

Title of report	Consultation on change to the fitness to practise process
Public/confidential	Public
Action	For decision
Summary/purpose of report	To seek refreshed authority to consult on introducing a procedure of holding fitness to practise hearings when a worker requests a hearing.
Recommendations	The Council is asked to: 1. grant authority to consult on the proposal.
Director	Maree Allison Director of Regulation Tel: 01382 207183 Email: maree.allison@sssc.uk.com
Link to Strategic Plan	The information in this report links to: Outcome 1 - The right people are on the Register.
Link to the Risk Register	Risk: Failure in our registration or fitness to practise processes lead to public protection failure. Risk 5: The SSSC does not have sustainable resources to support the delivery of Strategic Plan outcomes (i.e. the strategic planning growth assumptions are not financially sustainable).
Equality Impact Assessment (EIA)	1. An EIA was not developed and will be considered as part of the consultation process.
Documents attached	Appendix 1: Sanction Comparison Charts
Background papers	Council Paper 1/2016

1. INTRODUCTION

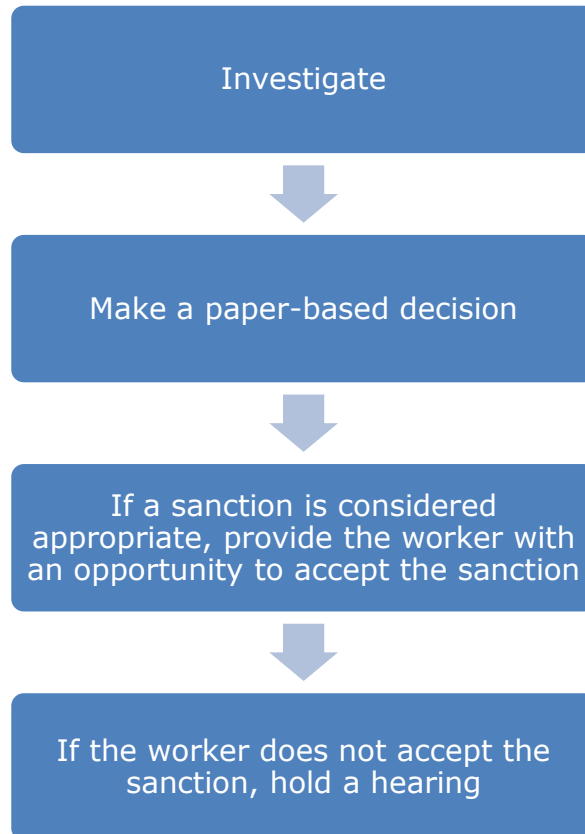
- 1.1 In 2016 Council granted authority to consult on a proposed change to the conduct process, whereby rather than only holding hearings when a worker did not accept the allegations and sanction, we would only hold a hearing when a worker requested it.
- 1.2 The evidence-base for the proposal was data gathered on the conduct model. As the move to the fitness to practise model then gathered pace, we decided that it would be premature to consult on this change at the same time as changing the model.
- 1.3 This report refreshes the request for authority to consult and updates the evidence-base.

2. WORKER ENGAGEMENT

- 2.1 30% of workers whose fitness to practise is investigated do not engage with the fitness to practice hearing process. We believe there are four main reasons for non-engagement:
 - they know that their behaviour is incompatible with registration
 - they have moved into a different type of work and are not interested in being able to continue to work in social services
 - they have retired
 - they do not have the right support to engage.
- 2.2 We are taking steps to improve the support we offer:
 - make it easier to attend hearings
 - extend and highlight the representation available
 - improve our literature
 - make soft skills a key part of recruitment and training of panel members
 - develop the case management system to make communication easier
 - implement surveys of workers, employers and witnesses to identify other areas for improvement.
- 2.3 By improving support we hope to improve engagement so that all workers invested in their profession engage with us.

3. CURRENT PROCESS

3.1 The relevant part of the fitness to practise process currently operates in four key stages:



3.2 Due to this four-stage process, where a worker does not accept the sanction, we are able to compare the sanction proposed by fitness to practise at stage three, and the outcome of the hearing at stage four.

3.3 The breakdown of the comparison is at Appendix 1. In particular it is broken down on the basis of the 70/30 split of workers who engage with the Clerks during the hearing process, and those who do not. In summary, where a worker does not engage with the hearing process, the sanction proposed at stage three is the same sanction imposed by the Fitness to Practise Panel after hearing the evidence in 94% of cases.

4. PROPOSED NEW APPROACH

4.1 With engagement levels during the hearing process at 70% over the 17 months analysed, we are holding significant numbers of hearings where there is no engagement from the worker (97 hearings, 165 hearing days). This has an impact on witnesses going through the process of giving evidence, care services which have to release staff which may have an

impact on a service user, as well as resource implications for us. It also generates a volume of formal paperwork that we have to serve on the worker throughout the process. We have had demands from disengaged workers to stop sending paperwork to them (which we cannot do).

- 4.2 The evidence shows that where there is no engagement, the Fitness to Practise Solicitor makes the same decision on the basis of the paper evidence, at stage three of the process, as the Fitness to Practise Panel make after having heard the oral evidence at stage four of the process in 94% of cases. This reflects the high standard of the Fitness to Practise Department's investigation and decision-making.
- 4.3 Rather than requiring a worker to sign their acceptance of the Fitness to Practise paper-based decision, the proposal is that we implement the paper-based decision unless the worker asks that we hold a hearing. This would limit hearings to those cases where the worker actively disputes or disagrees with the view of the Fitness to Practise Department.
- 4.4 The key requirement is that the process is fair to the worker and does not compromise public protection. This proposal would retain the key elements required to safeguard these requirements:
 - any worker can request a hearing
 - all decisions retain the right to appeal to the Sheriff Court
 - the evidence-base demonstrates that the Fitness to Practise Department decision-making process has the right approach to fairness to the worker and public protection.
- 4.5 To provide further reassurance, the seven cases where the worker did not engage and the Fitness to Practise Panel reached a different outcome to that proposed by the Fitness to Practise Department have been analysed. This analysis is in Table 1 of the Appendix. In three cases the difference related to witnesses failing to attend the hearing. We must also bear in mind that different panels reach different decisions. The analysis does not give rise to a concern about a fundamental flaw in the Fitness to Practise Department decision-making process.

5. RESOURCE IMPLICATIONS

- 5.1 There are no specific resource implications associated with carrying out the consultation which we can manage within existing staff time and travel budget.
- 5.2 We predict that there will be 660 temporary order or impairment hearing days arising out of this financial year's referrals about registered workers. Each hearing day costs £950 in Panel Member fees. If we take engagement as a measure then it is reasonable to estimate that the 30% of people who do not engage would not request a hearing.

- 5.3 Reducing hearing numbers will also increase capacity within the Fitness to Practise and Hearings Departments, at a time when the Register and therefore workloads are increasing.

6. LEGAL IMPLICATIONS

- 6.1 We have obtained external legal advice confirming that the proposed approach is lawful. If the consultation were successful and Members ultimately decided to implement the proposal we would need to amend the Fitness to Practise Rules which would require the consent of Scottish Ministers.

7. STAKEHOLDER ENGAGEMENT

- 7.1 If approved the consultation will be advertised on the website, included in our bulletins and highlighted to all workers through direct mailing. Focussed engagement will take place with representatives, including unions, solicitors, advocates, law centres

8. IMPACT ON PEOPLE USING SOCIAL SERVICES AND CARERS

- 8.1 The public protection focus of the Fitness to Practise work would not change through this process.

9. CONCLUSION

- 9.1 Members are asked to grant authority to consult on the proposal.