



Fitness To Practise

STANDARD OF ACCEPTANCE: FITNESS TO PRACTISE ALLEGATIONS

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Northern Ireland Social Care Council
7th Floor, Millennium House
19-25 Great Victoria Street
Belfast
BT2 7AQ
Tel: 028 95 362 325
E-mail: info@niscc.hscni.net
Website: www.niscc.info

Standard of Acceptance: Fitness to Practise Allegations

Introduction

- 1.1 The Health and Personal Social Services Act (2001) provides that the NISCC's primary function is to set and maintain standards for the social care workforce with the objective of protecting the public. An important part of this function is the investigation and adjudication of allegations which are made against Registrants.
- 1.2 It is important that every stage of the NISCC's Fitness to Practise process is focused on protecting the public and maintaining confidence in the social care workforce and system of regulation.
- 1.3 Our primary concern as a regulator is that Registrants are 'fit to practise' in the sense that they have the knowledge, skills and character to practise safely and effectively. Our proceedings are designed to protect the public from those whose fitness to practise is impaired. Impairment can be on the basis of:
- Misconduct
 - Lack of competence
 - Physical or mental health
 - A conviction or caution for a criminal offence
 - A finding by another regulatory body
 - Inclusion on a list maintained by the Disclosure and Barring Service
- 1.4 Fitness to practise is not just about professional performance. It also encompasses acts by Registrants in both their professional and personal life which may have public interest implications, including:
- protecting service users
 - maintaining public confidence in the profession and regulatory process
 - declaring and upholding proper standards of conduct and behaviour
- 1.5 Alleging that a Registrant's fitness to practise is impaired is a serious matter. It is not simply a suggestion that a Registrant has done something wrong but, in essence, that they have done something which is serious enough to raise doubts about whether they should be allowed to continue to practise, either on a restricted basis or at all.
- 1.6 Registrants do sometimes make mistakes or errors of judgement and it would not be in the public interest for NISCC to pursue every minor lapse.
- 1.7 NISCC's Fitness to Practise Rules (2016) provide the grounds for defining what constitutes an allegation. Information will only be considered to be capable of amounting to an allegation where the information:
- i. relates to an identifiable registrant;
 - ii. forms the basis of an allegation of impaired fitness to practise against a Registrant; and
 - iii. meets the Council's Standard of Acceptance
- 1.8 This policy outlines the Council's Standard of Acceptance, the aim of which is to provide a proportionate threshold which allegations must meet before they will be investigated by NISCC. The purpose of this policy is to ensure that NISCC undertakes its duties as a responsible regulator effectively and efficiently. It is not intended to act as a barrier to the making of an allegation, but simply to act as a filter to ensure that resources are not expended on pursuing matters which do not raise credible cause for concern.

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- 1.9 While allegations are only made against a small minority of NISCC Registrants, investigating them properly is a resource-intensive process. Therefore it is important to ensure that the available resources are used effectively to protect the public and are not diverted into investigating matters which do not raise cause for concern. The Standard of Acceptance is an important safeguard against the diversion of resources, but as the NISCC's primary concern is public protection, it is not a rigid and unbending rule.
- 1.10 The core principles underpinning this policy are that NISCC will:
- ensure the protection of those using social care services
 - promote and uphold high standards in the social care workforce
 - maintain confidence in the social care profession
 - adopt a proportionate, risk-based approach to regulation

Making an allegation

- 2.1 Anyone can make an allegation about a registered social care worker – service users, carers, employers or the general public. The Council will endeavour, through its website and other published information, to ensure that any person wishing to make an allegation is clear about the Council's role and remit and the thresholds for referral. The Council will determine whether the information received constitutes an allegation as defined in paragraph 1.7 above.
- 2.2 The Council may also act on information that comes to its attention by other means, for example, through the press or notification by the police or the courts if a social care worker has been arrested or convicted.
- 2.3 Each allegation received by the NISCC will be considered on its own merits, and as NISCC's main objective is public protection, there will be a presumption in favour of making further enquiries about an allegation unless it clearly does not meet the Standard of Acceptance.
- 2.4 In some cases it is clear from the outset that there is no need for NISCC to investigate because the allegation:
- is about matters that do not raise public protection concerns
 - relates more to a service provided by a health and social care organisation
 - relates more to a decision made by another body
 - would be more appropriately dealt with by another body (e.g. the Regulation and Quality Improvement Authority (RQIA) as the Service Regulator)
- 2.5 Where an allegation falls outside the Council's jurisdiction or might be more suitably handled elsewhere, the Council will endeavour to signpost the person making the allegation to the appropriate body.
- 2.6 Allegations must be made in an acceptable format. This will normally be in writing, to assist in obtaining all relevant information from the person making the allegation. Where the initial contact with the NISCC is by other means, the Council will assist the person to submit their allegation in writing.
- 2.7 Where the allegation does not relate to a registered Social Care Worker, that information will be held by the NISCC pending future application to be included on the register. It is the Council's policy to notify the individual that an allegation has been made and to give them an opportunity to respond to the allegations if they wish to do so. Where the person making the allegation is a service user, they will be advised of the Council's policy with regard to non-registered workers and be directed to the worker's employer if they have not already done so.

What types of cases can we not consider?

3.1 The Council is not able to:

- consider allegations about social care workers who are not registered with us
- consider complaints about the level or quality of social care services (concerns about the level or quality of a social care service should be directed to the social care organisation responsible for providing the service, or to the RQIA which regulates and reviews social care services in Northern Ireland)
- get involved in a service user's care
- deal with customer-service issues
- resolve disputes between Registrants and service users

3.2 In the course of their professional duties, NISCC Registrants often have to make difficult decisions, particularly when performing statutory functions, and not everyone will agree with those decisions or the consequences that may result from them. Understandably, those affected by a professional decision may disagree with it (for example, an adverse comment about them in a report, a decision that they are not eligible for some form of special assistance or benefit or a recommendation made to a court in relation to a child care matter). The fitness to practise process is not an appropriate mechanism for challenging the content of professional reports or the exercise of statutory powers and it is unlikely that allegations which seek to do so will meet the standard of acceptance unless there is evidence that, for example, the Registrant knowingly made a false or misleading statement, acted beyond their scope of practice or otherwise acted in bad faith.

What types of cases can we consider?

4.1 The Council's role is to investigate those allegations which, if proven, call in to question a Registrant's suitability to remain on the Social Care Register. This is likely to involve those cases where the Registrant has:

- been dishonest, committed fraud or abused someone's trust
- exploited a vulnerable person
- failed to respect service users' rights to make choices about their own care
- had an improper relationship with a service user
- carried out reckless or deliberately harmful acts
- seriously or persistently failed to meet standards
- been involved in sexual misconduct or indecency
- been violent or displayed threatening behaviour

Time Limits for making an allegation

- 5.1 There is normally a five year time limit in relation to making an allegation however the Council can consider cases where events may have taken place several years beforehand if it is in the public interest to do so. However to enable the Council to secure the best evidence possible, it is preferable if the allegation is made as close to the time of the incident as possible.

Anonymous Complaints

- 6.1 Allegations about a social care worker may on occasion be made by a person whose identity is unknown to NISCC or by a person who has asked that their identity is not disclosed. The Council will make clear to any person making an allegation who asks for their identity to be withheld that failure to agree to the disclosure of the allegation may prevent the matter progressing further. Telephone callers will be encouraged to make their allegation in writing.
- 6.2 Anonymous allegations raise both practical problems in terms of following up information and also issues of fairness in that a Registrant is entitled to know not only what allegations are being made against them but also the identity of the person making them.
- 6.3 In the interests of public protection however, the Council cannot completely ignore allegations against Registrants from anonymous sources and may take action in the following circumstances:
- the allegations are of a particularly serious or significant nature
 - it is deemed that the public interest would be best served by referring the allegation for further investigation or other action
 - there is a good reason why the allegation is being made on an anonymous basis, e.g. where there might be potential adverse consequences for the person making the allegation
 - the allegations can be properly substantiated by third party witnesses or by documentary or photographic evidence provided with the allegation without the need for further contact with the person making the allegation
- 6.4 Where the Council is unable to progress an investigation, the Registrant and their employer will be notified of the allegations received and advised of the Council's policy on anonymous allegations.

Vexatious Complaints

7.1 In making allegations to NISCC, most people act entirely reasonably and act in good faith. However a small minority of people make allegations that are vexatious, in that they persist unreasonably with allegations or make allegations other than genuinely to resolve a concern.

7.2 Vexatious allegations unnecessarily divert valuable NISCC resources from their true purpose; public protection, and therefore it is important that such allegations are properly identified and managed.

7.3 Each allegation will be considered on its own merits, however an allegation may be regarded as vexatious where the person making the allegation:

- persists in pursuing an allegation which has already been investigated by the NISCC and provides no new and material information
- continually raises further concerns or questions whilst the allegation is being addressed
- fails to clearly identify the substance of an allegation or the precise issues which may need to be investigated, despite reasonable efforts by NISCC to assist the person making the allegation to do so
- makes allegations solely about trivial matters to an extent which is out of proportion to their significance
- makes excessive contact with NISCC or seeks to impose unreasonable demands or expectations on resources, such as responses being provided more urgently than is reasonable or necessary

7.4 In cases where it is decided that an allegation is vexatious, the Council will not proceed with an investigation and will inform the person making the allegation in writing of the decision.

Employer Referrals

8.1 Under the Code of Practice for Employers of Social Care Workers, employers must promote the NISCC Standards of Conduct and Practice to social care workers, service users and carers and co-operate with NISCC proceedings. Standard 5.5 of the Code states that employers must inform NISCC about:

'any misconduct by registered social care workers that might call into question their registration and inform the worker that a report has been made to the NISCC'.

8.2 NISCC requires employers to make a referral to the Council in the following circumstances:

- i. where the worker is suspended pending the outcome of a disciplinary investigation
- ii. where the worker has been dismissed, regardless of any intention to appeal
- iii. where the worker resigns during a disciplinary investigation
- iv. where the employer becomes aware of a criminal charge or conviction against the worker
- v. in any other circumstances which the employer feels may have a bearing on the worker's registration

8.3 NISCC recognises that employers deal with situations regarding the misconduct, lack of competence and ill health of their staff every day, and that will include situations with our Registrants. We do not need to be told about:

- lateness or poor time-keeping (unless it has a direct impact on service users, such as delaying handovers or leaving service users at risk)
- personality conflicts, provided that there is no evidence of bullying or harassment
- sickness or other absence from work, provided that there is no impairment of fitness to practise and the Registrant is managing his or her health unless the matter has resulted in the Registrant's suspension.

8.4 If in doubt as to whether a matter should be referred to NISCC, it is better to check with us. Our Fitness to Practise Officers will be happy to offer advice on a case by case basis.

8.5 In most cases, these situations can be resolved quickly and proportionately through local procedures without any need for referral to NISCC. Referral to the Regulator should be regarded as a position of last resort where regulatory measures put in place by the employer at individual, team and organisational levels are not deemed to offer sufficient safeguards in relation to ensuring safe and effective practice to service users and carers.

8.6 Where the concerns about a Registrant relate to competence, we would normally expect the employer to have exhausted their internal capability processes and procedures before making a referral to NISCC.

Notifiable Occupations Scheme

- 9.1 Under the terms of the Notifiable Occupations Scheme, the Police will inform the NISCC of any conviction, caution, reprimand or warning about social care workers. This information will only be used for its designated purposes, which is to assess whether the issues raised call into question the worker's suitability to remain on the Social Care Register.
- 9.2 Under the terms of registration, registered workers are also expected to inform NISCC directly of relevant changes in their circumstances, including convictions and other disciplinary findings.
- 9.3 All serious criminal convictions will be referred directly to the Fitness to Practise Committee. All other convictions, other than those for minor road traffic offences, will be risk assessed by the Council and will normally be referred for the consideration of a Preliminary Proceedings Committee.
- 9.4 Notifications about non-registered workers will be dealt with under the Non-Registered Workers procedures.

Case closures

- 10.1 A decision not to proceed with an allegation on the basis that it does not meet the Standard of Acceptance will only be taken after consideration of all the available information. Any doubt will be resolved in favour of public protection, by allowing the allegation to proceed.
- 10.2 In establishing whether any information received is capable of amounting to an allegation, the Fitness to Practise Rules make provision for the Council to make what preliminary enquiries it considers necessary. Preliminary enquiries will depend on the nature of concerns raised but may include seeking further documentation from an employer or confirming the circumstances of a conviction with the PSNI.
- 10.3 Where an allegation is found not to meet the Standard of Acceptance, clear reasons for the decision will be recorded.
- 10.4 Where an allegation does not proceed at this stage, it will not form part of a Registrant's formal NISCC record (i.e. affect their registration status) or be made public. The information may however be taken into account if a further allegation is made about that person.
- 10.5 All allegations which are deemed to meet the Standard of Acceptance will be subject to a full risk assessment to determine the appropriate action to be taken.