



Regulation and Inspection of Social Care (Wales) Act 2016

2016 anaw 2

PART 6

SOCIAL CARE WORKERS: FITNESS TO PRACTISE

CHAPTER 2

PRELIMINARY PROCEDURES

Preliminary consideration of allegations etc.

118 Referral of allegations etc. of impaired fitness to practise

- (1) This section applies where—
- (a) an allegation is made to SCW that a registered person's fitness to practise is impaired, or
 - (b) SCW otherwise has reason to believe that a registered person's fitness to practise may be impaired.
- (2) SCW—
- (a) must refer for preliminary consideration the matter which is the subject of the allegation or its reason to believe that the registered person's fitness to practise may be impaired, and
 - (b) may refer the matter to an interim orders panel (see Chapter 4).

119 Preliminary consideration

- (1) The person giving preliminary consideration to a matter referred by SCW must refer that matter for investigation under section 125 unless—

Status: This is the original version (as it was originally enacted).

- (a) the person determines that the matter is not eligible for onward referral under section 120, or
 - (b) the person is required by section 121 to refer the matter directly to a fitness to practise panel.
- (2) The person giving preliminary consideration to a matter may, at any stage, refer the matter to an interim orders panel (in addition to making a referral or determination under subsection (1)).
- (3) SCW must by rules make provision about the procedure for preliminary consideration which may, in particular, provide for preliminary consideration to be carried out by—
- (a) one or more persons appointed for that purpose, on such terms and conditions (including remuneration) as SCW may determine;
 - (b) one or more members of SCW’s staff.
- (4) But rules made under subsection (3) may not provide for preliminary consideration to be carried out by—
- (a) a person who is a member of—
 - (i) SCW,
 - (ii) the Health and Care Professions Council,
 - (iii) the Scottish Social Services Council, or
 - (iv) the Northern Ireland Social Care Council;
 - (b) a person who is a member of a fitness to practise panel;
 - (c) a person who is a member of an interim orders panel;
 - (d) a prescribed person.
- (5) SCW must make such arrangements as it thinks appropriate to facilitate co-operation between—
- (a) a person who has made an allegation that a registered person’s fitness to practise is impaired, and
 - (b) the person giving preliminary consideration to the allegation.

120 Eligibility for onward referral

- (1) A matter is eligible for onward referral unless—
- (a) the matter relates to conduct or an incident which occurred 5 years or more before the relevant date and none of the exceptions in subsection (4) apply,
 - (b) the person appointed to give the matter preliminary consideration thinks the allegation is vexatious, or
 - (c) where an allegation has been made anonymously, or by a person who fails to co-operate with the preliminary consideration procedure, the person appointed to give the matter preliminary consideration is unable to verify it.
- (2) In subsection (1) the reference to onward referral is a reference to—
- (a) referral to a fitness to practise panel under section 121, or
 - (b) referral for investigation under section 125.
- (3) In subsection (1)(a) “relevant date” means—
- (a) the date of the allegation under section 118(1)(a), or
 - (b) where an allegation has not been made under that section, the date on which SCW first became aware of the matter.

- (4) For the purposes of subsection (1)(a) the exceptions are—
- (a) the matter relates to a registered person’s conviction for a relevant criminal offence;
 - (b) the matter relates to the inclusion of the registered person in a barred list (as defined in section 117);
 - (c) the matter relates to a determination by a relevant body (as defined by section 117) to the effect that a registered person’s fitness to practise is impaired;
 - (d) the person giving the matter preliminary consideration thinks that it is in the public interest for the matter to be referred for investigation.
- (5) For the purposes of subsection (4)(a) and section 121, a relevant criminal offence is—
- (a) in the case of a conviction by a court in the United Kingdom, an offence in respect of which a custodial sentence was, or could have been, imposed, or
 - (b) in the case of a conviction by a court elsewhere, an offence in respect of which, had the offence been committed in England and Wales a custodial sentence could have been imposed.
- (6) In subsection (5) “custodial sentence” has the meaning given by section 76 of the [Powers of Criminal Courts \(Sentencing\) Act 2000 \(c.6\)](#).

121 Direct referral to a fitness to practise panel

A person giving preliminary consideration to a matter must refer it directly to a fitness to practise panel—

- (a) if the matter relates to the conviction of a registered person for a relevant criminal offence (see section 120(5)), and
- (b) in such other circumstances as may be specified by SCW in rules.

122 Notice: ineligibility for onward referral

- (1) This section applies where a person giving preliminary consideration to a matter determines that the matter is not eligible for onward referral under section 120(1).
- (2) SCW must give notice of the determination to the relevant persons, unless SCW thinks that it is not in the public interest to do so.
- (3) For the purposes of subsection (2) “the relevant persons” are—
- (a) the registered person to whom the matter relates, and
 - (b) where the matter was the subject of an allegation mentioned in section 118(1)(a), the person who made the allegation.
- (4) SCW may give notice to any other person that a matter is not eligible for onward referral where it is satisfied that it is in the public interest to do so.
- (5) SCW may by rules make provision about—
- (a) the content of a notice under this section, and
 - (b) the procedure for giving notice.

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123 Notice: onward referral

- (1) This section applies where, on conclusion of a preliminary consideration under section 119, a matter is referred—
 - (a) to a fitness to practise panel under section 121, or
 - (b) for investigation under section 125.
- (2) SCW must give notice to—
 - (a) the registered person to whom the matter relates;
 - (b) where the matter was the subject of an allegation mentioned in section 118(1)(a), the person who made the allegation;
 - (c) each person by whom, to the knowledge of SCW, the registered person is employed as a social care worker;
 - (d) each person who, to the knowledge of SCW, has an arrangement with the registered person for the registered person to provide services to a third party in his or her capacity as a social care worker;
 - (e) such other persons as may be prescribed.
- (3) SCW must by rules make provision about giving notice under subsection (2).
- (4) The rules may, in particular, make provision about—
 - (a) the content of a notice;
 - (b) the procedure for giving notice;
 - (c) the period within which notice must be given.

124 Notice: referral to an interim orders panel

Where a person refers a matter to an interim orders panel under section 118(2)(b) or 119(2) SCW—

- (a) must give notice of the referral to—
 - (i) the registered person to whom the matter relates, and
 - (ii) where the matter was the subject of an allegation mentioned in section 118(1)(a), the person who made the allegation, and
- (b) may give notice of the referral to any other person if SCW thinks it is in the public interest to do so.

Investigation

125 Duty to investigate

- (1) SCW must investigate, or make arrangements for the investigation of, a matter referred under section 119 in respect of a registered person's fitness to practise.
- (2) The person conducting an investigation under this section may, at any stage during the investigation, refer the matter to an interim orders panel.
- (3) SCW must by rules make provision about the arrangements for investigations under this section.
- (4) Rules made under subsection (3) may, in particular, make provision for—
 - (a) the registered person to make representations to the person conducting the investigation;

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- (b) investigations to be carried out by a member of SCW's staff;
 - (c) the appointment of one or more individuals for the purpose of conducting an investigation;
 - (d) the appointment of persons to provide assistance in relation to an investigation.
- (5) But rules made under subsection (3) may not provide for an investigation to be carried out by—
- (a) a person who is a member of—
 - (i) SCW,
 - (ii) the Health and Care Professions Council,
 - (iii) the Scottish Social Services Council, or
 - (iv) the Northern Ireland Social Care Council;
 - (b) a person who is a member of a fitness to practise panel;
 - (c) a person who is a member of an interim orders panel;
 - (d) a prescribed person.

126 Powers following an investigation

- (1) This section applies where the investigation of a matter relating to a registered person's fitness to practise has been concluded.
- (2) SCW must refer the matter to a fitness to practise panel if it is satisfied that—
- (a) there is a realistic prospect of the panel finding that the registered person's fitness to practise is impaired, and
 - (b) it is in the public interest to refer the matter.
- (3) Where the matter is not referred to a fitness to practise panel, SCW may—
- (a) decide to take no further action in respect of the registered person;
 - (b) give advice to the registered person, or to any other person involved in the investigation, in respect of any matter related to the investigation;
 - (c) issue a warning to the registered person in respect of future conduct or performance;
 - (d) agree with the registered person that he or she will comply with such undertakings as SCW thinks appropriate;
 - (e) grant an application under section 92 by the registered person for his or her entry in the register to be removed by agreement.

127 Notice: referral or disposal

- (1) SCW must give notice to the persons listed in subsection (2) of—
- (a) the referral of a matter to an interim orders panel under section 125(2);
 - (b) the referral of a matter to a fitness to practise panel under section 126(2);
 - (c) the way in which the matter has been disposed of under section 126(3).
- (2) The persons are—
- (a) the registered person to whom the matter relates, and
 - (b) where the matter was the subject of an allegation mentioned in section 118(1)
 - (a), the person who made the allegation.

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- (3) SCW may give notice to any other person of the referral or disposal of a matter under section 126 if satisfied that it is in the public interest to do so.
- (4) A notice under this section must give the reasons for the referral.

128 Warnings

- (1) Where SCW is proposing to issue a warning to a registered person, SCW must—
 - (a) notify the registered person of its intention, and
 - (b) notify that person of the right to request an oral hearing for the purpose of determining whether or not to give a warning.
- (2) SCW must by rules make provision about—
 - (a) the period within which a request for an oral hearing may be made;
 - (b) the arrangements and procedure for an oral hearing.
- (3) SCW must grant a request for an oral hearing if the request is made in accordance with the requirements of rules made under subsection (2).

129 Undertakings

- (1) SCW must by rules make provision about the agreement of undertakings under section 126(3)(d).
- (2) The rules may, in particular, make provision about—
 - (a) the procedure to be followed for the agreement of undertakings;
 - (b) the procedure to be followed in the event of a breach of an undertaking;
 - (c) the consequences of a breach of an undertaking;
 - (d) periodic review of a requirement to comply with an undertaking.

130 Mediation

- (1) The Welsh Ministers may by regulations provide, or authorise SCW by rules to provide, for arrangements for mediation to be undertaken with any registered person in respect of whom a matter is referred for investigation under section 125.
- (2) The regulations may make provision about, or authorise SCW by rules to make provision about—
 - (a) the circumstances in which mediation may be undertaken, and
 - (b) the arrangements for undertaking mediation.

Review

131 Review of decisions by SCW

- (1) SCW must review a decision to which subsection (2) applies if—
 - (a) it thinks that the decision may be materially flawed, or
 - (b) it thinks that a different decision may have been made on the basis of information that was not available when the decision was made.
- (2) This subsection applies to the following decisions—

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- (a) a decision not to refer a matter to a fitness to practise panel under section 121 or 126(2),
 - (b) a decision not to refer a matter for investigation under section 125,
 - (c) a decision to dispose of a case after investigation under section 126(3), and
 - (d) a decision to refer a case for mediation under regulations under section 130.
- (3) SCW may not review a decision after the end of the period of 2 years beginning with the date on which the decision was made unless SCW thinks that it is in the public interest to do so.
- (4) Where SCW decides to review a decision, it must give notice to the interested parties of—
- (a) the decision to carry out a review, and
 - (b) the reasons for carrying out a review.
- (5) In this section “interested parties” means—
- (a) the registered person in respect of whom the decision under review was made,
 - (b) the person (if any) who made an allegation in respect of which the decision was made, and
 - (c) any other person who SCW thinks has an interest in the decision.
- (6) On a review under this section, SCW may—
- (a) substitute for the decision under review another decision of a kind that could have been made by the original decision maker,
 - (b) refer the matter for investigation under section 125, or
 - (c) determine that the decision stands.
- (7) SCW must give notice of the outcome of the review to the interested parties.
- (8) SCW must by rules make provision about the arrangements for carrying out a review under this section.
- (9) Rules made under subsection (8) may, in particular, make provision about—
- (a) the procedure to be followed in carrying out a review (including provision for the interested parties to make representations to SCW);
 - (b) the content and timing of notices to be given under this section.

132 Cancellation of referral to fitness to practise panel

- (1) This section applies where a matter has been referred to a fitness to practise panel under section 121 or 126(2) or to an interim orders panel under section 118(2)(b), 119(2) or 125(2) and—
- (a) SCW no longer thinks that there is a realistic prospect that the panel will find that the registered person’s fitness to practise is impaired, or
 - (b) SCW otherwise thinks that it is no longer appropriate for the registered person to be subject to fitness to practise proceedings under this Part.
- (2) SCW may—
- (a) determine that the fitness to practise panel or interim orders panel may not commence or continue proceedings in respect of the matter, or
 - (b) determine that the fitness to practise proceedings may only commence or continue in respect of such particulars of the matter as SCW may specify.

Status: This is the original version (as it was originally enacted).

- (3) Where SCW makes a determination under subsection (2) it may refer the matter, or specified particulars of the matter, for investigation under section 125.
- (4) SCW must give notice of a determination under subsection (2) to—
 - (a) the registered person to whom the matter relates,
 - (b) where an allegation has been made, the person who made the allegation, and
 - (c) any person to whom notice of the referral was given under section 123(2)(c), (d) or (e) or 127(3).
- (5) The notice must include the reasons for the determination.
- (6) SCW must by rules make provision about the procedure for exercising its functions under this section; in particular, provision about—
 - (a) the procedure to be followed in making a determination under subsection (2), and
 - (b) the content and timing of a notice under subsection (4).

133 Referral by SCW for review proceedings

- (1) This section applies where, in relation to a registered person, any of the following have effect—
 - (a) undertakings agreed between the person and SCW under section 126(3)(d);
 - (b) undertakings agreed between the person and a fitness to practise panel under section 136(1), 152(5) or (6), 153(4), 154(4) or 155(7);
 - (c) a conditional registration order made (or confirmed or varied) under section 138(7), 152(8)(c), 153(6) or (7), 154(8)(c) or 155(10)(c);
 - (d) a suspension order made (or confirmed or varied) under section 138(8), 152(8)(d), 153(9)(c) or 154(6) or (7).
- (2) If SCW thinks at any time that it is desirable that a fitness to practise panel should review the registered person's fitness to practise, SCW may refer the case to the panel to carry out a review (see Chapter 5).
- (3) But SCW must refer a case to a fitness to practise panel to carry out a review of a registered person's fitness to practise if SCW has reason to believe that—
 - (a) where the person has agreed an undertaking of the kind mentioned in subsection (1)(a) or (b), that the person has breached the undertaking, or
 - (b) where the person is subject to a conditional registration order of the kind mentioned in subsection (1)(c), that the person has breached any condition of the order.