

Additional information

What we have done so far

Over the summer we held four engagement events across Scotland and we have spoken to existing stakeholder networks. We have taken all the feedback we received and have developed this guidance on the key aspects of the move to the new process. We are now consulting on this more widely.

Background

The SSSC is a statutory body established by the Regulation of Care (Scotland) Act 2001. Our remit is to safeguard the public by setting and promoting high standards of conduct, practice and training for social service workers. Social service workers is the description for a wide range of roles including social workers, workers in care home services for adults and child care services such as nurseries and residential services. These workers hold a variety of roles such as support worker, practitioner, supervisor and manager.

We have responsibility for the registration and regulation of these workers and as part of meeting that responsibility we must:

- be assured of the good character, conduct and competence of workers applying for registration
- investigate any information we receive that a worker is not fit to practise.

What is changing?

In October 2013 we consulted on proposals to reform our model of regulation from one based on the concept of conduct to one based on fitness to practise. Following the positive outcome of that consultation we decided to change to a fitness to practice process.

The misconduct process

Currently we investigate allegations of misconduct.

Misconduct is behaviour, whether by act or omission, which falls short of the standard of conduct expected of a person registered with the SSSC having particular regard to the SSSC Code of Practice for Social Service Workers.

The focus is on whether or not 'misconduct' has been committed. This terminology does not recognise that in some cases the allegations do in fact relate to competence. Furthermore we cannot take action when a worker's health might put the public at risk.

The fitness to practise process

Fitness to practise will extend our current process to include competence and health. We will investigate where there is information that a worker's fitness to practise is impaired because of:

- conduct
- competence (new)
- health (new).

Impairment may be due to one or more of these reasons.

This change means that competence issues will be correctly described and not called misconduct and we will now be able to address health. There may be a health issue in a case about conduct or competence and we will take this into account. It may affect the final decision and the sanction.

Fitness to practise is only impaired by health when health is the central issue.

Other areas of work

As well as the change to our process there are four other areas of work.

1. Considering the impact of the new process on the **SSSC Codes of Practice for Employers and Social Service Workers**. We anticipate that we will need the following changes:
 - duty on employers to refer registered workers if they consider fitness to practise may be impaired
 - duty on workers to tell the SSSC if they consider that their fitness to practise may be impaired
 - duty on workers to inform the SSSC if they consider that a colleague's fitness to practise may be impaired.
2. We will update the **Publicity Policy** that governs how decisions are made public to take health matters into account.

3. We will hold a formal consultation on changes to the **Rules** in due course.
4. We will revise processes, forms and website guidance.

The aims of this work are to:

- provide clear guidance to applicants and registrants on what to declare and how decisions will be made
- provide clear guidance to employers and other parties on how to make a referral and when
- set out in the Rules how cases about health will be managed
- set out what happens once decisions have been made and how a worker might re-join the profession after particular decisions.

Human rights

The SSSC has considered if a fitness to practise regime will breach the human rights of applicants or registrants and has decided that it will not.

The Human Rights Act 1998 sets out that we all have the right to respect for private and family life. This right should not be interfered with by a public body unless it is in accordance with the law and necessary for the protection of health or the rights and freedoms of others. The SSSC is established by law and its purpose is to protect the public. If a worker is allowed to practise while living with an illness or condition that affects their practise this may put people who use services at risk of harm. The following regulatory bodies have all adopted/are adopting a fitness to practise approach that includes the consideration of health:

- Care Council for Wales
- Northern Ireland Social Care Council (moving to a fitness to practise approach in 2016)
- The Health & Care Professions Council.
- General Medical Council
- Nursing and Midwifery Council
- General Dental Council.

Equalities

The SSSC has considered if a fitness to practise process will breach legislation that promotes equality and decided that it will not.

The Equalities Act 2010 sets out a number of protected characteristics and three may potentially have health implications; disability, age and pregnancy/maternity. The Act prohibits discrimination which means treating a person less favourably because of one of the protected characteristics. The SSSC does not set a list of health issues that will always mean fitness to practise is impaired. We will not treat all people who are ill or have a certain type of illness or disability in a different way from everyone else. Having a diverse workforce is very important to us. It will only be in very specific circumstances that we will need to take action and only where health means that the person cannot carry out their role safely and effectively. This will always vary from case to case.

However, the SSSC is conscious of the importance of clear and appropriate language in all guidance, referral documents, website material and internal documents to make sure that those living with a disability or an age related illness do not perceive any barrier or that they are being treated less favourably.