, safety and welfare, often at vulnerable times in their lives. The care that workers deliver and the behaviour they display must uphold the trust placed in them by individuals using social services and the wider public.

6.6.2 The profession's most valuable asset is its reputation and the confidence that inspires. Decisions must take into account that the reputation of the profession is more important than the interests of any one individual worker.

6.6.3 The public should have confidence in us as the regulator to take appropriate action when necessary and decisions should also take account of their impact on the public's view of the SSSC.

6.6.4 The Codes set out the standards workers should maintain. We expect workers to meet the standards set out in the Codes. A failure to

follow the Codes may present a risk to public protection and damage the reputation of the profession. Repeated or serious failures are more likely to do this.

- 6.6.5 Our decisions uphold the standards set out in the Codes. Decisions illustrate how the Codes are applied. This helps the workforce, individuals using social services, their carers and the wider public understand what conduct falls below the standards expected of workers.

## 6.7 **Interests of the worker**

In some temporary order cases, we make decisions in the interests of the worker.

# 7. **What approach should be taken when making a decision?**

## 7.1 **Standard of proof**

We operate to the civil standard of proof, which is the balance of probabilities. Saying something is proven on the balance of probabilities means that it is more likely than not to have occurred. Temporary order hearings are different. The facts are not being tested at this stage. Instead the test is whether or not, on the face of it, there is a case to answer. This is known as the prima facie test.

## 7.2 **Fairness**

There is an overarching duty to act fairly when making a decision. What is fair may change over time and will depend on the facts and circumstances of each case.

## 7.3 **The seriousness of the behaviour**

- 7.3.1 The seriousness of the behaviour is an important factor. It will depend on the facts and circumstances of a particular case and the values the behaviour indicates.
- 7.3.2 Some particular types of behaviour are likely to indicate that more serious action may need to be taken. Further guidance can be found at paragraph 10.

## 7.4 **Proportionality**

- 7.4.1 Decisions must be proportionate. Proportionality requires the decision maker to carry out a balancing exercise between the interests of the worker and the interests of the wider public. When carrying out this balancing exercise, the decision maker must think about the seriousness of the behaviour and the aggravating and mitigating factors relevant to the case.
- 7.4.2 Any decision that restricts a worker's ability to work must be no more than is necessary to protect the public and the public interest. When considering the outcomes available, the decision maker must start at

the outcome that is least restrictive to the worker. If this outcome does not adequately address the public protection and public interest concerns, the decision maker should move onto the next least restrictive outcome.

- 7.4.3 Having considered the interests of the worker and the interests of the wider public, a decision maker must take the course of action considered appropriate, even though this may lead to reputational or financial difficulties for the worker.

## 7.5 **Reasons**

- 7.5.1 The decision maker must give clear reasons for the decision in every case. The reasons must allow a worker to understand why the decision was made. The decision should be written so that the worker and the SSSC are in no real doubt as to how the decision was reached.

- 7.5.2 A worker can appeal some decisions to the Sheriff Court. To help decide whether to do so, a worker needs to understand the reasons for the decision. If a worker does appeal, the reasons are essential for the Sheriff to understand how the decision was reached.

- 7.5.3 The reasons should cover:

- the factual basis of the decision, except in temporary order cases
- the legal basis of the decision
- the reasons for the decision and/or sanction, explaining the extent to which this guidance was taken into account, whether it was followed and, if not, why not.

- 7.5.4 Where a panel has made a decision, the reasons should also cover the following.

- Confirmation of whether the panel accepted any legal advice given to it by the legally qualified chair. A full and detailed explanation will be required where the panel has decided not to accept the legally qualified chair's advice.
- How the panel resolved particular points of controversy.
- The panel's conclusions on the submissions made to it by the worker and/or their representative and the SSSC.

## 8. **Aggravating and mitigating factors**

- 8.1 Decision makers must consider and balance any aggravating factors (factors not in favour of the worker) against any mitigating factors (factors in favour of the worker).
- 8.2 Public protection and upholding the public interest are the overriding aims. Mitigating factors are less likely to be relevant where there are greater public protection and public interest concerns.



- 8.3 Seriousness of the behaviour is a very important consideration. In some circumstances, the behaviour of a worker is so serious that it indicates they are not suitable to be on the Register. It may be that no number of mitigating factors will change that conclusion.
- 8.4 Decision makers should place less weight on mitigating factors where the behaviour of concern impacts the safety of individuals using social services, in comparison to conduct where the concern is more about public confidence in the profession.
- 8.5 Aggravating and mitigating factors must be considered when deciding:
- if a worker's fitness to practise is impaired
  - what sanction or outcome is appropriate.
- 8.6 A decision maker must decide if:
- the factor is present or absent
  - the factor is relevant to the matter
  - the factor mitigates or aggravates the matter, or should be considered as neutral, so is neither aggravating or mitigating.
- 8.7 The decision maker should keep in mind that the absence of certain factors is not always aggravating. For example, see the section on references and testimonials at paragraph 8.16.
- 8.8 Some common factors are:
- insight, regret and apology
  - previous history
  - circumstances leading up to the behaviour
  - length of time since the behaviour and subsequent practice
  - conduct inside or outside of work
  - duress
  - references or testimonials
  - cooperation with the SSSC
  - whether the behaviour was isolated or was part of a pattern of behaviour
  - any consequences of the behaviour
  - abuse of trust and/or power
  - any failure to act in accordance with the duty of candour.

8.9 This list shows examples, but other factors may be relevant. For further detail on each factor, see below. For factors relevant to a temporary order, see paragraph 12.

#### 8.10 **Insight, regret and apology**

8.10.1 Insight is the expectation that a worker will be able to stand back and accept that, with hindsight, they should have behaved differently. It is also expected that they will take steps to prevent similar behaviour happening again.

8.10.2 Individuals using social services should be protected from similar events happening again, and workers should take positive steps to learn from their mistakes. The insight shown by the worker is an important factor in this.

8.10.3 In considering this, the decision maker must also remember that the worker has the right to deny any allegations. The fact that a worker denies allegations which are later found proven should not generally be held against them as an aggravating factor.

8.10.4 Decision makers should see open and honest explanations for what has happened, expressions of empathy and an apology as mitigating factors.

8.10.5 Where a worker has apologised for something that has happened, this does not always mean that they admit the facts and/or impairment. A decision maker should assess carefully the nature of the admission to assess whether it amounts to an admission of the facts and/or impairment.

8.10.6 It is likely to be considered a mitigating factor if the worker has demonstrated insight. Examples of insight include where the worker has:

- taken steps to address the concern(s), such as undertaking further training and learning
- apologised at an early stage of the process
- admitted the facts
- accepted they should have behaved differently and is able to show understanding and empathy.

8.10.7 A worker who lacks insight may:

- fail to apologise or accept their mistakes, including failing to be open and honest during the SSSC's investigation and any panel hearing
- offer to take steps to address the concerns but fail to do so, or only do so when prompted immediately before or during a hearing

- fail to develop insight at the right time, for example insight is only displayed immediately before or during a hearing.

- 8.10.8 A decision maker may be able to infer insight, or a lack of insight, based on what a worker has said in written correspondence or during a hearing.
- 8.10.9 The decision maker must keep in mind the equality, diversity and inclusion statement set out at paragraph 3.5 when considering insight, regret and apology.
- 8.10.10 When assessing insight, the focus must be on what the worker says, not the way in which they say it.
- 8.10.11 Where a worker does not demonstrate any insight, or only demonstrates very limited insight, this should be marked as a neutral or absent factor, depending on the circumstances, not as an aggravating factor.

## 8.11 **Previous history**

- 8.11.1 It is generally a mitigating factor that the worker has not previously been found by the SSSC to have had their fitness to practise impaired. The extent to which this should be considered a mitigating factor will depend on the length of time the worker has been working in a role that requires registration.
- 8.11.2 In general terms, the longer a worker has worked in a role that requires registration without any adverse findings being made against them, the more mitigatory this factor is likely to be. Where a worker has only been employed for a short period of time in a role that requires registration, this factor is likely to be neutral.
- 8.11.3 This factor will also carry less weight where the behaviour of concern is particularly serious or impacts the safety of individuals using social services.
- 8.11.4 A decision maker is likely to consider previous criminal or regulatory findings (whether by the SSSC or another regulatory body) as an aggravating factor.

## 8.12 **Circumstances leading up to the behaviour**

- 8.12.1 A decision maker must carefully examine the circumstances leading up to an incident. Evidence that behaviour happened in extreme circumstances that no longer exist may provide a decision maker with some reassurance. However, the likelihood of extreme circumstances happening in the future will still be relevant to assessing risk.
- 8.12.2 These are some examples of factors that may be mitigating.
- The behaviour was spontaneous.
  - A lack of experience. Whether a worker's experience level is a mitigating factor will depend on the nature of the behaviour. It also depends on whether the behaviour is something that is

likely to improve with experience or reveals a significant problem with the worker's values.

- A lack of support at work such as training or supervision may be a mitigating factor. Any failure by an employer should be considered against the nature of the behaviour and any serious concern about the worker's values. It is also important to remember that a worker remains personally responsible for their own behaviour.
- Personal circumstances such as work issues, family life or health problems. For these to be mitigating, the worker would be expected to show the impact of the issue on their behaviour. The worker has the responsibility for establishing this and may provide medical evidence. Health can be a mitigating factor but only if the health issue itself does not impair fitness to practise.

8.12.3 These are some examples of factors that may be aggravating.

- The degree of disregard for the Codes shown in the worker's behaviour.
- If the behaviour was planned or deliberate.
- Where the behaviour relates to a value rather than practice issue, such as dishonesty or discriminatory conduct.
- Where the behaviour deliberately exploited or abused a particular vulnerability of an individual using social services, or where a particular vulnerability increased the likelihood of serious harm being caused as a result of the worker's conduct.
- A failure to raise concerns. Workers have a responsibility to raise concerns, particularly where the concern presents a risk of harm to individuals using social services or the concern has been present for a long time.
- If the worker is experienced, well trained or holds a senior position, this is likely to be an aggravating factor.

## 8.13 **Length of time since the behaviour and subsequent practice**

8.13.1 A decision maker may take some reassurance if the behaviour occurred in the distant past and there has been no repeat of similar behaviour.

8.13.2 Any evidence the worker can show of good practice since the behaviour, with particular reference to the Codes, will be significant. If a worker has been subject to a temporary suspension order and has not been able to work in the sector, the lack of good practice is not aggravating. The decision maker should simply find this factor as absent.

8.13.3 Where a worker has indicated that they have retired, or intend to retire in the near future, this should not be considered to be a mitigating factor.

## 8.14 **Conduct inside or outside of work**

- 8.14.1 Most behaviour that a decision maker considers will have taken place at work. Where the behaviour is directly linked to individuals using social services, and caused actual harm or gave rise to an increased risk of harm, this is likely to be an aggravating factor.
- 8.14.2 It is unlikely that the fact that behaviour that took place in work will be mitigating.
- 8.14.3 The fact that behaviour took place outside work will not usually be mitigating but may be depending on the circumstances. In the majority of cases, the fact that behaviour took place outside of work is likely to be irrelevant or neutral.
- 8.14.4 For example, certain behaviour that may occur in a worker's personal life, such as domestic abuse and other violent, discriminatory or sexually inappropriate conduct may indicate deep-seated attitudinal issues capable of placing individuals using services at an increased risk of harm. Such behaviour may also have a significant adverse impact on the reputation of the social service profession. In cases like this, the fact that the behaviour took place outside of work is unlikely to be relevant, given concerns over the worker's values would exist either way.
- 8.14.5 A decision maker should carefully consider the facts and circumstances of the behaviour and where it took place and decide whether or not this raises concerns about the values indicated by the behaviour and how that relates to the worker's role.

## 8.15 **Duress**

To be mitigating, there will need to be evidence that the worker was forced, induced or coerced into a particular behaviour. If there is no evidence of duress, this factor should be considered absent.

## 8.16 **References or testimonials**

- 8.16.1 A worker may present references and testimonials to support their professional standing or their standing in the wider community. Positive references and testimonials are likely to be considered to be a mitigating factor.
- 8.16.2 A decision maker should consider what weight, if any, to give to these documents taking the following factors into account.
  - Whether the reference or testimonial is genuine. If the reference is genuine, it may be:
    - signed, or from a professional email address
    - on headed paper (where appropriate)
    - in the language and style expected of the author

- capable of being verified, in that contact details of the person providing the reference are available.
  - Whether the author was fully aware of the nature of the allegations faced by the worker.
  - The extent to which the views expressed are supported by other evidence.
  - The length of time the author has known the worker.
  - How recently the author has had experience of the worker's behaviour or practice at work.
  - The relationship between the author and the worker. For example, is the author a senior member of staff or does the author have a potential conflict in providing a testimonial?
- 8.16.3 The decision maker should be aware that the quantity and quality of references or testimonials will vary from case to case. Not all workers will produce references and testimonials and there may be legitimate reasons for this. For example, workers who may have only recently started working in Scotland might find it more difficult to obtain references and testimonials.
- 8.16.4 The decision maker must keep in mind the equality, diversity and inclusion statement set out at paragraph 3 when considering references and testimonials.
- 8.16.5 If a worker does not provide references and testimonials, this should be considered as an absent factor.

## 8.17 **Cooperation with the SSSC**

- 8.17.1 Cooperation with the SSSC's processes is a mitigating factor. There will be different levels of cooperation in each case. Cooperation includes:
- providing detailed comments in response to any allegations
  - making early admissions
  - engaging in any meaningful way with the process
  - providing documents or other information within appropriate timescales.
- 8.17.2 If a worker fails to be open and honest during the SSSC's investigation or otherwise disrupts an investigation by, for example, putting pressure on witnesses not to cooperate, or failing to comply with a Case Management Meeting direction, this is likely to be aggravating.
- 8.17.3 As a worker has a right to deny allegations, it is possible that a worker can cooperate with the process without admitting the allegations.

- 8.17.4 Where a worker does not engage at all with an investigation, this is not an aggravating factor. The factor should be considered absent.

## 8.18 **Isolated incident or a pattern of behaviour**

- 8.18.1 A decision maker must consider whether the worker's behaviour involved a one-off incident or was part of a pattern of conduct. Generally, if the behaviour only happened once, this is mitigating, unless the behaviour is particularly serious.
- 8.18.2 A pattern of behaviour will generally involve similar types of conduct, which occurred over a period of time. Depending on the context and circumstances, this could include conduct that took place during a single day, or across several weeks, months or even years.
- 8.18.3 The nature of the conduct and the circumstances in which it arose are critical in assessing whether the conduct is similar.
- 8.18.4 A pattern of behaviour is likely to be aggravating, especially if the same type of behaviour is repeated. A significant pattern of low-level behaviour can also be an aggravating factor.
- 8.18.5 It can also be a further aggravating factor if support has been provided to the worker, such as training provided by an employer, and yet the worker has continued to behave in a manner that falls short of the standards as set out in the Codes.
- 8.18.6 If there are multiple instances of behaviour that is of concern which are not similar, this is likely to be a neutral factor, as this is not a pattern of similar behaviour or an isolated incident.

## 8.19 **Consequences of the behaviour**

- 8.19.1 The consequences of behaviour are relevant. To decide if this factor is aggravating or mitigating, a decision maker should consider the impact on the victim, including the level of actual harm and potential harm. If there is evidence the behaviour would not have caused direct or indirect harm, then this is likely to be a mitigating factor.
- 8.19.2 A decision maker should understand that some cases may involve serious behaviour but cause no harm while other cases may involve less serious behaviour that causes significant amounts of harm.
- 8.19.3 In cases where the public interest is acute, this factor may be aggravating and carries significant weight even where the worker's behaviour is relatively minor.

## 8.20 **Abuse of trust and/or power**

- 8.20.1 Individuals using social services, their families, employers and the public trust workers to provide an acceptable standard of care to those using services.
- 8.20.2 An abuse of trust and/or power can occur when a worker exploits a position of trust or authority for their own personal gain, or for other reasons personal to them, often resulting in harm or loss to others.



- 8.20.3 Any abuse of trust and/or power is likely to be considered to be an aggravating factor.
- 8.20.4 In assessing this factor, decision makers should consider:
- whether the behaviour amounts to a fundamental failure to follow the Codes
  - the nature and extent of the relationship between the worker and the people who were affected by the behaviour
  - the vulnerabilities of any person, or group of people, affected, or potentially affected, by the behaviour
  - the nature and extent of any personal gain obtained by the worker as a result of the behaviour in question.
- 8.20.5 Most cases involving behaviour at work will involve a breach of the trust placed in the worker by their employer and/or people who use services. Decision makers should be aware that not every breach of trust amounts to an abuse of trust.
- 8.20.6 If there has been no abuse of trust, then this should be considered as an absent factor.

## 8.21 **Not acting in line with the duty of candour**

- 8.21.1 Acting in an open manner when things go wrong is essential when complying with the duty of candour, which is a legal duty that applies to organisations and, in turn, staff working in social services in Scotland. The Codes reflect this duty, placing an obligation on workers to be open and honest with an employer, individuals using social services and carers when practice has or may have caused harm or loss.
- 8.21.2 Where there is a failure by a worker to act in accordance with the duty of candour, this should be viewed as an aggravating factor.
- 8.21.3 Where the duty of candour requirement has been complied with, then this should be considered as a neutral or absent factor.
- 8.21.4 As noted at paragraph 8.10.3, the fact that a worker denies allegations which are subsequently found proven, on the balance of probabilities, should not generally be held against them as an aggravating factor, or be viewed as a failure to act in accordance with the duty of candour.

## 9. **Criminal convictions**

- 9.1 A decision maker should not rely on the sentence imposed in a criminal court as a definitive or reliable guide as to the seriousness of the behaviour.
- 9.2 There may have been specific personal mitigation considered in the criminal court that carries less weight in a professional regulatory context due to the different public interest test that applies. This is particularly relevant in cases



involving a victim who is an individual using services, or where the offence took place in the course of the worker's employment.

- 9.3 Decision makers must not seek to challenge or reinvestigate a criminal conviction or assess the evidence which led to the conviction. The role of the decision maker is to consider whether the conviction is sufficient for there to be a finding of current impairment, taking into account all of the other relevant factors as outlined in this guidance.
- 9.4 When considering a case where the worker has been convicted and is still subject to a criminal sentence (including a suspended sentence of imprisonment, or a community penalty), decision makers should take account of the general principle that, where a worker has been convicted of a serious criminal offence, or offences, they should not be allowed to resume working in a role that requires registration until they have completed that sentence. Only where there are circumstances which clearly justify a different course of action should this approach be taken (for example, time allowed by the court for payment of a fine, or disqualification from driving).

## **10. Cases where more serious action may be required**

- 10.1 Certain types of cases may need more serious action. This is because the overarching need to protect the public and/or the public interest (which includes the reputation of the profession) means that mitigation is less relevant in these types of cases.
- 10.2 This section provides examples of certain types of behaviour which are viewed as more serious, because they give rise to greater concerns about the risk that may be posed to individuals using services and/or the wider public interest if a worker is found to have behaved in one or more of the manners detailed below.
- 10.3 The following types of cases are considered to be more serious and are more likely to lead to refusal of an application to register, temporary orders being imposed and removal. This list shows examples but will not include every possible type of case.
- 10.4 However, simply because a worker's conduct may fall within one or more of the categories of conduct detailed below, does not automatically mean that the behaviour should be viewed as being very serious.
- 10.5 Decision makers should take a nuanced approach to cases of this nature, assessing all the relevant context and circumstances before reaching a determination on the seriousness of the conduct. They should set out this decision clearly in written reasons, with specific reference to the behaviour, explaining why it is serious.
- 10.6 **Sexual misconduct and sexual offences**
- 10.6.1 This covers a wide range of conduct including:
- sexual harassment
  - sexual assault

- sexual misconduct with individuals using social services, their carers and relatives, or within the workplace.

10.6.2 The behaviour is particularly serious if the worker abuses a position of trust or power by, for example, establishing a sexual relationship with an individual using social services.

10.6.3 Decision makers must pay specific attention to behaviour that led to a worker being subject to notification requirements in relation to sexual offences. This is because there is not only a risk to public protection but also an impact on public confidence in having such a worker on the Register.

## 10.7 **Sexual misconduct and/or offences of a sexual nature involving children and young people**

10.7.1 This covers conduct including:

- engaging in a sexual relationship with a child or young person
- sexual abuse of children
- being involved in the creation, possession and/or distribution of indecent images of children.

10.7.2 As with paragraph 10.6.2 above, the behaviour is particularly serious if the worker abuses a position of trust by, for example, establishing a sexual relationship with a young person that they have caring responsibilities for.

10.7.3 Any behaviour relating to the conduct detailed at 10.7.1 above is a matter of serious concern because it breaches public trust and undermines public confidence in the profession. Such behaviour is likely to lead to removal being the only appropriate and proportionate sanction.

10.7.4 As with paragraph 10.6.3 above, decision makers must pay specific attention to behaviour that has led to a worker being subject to notification requirements in relation to sexual offences.

## 10.8 **Dishonest conduct**

10.8.1 Dishonesty can be particularly serious because it may undermine trust in social services. The public, including individuals using social services, must be able to place reliance on the integrity of workers.

10.8.2 Examples of dishonesty include:

- theft
- fraud or embezzlement
- lying about whether a work task has been done
- asking colleagues and/or an individual using social services to lie

- falsifying or improperly amending records relating to individuals using social services
  - providing false references and/or qualifications
  - including inaccurate or misleading information on a CV or application form.
- 10.8.3 Workers are expected to be open and honest with everyone involved in the delivery of care. Decision makers must treat very seriously any findings that a worker took deliberate steps to avoid being open and honest with individuals using social services or took steps to prevent others from being open and honest. Decision makers should consider more severe sanctions when dealing with cases of this nature.
- 10.8.4 In every case, the decision maker must carefully consider the nature of the dishonest conduct. Dishonest conduct can take various forms, some destroying trust instantly, others undermining it to a greater or lesser extent.
- 10.8.5 The following are examples of dishonest conduct that are particularly serious.
- Deliberately covering up when things have gone wrong, especially if this could cause harm to individuals using social services.
  - Where there is a misuse and/or an abuse of power.
  - Where individuals using social services are victims of the dishonest conduct, or where the worker has put pressure on individuals using social services to lie on their behalf.
  - Where the worker has gained personally from the dishonest conduct.
  - Where there is a premeditated, ongoing pattern of dishonest conduct, particularly where the worker has had opportunities to correct the course of conduct and has not done so.
- 10.8.6 Dishonest conduct will generally be less serious in cases where the factors at 10.8.5 are not present, and some or all of the following factors are present.
- The dishonesty only occurred on one occasion.
  - The dishonesty was spontaneous and occurred without any prior planning.
  - The worker obtained no direct personal gain from the dishonest conduct.
  - No harm or risk of harm was caused to individuals using social services as a result of the dishonesty.
  - The worker admitted their dishonesty at an early stage.

**10.9 Discrimination against individuals using social services, colleagues or other people**

10.9.1 Workers are expected to treat all individuals fairly and equally.

10.9.2 More serious outcomes are likely to be appropriate where the worker's conduct involves discrimination with reference to the protected characteristics as set out at paragraph 3.2 above.

10.9.3 Discriminatory conduct undermines public confidence in the social service profession and may present a significant risk of harm to individuals using social services. Discriminatory conduct also gives rise to significant concerns about the personal values held by the worker.

10.9.4 Examples of discriminatory conduct include:

- treating an individual using social services or carers differently or worse than others because of who they are and/or the personal beliefs they hold
- making inappropriate or abusive comments directed towards an individual or group of people targeted at that individual or group of people's protected characteristic(s), whether in person or online
- refusing to provide a service to an individual using social services because of who they are and/or the personal beliefs that they hold
- punishing an individual using social services in some way for complaining about discriminatory conduct.

**10.10 Failing to provide an acceptable level of care**

10.10.1 Cases in this category are where a worker has not acted in the best interests of an individual using social services and has provided care that falls well below the professional standard expected.

10.10.2 A particularly important consideration is whether the worker has shown insight into these failings or has been able to improve their practice by taking remedial steps. Where insight is present and/or remedial steps have been taken, it is likely that a sanction other than removal will be appropriate.

10.10.3 There are some cases where a worker's failings cannot be remedied. This is because they are so serious or persistent that, despite steps subsequently taken, action is needed to maintain public confidence. This might include when a worker knew or should have known they were causing harm to an individual using social services and should have taken steps earlier to prevent this.

**10.11 Abuse of a position of trust, abuse of power or violation of the rights of individuals using social services**

10.11.1 Social service work relies on a caring and professional relationship in circumstances in which individuals using social services have little choice but to be trusting. Individuals using social services rely on a worker being trustworthy. They have the right to be protected from a worker who abuses this trust and/or the power that they may have over an individual using social services. This abuse may be for sexual purposes, financial gain, or for some other purpose against the interests of an individual using social services.

10.11.2 Workers have privileges which society has given them on the understanding that they will be used responsibly and for legitimate professional purposes. A worker who abuses the trust and power which society places in them will place themselves at risk of losing the privileges that come with registration. This could include, for example, the respect gained from that position, the right to work with individuals using social services and the ability to be employed in the profession.

10.11.3 Workers must not use their professional position to pursue a sexual or improper emotional relationship either with someone who currently or has previously used services or with someone close to them.

#### 10.12 **Behaviour that is fundamentally incompatible with professional registration**

A worker's behaviour, values or attitudes may identify them as being unfit to be a member of a caring and responsible profession such as violent behaviour or physical or emotional abuse. This may be demonstrated by a serious or persistent contempt for the safety, rights and dignity of others or by serious criminality such as violent behaviour.

# Part B – Types of decision

## 11. Applications to register

- 11.1 This section is about people applying to register with the SSSC. The decision maker needs to consider the general principles in Part A and take the following matters into account.
- 11.2 The SSSC must carefully consider applications to make sure only the right people are on the Register. Although public protection concerns are important to application decisions, application issues may be about historic behaviour which means that public interest may be the more important consideration.
- 11.3 The decision maker needs to keep in mind the values underlying the behaviour and whether any mitigation minimises the risk of repeated behaviour so that the public protection concern is reduced. The decision maker should also consider any circumstances that led to the behaviour occurring and whether a recurrence of these circumstances mean the worker would be at risk of repeating the same or similar behaviour.
- 11.4 Some behaviour, even if historical, may be so serious that it is still damaging to the reputation of the profession and to the confidence people have in social services. In these cases, it may be appropriate to refuse a worker's application to register.
- 11.5 The decision maker should consider that:
- the profession's most valuable asset is its reputation
  - the reputation of the profession is more important than the interests of any individual worker
  - of all the interests that need to be weighed up when determining a worker's fitness to practise, the overriding interest is maintaining public confidence in the profession
  - when deciding if a worker's fitness to practise is impaired, the same standards must be applied to a worker applying to join the Register as would be applied to someone who is already registered
  - the passage of time might reduce public protection concerns.
- 11.6 **Possible outcomes**
- 11.6.1 SSSC staff can:
- grant registration
  - grant registration subject to condition(s)
  - refer an application for registration to a panel.
- 11.6.2 A panel can:
- grant registration

- grant registration subject to condition(s)
- refuse registration.

## **11.7 Grant registration**

- 11.7.1 The decision maker needs to be satisfied when granting registration that any risk to public protection is low or being managed. The decision maker also needs to be satisfied that, despite the behaviour, there would be minimal damage to the reputation of the profession if the worker was registered.
- 11.7.2 It is likely that a worker's insight and remedial steps since the behaviour will be key factors in deciding whether to grant registration. A worker who shows limited or no understanding of the concerns is unlikely to be granted registration.

## **11.8 Grant registration subject to condition(s)**

A decision maker may decide a person should be registered subject to conditions that protect members of the public and/or maintain the public interest. Detailed guidance on conditions is at paragraph 15.

## **11.9 Refuse registration**

- 11.9.1 A panel is likely to refuse an application if it is not satisfied that a worker is fit to practise and there are no conditions that protect members of the public and/or maintain the public interest.
- 11.9.2 Refusal of a worker's application will prevent them from working in their chosen role. Following a refusal of an application for registration, a worker cannot apply again for registration for a period of two years unless the only reason for refusing the application was that the worker was not fit to practise due to their health.

## **11.10 Qualification conditions**

Some parts of the Register require workers to achieve certain qualifications. If the worker does not have the required qualification(s), their registration can only be granted subject to the condition that they achieve the qualification(s) within the required timescale. These conditions may be additional to any other condition required. The decision maker must be aware of any qualification requirement before making a decision.

# **12. Temporary orders**

- 12.1 This section applies to workers registered with the SSSC.
- 12.2 The SSSC may receive information about a registered worker that raises serious concerns about their fitness to practise. In these cases, a temporary order restricting the worker's practice may be required while the SSSC carries out the investigation. The decision maker needs to consider the general principles in Part A, but they must not consider the aggravating and mitigating factors at paragraph 8, as sanction is not being considered at this stage.



12.3 A decision to impose a temporary order is likely to be made at an early stage in the case. Often a decision maker will need to make a decision on much less information and evidence than will be available when making a final decision. The decision maker must decide on the face of it, whether there is a case to answer and then assess the risk based on the information available at the time.

12.4 The decision about a temporary order will depend on the particular facts and circumstances of each case. The decision maker should consider:

- the seriousness of the allegations
- the likelihood of the alleged behaviour being repeated
- the severity of the harm or risk of harm if the alleged behaviour is repeated
- the effect on public confidence in the integrity of the regulation of the social service profession
- any other steps which could be taken to protect against the risk of the harm
- the hardship which may be caused to a worker by a temporary order
- the assurance about the worker that may be taken by a prospective employer or individual using social services if the worker remains able to practise without restriction.

This list shows examples but there may be other factors a decision maker takes into account.

12.5 When imposing a temporary order, the decision maker should be satisfied that, in all the circumstances, there may be impairment of the worker's fitness to practise which:

- poses a real risk to members of the public and/or
- adversely affects the public interest and/or
- adversely affects the interests of the worker.

12.6 After balancing the interests of the worker and the interests of the public, the decision maker should be satisfied that an order is necessary to protect against the risks identified at paragraph 12.5.

## 12.7 **Possible outcomes**

### 12.7.1 **No order**

If a decision maker decides there is not enough information to make an informed assessment or that a temporary order would be disproportionate to the harm that is being protected against, then they must not impose an order.

### 12.7.2 **Temporary conditions order**



If a decision maker decides it is necessary to impose a temporary order, they must first consider the least restrictive temporary order. This is a temporary conditions order. This order would allow the worker to continue working until the final outcome of the case. Detailed guidance on temporary conditions is at paragraph 15, with paragraph 15.5 being particularly relevant.

#### **12.7.3 Temporary suspension order**

A temporary suspension order will prevent a worker from working on the part or parts of the Register they are registered on until the outcome of the case. This may lead to the worker suffering from financial and/or reputational damage but often a temporary suspension order will be the only way to protect the public, maintain the public interest or act in the worker's best interests.

#### **12.7.4 Temporary conditions and suspension order**

There may be exceptional cases where both types of temporary order are appropriate. A decision maker must clearly detail in their reasons why they have imposed both orders.

### **12.8 Length of temporary order**

12.8.1 When imposing a temporary order, the decision maker must consider the impact the order will have on the worker and the length of time needed to complete the investigation.

12.8.2 The length of the order will depend on the facts of the case and the decision maker should consider:

- how much information is currently available
- how much information is likely to be needed to fully consider the allegations
- the likely number of witnesses that require to be spoken to
- the likely length of time any investigations by other bodies, such as the police, will take to complete
- the time needed to proceed to a final hearing
- the prejudice to the worker.

### **12.9 Reviews of temporary orders**

12.9.1 A case may not conclude within the duration of a temporary order and in these cases the SSSC may seek a further order. This may be because:

- further allegations have emerged during the investigation
- the level of detail and information received is greater than expected at an earlier stage

- there have been difficulties in securing information or cooperation of witnesses
  - investigations by other bodies have still to conclude.
- 12.9.2 A review of a temporary order is intended to be a different exercise from the initial consideration of whether a temporary order is necessary.
- 12.9.3 The decision maker will need to re-consider the factors at paragraphs 12.4 to 12.6 and decide whether the temporary order is still necessary.

## **13. Impairment cases**

- 13.1 This section applies to workers registered with the SSSC.
- 13.2 When a worker's fitness to practise is impaired, the SSSC will decide what action, if any, is necessary to protect the public and maintain the public interest.
- 13.3 As detailed at paragraph 12, a worker may have a temporary order imposed while the SSSC investigates the matter. This factor should not influence the decision maker when considering an impairment case.
- 13.4 The guidance contained in Part A applies to impairment cases.
- 13.5 The decision maker must start by considering the least restrictive outcome first and working upwards until they reach the least restrictive outcome that adequately addresses the behaviour. Reasons must be given as to why each outcome was not appropriate.
- 13.6 If a sanction is considered appropriate, the fact that the worker has indicated they no longer require registration is not relevant.
- 13.7 A decision maker may:
- take no further action
  - impose a warning of up to five years
  - impose condition(s)
  - impose a warning and condition(s)
  - impose a suspension order for up to two years
  - impose a suspension order and condition(s)
  - impose a removal order.
- 13.8 **No further action**
- 13.8.1 Where a worker's fitness to practise is impaired, it will usually be necessary to take action to protect the public or because it is in the public interest or in the interests of the worker.

- 13.8.2 The decision maker will have taken account of the worker's level of insight and any remediation when deciding if their fitness to practise is impaired. Therefore, these mitigating factors are unlikely on their own to lead to taking no further action.
- 13.8.3 There may be exceptional circumstances to justify a decision maker taking no further action where a finding of impairment has been made. Exceptional circumstances are unusual, special or uncommon. Such cases are likely to be very rare. The decision maker must be able to fully and clearly explain:
- what the circumstances are
  - why they are exceptional
  - how the exceptional circumstances justify taking no further action.

## 13.9 **Warning**

- 13.9.1 A warning is the least restrictive sanction. It does not restrict the worker's ability to work in the sector but is recorded on the Register and published on the SSSC's website and on the SSSC's public facing register. It can be imposed for a period of up to five years and is disclosed to an employer enquiring about the worker's fitness to practice history.
- 13.9.2 A warning may be appropriate where some or all the following factors are present.
- The behaviour is less serious in nature and the decision maker wishes to mark that the behaviour was unacceptable and must not happen again.
  - There was no or very limited harm or risk of harm caused to individuals using social services as a result of the worker's conduct.
  - The worker's character and circumstances are such that, whatever the history, there is no or a very limited risk to the public or individuals using social services, as the worker will be able to continue to practise without any restriction.
  - The worker has shown insight.
  - There is evidence that the behaviour has been corrected and there has been no repetition.
- 13.9.3 In cases that are restricted to a worker's health, a warning is unlikely to help manage the health condition meaning it is unlikely to be appropriate. If a warning is given the decision maker must clearly set out their reasons and explain how public protection will be achieved.
- 13.9.4 In relation to the duration of the warning to be imposed, as a starting point decision makers should consider imposing a warning for a period of one, three or five years. Decision makers are not bound by

these suggested time periods and may choose to impose a warning for a different duration.

- 13.9.5 Imposing a warning for a period of one year may be appropriate for an isolated incident of relatively low seriousness where the warning marks that the behaviour was unacceptable and sends a message about the professional standards expected of workers.
- 13.9.6 Imposing a warning for a period of three years may be appropriate for more serious concerns, to maintain public confidence and to send a message about the professional standards expected of workers. The period also allows more time for the worker to demonstrate that they have successfully addressed any risk of repetition by continuing to work without any further behaviour of concern occurring.
- 13.9.7 Imposing a warning for a period of five years may be appropriate for serious cases that have fallen only marginally short of requiring a suspension or removal order, to maintain confidence in the profession and, where it is necessary, to send a clear signal about the standards expected. The timeframe presents an extended period over which the worker must demonstrate that there is no risk of repetition.

#### 13.10 **Conditions**

The purpose of conditions is to protect individuals using social services and the public interest. Conditions restrict a worker's practice or require them to do something. In many cases, the purpose of conditions is to help the worker to deal with their health issues and/or remedy any deficiencies in their practice, while protecting the public. Detailed guidance on conditions is at paragraph 15.

#### 13.11 **Warning and conditions**

Where a warning is appropriate but does not effectively address a particular area of concern then a combined sanction of warning and conditions may be imposed.

#### 13.12 **Suspension**

- 13.12.1 Suspension from a particular part of the Register prevents a worker from working in that role while suspended. The decision maker can use a suspension to send a message to the worker, the profession and public about behaviour that is of significant concern.
- 13.12.2 A suspension order may also have a punitive effect, in that it prevents the worker from working during the suspension. This is not the intention of the order but may be one of the effects.
- 13.12.3 A decision maker can suspend a worker for a period of up to two years. A suspension order must state how long it will last.
- 13.12.4 A suspension order may be appropriate:
  - where the impairment is serious, the departure from the Codes is marked or the risk of harm to public protection or public

interest is significant, although not so serious as to justify removal

- where the worker's failings or health condition are realistically capable of being remedied by temporarily being restricted from working
- where there are no underlying issues about the worker's values and they have shown a significant and developed sense of insight.

### 13.13 **Suspension and Conditions Order**

If a suspension order is an appropriate sanction but it does not effectively address a particular area of concern with a worker's practice or knowledge, then a combined sanction of a suspension and conditions order may be imposed. This may allow for more effective protection of the public.

### 13.14 **Removal on grounds of health**

13.14.1 Although usually reserved for the most serious matters, removal may also be appropriate where fitness to practise is impaired by health only.

13.14.2 Ordinarily, a removed worker's entry will show on our Register as removed and they will be unable to apply to be restored to the Register until three years have passed. In health cases only, the details behind the decision to remove a worker will not be available to the public, and the worker can apply to be restored to the Register at any time.

13.14.3 Where a worker is removed from the Register in accordance with:

- Rule 29.4 of the SSSC Fitness to Practise Rules 2016 (as amended), where a panel has found the worker to be unfit to plead
- Rule 42.5 of the SSSC Fitness to Practise Rules 2016 (as amended), relating to non-cooperation with a SSSC investigation involving the worker's health

the same principles apply as are detailed at paragraph 13.14.2.

### 13.15 **Removal**

13.15.1 Removal is the most serious sanction. A removal order results in the removal of the worker's name from the Register. A removal order must be used where there is no other way to protect the public or where confidence in the social service profession would be undermined by allowing the worker to remain on the Register. Even if the worker does not present a risk to the public, a removal order may be necessary to maintain public confidence in the profession.

13.15.2 See paragraph 10 for the types of cases that may indicate removal is the appropriate sanction.

13.15.3 A removal order may be appropriate when the worker's behaviour is fundamentally incompatible with being a social service worker (as referenced at paragraph 10.12) and/or involves any of the following.

- Serious, deliberate, grossly negligent or reckless act(s) or omission(s).
- A significant abuse of trust and/or power.
- Persistent lack of insight into seriousness of actions or consequences.
- A serious departure from the relevant professional standards set out in the Codes.
- A pattern of unacceptable behaviour.
- No evidence that there is likely to be remediation (action to correct behaviour).

#### 13.16 **Temporary orders following an impairment case**

13.16.1 A decision to place a sanction on a worker's registration will not come into force until the appeal period has expired or until an appeal is heard by the court, unless the sanction is a suspension order. Decision makers should consider if a temporary order is needed during this period. Guidance on this is available at paragraph 12.

13.16.2 If a decision maker decides that a temporary order is not needed, then consideration should be given to revoking any current temporary orders imposed on the worker's registration.

# Part C – Applications to be restored

## 14. Restorations

- 14.1 This section applies to people the SSSC has removed from the Register. The general principles at Part A apply to applications to be restored to the Register.
- 14.2 Where a worker was removed only on the grounds that their fitness to practise was impaired due to health, or due to the reasons detailed at paragraph 13.14.3 above, they can apply to be restored at any time. The worker must be able to produce satisfactory evidence that the health matter has been resolved and there are no longer public protection or public interest concerns.
- 14.3 In all other cases, a worker cannot make an application until after three years from the date of removal.
- 14.4 **Material change**
- 14.4.1 To restore a worker to the Register, the decision maker must be satisfied that a material change has taken place. The material change must be relevant and significant.
- 14.4.2 The decision maker should:
- identify if there has been a material change and what that change is
  - explain how any material change addresses the previously significant public protection and public interest concerns.
- 14.5 **Additional considerations**
- 14.5.1 The decision maker must keep in mind that the removal order was issued on the basis that there was no other way to protect the public or maintain confidence in the social service profession. This is a clear indication that the behaviour was considered to be extremely serious or that there was no other way to safely manage a worker's health condition.
- 14.5.2 The decision maker must consider the original decision but the application for restoration is not an opportunity to revisit the facts that were previously decided. The decision maker cannot change what was previously found and must resist any temptation to look behind the factual basis for the decision.
- 14.5.3 The aggravating and mitigating factors outlined at paragraph 8 may be relevant, but the decision maker should look at whether these factors were present before.
- 14.5.4 The term 'material change' suggests any mitigating factors would need to be present to a significant degree and more so than previously. If factors were mitigating in the past and were not enough to lead to a sanction less than removal at the time, then it is unlikely the passage of time alone will have changed this situation. The length

of time since the worker was removed is not likely, on its own, to be considered a material change.

14.5.5 In addition, when considering material change in a case restricted to health, the decision maker will likely need to focus on the current nature and extent of the health condition, how this health condition is currently, or can be, managed and the risk of any relapse.

14.5.6 In restoring a worker to the Register, a decision maker must also be satisfied as to the level of any ongoing public protection or public interest concerns. A decision maker must remember that there may be significant public interest concerns in restoring someone to the Register who was previously found to be so unsuitable that they had to be removed.

#### 14.6 **Possible outcomes**

14.6.1 SSSC staff can:

- restore to the relevant part of the Register
- restore with conditions
- refer the case to a panel.

14.6.2 A panel can:

- restore to the relevant part of the Register
- restore with conditions
- refuse the application for restoration.

#### 14.7 **Qualification conditions**

Some parts of the Register require workers to achieve certain qualifications. If the worker does not have a required qualification(s) their registration can be granted subject to the condition that they achieve the qualification(s) within the required timescale. This may be additional to any other condition required. The decision maker must be aware of any qualification requirement before making a decision.



# Part D – Conditions

## 15. Conditions

15.1 A condition allows a worker to stay on the Register and puts measures in place to protect the public, uphold the public interest, or that are in the interests of the worker. For example, a condition may require the worker to reflect on their practice, attend training or may restrict the worker from doing a particular part of their job.

### 15.2 When is a condition appropriate?

15.2.1 A condition must only be considered when other less restrictive outcomes are not appropriate. It must adequately address the public protection and public interest concerns. Subject to the aggravating and mitigating factors, a condition may be the most appropriate outcome in cases:

- about a worker's health
- about a worker's performance, or specific areas of it.

15.2.2 Conditions may also be appropriate when the following factors are present.

- The worker shows insight.
- A period of retraining and/or supervision is the most appropriate way of addressing any failings.
- There is potential to respond positively to actions required to correct behaviour, or retraining, or to work being supervised.
- There are no underlying values issues.
- Individuals using social services will not be put at risk while the worker is in the process of carrying out the condition.
- The worker has meaningfully engaged with the SSSC's investigation, and the decision maker is satisfied that the worker will comply with the conditions.

15.2.3 Conditions may not be appropriate when the following factors are present.

- Serious dishonesty.
- Serious and repeated discriminatory conduct.
- No insight or lack of reflection.
- Denial of wrongdoing.
- Serious abuse of trust or power.

- Serious and persistent failings.
- Violent or abusive behaviour.
- Where the worker has failed to engage with the fitness to practise process.
- Other conduct which gives rise to significant concerns about the worker's personal and/or professional values.

### 15.3 **Are the conditions enforceable and workable?**

15.3.1 All conditions, including temporary conditions orders, must:

- be enforceable
- be workable
- be proportionate
- protect the public
- protect the wider public interest.

15.3.2 To achieve this, the decision maker must consider the following SMART criteria.

- **Specific** – the conditions should set out clearly what it is the worker must do to comply with the conditions. The condition must be specific to the worker and not be an excessive burden on other parties.
- **Measurable** – if a condition is not measurable then it will be impossible to assess whether the worker has complied with it. The worker must be clear on what is expected of them and the timeframes around this.
- **Achievable** – a condition must be realistic and set at the right level. This takes into account any existing qualifications, the worker's role and their experience. A condition set below the standards expected of the worker is meaningless, but a condition set excessively beyond that standard may be unfair and difficult to comply with. The condition must not be extreme. Decision makers must take steps to satisfy themselves that if a condition needs cooperation from an employer or other party that they are willing and able to do so.
- **Relevant** – the condition must be relevant to the concern. It must be written in a way that clearly sets out the benefits of the condition.
- **Time-bound** - a condition has to be set within a reasonable timeframe. The worker can work while undertaking the condition and the risks may not be fully addressed until the condition is complied with. A condition must not be so long as to create an unnecessary public protection risk but not too short as to make

it difficult for the worker to comply with the condition. The start and end date of the condition must be clear.

15.3.3 Decision makers must keep in mind that the worker may have to fund any training condition on their own. The SSSC cannot require an employer to provide training.

15.3.4 The condition applies to the individual worker, not an employer or any other third party. Decision makers must take care not to inadvertently impose a condition on a third party rather than the worker.

## 15.4 **Types of conditions**

While not an exhaustive list, and other options can be explored, these are examples of the types of condition a decision maker may consider.

- Supervision of practice – for example, requiring a worker to be closely monitored by a line manager or colleague when carrying out specific tasks.
- 1:1 meeting – for example, requiring a worker to have regular 1:1 meetings with their line manager at specified intervals and detailing what these meetings must cover.
- Restriction on practice – for example, limiting a worker's contact with individuals using social services or the type of work they carry out.
- Health conditions – for example, a requirement to provide a letter from the worker's GP/addiction services/mental health services confirming they are engaging with the service and providing an update on their progress.
- Training – for example requiring a worker to complete further training in a particular area or complete a qualification.
- Counselling and/or medical treatment – this is likely to be appropriate in cases involving a health matter and could include, for example, alcohol or drug treatment, anger management counselling etc.
- Disclosure – this is also likely to be relevant in health matters and may require a worker to disclose to their employer and/or the SSSC if a health matter recurs or gets worse.
- Reflective account – if a decision maker feels that a worker may be fit to practise but has failed to show sufficient insight into the matter being considered, they may consider asking the worker to complete a reflective account to remedy this.

## 15.5 **Temporary conditions order**

15.5.1 The sections above are relevant to temporary conditions orders and the following matters should also be considered.

15.5.2 A temporary conditions order must be considered before a temporary suspension order as it is less restrictive, allowing the worker to carry

on in employment during the investigation. Decision makers must keep in mind the difference in procedure at this stage. The focus is not on fitness to practise but on risk. No decision has been made at this stage on the facts or impairment.

- 15.5.3 Decision makers must be careful not to impose conditions which imply that the allegations have been admitted or have been proved, when this is not the case given the stage of the proceedings. Therefore, conditions that, for example, require a worker to write a reflective account and/or complete further training should generally not form part of a temporary conditions order.
- 15.5.4 The following may be appropriate types of temporary condition order.
- Limit contact with individuals using social services.
  - Make sure that a prospective employer is aware of the temporary order.
  - Limit the type of work that can be carried out.
  - One that addresses the practical arrangements needed where there is a health concern.
- 15.5.5 If a temporary condition order is not enforceable or workable and does not protect the public or the public interest, then the decision maker must then consider a temporary suspension order.
- 15.5.6 Decision makers must be careful that a temporary condition order does not have the same practical effect as a temporary suspension order. If it does, then a temporary suspension order is the appropriate order.



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