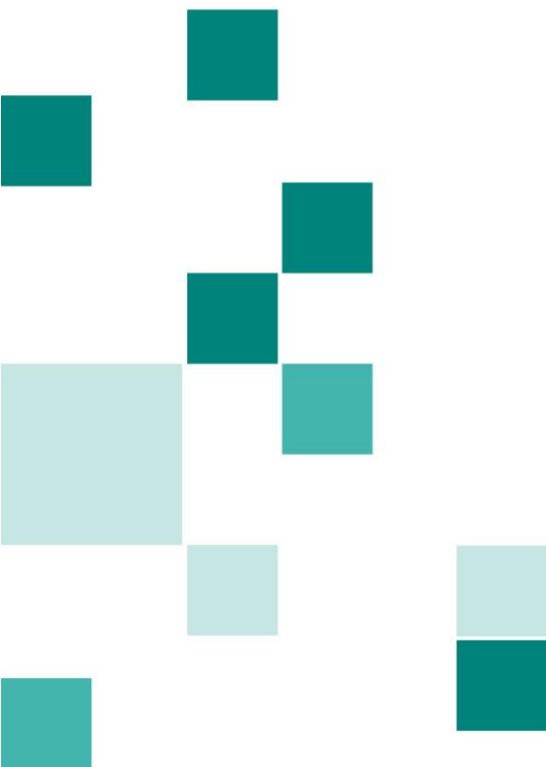


Outcome of consultation on introduction of Opt-in Hearings: analysis of responses

January 2021



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Opt-in Hearings Consultation

Introduction

This consultation gathered views about a proposed change to when we hold hearings, to improve our fitness to practise process and focus our resources better. Our proposal was to do this by only holding hearings where the worker disagrees with the outcome of our investigation and asks for a hearing to resolve the disagreement.

There was a strong level of support for our proposal. If implemented, the change will enable us to further our Strategic Plan priority to improve support to those going through the fitness to practise process. It will:

- a. be beneficial to those witnesses spared the requirement to attend a hearing, and to the services that many of them work in
- b. provide an opportunity to divert resources from the cost of holding hearings to provide more support for workers
- c. provide the Fitness to Practise Department with greater capacity to focus on cases where the worker requests a hearing.

We have submitted amended Fitness to Practise Rules implementing the proposal to Scottish Ministers for their consent.

We got a great response to the consultation and would like to thank everyone who shared their views. This document explains how we carried out the consultation and summarises the responses.

Background

What we currently do

We are responsible for protecting and enhancing the safety and welfare of people who use social services in Scotland. To meet that responsibility, we must be confident the right people are on the SSSC Register. We investigate concerns about workers and take action when necessary.

If we think action is necessary, we ask the worker if they accept our findings, that their fitness to practise is impaired and our proposed sanction. If they tell us they do not accept our findings and proposed sanction, we hold a hearing. We also hold hearings when workers don't respond to our correspondence or engage with us.

What we proposed

When we ask if the worker accepts their fitness to practise is impaired, we'll explain that we will impose a sanction unless they disagree with our findings and proposed sanction and ask for a hearing. If a worker doesn't ask for a hearing, we'll impose the sanction and tell the worker in writing. When a worker asks for a hearing, we will always hold one.

Why do we want to make this change?

- We want to focus on cases where there is a disagreement about the outcome of our investigation.
- We want to avoid witnesses having to come to hearings where there is no disagreement about the outcome of our investigation. Giving evidence is a difficult process for witnesses and has an impact on services that have to release staff to attend.
- By focusing on cases where there is a disagreement about our investigation, we hope to be able to resolve those cases more quickly.
- We want to be able to put more resources into improving support for workers who disagree with the outcome of our investigation and want a hearing.

Who will be most affected?

Workers who do not engage with our fitness to practise process will be most affected. However, our analysis shows that when the worker hasn't engaged, the outcome of the hearing is almost always the same that our Fitness to Practise Department initially proposed.

We believe there are four reasons for workers not engaging in the hearing process:

- acceptance that their behaviour is incompatible with registration
- moving into a different type of work and have no interest in continuing to work in social services
- retirement
- lack of support to help them engage with us.

We are taking steps to improve the support we offer workers. We are:

- working with other organisations, such as law centres, to improve the availability of advice and representation
- making it easier to attend hearings by holding hearings outwith Dundee, or by video conference
- paying for hotel and travel expenses for workers and representatives to attend
- improving our factsheets
- developing our fitness to practise portal to improve communication
- surveying workers, employers and witnesses to identify areas for improvement.

How will workers be protected?

- We will make sure there are no barriers to asking for a hearing if workers disagree with the outcome of our investigation. We will make this easy to do. Any worker who wants a hearing will be able to have one.
- This simplified process will be easier to understand. You've told us the current process is complicated.

- We will publish clear guidance and information.

How do workers, employers and the public know we make decisions to impose a sanction fairly?

- We will continue to provide detailed notices explaining our decision to workers and employers.
- We will continue to publish decisions on our website.
- We have a rigorous quality assurance process which scrutinises each decision.
- The worker will continue to have the right to appeal our decision.

Consultation process

We took the following steps to highlight the consultation and encourage responses:

- published it on our website on 23 August 2019
- highlighted it in the SSSC newsletter in September and October
- raised awareness through corporate social media channels
- held a specific session for Fitness to Practise Panel Members
- discussed it at a meeting with Unison.

Two Dundee-based solicitor firms also highlighted the consultation on their social media channels. The consultation closed on 16 October 2019.

There were 733 survey responses and written responses from the Nursing and Midwifery Council, Unison and GMB Union. This is a very high response rate for a consultation on our fitness to practise process.

Consultation outcome

92% of respondents agreed with the proposal. There were 206 free-text comments, broadly split into three areas:

- a. concerns with the proposal
- b. support for the proposal
- c. comments about the fitness to practise process more generally.

An analysis of the comments is outlined below. There are two key issues that we draw from the comments:

- a. concern that currently workers may disagree with the findings of the Fitness to Practise Department but feel unable to engage with the process through lack of support
- b. a desire that we focus our resources on resolving fitness to practise investigations more quickly.

The two unions who responded oppose the proposal due to their concerns about the lack of support. The Nursing and Midwifery Council support the proposal.

Support for workers

The evidence shows the proposed change to the fitness to practise process will not make a difference to the outcome of the investigation as where a worker is not engaged, the proposed decision of the Fitness to Practise Department is the decision that the Fitness to Practise Panel imposes in 94% of cases. Where the worker is engaged this figure reduces to 71%. Where the worker is represented this figure reduces to 55%.

We have worked over the last two years to improve the support available through encouraging union membership, working with law centres, working with the Faculty of Advocates, responding to the consultation on Legal Aid and introducing financial support for workers to attend hearings.

Currently a third of workers do not engage with the fitness to practise process. If they wish to engage, we hope that continuing to expand the support available to them enables them to. However, support is unlikely to lead to 100% engagement, as the non-engaged include people who have committed serious offences and behaviour and understand their role is incompatible with registration.

Equality Impact Assessment (EIA)

An EIA was developed.

- The evidence available is that the proposal would not have a specific impact on any of the groups with protected characteristics. However, we recognise that not all registered workers provide equalities information when they apply for registration.
- The consultation responses raise concerns that individuals with a disability or those who do not have English as a first language may struggle to engage with the fitness to practise process. While this policy proposes a process change, it is based on the evidence that the change in process will not change the outcome of the fitness to practise process.
- We already take steps at the outset and during the course of an investigation to direct workers to where they can obtain support and to encourage them to tell us if there are any adjustments or translations we can provide for them. We will obtain expert advice on how to frame our correspondence to address the concerns.
- We continue to work to expand the support available.

Sustainability

- There are environmental sustainability issues associated with holding fitness to practise hearings as they inevitably involve travel for most attendees. If approved this proposal is likely to reduce the number of hearings.
- The attendance of witnesses at hearings affects the community as it can affect continuity of service delivery.

Free text comments

Free-text comments on proposal to amend the fitness to practise process to only hold a hearing where a worker requests one.

Concerns - 34 comments	
Twenty-one comments that some workers do not engage due to lack of support. Concerns about health and literacy levels as a barrier to engagement.	If the proposal is implemented the outcome for workers who do not engage and therefore do not ask for a hearing, would be no different than under the current process, as the evidence shows the Fitness to Practise Department's view on the appropriate outcome is the same as the subsequent Panel decision in virtually all cases. However, we agree that if there are workers who are not engaging due to a lack of support that is a serious concern. We want to be able to develop improved support so anyone who wants to engage can. Unison expressed concern about the lack of support. They recommended that where a person is not engaged with the process, we take them to a hearing asking the Panel for removal from the Register on grounds of non-cooperation rather than implementing this proposal. Our concern with this approach is that if the worker asked to rejoin the Register a number of years later it might not be possible to deal with the issue that concerned us in the first place, as witnesses recollection may have faded and the evidence degraded. It would have the potential to seriously compromise public protection.
Four concerns about whether the proposal was compliant with human rights.	We have taken independent advice. The proposal is compliant.
Six comments about the process of ensuring the worker receives and understands the decision.	If we implement the proposal the Fitness to Practise Department will follow a protocol setting out a sufficient number of attempts at contact, over a period of time and using various channels. We will obtain expert advice to address concerns around those with disabilities.

GMB Union and one other respondent raised concerns that some people instruct representation just before the hearing.	Our experience is that those seeking representation later in the process have engaged directly with the process before instructing representation.
Concerns arising from a lack of understanding of the proposal – 41	
Twenty-seven comments that all workers should have a right to a hearing and speak in their own defence.	All workers will continue to have the right to a hearing.
Six comments that solicitors will be making the decision and missing the input of the social service member that sits on the panel.	The Fitness to Practise Department has a multidisciplinary staff team including those with sector qualifications and experience. Sector staff assess all cases relating to practice. The Department also has investigatory staff from a range of backgrounds. This structure mirrors that of the Fitness to Practise Panels.
Six comments about ensuring the worker can input into the investigation.	This is a key part of the existing process. We ask all workers for their position on the allegations and all relevant circumstances.
One comment asking how the outcome will be publicised.	We publish all sanction outcomes on our website to meet our statutory obligations.
One comment that this proposal was purely to save resources.	Proportionate targeting of resources is important but one of the key drivers for this proposal was the impact on witnesses and services.
Positive comments - 57	
Forty-nine comments that the proposal will free up resources, be fairer, quicker, and permit us to focus on other cases.	
Four comments that it will be less stressful for witnesses.	
Four comments that workers may be relieved that the process has concluded.	
General comments about the fitness to practise process - 22	
Nine comments that the investigation process is too long.	We agree and reducing the time is a strategic priority. This proposal will help us do so.
Five comments that publicity surrounding hearings is unfair.	It is a statutory requirement that our hearings are public and part of fulfilling that duty is publicising the hearing and outcome.

One comment that hearings are too legal and complicated.	The fitness to practise process must be human rights compliant and must meet certain standards that ultimately mean they are formal and legal. What we are trying to do is make them as accessible as possible within those constraints.
One comment that people cannot afford representation.	We have and continue to do what we can to expand the access to representation.
One comment that we should provide transport costs and lunches to workers.	We introduced this policy in 2018.
Two concerns that we do not address service and management failings.	If we identify an issue with the management of the service, we report it to the Care Inspectorate and, where appropriate, investigate the manager. Managers have higher referral rates than support workers or practitioners.
One request that we hold hearings in Glasgow as the largest demographic and one request that we use video link more often.	In the last year we introduced a focus on improving attendance at hearings by being more proactive in funding travel to Dundee, use of video link and holding hearings locally to the worker.
One comment that we need to provide information to guide the worker through the process.	We provide factsheets for all stages and have a detailed guide for the hearing process.
One comment that we need to brief witnesses properly before the hearing.	The Hearings Department have undertaken a project carrying out interviews with witnesses who have attended hearings to identify how we can improve the support we offer.



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