



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

Guide for employers on the process of referral, investigation and fitness to practice hearings



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Guide for social care employers on Social Care Wales's referral, investigation and fitness to practise hearings processes

As an employer of a social care professional registered with Social Care Wales, this leaflet provides you with information about the following:

- checks to be made before employing a social care professional who should be registered with us
- when to refer an employee to us
- our investigation process and your role in it
- our fitness to practise hearings process and your role in it
- length of proceedings
- working with and providing information/evidence to us
- additional guidance and documentation for registered social care professionals
- contacting us.

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Checks to be made before employing a social care professional who should be registered with us

The following social care professionals are currently legally required to register with us before working in the social care sector in Wales:

- social workers
- social care managers
- residential child care workers
- social work students.

Domiciliary care workers have been able to register voluntarily with us since 2018, with registration becoming compulsory from 2020. Adult care home workers will be able to register voluntarily from 2020, with registration becoming compulsory from 2022.

Before you employ a social care professional from the above list, you should check the Register of Social Care Workers as this will provide confirmation about a worker's identity and their ability to work in the role for which they are being employed.

Checking the Register will provide you with:

- their current name
- their registration number
- the county in which they are currently employed
- confirmation of the part for which they are registered





- confirmation that they are qualified for the role for which they are registered
- confirmation about whether they hold any other qualifications, knowledge and experience relevant to their registration. This is currently limited to whether they are able to work as an approved mental health professional, and confirmation as to whether they are or have been the subject of fitness to practise proceedings by us. This may include confirmation about:
 - whether they have any restrictions currently placed on their registration, such as conditions imposed on their registration status
 - whether they are currently suspended from the Register, which could be on a temporary basis while we are investigating allegations received about their fitness to practise.

A registered person will also be issued with electronic proof of registration, which will include the following information:

- current name
- registration number
- date registered
- registered role.

Both the Register and, if required, an individual's electronic proof of registration, are updated at the end of each working day to ensure the information accurately reflects the status of all registered social care professionals.

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When to refer an employee to us

As an employer, you have a vital role to play in initially assessing and dealing with any allegation(s) about an employee's fitness to practise.

You should refer your employee to us at the start of your processes:

- if you assess a matter to be high risk
- if your employee has been suspended or dismissed
- if your employee resigned or left before you were able to complete your process and the outcome would have been dismissal
- if they are subject to a police or safeguarding investigation.

You should keep us informed while these processes are ongoing. You should then inform us when they are concluded, and provide us with relevant supporting evidence.

If you assess a matter to be low risk you can forward the information to us at the end of your processes, together with relevant supporting evidence.





Examples of the types of matters that do not need to be referred to us are:

- employment matters relating to annual leave, lateness or sickness absence
- where a letter of concern has been issued by you but no disciplinary sanction has been given
- concerns which, after initial consideration, were not investigated further.

In some circumstances, you should refer your employee directly to us, irrespective of your own internal investigation procedures. For example, if they have been placed on a barred list held by the Disclosure and Barring Service or they have been convicted of a criminal offence.

You can refer an employee to us by completing our referral form at socialcare.wales/fitness-to-practise/employers-referring-workers via email or by post (please see contact details at the end of this document).

Compromise agreements

When there's a duty to refer a worker to us, you should do so even where a compromise agreement has been signed. We don't need any financial details, but we do need to know the reasons for the compromise agreement.

When writing the agreement, you should make it clear that any confidentiality clause entered into does not apply to information passed to Social Care Wales. Under Section 160 of the Regulation and Inspection of Social Care (Wales) Act 2016, we are able to apply for a court order to receive this information.

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Our investigation process and your role in it

When you refer a registered social care professional to us, our fitness to practise team will carry out an assessment to decide whether the information is appropriate for us to consider and whether the individual's fitness to practise is, or may be, impaired.

We consider whether their fitness to practise is, or may be, impaired on one or more of the following grounds:

- poor practice or deficient performance. This may include, for example, an instance of negligence
- serious misconduct, whether as a registered person or otherwise
- the inclusion in a barred list held by the Disclosure and Barring Service
- a decision by another body, such as the Nursing and Midwifery Council, that their fitness to practise is impaired





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- poor physical or mental health
- 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 registered social care professional's fitness to practise may be regarded as being impaired in the following circumstances:

- whether or not they were on the Register when the matter took place
- whether the matter took place inside or outside Wales
- whether or not the matter took place when they were at work.

If we consider that the allegation isn't appropriate for us to consider, we'll take no further action but we will inform the registered person that we have received the information.

If we consider that it is appropriate, we'll undertake our own initial enquiries. This will include notifying the registered person and providing them with the opportunity to respond. We may also contact you for additional information. An officer from the fitness to practise team will be appointed to the case and will be your point of contact for the duration of the investigation.

After these enquiries have been made, we'll evaluate the information and assess the level of risk to decide whether there is a real prospect of a finding of impaired fitness to practise. We will then make one of the following decisions:

- close the case – for example, where we consider that you have adequately dealt with the matter
- further investigation is required – for example, where we consider that there is insufficient information/evidence available to make a decision about the way in which to proceed with the case
- forward the case to an interim orders panel, to either temporarily suspend the individual from the Register or impose conditions on their registration, while our investigation is underway
- send the case directly to a fitness to practise panel – for example, if the registered person has received a caution or has been convicted of an offence by a court in the UK or elsewhere for which a custodial sentence was or could have been imposed.

Where we decide that further investigation is required, we may contact you again for additional information and/or evidence. We may also contact the registered person.

At the end of this process we can make one of the following decisions:

- no further action – for example, where we consider that you have adequately dealt with the matter
- provide advice – for example, that the registered person should remind themselves of the content of the *Code of Professional Practice for Social Care*



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- offer a warning ranging from six months to three years
- offer an undertaking – for example, that the registered person should complete identified training within a specified timescale. These are imposed with the agreement of the registered person
- remove the registered person, with their agreement, from the Register via the removal by agreement process
- refer the matter to an interim orders panel to either temporarily suspend the individual from the Register or impose conditions on their registration, while our investigation is underway
- refer the matter to a fitness to practise panel.

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Our fitness to practise hearings process and your role in it

Following investigation of your referral, a registered person will be referred to a fitness to practise panel when:

- we are satisfied that there is a realistic prospect that the panel will find that their fitness to practise is impaired
- that it is in the public interest to do so.

Depending on the nature of the case and matters agreed between us and the registered person, a fitness to practise panel can consider the grounds for impaired fitness to practise either at a public hearing or in a meeting, where neither party is present. The outcome will be published on our website.

As part of the preparation for a hearing, you may be contacted by us for the following reasons:

- to obtain further information or evidence that has been identified during the pre-hearing procedures
- to appear as a witness for us if we have taken a witness statement from you.

The registered person may contact you to act as a witness for them.

If you are called as a witness for us, you will be contacted either by the officer from the fitness to practise team responsible for the case or by the solicitor presenting the case on behalf of us.

You will be informed of the date, time and venue of the hearing approximately four to six weeks before it is held.





If the hearing is held in public and you are not called as a witness, you will be able attend as an observer. If you are called as a witness, you will only be able to attend once you have given your evidence.

A fitness to practise panel can make the following decisions:

- where a panel finds that the registered person's fitness to practise is not impaired:
 - take no further action and close the case
 - provide advice.
- where a panel finds that the registered person's fitness to practise is impaired:
 - take no further action and close the case
 - issue a warning
 - remove the registered person by agreement
 - impose an undertaking
 - impose a conditional registration order – for example, to undertake specific training within a defined period
 - impose a suspension order, preventing the registered person from working in a role that requires registration for a set period of time
 - remove the individual from the Register. The person will be unable to work in a role that requires registration in Wales.

You will be informed of the panel's decision. The decision will also be published on our website and the Register will be updated to show the decision made.

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How long will the processes take?

As each case is different, it is difficult to give an accurate timeline as to how long it will take us to investigate it, and, if it proceeds through the hearings process, how long that process will be.

Examples, however, of average timescales are:

- **receipt of allegation to case closed at investigation stage:** up to six months, but this varies depending on the complexity of the case
- **receipt of allegation to case closed at fitness to practise hearing:** approximately nine to 10 months, again depending on the complexity of the case.

Cases can take longer than these timescales if :





- we are waiting for evidence from, for example, you or your employer
- we are waiting for a police investigation or court proceedings to be finalised
- the registered person is registered with another regulatory body, which is also undertaking proceedings against them, as we may need to wait for it to conclude its proceedings before we can complete ours.

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Working with and providing us with information/evidence

We are aware that working with us during our investigation and hearings processes, can be time-consuming. If the matter has also been investigated by another body, such as the police, you may have had to supply the same information twice.

However, we have a statutory duty to carry out our own procedures and appreciate your co-operation in providing us with the information we require from you within any timescales provided. We are also aware of the effect our processes can have on the registered person and the need to deal with cases in a timely manner.

To help us obtain the information and evidence we need as part of our investigation and hearings processes, we have the power under the Regulation and Inspection of Social Care (Wales) Act 2016 to require any person to supply that information to us¹.

If that person then fails to provide us with the information or evidence we require within a set timescale, we will be able to apply to the Care Standards Tribunal for an order requiring the information. We will also be able to subpoena witnesses to appear before one of our panels.

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Keeping you informed

The officer from the fitness to practise team managing the case will keep you informed about how the case is progressing at regular intervals during the process. You can also contact us at any time to ask for an update.

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Further information





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The information above is a summary of the investigation and hearings processes that are set out in the legislation and rules that govern these processes.

Contacting us

Fitness to practise team

To refer a registered social care worker to us and for information about an investigation into a case, please contact:

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

Hearings

For information about a hearing on a case, 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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