



## **Northern Ireland Social Care Council**

### **Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees**

June 2017

Version 1.2

<b>Introduction</b>	1
The Guidance	1
The statutory purposes of the NISCC	1
The role of the NISCC in setting standards	1
Equality and diversity statement	2
<b>Part I: Indicative Sanctions</b>	3
<b>1. Purpose</b>	3
<b>2. General Principles Regarding Sanctions</b>	3
2.2 Public interest	4
2.4 Fairness	4
2.5 Proportionality	4
2.8 Approach	5
2.9 Reasons	5
2.13 Guidance on considering a case under the Health Procedure	6
2.16 Guidance on considering conviction cases and findings of facts by other regulators	6
<b>3. Mitigating And Aggravating Factors</b>	7
3.2 Mitigating factors	7
3.3 Aggravating factors	8
3.4 Guidance on considering references and testimonials	9
3.10 Expressions of regret and apology	
<b>4. Sanctions</b>	10
4.8 Warning	11
4.13 Conditions of Practice Order	13
4.18 Suspension Order	15
4.26 Resumed hearing – review of Suspension Orders	16
4.12 Removal	16
<b>5. Examples of Impairment Relevant to the Sanction of Removal</b>	17
5.4 Sexual misconduct	17
5.6 Sex offenders and child abuse images offences	18
5.10 Dishonesty	19
5.14 Failing to provide an acceptable level of care	19
5.15 Other abuse/s of position/trust or violations of the rights of users of services	20
5.16 Other serious abuse/s of the privileged position enjoyed by registered professionals	20
5.17 Impairment caused by lack of competence such as to call into question the continued ability of the practitioner to practise safely	20
5.18 Behaviour that is fundamentally incompatible with professional registration	20

<b>Part II: Interim Orders</b>	21
<b>1.1 Introduction</b>	21
<b>2.1 Interim Suspension Orders</b>	21
<b>3.1 Interim Conditions of Practice Orders</b>	21
<b>4. The Legal Tests to be Applied</b>	22
4.3 Public interest	22
4.4 Fairness	22
4.5 Proportionality	22
<b>5. General Principles to be Taken Into Account</b>	23
5.2 Examples of alleged impairment to be taken into account in assessing risk of harm	23
<b>6. Decision</b>	24
6.2 Reasons	24
<b>Appendices</b>	
1. Approved Regulatory Bodies Policy	25

## **INTRODUCTION**

### **The Guidance**

This Guidance has been produced by the Northern Ireland Social Care Council (NISCC) to assist Fitness to Practise Committees in their decision making processes around impairment and sanction and Preliminary Proceedings Committees (PPCs) in their consideration of whether an Interim Order should be imposed. It sets out the principles and factors which should underpin the decision-making process.

The Guidance is a 'living document'. It will be reviewed annually and updated and revised in the light of experience and any relevant case law. This document is designed to guide Officers and Committees; it is not intended to restrict them Committee from exercising their own judgement.

The Guidance considers:

- General principles to be taken into account;
- Mitigating and aggravating factors;
- Sanctions available;
- Factors to be taken into account when considering particular sanctions.

Throughout this Guidance the generic term 'social care worker' has been used. This term covers both social workers and social care workers.

The NISCC acknowledges the kind permission of both SSSC and CCW to reproduce and amend their documents.

### **The statutory purposes of the NISCC**

The statutory purposes of NISCC are to promote high standards of conduct and practice among social care workers, and high standards in their education and training. The safety and welfare of all persons who use, or are eligible to use, care services are to be protected and enhanced. The NISCC has four main functions in terms of the Health and Personal Social Services Act (Northern Ireland) 2001 (the 2001 Act).

- Maintaining the Register of social workers and social care workers;
- Producing, publishing and keeping under review Codes of Practice;
- Approving and quality assuring social work training courses;
- Managing referrals in a robust and fair way in relation to social care workers whose suitability to be registered has been called into question.

### **The role of the NISCC in setting standards**

NISCC has a statutory role in providing guidance to social care workers on the standards of conduct and practice expected of them. Section 9 of the 2001 Act

makes it mandatory for the NISCC to prepare and publish Standards of Conduct and Practice setting down these standards.

NISCC has developed standards of conduct and practice for social workers and social care workers respectively. The Standards of Conduct describe the values, attitudes and behaviour expected of Registrants as they go about their day to day work while the Standards of Practice outline the competence requirements for safe and effective practice. Together, both sets of standards combine to form the regulatory framework for social workers and social care workers.

### **Equality and diversity statement**

NISCC is a public authority for the purposes of Section 75 of the Northern Ireland Act 1998 and the Human Rights Act 1998. NISCC will seek to uphold and promote the principles of the European Convention on Human Rights in accordance with the 1998 Act.

NISCC has made a commitment to equal opportunities and diversity and has an agreed strategy for delivering on this commitment. NISCC will uphold its policy on equality in the administration of the fitness to practise procedures and expect Committees to do the same.

Social care workers practise social work and social care work in order to serve the interests of people who use services. It is a central function of a Fitness to Practise Committee to consider the interests of people who use social care services and to protect them by ensuring the suitability of Registrants. NISCC is committed to promoting equality and valuing diversity and to operating procedures and processes that are fair, objective, transparent and free from discrimination. Promoting equality is also a requirement under current equality legislation. Everyone acting for NISCC is expected to adhere to the spirit and letter of this legislation.

NISCC also has a positive duty to promote equal opportunities for service users and carers and to respect diversity of different cultures and values.

Social care workers are required not to discriminate unlawfully or unjustifiably against users of services, carers or colleagues, as set out in the Standards of Conduct and Practice.

## **Part I: Indicative Sanctions Guidance**

### **1. Purpose**

- 1.1 The primary reasons for NISCC to provide Indicative Sanctions are to provide guidance to Committees about the NISCC's views on required standards of conduct and practice and for there to be consistency in the approach of the imposition of sanctions. This is aligned with the requirement on NISCC to maintain professional standards and protect the public and service users from poor or unsafe standards of social care.
- 1.2 While each case will turn on its own particular facts, Committee members should refer to the Guidance at the stage of considering what sanction to impose after making a finding of impaired fitness to practise. The Guidance sets out the relevant criteria to be applied in assessing the appropriate sanction to be imposed. This helps to ensure consistency of approach over time.
- 1.3 The particular advantage of the Guidance is that it demonstrates to the profession as a whole and the wider public that they can have confidence in NISCC and the sanctions which may be imposed by its Fitness to Practise Committees. It also means that the Fitness to Practise Committees, the Registrants and all representatives appearing before the Committee know what to expect when assessing the gravity of the particular case and considering the sanction to be imposed.
- 1.4 This Guidance will be useful to those involved personally or professionally in fitness to practise cases, including:
  - People who use services who are considering making an allegation to NISCC about a social care worker;
  - Social care workers who are subject to fitness to practise proceedings;
  - Employers considering making a referral to NISCC;
  - Factual and expert witnesses;
  - Those representing NISCC and Registrants;
  - Legal Advisers and Medical Advisers;
  - Other regulatory bodies.
- 1.5 A Committee is expected to confirm that in reaching its decision, the Guidance was referred to. If the Guidance was not used, a Committee is expected to explain why not.

### **2. General Principles Regarding Sanctions**

- 2.1 The role of a Fitness to Practise Committee in reaching its decision on a sanction involves a three-stage process. Under the Fitness to Practise Rules a Committee shall:

- Stage 1: Make findings of fact;
- Stage 2a: Determine if one of the 6 grounds for impairment is found proved, e.g. misconduct, competence;
- Stage 2b: Determine if current impairment of fitness to practise exists;
- Stage 3: If current impairment exists, which sanction, should be imposed.

### **Purpose of Sanction**

- 2.2 The primary purpose of a sanction is not to be punitive, but to protect the public, although a sanction may have a punitive effect.

In considering fitness to practise, the focus is on the 'now', not what has happened in the past.

### **Public interest**

- 2.3 The public should have confidence that NISCC, as the regulator of social care workers, will uphold proper standards of behaviour and conduct. The public interest requires that the public and social care users are protected from unsafe practice and that confidence in the profession of social work and the social care workforce in general is maintained. It is part of NISCC's role to maintain standards and to protect the public from social care workers who for any reason whether character, competence, conduct or health, are not fit to practise. Any social care worker registered with NISCC agrees to abide by the Standards of Conduct and Practice.
- 2.4 In serving the public interest, the primary purpose of sanctions is to ensure, firstly, that the social care worker does not have the opportunity to repeat the misconduct and secondly, to maintain the reputation of the profession (see also section 4, 'Sanctions').

### **Fairness**

- 2.5 There is a duty on Fitness to Practise Committees to act fairly. What constitutes the standards of fairness in any proceedings is not fixed and may change over time and depends on the circumstances of each case.

### **Proportionality**

- 2.6 The principle of proportionality requires that the consequences of the sanction which a Committee imposes must not be disproportionate to the harm from which the sanction is intended to protect the public and service users. The interests of the public and service users have to be weighed against those of the Registrant. There is a wider public interest to be served in the approach to sanctions. A Committee ought not to have only a particular service user or service user group in mind.

- 2.7 A Committee must ensure that measures taken to limit the fundamental right to practise one's profession are no more than is necessary in all the circumstances.
- 2.8 NISCC Registrants are primarily employed by social care providers and therefore Committees should also pay regard to the NISCC Code of Practice for Employers which requires Employers to have adequate systems, policies and procedures in place to support Registrants to meet the Standards of Conduct and Practice

### **Approach**

- 2.9 A Committee should approach the task of deciding which sanction to impose in all the circumstances of the particular case by starting with the least restrictive sanction and working upwards from there. At each stage, a Committee should state why a particular sanction was not sufficient to protect the public and then move to the next sanction (see 'Reasons', at 2.10 below). A Committee should continue in this way until it reaches the sanction it considers is sufficient.

### **Reasons**

- 2.10 A Committee must give reasons for the imposition of the particular sanction in every case. The reasons must be adequate and allow a Registrant to understand why a particular sanction was chosen in preference to other sanctions which were available (see 'Approach', at 2.9 above).
- 2.11 The reasons should indicate why the decision taken by a Committee is considered to be proportionate in all the circumstances. By setting out intelligible and adequate reasons, the Registrant, NISCC, the public and those who gave evidence to a Committee, will be able to see and understand why a particular decision has been reached.
- 2.12 As the Registrant has the right to appeal to the Care Tribunal, a proper explanation of the reasons for the decision will assist the Registrant in deciding whether or not to exercise their right to appeal and, if that right is exercised, will help the Care Tribunal in determining any such appeal.
- 2.13 The reasons for the decision of a Committee should cover:
- the factual basis of the decision;
  - the legal basis of the decision;
  - the conclusions reached on the principal important controversial issues, disclosing how any issue of law or fact was resolved;
  - confirmation or otherwise that a Committee has accepted any legal advice given to it by the independent Legal Adviser (and a particularly full explanation will be required where a Committee has decided not to accept the Legal Adviser's advice);



- a Committee's conclusions on the submissions made to it by the parties or their representatives;
- the reasons for any sanctions imposed explaining the extent to which this Guidance was taken into account, whether it was followed, and, if not, why not.

### **Guidance on considering a case under the Health Procedure**

- 2.14 A Fitness to Practise Committee has the power, at any stage in the course of a hearing, to consider the case under the Health Procedure if it appears that the alleged impairment may have been caused or substantially contributed to, by the Registrant's physical or mental ill-health.
- 2.15 If a Committee determines that the Registrant is unfit to plead, it should make a Suspension Order until the Registrant becomes fit to plead.
- 2.16 A case may be referred under the Health Procedure as a result of evidence presented to a Committee as part of the defence or mitigation (for example, the objective evidence of a psychiatric condition); or it could be based on the Registrant's behaviour or demeanour on the day. In assessing this, a Committee should take account of cultural differences that affect behaviour, attitude and the process of communication.

### **Guidance on considering conviction cases and findings of facts by other regulators**

- 2.17 Convictions refer to a determination by a criminal court in the United Kingdom, or elsewhere which, if committed in the UK, would constitute a criminal offence.
- 2.18 The findings of fact by any of the regulatory bodies referred to in the 'Approved Regulatory Bodies' Policy (see Appendix 1) shall be prima facie evidence of the facts founds.
- 2.19 Where a Committee receives the findings of fact of a regulatory body and/or a certificate of conviction of any UK criminal court, unless it also receives evidence that the social care worker is not the person referred to in the conviction or findings of fact, then the Committee is to accept the certificate as conclusive evidence of the offence having been committed.
- 2.20 A Committee must establish whether the offence amounts to impairment of fitness to practise and must take due account of any mitigating circumstances.
- 2.21 A Committee should not take into account in its consideration that a Registrant may already have suffered personally or professionally for their behaviour in prior criminal proceedings. The Committee's function is to protect members of the public and to maintain the high standards and reputation of social care services.

- 2.22 A Committee should bear in mind that the sentence or sanction previously imposed is not necessarily a definitive guide to the seriousness of the offence. There may have been circumstances that led the court or regulatory body to be lenient. For example, despite sentencing guidelines, judges differ in their approach to sentencing. There are also different sentencing powers available to the courts. Similarly, the range of sanctions and how they are applied may vary significantly between regulatory bodies.
- 2.23 A Committee's role is to balance the nature and gravity of the offence/s, mitigating factors such as remorse and length of time since the offence (see 'Mitigating and Aggravating factors' at section 3 and their bearing on the Registrant's suitability to practise as a social care worker, against the need for the imposition of a sanction and its consequences upon the ability of the Registrant to practise his or her profession.

### **3. Mitigating and Aggravating Factors**

- 3.1 Where a Committee makes a finding of impaired fitness to practise, the Committee will require to be addressed by the Registrant, if in attendance, or their representative in mitigation. The Committee will have heard from the NISCC's Presenter on aggravating factors. The Committee must weigh the mitigating factors against the aggravating factors relevant in each case (see also section 4.5 below) before deciding on the appropriate sanction.

#### **Mitigating factors**

- 3.2 The following is a list of possible mitigating factors, although a Committee should bear in mind this list is not exhaustive:
- length of time since the incident/s and any good practice in the meantime;
  - co-operation with the NISCC investigation;
  - compliance with any previous assessment or conditions;
  - early admission of facts alleged;
  - insight;
  - behaviour was an isolated incident, which was not deliberate or premeditated;
  - genuine expression of regret/apologies;
  - acting under duress;
  - previous good history;
  - previous good character of the Registrant;
  - evidence that rehabilitative/corrective steps have been taken;
  - relevant and appropriate references and testimonials;
  - circumstances leading up to the incident/s, for example, significant events in the Registrant's life which have impacted on their ability to do their job, underlying mental or physical ill-health;

- impact on victim – to include both harm and potential harm;
- evidence that the behaviour would not have caused direct or indirect harm to a service user;
- whether the offence was committed at work or outside work.

If a Committee takes the view that an employer may have had an impact on the practitioner's behaviour or competence (for example lack of supervision, high workload, lack of adequate policies/procedures), this could also be considered as a mitigating factor, albeit that Registrants ultimately remain personally responsible for their own standards of professional conduct and practice. In these circumstances the Committee should pay regard to the Code of Practice for Employers. Individuals who are both employers and social care workers are subject to the Code of Practice for Employers and the Standards of Conduct and Practice for Social Workers/ Social Care Workers.

Where a Committee is addressed on mitigating factors, it should consider the relevance of those factors and the weight to be given to them in accordance with the terms of section 4 "Sanctions" in each case.

### **Aggravating factors**

3.3 The following is a list of possible aggravating factors although a Committee should bear in mind this list is not exhaustive:

- dishonesty;
- abuse of trust;
- concealment of wrong-doing;
- pre-meditated actions;
- lack of insight;
- lack of regret;
- risk posed to and/or impact on service user(s);
- failure to co-operate with an investigation by the NISCC;
- circumstances leading up to the incident/s;
- serious disregard for the NISCC's Standards of Conduct and Practice, for example, the Registrant was aware of and/or colluded with practice that was contrary to the Standards;
- offending in the light of previous findings of impairment;
- previous convictions;
- evidence of persistent misconduct;
- whether the offence was committed at work or outside work.

The Committee should consider the relevance of these factors and the weight to be given to them in accordance with the terms of section 4 "Sanctions" in each case.

## **Guidance on considering references and testimonials**

- 3.4 In mitigation, the Registrant may present references and testimonials. In considering these, a Committee should explore and take into account the following factors:
- how recent they are;
  - the “expertise” of the writer;
  - the actual level of knowledge the writer has of the Registrant and, where relevant, the Registrant’s recent practice;
  - whether the writer is aware of the allegations;
  - whether the writer is aware that their letter is to be put to a Committee as mitigation evidence;
  - whether the reference/testimonial is genuine.
- 3.5 A Committee must be convinced of the validity of a document before it can be accepted as part of mitigation.
- 3.6 If provided in advance of the hearing, references/testimonials may not stand as an accurate portrait in light of the facts/impairment found proved.
- 3.7 All the factors outlined above should be considered when looking at references and testimonials.
- 3.8 The absence of references or testimonials may not necessarily count against a Registrant.
- 3.9 Registrants may present references and testimonials as to their standing in the community or profession. These need to be weighed appropriately against the nature of the incident. The quantity, quality, and spread of references and testimonials will vary from case to case. This will not necessarily depend on the standing of a Registrant. There may be cultural reasons for not requesting references or testimonials. In addition, acquiring references and testimonials may pose a difficulty for newly arrived overseas-qualified social workers or social care workers, or newly qualified social workers or newly appointed social care workers.

## **Expressions of regret and apology**

- 3.10 The social care profession and the public have a number of expectations, including that people who use services should be protected from similar events recurring, and that social care workers should take positive steps to learn from their mistakes.
- 3.11 The insight of the social care worker is an important factor. Insight can be defined as the expectation that a social care worker will be able to stand back and accept that, with hindsight, they should have behaved differently. It is

also expected that he or she will take steps to prevent a recurrence. There may be cultural differences in the way that insight is expressed for example, how an apology or expression of regret is framed and delivered and the process of communication.

- 3.12 The important factor is that the Registrant has recognised that steps are required to be taken to remedy the failures and it is not simply the form in which this may be expressed that is relevant.
- 3.13 A Committee should take account only of evidence actually put before it, for example, testimonials. A Committee should not draw any adverse inferences from an absence of such evidence because:
- there may be cultural or other reasons why a Registrant would not solicit testimonials from colleagues or service users, and
  - in any event, such inferences would be likely to be influenced by assumptions about the sort of references that might have been produced, assumptions that are untested.
- 3.14 If a Registrant's conduct or practice shows they are fundamentally unsuitable for registration as a social care worker, no amount of remorse or apologies – or indeed positive personal qualities in other respects – can “mitigate” the seriousness of that conclusion and its impact on registration. Persuasive evidence of rehabilitation and a credible commitment to high standards in the future will be directly relevant to the question of suitability to practise, to the Registrant's credit, even though there may have been a lapse in the past, possibly a serious one.
- 3.15 Evidence of mitigating circumstances surrounding proven impairment can be helpful in forming a picture of how a Registrant has responded to stresses in life and professional practice, which may be significant in relation to the question of impairment. Evidence that lapses have been associated with extreme circumstances that no longer exist may give some degree of reassurance. But the risk of recurrence of stressful circumstances may be relevant to the evaluation of risk (and hence to the sanction).

#### **4. Sanctions**

- 4.1 Fitness to practise means that the Registrant has the ‘skills, knowledge and character to practise their profession safely and effectively’.
- 4.2 A Registrant's fitness to practise may be impaired by reason of one or more of the following:
- i. Misconduct
  - ii. Lack of competence
  - iii. Physical or mental health

- iv. A conviction of caution in the UK for a criminal offence or a conviction elsewhere for an offence which, if committed in the UK, would constitute a criminal offence
  - v. A determination made by another Regulatory Body (see Appendix 1).
  - vi. Inclusion on a list maintained by the Disclosure and Barring Service.
- 4.3 The level of seriousness of the impairment will be a very significant factor in determining the sanction to be imposed.
- 4.4 A Committee should refer to this Guidance and take into account the principles set out in it when coming to its decision on sanction.
- 4.5 The sanctions which a Committee may impose are set out in the Fitness to Practise Rules, as follows:
- Warning;
  - Conditions of Practice Order (CPO);
  - Suspension Order;
  - Removal Order.

The Committee may also close a case or issue a written reminder to a Registrant.

- 4.6 Where the Committee finds impairment, it will almost always be the case that a sanction is imposed. In very exceptional circumstances, a Committee may decide that it is appropriate not to impose a sanction, for example where the Registrant has been diagnosed with a life threatening illness and is unlikely to return to practise.
- 4.7 The primary purpose of sanctions is to protect the public by ensuring, so far as possible that the Registrant does not breach the Standards of Conduct and Practice and also to maintain the reputation of the profession. Punishment is not the primary purpose. Rather the primary focus of the Committee is on the protection of the public - service users in particular and the maintenance of public confidence in the integrity of the profession. There may be a punitive element, perhaps because the Registrant can no longer work in their chosen profession possibly resulting in a change in their financial position. The case law makes clear that a 'punitive' element is not one which a Committee can shy away from when imposing the appropriate sanction. A profession's most valuable asset is its collective reputation and the confidence which that inspires. While membership of a profession brings many benefits, the reputation of the profession is more important than the fortunes of any individual Registrant.

### **Warning**

- 4.8 A warning may appear to be the least severe sanction as it permits the Registrant to continue working. A warning may be imposed for a period of between 1 to 5 years and will be recorded against the Registrant's entry for

the duration of the sanction. A warning may not be imposed for a period of less than one year. In order to ensure that a fair and consistent approach is adopted, Committees should regard a period of 3 years as the 'benchmark' for a warning and only increase or decrease that period if the particular facts of the case make it appropriate to do so. In their determination, the Committee must provide an explanation as to why a particular period of sanction is being imposed.

- 4.9 A warning does not directly affect a Registrant's ability to practise, but is disclosed if an employer enquires about the Registrant's entry on the Register. It can also be disclosed to any Preliminary Proceedings Committee or Fitness to Practise Committee in the future if further allegations are received about the Registrant. A warning may be appropriate where the behaviour is at the lower end of the spectrum of impairment; where the Committee wish to mark that the behaviour was unacceptable and must not happen again.
- 4.10 If a Committee is minded to issue a warning, it should consider whether the sanction provides adequate public protection as far as the Registrant's suitability is concerned, bearing in mind that the Registrant will be entitled to work as a social care worker. This sanction may be appropriate if the Registrant's character and circumstances are such that, whatever the history, a Committee is confident that there is no risk to the public or people who use services.
- 4.11 It may also be the appropriate sanction for cases where there may be a low risk of recurrence, and where the lapse has been corrected and was of itself of a minor nature and does not involve serious wrong-doing.
- 4.12 A warning may be appropriate when most or all of the following factors are present (this list is not exhaustive):
- evidence that the behaviour would not have caused direct or indirect harm to service users;
  - evidence of insight into failings and of willingness to change the behaviour;
  - behaviour was an isolated incident, which was not deliberate;
  - genuine and timely expression of regret/apologies;
  - acting under duress;
  - previous good history and good character;
  - no repetition of behaviour since incident;
  - evidence that rehabilitative/corrective steps have been taken;
  - relevant and appropriate references and testimonials.

## Conditions of Practice Order (CPO) (please refer to the Conditions Bank)

- 4.13 Conditions may be appropriate in cases involving particular areas of a Registrant's performance, for instance, following a single incident, or where there is evidence of shortcomings in a specific area or areas of the Registrant's work, but where a Committee is satisfied that it is appropriate for an individual to remain on the Register.

A Committee should be satisfied that the Registrant has displayed insight into their failings, and that there is potential for the Registrant to respond positively to remediation/re-training, a health assessment where that is relevant, and to supervision of their work.

- 4.14 The purpose of conditions is, for example, to enable a Registrant to remedy any deficiencies in their work and, where relevant and appropriate, to deal with their health issues while in the meantime protecting service users from risk of harm. In such circumstances, conditions might include requirements to undertake specific training, e.g. alcohol awareness programmes or attaining specific qualifications.

The CPO should be **relevant, proportionate, workable, measurable and timebound**.

**Relevant** means that the conditions should relate to and address the matters giving rise to the finding of impairment of fitness to practise.

**Proportionate** means that the conditions must be no more than necessary to achieve the legitimate aims of protecting the public and upholding confidence in the profession. They must strike a fair balance between the interests of the Registrant and the public interest, which includes public protection and public confidence.

**Workable** means that it must be possible for the Registrant to comply with the conditions. Any conditions imposed should not be wholly impracticable or have the effect of amounting to a complete restriction on the Registrant's ability to practise. It is inevitable that conditions may have the effect of making it more difficult to obtain employment, but this does not mean that the conditions are unworkable.

**Measurable** means that it must be possible to assess objectively whether the Registrant has complied with each condition. The condition must be clear and unambiguous and provide the Registrant with a clear sense of what is required. The question of whether the Registrant has complied with the condition should be capable of being answered 'yes' or 'no'. If the question is capable of being answered 'it depends', the condition is not measurable because it is not sufficiently specific. The onus is on the Registrant to provide the Council with sufficient information, in sufficient time, to enable it to assess whether the Registrant has complied with the condition.



**Timebound** means that the Registrant is clear when the condition should be complied with. Under the Fitness to Practise Rules, a condition may be imposed for a period up to three years. There is provision for an early review of conditions, which may be initiated by either the Registrant or the Council.

4.15 In formulating appropriate conditions, a Committee should take into account the following questions:

- i. Are the conditions relevant and measurable?
  - will the Registrant be able to comply with these conditions?
  - are the conditions proportionate and do they provide the necessary level of public protection?
  - will they be enforceable if the Registrant changes employment?

For example, if the conditions require the Registrant to undertake specific training, they should only be set at the standard reasonably required of and obtainable by a worker registered in that part of the Register.

- ii. Are the conditions directed at the right person and enforceable?
  - do the conditions clearly impose obligations on the Registrant?
  - are any conditions mistakenly directed at someone else?
  - are the conditions such that it is possible to determine when they have and have not been satisfied?

It is for the Registrant to comply with the conditions which have been imposed and in drafting conditions, care must be taken not to inadvertently impose a condition on a third party, such as an employer, which will not be enforceable. However the employer should support the Registrant to fulfil the condition.

The Committee should make it clear that the onus is on the Registrant to find appropriate training courses or materials to meet the conditions, and if necessary, should be paid for by the Registrant.

A conditions of practice bank has been developed to help Committees achieve consistency in the conditions of practice that are imposed. Where the wording of a bank condition meets the requirements of the Committee, that wording should be used. Where there is no condition in the bank that meets the requirement of the Committee, it should create its own condition.

4.16 This sanction may be appropriate when most or all of the following factors are present (this list is not exhaustive).

- the Registrant is present and is able to confirm whether or not a condition is achievable and accepted;
- particular areas of the Registrant's practice is in need of review, retraining or assessment;

- evidence of willingness to and potential to respond positively to further training and assessment;
- no evidence of harmful deep seated personality or attitudinal problems;
- insight;
- service users will not be put at risk directly or indirectly as a result of continued registration with conditions;
- the conditions will protect service users during the period they are in force.

4.17 A Committee will not be convened to assess whether the conditions have been fulfilled; this will be undertaken by a Council Officer. A Committee will only be convened if the Registrant has failed to meet the conditions or to provide the requested information. This Committee may vary the terms of the Order or impose a different sanction.

### **Suspension Order**

4.18 Where registration is a legal requirement, suspension from the relevant part of the Register prevents a Registrant from practising under that title during the period of suspension. Suspension from the Register gives a clear message to the public and the profession about what is or is not appropriate conduct for a social care worker. Under the Fitness to Practise Rules, a Committee may suspend a Registrant for a period of up to two years.

4.19 Suspension from the Register may be an appropriate sanction for impairment which while very serious, is not so serious as to justify removal from the Register; for example, where there has been an acknowledgment of failings and where a Committee is satisfied that the behaviour is unlikely to be repeated, and the Registrant has no psychological or other difficulties preventing them from understanding and seeking to remedy the failings and the failings are realistically capable of being remedied, then suspension may be appropriate.

4.20 Suspension may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):

- serious incident of misconduct where suitability to be registered is impaired and where a lesser sanction is not sufficient, but removal is not warranted;
- behaviour is not fundamentally incompatible with continuing to be a registered social care worker in the long term;
- interests of service users and the public are sufficiently protected by suspension;
- no real risk of repeating the behaviour;
- no evidence of harmful deep-seated personality or attitudinal problems;
- no evidence of a repetition of the behaviour since the incident/s;
- insight;

- where the evidence demonstrates that the Registrant will be able to resolve or remedy the cause of the misconduct during the period of suspension.
- 4.21 A Suspension Order must specify the period for which it has effect. The length of the suspension may be for a period of up to two years and is a matter of a Committee's discretion taking account of all of the circumstances of the particular case. The Committee should however ensure that it adequately details its reasoning for the duration of the Suspension Order imposed.
- 4.22 A Committee may review a Suspension Order while it is still in force at the request of either the Registrant or the Council.
- 4.23 Suspension Orders will also be reviewed at the conclusion of sanction to determine if the Registrant is fit to practise without restriction. Where appropriate, a Committee may impose a further Suspension Order or a Conditions of Practice Order to commence upon the expiry of the existing Suspension Order for a specified period of no longer than two or three years respectively.
- 4.24 Suspension Orders cannot be made subject to conditions. However, the Committee should advise the Registrant that a review of their fitness to resume practise will be undertaken towards the end of the period of the Suspension Order. The review will consider the particular concerns articulated by the original Committee and seek to discern what steps, if any, the Registrant has taken to allay them during the period of their suspension.

### **Resumed hearing – Review of Suspension Orders**

- 4.25 Under the Fitness to Practise Rules, the Registrant can request that a Suspension Order is reviewed before the end of the period for which it has been ordered. A Committee will agree to this review only where in its opinion there has been a material change of circumstances since the Order was imposed. A Committee may revoke the Suspension Order.

### **Removal Order**

- 4.26 This is the most serious sanction which a Committee can impose. A Removal Order is likely to be appropriate when the Registrant's behaviour is fundamentally incompatible with being a social care worker. Removal should be used where there is no other way to protect the public, for example, where there is a lack of insight, continuing problems and a pattern of unacceptable behaviour or denial, where there is no evidence that there is likely to be satisfactory remediation and where confidence in the social care profession would be undermined by allowing the Registrant to remain on the Register.
- 4.27 Removal may be appropriate where some or all of the following factors are apparent (this list is not exhaustive):

- doing serious harm to service users either deliberately or through gross neglect and particularly where there is a continuing risk to service users;
- abuse of position/trust (particularly involving vulnerable people who use services) or the violation of the rights of people who use services, eg sexual abuse;
- dishonesty (especially where persistent or covered up);
- persistent lack of insight into seriousness of actions or consequences;
- blatant disregard for the system of registration which is designed to safeguard the interests of service users, the public and the reputation and standards of the social care profession;
- a serious departure from the relevant professional standards set out in the Standards of Conduct and Practice for Social Care Workers.

4.28 A Committee should have regard to the examples of impairment in section 5, below, in reaching its decision.

## **5. Examples of Impairment Relevant to the Sanction of Removal**

5.1 There are some examples of impairment where the Privy Council has upheld decisions to remove individuals from other statutory registers despite strong mitigation. This is because it would not have been in the public interest to do otherwise, given the circumstances concerned. The three most serious areas of concern are:

- sexual misconduct;
- dishonesty;
- failing to provide an acceptable level of care.

5.2 Whether removal from the Register is appropriate in cases of this kind will depend on the particular facts of each case and other relevant factors.

5.3 However, the safety of people who use services and their right to protection from neglect and abuse is more important than the fortunes of any individual Registrant.

### **Sexual Misconduct**

5.4 Sexual misconduct encompasses a wide range of conduct and can include, but is not limited to criminal convictions for sexual assault and sexual abuse of children (including child abuse images), sexual abuse of vulnerable adults, sexual misconduct with people who use services, their carers and relatives, or with colleagues. The misconduct is particularly serious however, where there is an abuse of the special position of trust that a Registrant occupies, or where a Registrant is subject to notification requirements as a sex offender.

- 5.5 The risk to people who use services is an important consideration. In such cases, removal from the Register has been judged the appropriate sanction to uphold public confidence in social care services. In these cases, removal from the Register was not found to be unreasonable, excessive or disproportionate, but necessary in the public interest.

### **Sex Offenders and Child Abuse Images Offences**

- 5.6 A Committee should take account of the serious effect continued registration of those convicted of sexual offences has on the public and service users. Such offenders will include those who are subject to notification requirements as a sex offender, that is those convicted of an offence listed in Schedule 3 to the Sexual Offences Act 2003 and who are required to notify the police under section 80 of that Act. Continued registration of individuals convicted and/or subject to notification requirements can seriously undermine public trust.
- 5.7 The ease with which child abuse images can be downloaded from the internet has resulted in a significant increase in cases of this nature before both the courts and regulatory bodies.
- 5.8 In determining the appropriate sanction in such cases, Committees need to be aware that the English Court of Appeal (in *R v Oliver* [2003] 1 Cr. App. R. 463) established a test for determining the seriousness of offences involving downloading child abuse images from the internet by reference to (1) the nature of the activity undertaken and (2) the nature of the images involved. In relation to the nature of the activity, consideration needs to be given to:
- proximity to, and responsibility for, the original abuse;
  - taking the original photographs is more serious than downloading images, which, in turn, is more serious than merely locating images on the internet; and
  - any element of commercial gain or activity, which although not for gain, fuels demand for such images (e.g. swapping of material).

In relation to the nature of the images, a useful scale from 1 to 5 was set in *Oliver* based upon the harm caused to the children involved in producing those images.

Level 1: erotic posing with no sexual activity

Level 2: sexual activity between children, or solo masturbation by a child

Level 3: non-penetrative sexual activity between adults and children

Level 4: penetrative sexual activity between children and adults

Level 5: sadism or bestiality

- 5.9 Committees should ensure that in child abuse images cases they obtain and take account of the appropriate guidance on the *Oliver* criteria. NISCC considers that all child abuse images cases involve some degree of

exploitation or abuse of a child and the viewing, downloading and reproduction of such images creates further demand for them. Therefore any conviction for such an offence will be considered a serious matter which will undermine trust in a Registrant and the profession. It is highly likely that in such a case, the only proportionate sanction will be removal from the Register.

### **Dishonesty**

- 5.10 The Standards state that social care workers must be honest and trustworthy (Standard of Conduct 2.1) and must recognise and use responsibly the power that comes from their work with people who use services and their carers (Standard of Conduct 3.7).
- 5.11 Dishonesty is particularly serious because it may undermine trust in social services. Examples could include cases of theft, fraud or embezzlement, lying to a manager about whether a work task has been undertaken, improperly amending records relating to people who use services, falsifying evidence or submitting or providing false references and information on a job application. The public must be able to place complete reliance on the integrity of Registrants.
- 5.12 Research misconduct is an example of dishonesty. This term is used to describe a range of misconduct, for example, presenting misleading information in publications. Such behaviour undermines the trust that both the public and the profession have in social work and other social care work, regardless of whether this leads to direct harm to users of services. Since it has the potential to have far reaching consequences, this type of dishonesty is serious.
- 5.13 Those who use services, employers, colleagues and others have a right to rely on the professional integrity of social care workers. Sometimes, life-changing choices about the options available to someone who uses services and significant financial decisions are made on the basis not only of the skill of Registrants but also of their honesty. Dishonesty, particularly when associated with professional practice, is so damaging to a Registrant's suitability and to public confidence in social care services that removal may be considered to be the appropriate outcome.

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

- 5.14 Cases in this category are those where a Registrant has not acted in a service user's best interests and has failed to provide an adequate level of care, falling well below expected professional standards. A particularly important consideration in such cases is whether or not the social care worker has, or has the potential to develop, insight into these failures. Where insight is evident, it is likely that another sanction may be appropriate or sufficient.

**Other abuse/s of position/trust (particularly involving vulnerable users of services) or violation of the rights of users of services.**

- 5.15 Social care work relies on the existence of an intimate professional relationship, in circumstances in which users of services have little choice but to be trusting. Users of services rely upon the professional's trustworthiness, which they are entitled to assume because of the professional's training and registration. People who use services have the right to be protected from a social care worker who seriously abuses the trust placed in them not only for sexual purposes as referred to above but also for financial gain, or for some other purpose contrary to the interests of the person using the services.

**Other serious abuse/s of the privileged position enjoyed by registered professionals**

- 5.16 In addition to the responsibilities that come with the caring relationship, Registrants have other privileges which society has given them on the understanding that they will be used responsibly and for legitimate professional purposes. A social care professional who abuses the trust which society places in them should forfeit the privileges which come with registration.

**Impairment-caused by lack of competence such as to call into question the continued ability of the practitioner to practise safely**

- 5.17 A commitment to continuous development of knowledge and ongoing competence is an essential aspect of professional life. A Committee should seriously consider whether a Registrant who is proven to have neglected this responsibility should be permitted to remain on the Register.

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

- 5.18 In a small number of cases, a Registrant's behaviour or the attitudes they demonstrate identify them as being unfit to be a member of a caring and responsible profession. This problem could be evidenced by serious or persistent contempt for the safety, rights and dignity of others or by serious criminality such as violent behaviour.

## **Part II: Interim Orders**

### **1. Introduction**

- 1.1 In some cases the Council will seek an Interim Suspension Order (ISO) or an Interim Conditions of Practice Order (ICPO) prior to a full hearing by a Fitness to Practise Committee and Part II of this document has been produced to assist the Preliminary Proceedings Committee (the PPC) in making decisions on the imposition of such Orders.
- 1.2 The aim is to promote consistency and transparency in the decision-making process. The principles and factors which the PPC requires to consider when reaching its decision on an ISO and ICPO are set out.

Part II considers:

- the legal tests to be applied;
- general principles to be taken into account when a PPC is considering the imposition of an ISO or ICPO

### **2. Interim Suspension Orders**

- 2.1 An ISO is an Order that temporarily suspends a social care worker from the Register, without prejudice, while investigation is underway and thus from working in that capacity.

Save in exceptional circumstances, an ISO can be imposed up to a maximum of two years, with the initial duration being up to a maximum of six months. Either party can apply for the ISO to be reviewed at any point in the process. Upon review, a Committee may continue, revoke or vary the Order. Where there has been a material change of circumstances, a Committee may replace an ISO with an ICPO or an ICPO with an ISO.

A Registrant is invited to attend the Preliminary Proceedings Committee when considering imposing an Interim Order and can be represented.

### **3. Interim Conditions of Practice Orders**

- 3.1 An ICPO is an Order that temporarily places conditions upon a Registrant's registration while the investigation is underway.

As with an ISO, the Order will have a maximum time of up to two years, with set review periods.

- 3.2 The process for imposing and reviewing an ICPO is the same as that for an ISO, e.g. the Registrant is able to be present and represented when the Committee is considering this Order.

- 3.3 The types of conditions that could be imposed may be:



- The Registrant to undertake specific training within a defined period and provide evidence of the successful completion of that training to the Council;
- The Registrant to provide the Council with a monthly report signed by the Registrant's employer confirming that the Registrant is continuing to comply with a relevant requirement or restriction.

#### **4. The Legal Tests to be Applied**

- 4.1 Under the Fitness to Practise Rules, the PPC may impose an ISO or ICPO if satisfied that such action is necessary for the protection of members of the public or is otherwise in the public interest or is in the interests of the Registrant.
- 4.2 When making a decision on an ISO or ICPC, the PPC is making that decision based on the evidence and information before it. The PPC should consider, on the evidence before it, the seriousness of the risk of harm to the public, in particular to service users and/or to the Registrant if the ISO or ICPO is not imposed.

##### **Public interest**

- 4.3 In considering what constitutes the public interest, the PPC should take account of the fact that the public should have confidence in NISCC as a regulator of the social care workers registered with it by upholding proper standards of behaviour and conduct. The public interest requires that the public and service users are protected from unsafe behaviour or practice and that confidence in the profession of social work and the social care workforce in general is maintained. It is part of NISCC's role to maintain standards and to protect the public from the risk of behaviour or practice by social care workers who for any reason whether competence, character or conduct are not fit to practise.

##### **Fairness**

- 4.4 There is a duty on the PPC to act fairly and in accordance with the Act 2001, the NISCC Fitness to Practise Rules, and the Standards of Conduct and Practice made under the Act, when reaching a decision on an ISO or ICPO. What constitutes the standards of fairness in any proceedings is not fixed, may change over time and will depend on the circumstances of each case.

##### **Proportionality**

- 4.5 The principle of proportionality requires that the consequences of the ISO or ICPO which the PPC imposes must not be disproportionate to the harm from which the ISO or ICPO is intended to protect the public and service users. An ISO or ICPO therefore requires to be a proportionate response to the alleged impairment and the risks which that impairment creates. The interests of the

public and service users have to be weighed against those of the Registrant. In doing this, the PPC will require to take account of the potentially very serious effect of an ISO or ICPO on the Registrant both financially and professionally. It will also require to take account of the wider public interest to be served in the approach to imposing an ISO or ICPO. In reaching its decision, the PPC ought not to have only a particular service users or service user group in mind.

## **5. General Principles to be Taken into Account**

5.1 The decision as to whether or not to impose an ISO or ICPO will depend on the particular facts and circumstances of each case. However, the following are relevant factors which the PPC must take into account in reaching its decision:

- the seriousness of the allegations;
- the likelihood of the alleged conduct being repeated before the final determination in the case;
- the severity of the harm or risk of harm if the alleged conduct was to be repeated;
- the effect on public confidence in the integrity of the regulation of the social care profession;
- the other steps which could be taken to protect against the risk of the harm;
- the Registrant's previous character and employment history;
- the hardship which may be caused to a Registrant by an ISO or ICPO;
- the assurance that may be taken by a prospective employer or service user if the Registrant remains on the Register about the good character, conduct, competence and health of the Registrant.

### **Examples of alleged impairment to be taken into account in assessing risk of harm**

5.2 As one of the principal factors the PPC requires to take into account is the assessment of harm or risk of harm to service users and/or the public, the PPC should have particular regard to the seriousness of the following types of alleged behaviour:

- allegation/s of inappropriate relationship/s with service users, for example grooming young people;
- allegation/s of sexual or violent or indecency offences;
- allegations of alcohol and/or drug abuse;
- allegations of dishonesty;
- allegations of financial abuse or exploitation of vulnerable people;
- any convictions relating to the above;
- allegations of consistently poor practice including poor record-keeping over a period of time usually involving several different cases.

## 6. Decision

6.1 Where the PPC is satisfied that in all the circumstances there may be:

- i. behaviour which poses a real risk to the public, may otherwise adversely affect the public interest and/or the interests of the Registrant; and
- ii. after balancing the interests of the Registrant and the public, the PPC considers that the ISO or ICPO is necessary to guard against that risk;

the PPC should impose the ISO or ICPO. In doing so the PPC should take account of the legal tests to be applied as set out in Section 1 (above) and the general principles set out in Section 2 (above).

### Reasons

6.2 The PPC must give reasons for the imposition of the particular sanction in every case. The reasons must be adequate and allow a Registrant to understand why the ISO or ICPO has been imposed.

6.3 The reasons should indicate why the decision taken by the PPC is considered to be proportionate in all the circumstances. By setting out intelligible and adequate reasons, the Registrant, NISCC, the public and any person who gave evidence to the PPC, will be able to see and understand why a particular decision has been reached.

6.4 As the Registrant has the right to appeal to the Care Tribunal, a proper explanation of the reasons for the decision will assist the Registrant in deciding whether or not to exercise their right to appeal and, if that right is exercised, will help the Care Tribunal in determining any such appeal.

6.5 The reasons for the decision of the PPC should cover:

- the factual basis of the decision;
- the legal basis of the decision;
- the conclusions reached on the principal important controversial issues
- confirmation or otherwise that the PPC has accepted any legal advice given to it by the independent Legal Adviser (and a particularly full explanation will be required where the PPC has decided not to accept the Legal Adviser's advice);
- the PPC's conclusions on the submissions made to it by the Parties or their representatives;
- the reasons for the imposition of the ISO or ICPO, explaining the extent to which this Guidance was taken into account, whether it was followed, and, if not, why not.

## **Appendix One - Approved Regulatory Bodies Policy**

Regulatory bodies whose determinations may be considered by Fitness to Practise Committees for the purpose of Rules 4 (1) e and 19 (1) b of the NISCC Fitness to Practise Rules 2016:

British Pharmaceutical Society

Care and Social Services Inspectorate Wales

Care Council for Wales

Care Quality Commission (replaced CSCI in March 2009)

Commission for Social Care Inspection (CSCI)

General Dental Council

General Medical Council

General Social Care Council

General Teaching Council for England

General Teaching Council for Northern Ireland

General Teaching Council for Scotland

General Teaching Council for Wales

Health and Care Professions Council

Health Professions Council

Nursing and Midwifery Council

Pharmaceutical Society of Northern Ireland

Regulation and Improvement Authority

Scottish Commission for the Regulation of Care

Scottish Social Services Council

Secretary of State for Education in England under Part 3, Section 8 of the Education Act 2011

## DOCUMENT CONTROL SHEET

<b>Title</b>	Indicative Sanctions Guidance
<b>Lead Director</b>	Director of Regulation and Standards
<b>Author(s)</b>	Helen McVicker, Head of Fitness to Practise
<b>Review Date</b>	May 2019 (every three years)

## VERSION HISTORY

Document Version	Date	Status	Reviewed by	Document Revision History
V 1.1	31.01.17	Final	Head of Fitness to Practise	Minor amendment to Paragraph 4.24
V1.2	02.06.17	Final	Head of Fitness to Practise	Minor amendment to wording at Paragraphs 5.4 to 5.9 to reflect change of terminology

## APPROVALS

Date	Document Version	Approver Name and Title	Approver Signature
13.05.16	V 1.0	Patricia Higgins, Director of Regulation and Standards	
31.01.17	V 1.1	Patricia Higgins, Director of Regulation and Standards	
02.06.17	V1.2	Patricia Higgins, Director of Regulation and Standards	