



Gofal Cymdeithasol **Cymru**
Social Care **Wales**

Investigation process – summary for persons registered with Social Care Wales



Noddir gan
Lywodraeth Cymru
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Social Care Wales is a Welsh Government Sponsored Body. We bring together workforce development, workforce regulation, service improvement and research in one organisation.

Our remit is to promote and maintain:

- high standards of conduct and practice among social care workers
- high standards in the training of social care workers
- public confidence in social care workers.

As part of this work, we will investigate a referral, allegation or complaint we receive about a person on our Register of Social Care Workers.

This guidance provides a summary of our investigation process.

If you are involved in an investigation, it will be important for you to refer to the documents as they will provide you with a more detailed understanding of the process.

- Regulation and Inspection of Social Care (Wales) Act 2016 (Act)
www.legislation.gov.uk/anaw/2016/2/contents/enacted
- Social Care Wales (Content of Register) Regulations 2016 (Register Regulations)
- Social Care Wales (List of Persons Removed from the Register) Regulations 2016 (List Regulations)
- Social Care Wales (Investigation) Rules (Rules) 2017
- Social Care Wales (investigation) Rules (Rules) 2018
- Social Care Wales (investigation) Rules (Rules) 2020

Fitness to practise – what it means

When we receive a referral, allegation or complaint about you, we will consider whether your fitness to practise is or may be impaired.

Your fitness to practise may be impaired on one or more of the following grounds:

- (a) poor practice (referred to in the Act as ‘deficient performance’). This may include, for example, an instance of negligence
- (b) serious misconduct (whether as a registered person or otherwise)
- (c) inclusion in a barred list (held by the Disclosure and Barring Service)
- (d) a decision by another body, such as the Nursing and Midwifery Council, that your fitness to practise is impaired
- (e) poor physical or mental health
- (f) a conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence.

A failure to comply with any standard in the *Code of Professional Practice for Social Care* will be considered when deciding whether or not your fitness to practise is impaired under one or more of the grounds outlined above.

Your fitness to practise may be regarded as impaired whether or not the matter took place when you were on the Register and whether or not the matter took place inside or outside Wales.

Initial consideration of a referral or complaint by us

When we receive a referral or complaint that your fitness to practice is or may be impaired, one of our fitness to practise officers will carry out an assessment to decide whether the information is appropriate for us to investigate.

We will make initial enquiries and give you the opportunity to provide a response. We will also contact the person who made the referral or complaint.

Every referral we investigate is presented to an internal case conference within 14 days of receipt to assess the information we hold and to consider the level of risk. We will also decide whether there is a real prospect of a finding of impaired fitness to practise.

We will then then make one of the following decisions:

- to close the case
- that further investigation is required
- to forward the case to an interim orders panel
- to send the case directly to a fitness to practise panel.

Decisions explained

Close cases

Examples of cases that could be closed at this stage are where:

- the matter occurred more than five years ago, apart from those where:
 - the matter relates to a conviction for an offence for which a custodial sentence was, or could have been, imposed
 - you have been placed on a barred list held by the Disclosure and Barring Service
 - your fitness to practice was found to be impaired by another regulator, such as the Nursing and Midwifery Council
 - our officers think it is in the public interest for the matter to be investigated further
- we regard the complaint as vexatious
- the complaint was made anonymously and we cannot verify it
- the person who made the complaint fails to co-operate with our officers and we are therefore unable to verify it
- there is insufficient evidence to take the matter forward and we are unable to obtain further information
- the matter concerns some type of caution or minor criminal conviction, such as a motoring offence not involving a person who uses care and support, and we consider that the circumstances leading to the caution or conviction do not amount to impaired fitness to practise
- we feel that the employer has adequately dealt with the matter, for example, by putting in place measures for specific training, mentoring or extra supervision.

Further investigation

We may need to investigate the matter further where we feel that there is insufficient information/evidence to enable us to decide how to proceed with the case.



Referral to an interim orders panel

We may refer a matter to an interim orders panel to consider whether to:

- suspend you from the Register (and from practice) for a set period while the preliminary enquiries are undertaken (called an 'interim suspension order')
- impose interim conditions on your registration (and your practice) while the preliminary enquiries are undertaken (called an 'interim conditional registration order').

Referral directly to a fitness to practise panel

A case will be referred directly to a fitness to practise panel where:

- you have received a caution or have been convicted of an offence by a court in the UK or elsewhere for which a custodial sentence was or could have been imposed
- the findings of fact of a regulatory body (such as the Nursing and Midwifery Council) or the Disclosure and Barring Service can be used as evidence that the facts have been found in your case.

Further investigation after an initial case conference

Where a case has been referred for further investigation, officers can make any enquiries that are considered necessary to determine whether your fitness to practise is or may be impaired.

This may include obtaining information/evidence from, for example, witnesses, your employer, the police, or another regulatory body with whom you are registered, such as the Nursing and Midwifery Council.

We may also require information or documents from any person to help with our investigation. If the information or documentation is not supplied within a set time, we may be able to apply for a court order for the information to be supplied.

We will discuss your case at a further internal case conference where we have new information that changes the risk level, or where there is sufficient information to make a decision about your case. We will evaluate any information obtained and decide whether there is a real prospect of a finding of impaired fitness to practise.



We will then make one of the following decisions:

- take no further action
- provide advice
- issue a warning
- impose an undertaking (with your consent)
- remove you from the Register via the removal by agreement procedure (with your consent)
- refer the matter to an interim orders panel
- refer the matter to a fitness to practise panel.

Our decisions explained

No further action

A case may be closed with no action taken against you. Examples include where a vexatious complaint has been made, or where a matter has been sufficiently addressed by the employer.

Provide advice

We can provide advice to you or to anyone else involved in the investigation upon the conclusion of the investigation.

Issue a warning

Where we decide to issue a warning, we will write to you to inform you about this and your right to respond either in writing or in person before a fitness to practise panel. If you accept the warning, or we do not receive a response, we will issue the warning.

If you confirm that you want an oral hearing before a fitness to practise panel, our hearings team will write to you to make arrangements.

We will publish the decision to issue a warning to you on our website and will update the Register to show that we have issued a warning (no information about your physical or mental health will be published). We will remove the warning from the Register when it expires.

Impose an undertaking

An undertaking is an agreement between you and Social Care Wales in relation to your work practices. It enables you to continue working and is put in place by our





officers without referral to a fitness to practise panel. An example of an undertaking is that you could be required to complete specific training within a specified time.

If you do not agree to the undertaking, the case will be referred to a fitness to practise panel.

While the undertaking is active, you will have to produce relevant written evidence of your compliance. You will need to demonstrate this to us throughout the time it is in place.

If you do any of the following:

- breach the undertaking
- fail to meet the undertaking
- fail to provide written evidence of compliance

then the matter will be referred to a fitness to practise panel.

If you have met the undertaking within the required time the sanction will expire.

We can use discretion when considering the reasons for non-compliance and, if reasonable to do so, we can amend the undertaking to enable compliance. For example, if failure is due to ill-health, we can extend the compliance period.

We will publish the decision to issue an undertaking on our website and will update the Register to show that an undertaking is in place (no information about your physical or mental health will be published). We will remove the information regarding the undertaking(s) from the Register once it has expired.

Removal from the Register via the removal by agreement procedure

Where you've had an allegation of impaired fitness to practise made against you, you can apply to be removed from the Register. You can only make an application to be removed if you haven't been referred to a fitness to practise panel.

We will publish the outcome of a removal under this process on our website and your name will appear on a list of people removed from the Register, which is also available on our website (no information about your physical or mental health will be published).



Being removed from our Register under this process will not mean that you can avoid any further action by other bodies, such as another regulatory body with whom you are registered. This is because each body has its own separate procedures to follow.

Referral to an interim orders panel

We may refer a matter to an interim orders panel to consider whether to:

- suspend you from the Register (and practice) for a set period while the investigation is undertaken (called an 'interim suspension order')
- impose interim conditions on your registration (and practice) while the investigation is undertaken (called an 'interim conditional registration order').

Referral to a fitness to practise panel

Where officers are satisfied that:

- there is a realistic prospect that a panel will find that your fitness to practise is impaired
- the matter is in the public interest

we will refer the matter to a fitness to practise panel.

Review of decisions by Social Care Wales

We are able to review certain decisions where:

- we think the decision may be materially flawed
- we think a different decision may have been made if certain information had been available at the time we made the original decision.

We can review a decision:

- not to refer a matter directly to a fitness to practise panel following initial enquiries or after an investigation
- not to refer a matter for investigation after initial enquiries have been made
- to take no further action
- to provide advice
- to issue a warning
- to impose an undertaking(s)
- to remove you from the Register via the removal by agreement procedure.



We can only review a relevant decision if the request for a review is made within **two years** of the decision being made, unless we think it is in the public interest to review it after the two year period.

If we decide to carry out a review, we will inform you, the person who made the complaint/referral and any other person that we think has an interest in the decision.

After the review, we can:

- refer the matter to a fitness to practise panel
- refer the matter for investigation
- take no further action
- provide advice
- issue a warning
- impose an undertaking(s)
- remove you from the Register via the removal by agreement procedure
- keep the original decision.

We will publish any decisions to issue a warning, impose an undertaking or remove by agreement (no information about your physical or mental health will be published).

Keeping you informed

We will keep you informed about how we are proceeding with our case against you at regular intervals during the process. You can contact us at any time to ask for an update.

Getting professional or legal advice and representation

If you are informed by us that we have received a referral, complaint or allegation about you, you may wish to seek professional or legal advice and representation before you respond to this information. You can do this by contacting:

- your trade union, such as Unison, GMB, Unite, TUC, PCS
- a professional association, such as the British Association of Social Workers (BASW)
- a solicitor
- a barrister through the Bar Pro Bono Unit which can provide legal advice or representation to registrants who cannot afford to pay for advice or





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representation and where public funding is not available. Contact: 020 7092 3960, enquiries@barprobono.org.uk or www.barprobono.org.uk

- the Citizen's Advice Bureau.

Contacting us

Fitness to practise team

For information about the investigation into a case, please contact:

Fitness to practise team: 029 2078 0545 or ftp@socialcare.wales

Hearings team

For information on the hearings process, please contact:

Hearings team: 029 2078 0505 or hearings@socialcare.wales.

Address: Social Care Wales, South Gate House, Wood Street, Cardiff
CF10 1EW

Website: socialcare.wales

Mae'r ddogfen hon hefyd ar gael yn y Gymraeg.

This document is also available in Welsh.



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