Draft Rules and Decision Guidance: Consultation analysis

INTRODUCTION

The Scottish Social Services Council (SSSC) carried out a consultation on draft revised Rules and Decisions Guidance. These documents need updated to enable the move to a fitness to practise model of regulation and also to streamline and improve existing processes. This is an analysis of the responses.

We decided to move to a fitness to practise model of regulation following a consultation in 2013. The current model of regulation is based on the concept of misconduct. The new model considers whether a worker is fit to practise and action is then taken if their fitness to practise is impaired due to conduct, deficient professional practice (previously termed competence) or health.

Part of the feedback from a number of stakeholders was that they would prefer more detail on the new model to enable them to provide fuller comment. We held a second consultation in 2015/16 on draft guidance as to how the changes would impact on stakeholders. We are using that feedback to inform how we will implement the move.

This consultation has a different focus and considers the underpinning Rules and Decisions Guidance.

EXECUTIVE SUMMARY

The consultation was available online from 1 June to 31 July 2016. The level of response was good across the consultation and engagement events. The number of survey responses was relatively low when compared with the previous consultation, however, much of the feedback was very detailed and was supported by similarly detailed feedback during the events and other discussions and meetings.

We have made a number of changes to the drafts Rules and guidance as a result of the feedback. Substantial changes have been made to wording and layout in order to:

1. improve readability, simplification, order and layout
2. correct errors and remove ambiguities
3. improve how the Rules work in practice.

Many, but not all, of the changes are set out in this analysis. The feedback about some of the key issues is highlighted first followed by a selection of other feedback and our response where appropriate. We also received comments which will be helpful during implementation of the model – we have addressed some here but others will be addressed at a later stage.

Key issues

1. Definition of impairment

1. The definition of impairment has changed: the word competence is replaced by the phrase 'deficient professional practice'. This followed

extensive discussions and correspondence with the Scottish Government to ensure that the definition fits within our legal framework.

2. The word disability has been removed as a range of stakeholders considered it to be unnecessary and that the intention of a fitness to practise regime can be achieved using the phrase 'health condition'. We agree with that view.

3. The inclusion of a criminal charge as a ground of impairment. A number of respondents disagreed that behaviour which has led to a criminal charge may lead to a finding of impairment. They noted that this could result in a matter progressing where a weak criminal charge is later dropped due to lack of evidence or witnesses retracting their statements. The worker may thereafter be subject to SSSC proceedings relating to the same complaint. They suggest that workers ought only to be subject to SSSC proceedings if a criminal charge is found proven in court. Charges which are found not guilty, not proven or which do not proceed to trial or result in a sanction ought not to form the basis of potential impairment of fitness to practice. In most cases an issue which is subject to a criminal charge will fall under the definition of misconduct. The inclusion of the word 'charge' muddies the water and leads to questions about an individual's right to a fair trial and the principle of presumed innocence.

   We have taken on board the concerns about the use of the word 'charge'. Any matters which do not result in a conviction will be dealt with under the misconduct ground. The joint Law Commission report of the Regulation of Health and Social Care Professionals 2014 endorsed the inclusion of this element in the definition of impairment and it is a model followed by a number of other regulators as set out in Appendix 1.

4. A number of respondents including Thompsons and The Law Society suggested that the word 'serious' should be added to the definition of impairment.

   We will not be introducing a seriousness test into the definition. Some, but not all regulators include the word serious. It is our view that seriousness is considered as one of many factors considered when deciding whether or not the facts amount to impairment and that there is no need to separate this out.

   We operate a screening stage when we receive referrals and this ensures that minor matters are not investigated.

2. Treatment of application cases

We asked if there was an appetite to change the test for applicant cases from whether or not the worker is fit to practise to whether or not their

fitness is impaired. There was a positive response and we have redrafted the Rules to achieve this.

Feedback was thus accorded with principles of remediation and Thompsons for example said 'Our position is that all Application hearings should proceed with the starting point being that the Registrant is, as a result of already being employed in the role and being formally endorsed by their employer, already Fit to Practise. The SSSC should then, if they wish, lead evidence to establish that this existing fitness is impaired. The hearings should not be conducted the other way around (i.e. requiring the Registrant to prove that they are fit to practise from a starting point that they are not). Under the previous procedure it was very difficult for employees to be able to establish the facts required to meet the test for registration, particularly if the allegations were complex. It was, in effect, a reverse proof, meaning the employee had to pre-empt what evidence the Council may have against them. We maintain that the burden of proof on establishing the facts should be with the SSSC but the Registrant's fitness to practice should be a rebuttable presumption.'

This change has also removed the need for a separate process for application cases and thus simplified the Rules.

3. Removal on grounds of health

A number of respondents challenged the possibility of a removal order in health cases. These included Unison, whose concerns were around proportionality and the fact that this should only be used where there was no prospect of the worker returning to health. Thompsons considered that removal placed a barrier in the way of a worker removed on grounds of heath from returning to the profession and that we should follow a model whereby the worker is suspended and at the end of that period a review considers any final sanction which may include removal.

We disagree with this. Removal is only one option open to Panels. We would expect the Panel to take into account all of the relevant factors and that the best interests of the worker would be one of these. It is not expected that this will be a frequently used sanction in health cases. Panels can suspend for fixed periods in which case the matter would come back for review as suggested above. Some parts of the social service workforce is movable and workers who have chosen to leave the sector may not wish to be subject to a two year suspension when they could be removed. In other words a suspension keeps them tied to the workforce and the regulator to no end.

4. Orders with consent

The Law Society suggested that before a worker consents to an order that they should be given independent legal advice and that the SSSC should meet the cost of this. This would take account of the inequality of arms between the parties and the likely impact of the order on the worker.

We currently provide the worker with information setting out the allegations, why we consider that they constitute misconduct, the sanction and reasons. We also explain the effects of the order and highlight the importance of seeking advice. Finally, the worker always has the option of a hearing before a Panel and also can appeal an order made with consent to the Sheriff Court. We are of the view that in the context of regulatory proceedings these steps are sufficient to enable them to make an informed decision about whether or not to consent. We would note that any decision is not irrevocable as it is in an employment law context as the worker can reapply to the Register.

However we are considering how to address the deficit in legal representation in the context of our proceedings as a whole.

5. Extending temporary orders

Unison considered that interim orders should be for no more than 18 months. That any longer may be a breach of human rights. They also pointed out that in their view we receive too many cases due to original regulations, low thresholds and a lack of discretion to manage the register in a reasonable manner. Also that the average length of a case is remarkable and delays should be reduced to ensure ECHR compliance. Finally that reducing the maximum period of suspension will compel us to review orders more frequently and 'prevent difficult cases from being kicked into the long grass'.

We disagree. We consider that extending temporary orders plugs a serious public protection gap that arises in a small number of cases. WE do not think a time period of more than 18 months breaches a worker's human rights. Temporary orders are put in place following receipt of a serious allegation which may be being investigated by the employer or police. We need to await the outcome of these investigations to avoid frustrating them or the worker having to deal with two processes. Delay may be also be needed to allow the worker to exercise their legitimate rights with regard to other proceedings or may be necessitated by their health.

6. Document Management

The draft Rules envisage a series of numbered Disclosure Packs to manage exchange of documentary evidence. We have kept this concept but removed the formal name in light of feedback. We now simply refer to them as documents.

ACKNOWLEDGEMENTS

We are grateful to the individuals and organisations who gave their time and attention to the consultation, engagement events and meetings. This is particularly so in light of the detailed and lengthy nature of this consultation exercise.

ANALYSIS

- **WHO RESPONDED?**

We received 24 responses via Snap Survey and 4 submissions by email (Care Inspectorate, Law Society of Scotland, Unison and the Royal College of Nursing). We obtained feedback from key stakeholder groups who we invited to a total of six events during June and July. These were focussed on groups and individuals representing service users and carers and particular interest groups such as those working in the fields of disability; employers and universities and groups who represent workers at hearings. We held two webinars which attracted 30 participants.

The respondents to the survey who agreed to their names being made public were:	**Participants in the engagement events and webinars included:**
Employers and employer bodies: • Scottish Care • Coalition of Care Providers Scotland (CCPS) • Falkirk Council Childrens' and Adults Services – Social Work (Falkirk Council) • ENABLE Scotland (Enable) • National Day Nurseries Association (NDNA) • Bupa • Crossreach Unions and worker representatives: A. Voice Scotland B. UNISON C. Thompsons Solicitors (Thompsons) D. Royal College of Nursing (RCN) Other: • Service users/carer • An individual within the sector but not registered • Social service workers • The Care Inspectorate • The Law Society of Scotland (Law Society) Employees of Higher Education Institutions	Service Users and reps: • Volunteer inspector for the Care Inspectorate who uses services and also campaigns on disability and health issues. • The Voice • RCN • Thompsons Solicitors • Inverclyde advice & employment rights centre • UNISON • The Glasgow Law Practice • Scottish Drugs Forum • Westwater Advocates • BASW Workers: • Former service manager • Inverclyde Health & Social Care Partnership • Care Assistant • Social Worker Representative bodies – equalities issues: • Disability Agenda Scotland (DAS) • Mental Welfare Commission • CCPS • Social Work Scotland • Scottish Care

	• NDNA • Share Scotland Employers • Includem • Alzheimers Scotland • St Mary's Kenmure • Turning Point • Leuchie House • Rossie • Aberdeen City Council • SWISS • Hyde n Seek Nurseries • Dundee City Council • Frontline Fife • Who Cares? Scotland • Community Integrated Care • Inacs • SAMH • Anderson Elgin • Randolphill • Blue Bird Care • Meallmore • Partnerships in Care Higher Education • Glasgow Caledonian University • Glasgow School of Social Work • University of the West of Scotland • University of Stirling • University of Edinburgh

- **WHAT THEY SAID**

The consultation was in three parts:

- Feedback on specific areas of change highlighted by us
- General feedback on the consultation as a whole
- Detailed feedback on each rule.

The analysis is grouped as follows:

- Registration Rules
- Fitness to Practise Rules
- Decision guidance

- General comments.

We have not included all of the detailed responses about each rule. Responses on the equal opportunities points are addressed in the Equality Impact Assessment that accompanies the Report to Council.

Each section has a selection of comments and our response where appropriate.

- **REGISTRATION RULES**

We asked 4 specific questions and sought general comments.

- **(Q. 7) Responses about the layout and wording**

Comments	Responses
Feedback was generally positive with one respondent stating that the Rules were straightforward and easy to engage with. A large employer felt the document was on the whole concise, is in an easy to understand order and the fees table is clear. Falkirk Council noted they were well structured given the nature of Rules. They suggested avoiding cross referencing to different sections.	We have made a substantial change by aligning application cases with impairment cases and we hope that this will reduce cross referencing to a minimum.
An individual noted that an aptitude test would be better for those who could not complete a qualification due to the cost.	
One respondent felt that the definition of newly qualified social worker was complicated.	We have changed the wording to make this clearer.
We should rename application cases as the name change is confusing – we should change them to 'registration application' and 'registration renewal'	We have considered this but decided to retain the new term to distinguish cases about application from those about existing registrations.
Scottish Care suggested that a shorter easy read version of the Rules should be produced. The Care Inspectorate sought a plain language version and simplified materials.	We understand that the Rules are complex. We will consider production of an easy read version. In many cases the Rules are supplemented by guidance or the content of letters which we hope explains to the worker what is happening.

- **(Q. 8) Moving arrangements for registration hearings into the Fitness to Practise Rules**

Comments	Responses
Responses including that from Crossreach were on the whole positive. Thompsons also felt it would help unrepresented workers. A service user felt that the procedures were fair and should be operated in a democratic way for all those who wish to work in social services regardless of background.	
A service user noted that some living with a disability or being in some other way vulnerable may need more time within hearings to ensure that they can take part fully.	We note this comment and while we try to accommodate needs we are investigating ways of proactively asking workers if they may need support.
One respondent was concerned about any impact on timescales.	We understand this concern but don't anticipate that registration hearings will take longer. We hope that the improved case management meeting will ultimately reduce the length of all hearings.
There was a comment about timescales in general and the resulting stress and uncertainty for workers.	We are aware of existing concerns and are working to reduce time and keep workers informed and better help workers to manage stress by for example changing our style of communications and the information provided.

- **(Q. 9) The SSSC will approve endorsers**

Comments	Responses
Responses were positive. One commenting that it encourages employers to share responsibility.	This is interesting as it might suggest that workers would find it helpful to know what responsibilities employers have. This is something that we will take into account in future engagement work.
It was important to have an endorser who was an operational manager rather than a head of service who may not know the employee well.	
Scottish Care and one other respondent amongst others were concerned about the lack of detail on how this will operate. Scottish Care was also concerned about consequences for employers who endorsed a worker later found to be impaired.	We will provide this detail in guidance. We appreciate that employers are reliant on the information to hand and as now we ask that they endorse on the basis of the knowledge they have via their own recruitment process. If a worker is later found to be impaired there is no consequence for the employer unless it was found that, for example, the employer had carried out no checks prior to recruitment in which case we may refer the matter to the Care Inspectorate – this not being a matter we could investigate. Endorsement has been working well since the Register opened with employers endorsing that the applicant is of good character, conduct and competence and we hope that this will continue to be the case within the context of the new model.
A service user agreed with the proposal but also noted that the sector benefits from workers who are from a wide range of backgrounds so that barriers between workers and service users can be overcome. But that workers must also have a record that does not pose safety issues and have the right level of knowledge.	This is an interesting comment on the balance to be struck in recruitment and registration decisions.

CCPS suggested that approval of endorsers might be subjective and sought details of the criteria, suggesting that it would perhaps be based on grade/role/length of time known to the employee. Crossreach suggested that guidance for endorsers on what to take into account would be useful.	There is an element of subjectivity however we will have a process considering all of the relevant factors. At the moment most endorsers are more senior members of staff or human resources professional.
Voice Scotland was concerned about how we approve an endorser who does not work for a social services employer and noted the problem with smaller employers. The situation for smaller employers was also noted by the Law Society and by Thompsons who also noted the fact that an employer may simply withhold endorsement as way of ending the contract. They cautioned against over reliance on endorsement and the power that this gives to employers.	Non social service employer endorsers is something that we currently manage and will be able to accommodate in the new process. We do recognise the difficulty that a smaller employer may have if the endorser is not approved. We can look further afield for an appropriate endorser such as a course leader at a college or university. We would liaise with the worker to arrange a suitable endorser. We do not see that an employer would withhold endorsement as a way of ending a contract as the employer may themselves risk the criminal offence of employing a worker who is not registered with us. We don't think that they would refuse to endorse and then sack the person on the basis that they were not registered due to the employer's actions.
Unison noted their experience of and concerns about unreliable information from employers and that the system requires to recognise this. One worker felt that endorsement may be undermined due to nepotism and personal connections affecting recruitment particularly in rural areas.	Our current arrangements are a combination of checks of convictions, previous disciplinary action, information held by us and endorsement by the employer. While we recognise that endorsement is necessary to achieving registration it does not become relevant until the employer decides to recruit the worker.
A worker noted a concern about the administrative burden on workers as did the RCN.	We will bear this in mind when designing processes to ensure that they are a straightforward as possible.

- **(Q. 10)Courses will no longer be listed in the Rules**

Comments	Responses
Respondents were happy with this as being simpler to update and access.	
Falkirk Council and An employer requested that we keep a list of previously accepted courses.	We will consider this.
A service user agreed but also made the point about the content of courses which should include for example training on issues such as disability.	We have noted this as part of our work on courses and qualifications.

- **General feedback on the Registration Rules**

Comments	Responses
The RCN recommended that we reconsider automatic refusal when a person is listed by Disclosure Scotland is unfair and noted examples when someone barred from one list (children or vulnerable adults) might work safely in a service relating to vulnerable people from the other list.	We will always take the fact that a worker has been listed very seriously as this is a decision that they are unsuitable to work with vulnerable people. We have altered this rule so that removal is not automatic and we can decide to refer the matter to a Panel to make a decision.
Clarity on whether fees are due during a fitness to practise investigation.	This is not something we will set out in the Rules however we do have processes in place. We will consider making these available on the website or in information we provide to workers.
The Care Inspectorate noted that the amount of post registration training and learning was to increase for their officers.	The proportion of hours has not altered, the increased hours reflects that fact that officers were registered for 3 years but are now registered for 5 years.

- **FITNESS TO PRACTISE RULES**

We asked 17 specific questions and sought general comments.

1. (Q. 11) We provided a definition of fitness to practise and impairment

Comments	Responses
Many survey respondents felt that the definitions were clear, however this provoked considerable discussion amongst others some of which are listed in the key points at the start. A service provider thought the definition good but gave rise to detailed queries about recruitment decisions in the face of convictions and PVG arrangements for non UK citizens.	We will take these points into account when providing guidance for employers.
One respondent noted that the word 'character' is not measurable and is subjective.	We understand this however the term is used in the Regulation of Care (Scotland) Act 2001. Many decisions around impairment are subjective and we endeavour to have processes and guidance in place to ensure that defensible decisions are made.
The fact that alcohol and drug addiction are not disabilities was raised during the events.	We have removed these from the definition.
Voice Scotland said that employment tribunal decisions should not be relied on in relation to the misconduct definition. Thompsons also noted their objection to this.	We use such decisions in relation to the findings in fact only as we recognise that they concern complex employment law matters and the outcome is therefore not relevant to our decision making.
Voice Scotland suggested that Rule 2.6 which sets out that we will consider behaviour whether inside or outside of work is too broad.	The definitions of conduct and competence (which will become deficient professional practice) refer to the Codes of Practice. This excludes matters that are not of relevance to us. So in the example cited of a failure to properly organise an event unrelated to work, this would not be considered, however, theft of the funds from the event would mean that the worker had been dishonest and could breach the Codes.

There was a request for more information on what fitness to practise means, for employers to give to occupational health assessors.	We will look at this in the course of implementation.
The Law Society considered that the term 'health condition' is broad and unhelpfully vague. They suggested that it should be modified to avoid unnecessary literal approach by employers.	The term is deliberately used and is qualified by the phrase 'which has an adverse effect on their ability to do their job safely and effectively'. Other regulators distinguish between physical and mental health however we have decided that this distinction is not needed. Others use the word 'adverse' but we have considered that this does not add clarity. We will continue as we do now to provide guidance to employers about what to refer. It is also the case that we make a decision independent of the employer, so if the matter is one that should not have been referred, action will not be taken.
Voice Scotland noted that it should be clear that being off work while sick should not be a ground of referral. Also that a referral should not be made where the employer has failed to make reasonable adjustments which would have protected the public.	Sickness absence would not be a referral under ill health, although it may be a conduct referral if a worker was dismissed due to their absence record. Where a worker has been referred to us, the fact that the employer could not or would not put reasonable adjustments in place would be a matter we would take into account in deciding on impairment.
Scottish Care felt that the definitions were lacking in clarity and that without that there would be confusion and no buy in from the sector. An employer suggested a signpost to the expected standards of health and character.	As now, we will provide guidance on what needs to be referred.

Falkirk Council noted the need for good guidance to avoid incorrect referrals that then impact on the worker.	
The Care Inspectorate sought clarification about when matters should be referred and said that it was a common misunderstanding that the SSSC and not the employer would be the primary investigator.	We currently offer guidance on referrals both online and by phone and email. It is not our experience that employers think that we will investigate the matter however we appreciate that the Care Inspectorate have a close relationship with services and will work with them to address any areas of concern.

2. (Q. 12) One panel for all hearings

Comments	Responses
Most comments were positive, that it was more streamlined and that the worker need not be concerned about the panel type. Scottish Care agreed with this subject to the caveat that members have sufficient knowledge and expertise. Falkirk Council expressed a concern about workload and training implications.	
That the processes may take longer as being held by one panel.	We do not anticipate this as the same number of members will form the new panels as currently form the existing Sub-committees.

3. (Q. 13) Members only sitting on particular specialist panel

Comments	Responses
There was considerable feedback about this suggestion, of the positive comments: 1. fairer hearing 2. fully appreciate the role 3. appreciates the complex issues being heard and the impact of the outcome 4. consistency.	

Scottish Care considered that this was a better system and one other respondent said that it was workable but that we had not made clear what the specialist needs were.	
Two employers felt that a broader knowledge across the process was important and would promote consistency and likely to increase capacity. Another that specialists are not needed so long as there is proper guidance available to members.	
A number of respondents suggested a hybrid system where some members develop expertise and provide a resource and consistency to other members.	This is a really interesting suggestion that we will consider.
CCPS were concerned that this could lead to delays that would outweigh improved consistency which may in any event still not be achieved.	
A number misinterpreted this question and took it to mean that the panel members would have knowledge about a particular register part or for example a health matter.	We currently ensure that the due regard member is where possible from the same part of the register as the worker, and hope that we therefore already address this issue. However we do not envisage having a medical assessor at panel, but will instead rely on expert evidence.
The Care Inspectorate suggested that specialist panel would promote consistency and better decision making but may lead to delays. They suggested that cases needing specialist input might be identified and noted that they have recently moved to a specialist approach where regulation is undertaken by people with a practice background in this type of care.	Since the outset our Rules have required that in any hearing one of the members has a background from the same part of the Register as the worker. We also operate a specialist sector team that screens each referral and provides specialist sector knowledge to caseworkers in cases where this is required, for example about practise failings. There is no proposal to change this system.

4. (Q. 14)The test in application hearings

Comments	Responses
A number considered impairment to be a better test than being fit to practise including, Scottish Care, Falkirk Council Voice Scotland, Thompsons, Unison and An employer who noted that maintaining consistency across all decisions, communication, and language will be beneficial for all concerned and aid understanding.	
One suggested that the change to impairment was good in that it was less final than being found not to be fit to practise.	
There was a concern that the language is complex.	We do appreciate this and we will ensure that we have guidance that supports workers
Some raised issues around the factors that are considered when deciding on impairment.	The decision guidance is intended to provide guidance on this.
Crossreach felt that impairment was less clear than whether or not one is fit to practise.	We understand this but in fact the decision will be made on the same basis. This proposal concerns a change in language and enables a discussion on remediation in the future.
The Care Inspectorate suggested that the test of impairment promotes strengths and not deficits and sends a message about change and rehabilitation.	

5. (Q. 15) Change to the arrangements for providing copies of evidence before hearings

Comments	Responses
Responses were generally positive. An employer noted that it will stop duplication, unnecessary complication for the worker and is environmentally better.	

A number of respondents appreciated the effort not to overload workers with documents. That it is clearer. Less expensive. Voice Scotland noted that evidence should be sent out with the first letter to the worker telling them that we are investigating; that workers need to be given at least 21 days to provide documents and that we should be required to prove by recorded delivery that documents have been served.	When we write to workers for the first time we set out what information we have received and offer to send documents to the worker if required. Often the referral follows disciplinary action by the employer and the worker already has the relevant paperwork. However we will revisit our processes to ensure that we are sending out relevant paperwork as soon as possible. The timescales for the parties to exchange paperwork is one aspect of the process that adds time and it is a balance between the need for proper time and the desire not to delay the hearing. We hope that these Rules strike that balance and will look at our guidance to ensure that workers have information about this and that they can contact us if there are problems meeting timescales.
CCPS and the Care Inspectorate noted that the name Disclosure Pack might confuse this with Disclosure Scotland.	We have removed this term as we agree it is not helpful and will refer to the written evidence just as 'documents'.
Several, including Scottish Care, felt that anything that can be done to support the worker was helpful. Falkirk Council noted the pressure on workers in trying to work out which documents in a large bundle are the new ones. Thompsons felt it would reduce confusion as everyone would be working from the same bundle.	
One respondent however felt strongly that the existing process is better as it is important that no documents are left out and all parties have access to them. That it was important to the worker that nothing was mislaid or lost by them.	This is the reasoning behind the existing processes however consistent feedback over many years is that workers find receiving repeat copies of the same papers distressing and overwhelming.

	We recognise that to be fair the worker needs notice of all documents that the SSSC will rely on at each stage and have them in a workable order. We have rewritten the provisions on documents to make this process simpler again, setting out that we send out new documents as they come in and numbered bundles before the hearing.
Some had a concern about the complexity of the process and language as set out in the Rules. There was comment about the order of the Rules around documents and case management.	We do appreciate that the Rules are complex and will support workers by ensuring that the letters and guidance explain the process as it proceeds.
The Law Society requested that the SSSC discloses all information held including that not being used in the decision making.	The SSSC must ensure that proceedings are fair. If we receive information that is of benefit to the worker this is provided to them and used in decision making or before a panel. We are however looking at this issue and how we can best make this information available.

6. (Q. 16) Information that an investigation has started will be provided to employers and universities at the outset

Comments	**Responses**
Most felt that this would be helpful and One respondent suggested a specific SSSC contact point for employers.	This is something that we are looking at for some larger employers
That this information will enable the employer to support the worker during the proceedings. That employers find it helpful to be aware of investigations at an early stage. An employer noted that this will be very beneficial from their perspective as there is limited transparency at the moment.	

A service user noted the impact for a service user if their worker changed suddenly and that if there was to be a change due to a disciplinary or regulatory issue this should be understood.	We have noted this impact which we had not previously considered and understand that our proceedings may result in the need for transition from one worker to another, that can have an impact on the service user.
There was a concern about confidentiality.	We are conscious of these concerns however consider that this sharing of information is legally competent as part of fulfilling our regulatory function and in most cases the information should have been disclosed by the worker to the employer.
There was concern about situations where a worker has changed employer during the investigation and the new employer is informed.	There is a balance to be struck in making sure the right people have the right information and sharing too widely. However in most cases the worker would have a duty under the Codes or have been asked by a new employer to declare investigations into their registration. Also in most cases it would be in the interests of public protection that the employer is aware of any allegations we are investigating.
One noted that employers and universities should be instructed not to take any unilateral action based on the information.	We will disagree with this. The employer or university may wish to put support mechanisms in place, communicate and support colleagues and services users involved in the matter. They may also not have been previously aware of the allegations and need to carry out a risk assessment and any other necessary actions.

7. (Q. 17) In cases about applications the burden of proof will move from the applicant to the SSSC

Comments	**Responses**
Most comments were positive	
Several felt that this was fairer and more in line with the approach in disciplinary proceedings	
Some noted that in general that hearings are difficult for workers	We are aware of this as an existing issue and hope that the change in the

	burden of proof will assist the worker. We are also exploring improving information about advocacy advice and representation that might be available.
Several respondents were happy with the changes including Thompsons, Falkirk Council and The Law Society. One however noted the need for training for panel members and also that enhanced procedures for receiving, screening, investigating and presenting allegations would be needed.	We will be carrying out training for panel members, however they will be familiar with the arrangement as the majority of cases are about existing registrations and they follow this arrangement. We do not anticipate changes to processes other than at the stage of presenting the case.
The Law Society considered that this proposal is compliant with the European Convention on Human Rights (Article 6) and proportionate.	
An employer noted that this would give workers every opportunity and lead to a higher number being registered.	

8. (Q. 18) A three stage hearing process will consider what facts are proved, if the facts will amount to impairment and then, if they do what sanction is appropriate

Comments	**Responses**
Most responses were positive and some noted that it was transparent, may help less confident workers and was acceptable so long as clear. An employer felt that it would help prevent bias. Falkirk Council considered this would allow the worker time to consider the impairment and sanction papers.	
Some comments were negative, for example, that it is overly legalistic and complex and that that the process sounded convoluted. That this would financially disadvantage workers who have to self-fund legal representation, by	It is a legal process and this brings with it a degree of complexity. We are endeavouring to improve worker's understanding of the process as they go through it and to address the deficit in legal advice and representation. We hope that by dividing the process into these distinct sections it will be

lengthening the hearing process.	clear in each what is being decided. That ultimately it is important that the hearing is properly run and fair.
Some regulators noted that this means that some witnesses have to give evidence three times, at each stage of the hearing.	As now we seek to avoid this and if a witness is likely to be able to speak to the facts, the issue of impairment and the sanction we would ask the Panel to take all of that evidence at one point.
Unison made a number of comments: 8. that it should be a 4 stage process – after the facts whether they amount to misconduct/competence or health (This point was also made by Thompsons) 9. that the order of proceedings should be decided by the parties after hearing submissions from the parties 10. the risks of lengthening the process.	Whether the facts amount to misconduct, deficient professional practise or health will be addressed at the impairment stage rather than extend matters by having a distinct stage for this. We think that to have a preliminary stage to decide on the process will be time consuming and would mean that there would be no certainty until very late in the day. As above we do understand concerns about delay but don't consider that this three stage process is the key factor in lengthening time. A three stage process is also the regulatory norm.

9. (Q. 19) The available sanctions for health cases will be removal, suspension, conditions and warning (and combinations of them)

Comments	Responses
A full range of sanctions was welcomed by a number of respondents including unions, legal representatives and Scottish Care. Scottish Care noted the need for particular care in the handling of health cases. One respondent welcomed the fact that removal allowed the worker to focus on getting better instead of being suspended and constantly scrutinised or having to meet conditions and appear before panels.	

Some of the comments included: • Some worker's health/disability may not have hindered good practice but would still be referred. • Recommendation to use removal sparingly. • There should be no automatic removal on health grounds, especially when mental health was an issue. • One worker accepted that workers are responsible for their own health and must be open with employers and regulator should be involved in this area.	• The definition of impairment should prevent workers being referred where their ill health does not have an impact on their work. • We will not automatically remove a worker where there is a finding of impairment due to health.
Crossreach sought clarity on how conditions and warnings would work in health cases.	We are not certain what clarity is being sought. We anticipate conditions being for example related to restrictions on the type of work being done, or attendance at health check-ups or drug/alcohol rehabilitation services. We do not anticipate that warnings will be commonly used in health cases although it is possible to imagine cases where a worker has perhaps refused to take a reasonable step to manage an illness which has then resulted in a problem. However whether warnings will be used remains to be seen.
There was comment that conditions were pointless if the function based worker came off the register and that it would be better to suspend and monitor them.	We disagree with this: for function based workers (i.e. those that must be in the role to remain registered) if a condition is imposed, it is the condition necessary to protect the public. If they then leave work, we will consider whether or not to re-apply it or part of it if and when the worker reapplies.
The Law Society considered the sanctions appropriate but made a comment about the confidentiality in relation to sanctions in health cases.	It is our intention that cases about impairment on health grounds will not be publicised.

Unison commented that a suspension and conditions order is not competent as you cannot undertake conditions while suspended.	We disagree with this. The worker is still registered with us though suspended for a period. This may be to enable the public to be protected while the condition (which may be training or in the future related to a health matter) is carried out.

10. (Q. 20) Workers removed from the Register because their fitness to practise is impaired on health grounds can reapply to the register at any time rather than wait for 3 years

Comments	Responses
Scottish Care suggested that it was correct that health cases are treated differently as to how they re-joined the register. An employer pointed out the different impact a health issue may have depending on register part. An employer considered that this is sensitive to the fact that ill health conditions can vary greatly and be controlled.	
Crossreach suggested that the evidence needed to show that a worker's circumstances had changed would need to be clearly defined.	We will develop guidance as we start operating the new model. However as health is such a varied issue and affects people differently it may be difficult to give definitive guidance.
Allow all cases the option to reapply at any time (instead of waiting 3 years).	We will not be changing the 3 year limit for non-health cases. This limit is taken into account when the sanction of removal is being considered. If there was no limit a removed person could reapply and the same issues would need to be reconsidered.
Comment that managing workers seeking restoration will be difficult where the workers think they are well but they may not be.	We note this concern and will consider what information and staff training we will need to manage such situations.
One considered this to be ECHR compliant and welcomed it as positive reinforcement for any medical support the worker is receiving.	

Falkirk Council pointed out the impact of a removal order and unemployment on a person's self-confidence which may hinder their ability to reapply at a later stage.	
The Law Society agreed with this approach and considered that it complied with the Equality Act. They welcomed this innovation as giving positive reinforcement to any medical support being received.	

11. (Q. 21) It would be possible for a panel to remove a worker who refused to cooperate with a medical assessment, on public protection grounds

Comments	Responses
We received mixed feedback. A number were happy with the proposition. One stated that it was a fair process as registering with SSSC requires the workers to agree that they will be responsible for themselves. An employer felt that this was a very sensible approach on the basis that the worker can choose to provide a report from their own medical practitioner, if they did not wish to go to an independent practitioner and think this is a good idea because some people do not feel comfortable discussing their ill health with new people.	
There were concerns, for example: • This power should only be used in extreme circumstances. The lack of willingness to attend a medical consultation should not automatically be considered non-cooperation. • Overly draconian approach and infringement of the human rights of the workforce. • Scottish Care highlighted the need to establish the reason for non–cooperation, particularly if the worker was living with a	This is a power that we only expect to use sparingly and after the worker has been given ample time and opportunity to participate in the process. The power exists to manage situations which cannot be taken forward and leave both the worker in limbo and on the Register while there are potential public protection concerns.

mental health illness. • the worker should be given time to cooperate. • The worker may be expected to attend a medical examination but should be directed to see the report before it is provided, which is consistent with Access to Medical Reports Act 1988.	
There were general questions on whether SSSC would need the worker's permission to view medical reports and on who would cover the cost of the report.	We would need consent to look at any medical documents and the worker's consent would be needed to any examination needed to produce a report. The costs would be met by the SSSC.
Unison felt that refusal to co-operate was potentially a conduct issue and that removal was not appropriate following a failure to co-operate.	We disagree with this. We do not think that we would ever consider refusal to submit to a health examination to be misconduct. In some cases refusal may also be as a result of a health condition.
Thompsons were concerned about the ability of some workers to consent due to ill health or the detriment to them in having to undergo an assessment. They suggested that the case would proceed on the best medical evidence available.	While we appreciate these concerns they ignore the fact that service users may be put at risk by a worker about whom there are health concerns but the regulator cannot take any action as the worker will not co-operate. It is not in the interests of the SSSC to remove workers where there are other avenues open such as suspension or conditions. We are also alive to the sensitivities around health and will always endeavour to engage with the worker to discuss their concerns and how their interests can be protected. However this provision enables us to take action when no other avenues are open and public protection is at issue.

12. (Q. 22) The fitness to practise panel will not include a medical adviser. Instead the worker and SSSC can bring their own medical evidence such as a report or expert witness

Comments	Responses
Some thought it was fair because workers could access GP reports and records so a medical assessor was not needed. Falkirk Council pointed out that no one adviser could span all of the possible health conditions. An employer suggested that a medical adviser might be used in a particularly complex case.	
There were a number of comments that this would be unfair to the workers for financial reasons (e.g. they are unemployed) and result in unfair hearings. Scottish Care and Crossreach were among those that noted this. One respondent pointed out that it would be unlikely that a worker would present evidence that did not support their position so there should be a way of being satisfied that the relevant medical expert was qualified to give evidence.	We envisage that a worker may wish to bring their own witness about medical matters. Equally a worker may wish that we instruct a report and bring a witness in which case that cost will be met by us. As now we will rely on the panel to consider the evidence including that of any expert and form a view.
Thompsons questioned what would happen if a joint report was instructed but the registrant disagreed with its terms. They suggested that the SSSC should fund another report on the sole instruction of the worker. That failure to do so may result in the proceedings being unfair due to the inequality of arms between the parties.	We would hope that if a report is needed that a joint instruction with the SSSC meeting the cost will meet the worker's needs. If it does not the worker can then instruct a second report. We acknowledge that cost may be a barrier however we do not consider that this can be met by the regulator. Whether a hearing is fair or not will be a matter of fact in each case and the Panel has the power to direct further investigations, the calling of witnesses or production of evidence if it has any concerns.
An employer queried if the panels would have the expertise to make decisions on health matters.	As in the courts, the panel will rely on the expert witnesses to gain sufficient understanding to make a decision.

The Law Society suggested that a joint report should be sought in each case to address the inequality of arms and only where this cannot be agreed should the SSSC instruct its own report.	

13. (Q 23) Temporary orders may be imposed for a period longer than two years

Comments	Responses
The existing two years is a lengthy period of time to put a worker's life on hold, especially if found not to have been impaired at the end. The timescales are too long and there were concerns about potentially lengthening an already lengthy process. Those concerned about this included Scottish Care and Crossreach.	We understand the effect that a temporary order can have. They are only sought where there is a risk. The further extension when other (usually criminal) proceedings are outstanding, will be in situations where a serious criminal matter is being considered in which case public protection takes precedence.
A temporary order to cover the appeal period was accepted, as long as it had regular reviews, because appeals can take years. An employer also highlighted the need for review.	The Rules have a provision to allow review by either party.
Voice Scotland said that it was appropriate to allow a longer order where other proceedings are on-going, though that we should then progress the case as soon as possible after that.	
The Law Society responded that an extension to the two year period should be made by application to the Sheriff Court in a similar way to the process operated by the General Medical Council and Nursing and Midwifery Council.	The Regulation of Care (Scotland) Act 2001 does not set down a maximum period for a temporary suspension order, this is set out in the rules. There is currently no mechanism to seek extensions to such orders in the Sheriff Court.

14. (Q. 24) Practice Notes for guidance on procedure

Comments	Responses
Most responses were that this would be helpful and was welcomed. This would probably speed up the process. A conditions 'bank' was suggested, to give Panels confidence. An employer noted that these should make clear that they are guidance only.	We are considering this as we agree that this would be helpful.
The Care Inspectorate noted that although they felt that practice notes would be helpful that discretion is the key element of being able to regulate proportionately. They also suggested a clear name is sought to avoid the suggestion that they were about an individual's practice.	We will use practice notes to improve consistency and also to reduce detail in the Rules. They will govern such matters as how postponements may operate, arrangements for vulnerable witnesses and how impairment should be considered. We will retain the title as this is commonly used in the regulatory field and will be understood by key stakeholders.
Unison suggested that practice notes be subject to initial consultation and review with stakeholders. Thompsons also suggested this and that they should be drafted by a neutral party who does not have a stake in the process.	We will seek feedback from relevant stakeholder on the content of practise notes. We will give some thought to this and discuss with fellow regulators however it is our current intention to draft these internally.

15. (Q. 25) Introduction of case management meetings

Comments	Responses
Majority of responses welcomed this including The Law Society. They will speed up the process and other systems (e.g. Children's Hearing System) use these to good effect.	

The worker would be disadvantaged by not being able to address the whole panel and have a balanced view in the decision making process.	The purpose of the meeting is to enable the final hearing to be a straightforward as possible. The decisions are about procedural matters not about the substantive issues in the case. Having them dealt with by the full panel would be costly and time consuming.
There were concerns that workers would be disadvantaged if they did not have legal representation at the meeting.	A worker can be represented, we are looking at clarifying this rule.
Unison suggested that where a worker is not represented the CMM should have more discretion to manage the cases in a way that expedites the process than where a worker is unrepresented where there should be a fixed process. They also suggested the use of a case management form and telephone and video conference facilities.	It is in the interests of all parties that hearings are efficient and do not waste time unnecessarily. We consider that the Rules allow the Chair and the panel sufficient discretion to depart subject to considerations around fairness. We currently conduct pre hearings via telephone. We will be looking at forms etc. during the implementation stage.
Scottish Care asked if this would be an opportunity for the worker to discuss the case with others who are part of it.	Case management meetings are a development of the current pre hearing review. It is a formal meeting and its function is to reduce delays at the hearing. Practical matters can be raised as the legal adviser, clerk and solicitor presenting the case for the SSSC are there.

- **DECISIONS GUIDANCE**

We have not provided responses at this stage however a flavour of some of the comments is set out here. On the whole the guidance met with approval but several respondents made some interesting observations that we wish to take time to consider.

a. (Q. 26) Responses about layout and wording

Comments
Most thought the guidance was clear. However Scottish Care thought that it was too long and that a shorter easy read version would be helpful. An employer suggested the use of a table for the aggravating and mitigating factors. Confusion over the phrase 'no real doubt'. Training and learning should top the list when looking at insight as they are the most visible signs of insight.
The Care Inspectorate stated that the guidance should be reviewed against the Scottish Regulators' Strategic Code of Practice, however we would note that unlike the Care Inspectorate this code (which considers regulation in the context of the economic environment) does not apply to the SSSC, however we do already espouse a number of its themes.
Voice Scotland suggested that we include a statement to acknowledge the impact of proceedings on workers and a commitment to progress cases without delay. They also requested that there be a statement setting out the burden of proof.
One respondent felt that the guidance allowed more insight into the decision making process and relevant factors. They also felt that it promoted equality and does not exclude those with health issues from the workforce.
Need recognition of the fact that it is hard for workers to admit failings or apologise because it may disadvantage them. We then consider late apologies as aggravating and this is unfair.
Unison suggested that: i. the guidance should be called 'sanctions guidance' as this was its main scope ii. temporary orders are out-with the scope of this document being decisions about risk iii. there should be guidance on decision making on registration issues, temporary orders, substantive hearings and sanctions guidance iv. that there should be guidance on other aspects of the hearing such as facts, misconduct and impairment and on the standard of proof and judgement required at each stage.

2. Does the guidance balance fairness to applicants with public protection and public interest in application and restoration cases

Comments
Some agreed that the guidance achieved this and made comments such as: A. was fair to applicants and also maintained the integrity of the register B. allows a worker to reapply where appropriate and allows for public protection C. does not exclude workers with health issues from the workforce D. promotes equality E. allows more insight into factors considered when deciding the appropriate and proportionate sanction.
An employer noted that the document achieved its aim on the whole but made these comments: • There was too great an emphasis on public interest and that of the SSSC and the negative perception of this. (Unison also made this point). 1. That we should consider if the guidance is appropriately reflective of support for individuals. We could talk about how the process is to try to support and rehabilitate workers in their chosen careers. 2. Abuse of position & violation of rights is narrow (referring in particular to sexual abuse but not mentioning physical or emotional abuse) and referring to motive. 3. Ability to impose suspension and condition orders at the same time: there are no examples given and we find it difficult to understand how this might work in practice.
Voice Scotland suggested that 3.7 be amended to set out that an employer may expect a worker to keep the subject of a disciplinary confidential and that therefore a character reference may not know the circumstances under investigation.
A service user pointed out the need to attract a wide range of people into the social service workforce and that the SSSC should not have processes in place that are a barrier to this. That those with a range of academic and social backgrounds, including difficult ones, and experiences were needed.
Falkirk Council while welcoming different approaches to health cases noted the stress and stigma of removal and restoration for those with ill health.
A service user suggested a sliding scale where sanctions took into account the extent of the failings.
Scottish Care were concerned about the fact that a temporary order may be made in the interests of the worker. They also queried who should be making such a decision and if this means they are unfit to practise.
CCPS suggested that insight by a worker might also be shown by the fact that they co-operated with an employer's process. Also that the description of

offences taking place in the 'distant past' at Part b 3.4 was subjective.
Thompsons made a number of comments and suggestions: Amend the Equality and Diversity statement at 2 to include an example about how health may impact on a person's ability to communicate which might be relevant to for example how they display insight. • That the lowest sanction is no sanction and the panel should consider this before a warning. • That we should make clear in the section about insight that a worker has a right to deny charges and that they may do so and show insight at a later stage. The Law Society also made comment on this and suggested that the worker should also be notified of rights as they are in a criminal investigation. • That behaviour at work in a social care setting should be an aggravating factor bearing in mind that workers may have a poor awareness of the SSSC. • That duress may be inferred from circumstances. • That the statement in the section about where a warning may be imposed should not state that it would be unlikely to be imposed in health cases and if it is it should state how public protection will be achieved.

D. General comments

Comments	Responses
Financial burden on workers was a key concern. Workers having to pay additional costs could easily create financial hardship especially for workers on minimum/living wage or where the main wage earners in their families, so these matters should be taken into account. Some groups with fewer resources would suffer because they cannot access legal assistance. Many concerns about lack of legal representation and problems this caused for workers.	We are aware of the cost of representation; this problem is the same under our existing process and the new model. Many of the changes to the Rules and Guidance have been made to try and make the process simpler to understand and more streamlined. However it is the case that a hearing regarding professional registration is important and must be both fair to the worker and rigorous from the point of view of protecting the public. We are looking at access to legal advice and representation and what if anything we can do to address this.
An employer strongly support the changes especially those aimed at transparency and speeding up the process.	
An employer welcomed the changes overall and felt that they will contribute to the professionalisation of the workforce and protection of those who use services.	
An individual respondent felt that the process is too long and also that it can appear inconsistently applied in that action may be taken against one worker and not another.	
There were concerns that including health cases could be open to abuse by employer, who had been subject to discrimination claims on health grounds.	We have heard worries from workers that some employers do not manage health issues well and that they might also over report certain workers. We hope that with guidance employers will report appropriately and where not we then actively look at each referral we receive to ensure that it is something appropriate for us to investigate.

While glad to see a health ground being introduced Scottish Care expressed a range of concerns around for example: • The impact of our decisions on employer's disciplinary decisions • Who makes decisions and who is responsible. a. The consultation processes have been too complex to engage in. b. Employers do not understand the proposed changes.	Our very brief responses are noted here, but we will be able to expand on these in other forums: **1.** Employer and regulator processes are separate although they impact on each other. Usually we will take action after the employer has done so. There are some circumstances where we reach a different decision and this may for example, result in a worker the employer is happy with not being registered. **2.** Our Panels are independent of the SSSC however they make decisions on our behalf and in our name. **3.** We have made every effort to engage as widely as possible but accept that these changes are complex and that the sector is very large. We would welcome suggestions about how to engage better in future work.
National Day Nurseries Association (NDNA) and an employer indicated that they were in agreement with the key proposed changes.	
Concerns that officers have powers to impose sanctions without recourse to a Panel and the need for clarity on what principles they applied.	We have been making officer decisions for some time where the worker consents. The principles are those set out in the current Indicative Sanctions Guidance which is being replaced with Decisions Guidance. The worker can choose to have the matter heard by a Panel, but if the worker consents then changes their mind shortly after, we would offer a hearing before a Panel, or the worker can choose to appeal the decision.
The Law Society noted that the statutory appeal period of 14 days was too short and should be extended.	The appeal mechanism is by summary application which allows an appeal to be lodged with more ease than in an ordinary action. The appeal period is set out in statute.

Fitness to practise definitions and guidance

Regulator	Impairment
HCPC	Finding that a registrant's fitness to practise is "impaired" (negatively affected) means that there are concerns about their ability to practise safely and effectively. **Health and Social Work Professions Order 2001, SI 2002/254 art 22(1)** 1. This article applies where any allegation is made against a registrant to the effect that: (a) his fitness to practise is impaired by reason of— (i) misconduct (ii) lack of competence (iii) a conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales would constitute a criminal offence (iv) his physical or mental health, (v) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that his fitness to practise is impaired, or a determination by a licensing body elsewhere to the same effect; (vi) the Disclosure and Barring Service including the person in a barred list(within the meaning of the Safeguarding Vulnerable Groups Act 2006 or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007), or (vii) the Scottish Ministers including the person in the children's list or the adult's list (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007); (b) an entry in the register relating to him has been fraudulently procured or incorrectly made.
Care Council for Wales	**Care Council for Wales (Fitness to Practise) Rules 2014 rule 3(4)** A Registrant's fitness to practise may be impaired by reason of one or more of the following: (a) misconduct (b) lack of competence (c) physical or mental health (d) a conviction or caution in the British Islands for a

	criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence (e) a determination (f) inclusion on a list maintained by the Disclosure and Barring Service.
General Medical Council	**Medical Act 1983, s35C(2)** A practitioner's fitness to practise may be found to be impaired by reason of any or all of the following: • Misconduct • deficient performance • a criminal conviction or caution in the British Isles (or elsewhere for an offence which would be a criminal offence if committed in England or Wales) • adverse physical or mental health • a determination by a regulatory body either in the British Isles or overseas • not having the necessary knowledge of English.
Nursing and Midwifery Council	Failure to meet standards for skills, education, and behaviour can bring fitness to practise into question. **Nursing and Midwifery Order 2001, SI 2002/253 art 22** 22.(1) This article applies where any allegation is made against a registrant to the effect that— (a) his fitness to practise is impaired by reason of— (i) misconduct, (ii) lack of competence, (iii) a conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence, (iv) his physical or mental health, or (iva) not having the necessary knowledge of English, (v) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that his fitness to practise is impaired, or a determination by a licensing body elsewhere to the same effect

General Dental Council	There may be doubts about a dental professionals' fitness to practise due to: •health; •conduct, including convictions and cautions; or •performance. **Dentists Act 1984 s36N (2)** A person's fitness to practise as a member of a profession complementary to dentistry shall be regarded as "impaired" for the purposes of this Act by reason only of— (a) misconduct; (b) deficient professional performance; (c) adverse physical or mental health; (d) a conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence; (e) the person having— (i) accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal), or (ii) agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution); (f) the person, in proceedings in Scotland for an offence, having been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him absolutely; (g) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that the person's fitness to practise as a member of that profession is impaired, or a determination by a regulatory body elsewhere to the same effect
General Optical Council	**Opticians Act 1989, s13D (2)** (2) The only grounds upon which the fitness to practise of a registered optometrist or registered dispensing optician, or the fitness to undertake training of a student registrant, is "impaired" for the purposes of this Act are– (a) misconduct; (b) except in the case of a student registrant, deficient professional performance; (c) a conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute

	a criminal offence; (d) the registrant having accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution); (e) the registrant, in proceedings in Scotland for an offence, having been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him absolutely; (f) adverse physical or mental health; or (g) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that his fitness to practise as a member of that profession is impaired, or a determination by a regulatory body elsewhere to the same effect.
General Teaching Council for Scotland (GTCS)	"Impairment of fitness to teach" (and any related expression) means that the person's conduct or professional competence falls short of the standard expected of a registered teacher. **Public Services Reform (General Teaching Council for Scotland) Order, SI 2011/215 art 8** (3) An individual is "unfit to teach" for the purposes of this Order if the GTCS considers that the individual's conduct or professional competence falls significantly short of the standards expected of a registered teacher (and "fitness to teach" is to be construed accordingly).