



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—

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- (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.

(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.

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- (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.