



Indicative Sanctions Guidance

for Conduct Committees

2008

INDICATIVE SANCTIONS GUIDANCE

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Introduction

This guidance has been developed for use by the General Social Care Council's (GSCC's) conduct committees when considering what sanction to impose upon a registrant following a finding of misconduct. It outlines the decision-making process and factors to be considered. This guidance is issued as part of the GSCC's commitment to ensuring openness and transparency in carrying out all its functions.

The guidance is a 'living document', which will be reviewed annually by Committee Members, the Regulation Committee and Conduct staff and managers, and updated and revised in the light of experience and any relevant case law.

The statutory purpose of the GSCC is to promote in relation to England; high standards of conduct and practice among social care workers; and high standards in their training. It does this through the four main functions given to it under the Care Standards Act 2000(the Act):

- Keeping up-to-date the register of social care workers
- Producing, publishing and keeping under review codes of practice
- Approving and quality assuring social work training courses, including post qualification training
- Managing referrals in a robust and fair way in relation to social care workers whose suitability to remain on the register is in doubt.

The GSCC has a statutory role in providing guidance to social care workers on standards of conduct and practice expected. The Code of Practice for Social Care Workers and The Code of Practice for Employers of Social Care Workers were widely consulted on and sets out the standards of conduct and practice expected of social care workers and the standards of conduct and practice of employers in relation to social care workers. The Code of Practice for Social Care Workers is a list of statements that describe the standards of professional conduct and practice required of social care workers as they go about their daily work. The intention is to confirm the standards required in social care and ensure that workers know what standards of conduct employers, colleagues, users of services, carers and the public expect of them.

Although this guidance is addressed to the members who sit on the Conduct Committee, it will be useful to others involved personally or professionally in conduct cases, including:

- people who use services who are considering making a complaint to the GSCC about a social care worker

- social care workers who are subject to conduct procedures
- employers considering making a referral to the GSCC
- factual and expert witnesses
- organisations, firms and advocates representing parties
- legal advisers and medical examiners
- other regulatory bodies
- the Care Standards Tribunal and the Courts.

The primary purposes of this document are to provide guidance to the Conduct Committee about the GSCC's views on conduct, and to form part of a framework for promoting quality, transparency and consistency of decision-making. It ensures that all parties are aware from the outset the approach taken by the Conduct Committee regarding the question of sanctions.

Conduct Committee members exercise their own judgement in making decisions as they are acting as the adjudicating body, but within a framework set out by the GSCC to ensure consistency and therefore fairness.

Committee members should refer to the guidance in every case after having found misconduct, at the stage when they are considering what sanction, if any, to impose on the registrant. Members are expected to confirm whether they have used this guidance or, if not, to explain why not. The guidance:

- describes general principles that committees should take into account when considering the appropriate sanction
- sets out the range of sanctions available
- describes associated issues to be considered and/or decided in relation to the various sanctions and
- suggests criteria to apply when considering any particular sanction.

Committee members should also bear in mind the five Principles of Good Regulation established by the Better Regulation Task Force:

- Proportionality
- Accountability
- Consistency
- Transparency
- Targeting.

Equality and diversity

The GSCC's responsibilities

The GSCC is a public authority for the purposes of the Human Rights Act 1998. The GSCC will seek to uphold and promote the principles of the European Convention on Human Rights in accordance with the Act.

The GSCC has made a commitment to equal opportunities and diversity [and has an agreed strategy for delivering on this commitment]. The GSCC will uphold its equalities and diversity policy in the administration of the conduct procedures and expect Committees to do the same.

Social care workers practise social care work in order to serve the interests of people who use services. It is a central function of the Conduct Committee to promote the interests of people who use services and to protect them by ensuring the suitability of registrants.

The GSCC is committed to promoting equality and valuing diversity and to operate procedures and processes that are fair, objective, transparent and free from discrimination. Promoting equality is also a requirement under current and emerging equality legislation. Everyone acting for the GSCC is expected to adhere to the spirit and letter of this legislation.

The social care worker's responsibilities

Social care workers are required to not discriminate unlawfully or unjustifiably against users of services, carers or colleagues, as set out in part 5.5 of the Code of Practice.

General principles regarding sanctions

Role of the Conduct Committee and the three-stage process

Rule 14(1) – 25(4) of the General Social Care Council Rules provides for a three-stage process before a Committee reaches a decision on sanction. The Committee has to decide in turn:

- Whether the facts alleged have been found proved;
- Whether, on the basis of the facts found proved, the social care worker has committed misconduct;
- If so, whether any action should be taken against the social care worker's registration.

Committee Members are reminded that cases that entered the conduct system prior to 4 March 2008 will continue to be processed under the 2003 Rules and new cases will be processed under the 2008 Rules. This means that certain processes may be different, however the three - stage process of findings of fact, misconduct and mitigation remains unchanged.

General principles: The public interest and proportionality

In deciding what sanction to impose, the Conduct Committee should apply the principle of proportionality, weighing the interests of user of services and the public with those of the registrant. The Committee should consider the options available starting with the least severe and moving to the next, only if satisfied that the sanction is not sufficient to protect users of services and the wider public interest.

The General Social Care Council exists to protect the public and to promote high standards of practice. The Conduct Committee should use its powers where necessary to protect the public:

- by protecting people who use services and colleagues from the risk of harm
- by safeguarding public trust and confidence in social care services generally
- by upholding high standards of conduct among social care workers.

The Committee's task is to determine whether, on the basis of the facts before it, the registrant has committed misconduct. In effect, the task is to consider a social care worker's past acts, and determine whether the social care worker is suitable to work with people who use services and what degree of public protection is required.

In considering whether to apply a sanction, the Committee has to exercise discretion. Even if it finds misconduct, it has discretion as to whether or

not to impose a sanction on the social care worker's registration. The Committee is required to exercise its discretion in a way that is fair and reasonable.

The Committee will ensure that any sanction imposed is proportionate, in all the circumstances of the case. This will involve a consideration of:

- any mitigating or aggravating features of the misconduct in question
- the personal circumstances of the registrant and any mitigation advanced
- any testimonials and character references adduced in support of the registrant.
- Whether there is any evidence of a pattern or trend in behaviour.

The Committee should be mindful of the message that the imposition of sanctions, and the type of sanction applied, sends to the public, the social work profession and the social care sector. Sanctions have the important function of working as a deterrent to other social care workers. It is also preferable in the interests of public protection, that a Committee has the confidence to apply the severest sanctions where it sees fit.

Sanctions

No sanction

The legislation does not require the Conduct Committee to impose a sanction in every case. It is open to the Committee to conclude a case without taking further action. Where a finding of misconduct has been found the Council expects the Conduct Committee will take action against a social care worker's registration in order to protect the public interest (protection of users of services, maintenance of public confidence in the provision of social care services and upholding proper standards of conduct and practice). There may however, be exceptional circumstances in which the Committee might be justified in taking no action against a social care worker's registration. Such cases are likely to be rare. In such cases it is important that the Committee's decision sets out very clearly the reasons why it considered it appropriate to take no action, notwithstanding the fact that the social care worker had been found to have committed misconduct.

Admonishment

An admonishment is the least severe sanction that can be applied in a case where the misconduct of a social care worker has been found proved. An admonishment does not directly affect a social care worker's ability to practise, but is disclosed if an employer enquires about the social care worker's entry on the social care register, and appears on the social care worker's entry on the public facing register. It will be recorded against their entry for up to five years, and can be disclosed to any PPC or Conduct Committee in the future if further complaints are received about the social care worker. Therefore, an admonishment may be appropriate where the offence is at the lower end of the spectrum of misconduct; where the Conduct Committee wishes to mark that the behaviour was unacceptable and must not happen again.

For cases where there may be a low risk of recurrence, and where the lapse has been corrected and was of itself of a minor nature, this may be the appropriate sanction.

If the Committee is minded to issue an admonishment, it should consider whether it provides adequate public protection as far as this registrant's suitability is concerned, bearing in mind that an admonishment has no direct effect on their ability to work as a social care worker. This might be appropriate if the registrant's character and circumstances are such that, whatever the history, the Committee is confident that there is no risk to the public or people who use services.

No review of an admonishment is possible. It will simply lapse after the specified time period.

Factors to be considered include:

- evidence that the behaviour would not have caused direct or indirect harm to service users
- evidence of insight into failings
- behaviour was an isolated incident, which was not deliberate
- genuine expression of regret/apologies
- acting under duress
- previous good history
- no repetition of behaviour since incident
- evidence that rehabilitative/corrective steps have been taken
- relevant and appropriate references and testimonials.

This is the lightest sanction that can be applied and its accompanying message to user of services, the public and the profession must also be taken into account.

Suspension

Suspension can be used to send out a signal to the social care worker, the profession and the public about what is regarded as unacceptable behaviour. Suspension from the register has a punitive effect, in that it prevents a social care worker from practising under that title during the period of suspension. It is likely to be appropriate for misconduct that is serious, but not so serious as to justify removal from the register; for example, where there has been an acknowledgment of fault and where the Conduct Committee is satisfied that the behaviour is unlikely to be repeated.

If the evidence suggests that the social care worker will be unable to resolve or remedy his or her failings then removal may be the more appropriate option. However, where the registrant has no psychological or other difficulties preventing him or her from understanding and seeking to remedy the failings, then suspension may be appropriate.

There may be cases where there is evidence that the social care worker has the potential to be rehabilitated if he or she is prepared to undergo further training and assessment, or undertake other suitable remedial actions. In such cases the Conduct Committee may wish to impose a period of suspension and recommend further training that the social care worker might undergo during suspension, or the remedial actions he or she should undertake. In practice, any training or courses might have to be organised and funded by the registrant, since it is not in the GSCC's power to order employers to provide training for suspended social care

workers. The GSCC has no powers to enforce any such recommendation and assess compliance, for example, a review at the end of the suspension period.

The Committee does not have the power to impose conditions on a registrant's registration, although this is something that the GSCC is seeking to achieve in the future through changes in legislation and rules.

A Suspension Order must specify the period for which it has effect and will cease to have effect at the end of that period. However, the Committee may review a Suspension Order while it is in force. The length of suspension may be up to two years and is a matter for the Conduct Committee's discretion, depending upon the gravity of the particular case.

If the Committee decides that it is not necessary to remove the registrant's name from the register, it should consider whether to suspend. If the registrant's suitability is impaired to the point that suspension is required, they will need to explain in their reasons why removal is not necessary.

Resumed hearings - reviews of suspension orders

The registrant can request that the suspension order is reviewed before the end of the period for which the suspension has been ordered, but the Committee will only agree if there has been a material change of circumstances since the order was imposed. The Committee may then decide to revoke the order.

Factors:

Suspension may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):

- a serious incident of misconduct where a lesser sanction is not sufficient
- behaviour is not fundamentally incompatible with continuing to be a registered social care worker
- no evidence of harmful deep-seated personality or attitudinal problems
- no evidence of repetition of behaviour since incident
- the Committee is satisfied that the social care worker has insight and does not pose a significant risk of repeating behaviour
- The interests of people who use services are sufficiently respected
- conduct that impairs suitability but that is not so serious and chronic that removal is required
- causing avoidable harm to people who use services

- other failure to uphold the principles in the Code of Practice for Social Care Workers
- where suspension may stop a pattern of behaviour.

Removal

Removal is a sanction for serious, deliberate, grossly negligent or reckless acts to include those involving; abuse of trust such as sexual abuse, dishonesty or persistent failure. Removal should be used where there is no other way to protect the public, for example, where there is a lack of insight, continuing problems and a pattern of unacceptable behaviour or denial.

Although this is the highest sanction the Committee can impose, registrants who have been removed from the register are eligible to apply for restoration to it after a period of three years.

This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registrant:

- serious departure from the relevant standards in the Code and/or where there is continuing risk to clients or others, and/or
- confidence in social care services would be undermined if the person is not removed.

The Conduct Committee should not feel it necessary to remove a registrant who does not present a risk in order to satisfy public demand for blame and punishment. This should be weighed against the message that removing a social care worker from the register sends to the profession and the public, and the fact that the safety of people who use services and their right to protection from neglect and abuse is more important than the fortunes of any individual registrant.

The Committee plays a role in maintaining confidence in social care services. Removal may therefore be appropriate where, despite a registrant presenting no risk, their behaviour had demonstrated a blatant disregard for the values of social care standards set out in the Code of Practice for Social Care Workers (which is designed to safeguard the interests of people who use services and to maintain high standards within social care services).

Removal order

A social care worker who has been removed from the register cannot apply for restoration until three years have elapsed. At this time the Restoration Committee will have regard to a number of factors including protection of the public and the maintenance of public trust and confidence in social care services.

Factors to be considered include:

- serious departure from the relevant professional standards outlined in the Code of Practice for Social Care Workers
- doing serious harm to others (people who use services or otherwise), either deliberately or through gross neglect and particularly where there is a continuing risk to users of services
- abuse of position/trust (particularly involving vulnerable people who use) or the violation of the rights of people who use services
- convictions or findings of a sexual and/or violent nature, including involvement in child pornography
- dishonesty (especially where persistent or covered up)
- persistent lack of insight into seriousness of actions or consequences.
- repeated inappropriate behaviour/practice which contravenes the Code of Practice for Social Care Workers.

Examples:

There are some examples of misconduct where the Privy Council has upheld decisions to remove health practitioners from registers despite strong mitigation. This is because it would not have been in the public interest to do otherwise, given the circumstances concerned. The three most serious areas of concern are:

- sexual misconduct
- dishonesty
- failing to provide an acceptable level of care

In such cases, a decision not to remove would require careful justification.

Sexual Misconduct

This encompasses a wide range of conduct from criminal convictions for sexual assault and sexual abuse of children (including child pornography) to sexual misconduct with people who use services, their carers and relatives, or with colleagues. The misconduct is particularly serious however, where there is an abuse of the special position of trust that a

registrant occupies, or where a registrant has been required to register as a sex offender.

The risk to people who use services is an important consideration. In such cases removal from the register has been judged the appropriate sanction to uphold public confidence in social care services. In these cases removal from the register was neither unreasonable, excessive nor disproportionate, but necessary in the public interest.

Further guidance on the issue of child pornography is given later in this document.

Dishonesty

The GSCC's Code of Practice states that social care workers must be honest and trustworthy (Code 2.1) and must recognise and use responsibly the power that comes from their work with people who use services and their carers. Code (3.8)

Dishonesty is particularly serious because it may undermine trust in social care services. Examples could include improperly amending records relating to people who use services, falsifying evidence or submitting or providing false references and information on a job application. The public must be able to place complete reliance on the integrity of registrants; and the Committee is entitled to regard conduct which undermines that confidence as calculated to reflect on the standards and reputation of social care services as a whole.

Research misconduct is another example of dishonesty. This term is used to describe a range of misconduct; for example, presenting misleading information in publications. Such behaviour undermines the trust that both the public and the profession have in social care work, regardless of whether this leads to direct harm to users of services. Because it has the potential to have far reaching consequences, this type of dishonesty is serious.

People who use services, employers, colleagues and others have a right to rely on social care workers' professional integrity. Sometimes, life-changing choices about the options available to someone who uses services and significant financial decisions are made on the basis not only of registrants' skill but also of their honesty. Dishonesty, particularly when associated with professional practice, is so damaging to a registrant's suitability and to public confidence in social care services that removal should be presumed to be the appropriate outcome.

Failing to provide an acceptable level of care

Cases in this category are ones where a social care worker has not acted in a service user's best interests and has failed to provide an adequate level of care, falling well below expected professional standards. A particularly important consideration in such cases is whether or not the social care worker has, or has the potential to develop, insight into these failures. Where this is evident, it is likely that another sanction may be appropriate or sufficient.

Further examples:

Abuse of position/trust (particularly involving vulnerable users of services) or violation of the rights of users of services

Social care work relies on the existence of an intimate professional relationship, in circumstances in which users of services have little choice but to be trusting. Users of services rely upon the professional's trustworthiness, which they are entitled to assume because of the professional's training and registration. People who use services have the right to be protected from a social care worker who seriously abuses the trust placed in them, for the purpose of sexual gratification, or profiteering, or for some other purpose contrary to the interests of the person using the services.

Other serious abuse of the privileged position enjoyed by registered professionals

In addition to the responsibilities that come with the caring relationship, registrants have other privileges which society has given them on the understanding that they will be used responsibly, for legitimate professional purposes. These privileges range from specific legal rights to less tangible cultural privileges (e.g. an expectation that professional standing confers legitimacy on 'expert' opinion). A social care professional who abuses the trust which society places in them should forfeit the privileges which come with registration.

Misconduct caused by lack of competence such as to call into question the continued ability of the practitioner to practise safely

A commitment to continuous development of knowledge and competence is an essential aspect of professional life. A registrant who is proven to have neglected this responsibility should not be permitted to continue to put the well-being and safety of people who use services at risk.

Knowingly or recklessly undertaking practice beyond competence

Sometimes professionals reasonably embark on a task and find, as it progresses, that the task is more challenging and complex than expected. This is a normal feature of practice from time to time. This sort of occurrence should not put a registrant's suitability in doubt, so long as they behave appropriately when that situation does arise. The assumption that a social care worker has conscientiously evaluated his or her competence to do what they have proposed to do is one of the key assumptions that all users of services rely on. This is why professional failure in this regard fundamentally undermines confidence in a registrant's suitability.

Patterns of behaviour that is fundamentally incompatible with professional registration

In a small number of cases, a registrant's behaviour or the attitudes they demonstrate identify them as being chronically and comprehensively unfit to be a member of a caring and responsible profession. This problem could be evidenced by serious or persistent contempt for the safety, rights and dignity of others or by serious criminality.

Convictions or findings of a violent nature

Registrants' private lives are their own business. The GSCC does not subscribe to or seek to enforce any particular model of private morality. However, there is some behaviour that is of concern to the GSCC, even though it may not be directly connected with social care. Behaviour in private life might damage confidence in social care services. For example, violent acts committed by registrants are the GSCC's business because of legitimate public concern about users of services' and colleagues' personal safety in the professional context.

Encouraging or permitting other registrants to behave unprofessionally

Any registrant who is in a position to direct the behaviour of other professionals – as a manager, employer, teacher or supervisor – and who encourages or permits them to behave in any of these ways should expect to be removed from the register.

Reasons

The Conduct Committee must give reasons for the imposition of the particular sanction in every case. The reasons must allow an individual to understand why a particular sanction was chosen in preference to another of those available.

The reasons should indicate why the decision taken by the Committee is considered to be proportionate. This will help to ensure that justice is seen to be done. The public, witnesses and the parties will be able to see why the Committee has taken a particular course, even if they disagree with the outcome. The registrant will have the right to appeal against the decision. A full explanation of the reasons for the decision will help the registrant decide whether to exercise that right, and will help the Care Standards Tribunal, which has to consider any appeal.

A full explanation should always cover:

- the factual basis of the decision
- the legal basis of the decision
- confirmation or otherwise that the Committee has accepted any legal advice it has been given by the independent Legal Adviser (it is particularly important to give a full explanation of the Committee's position in relation to any advice it has not accepted)
- the Committee's conclusions on the main submissions made to it by the parties or their representatives
- the reasons for any sanction imposed, explaining the extent to which the Committee has taken account of this guidance, and whether the Committee has followed it or not, and why.

When the Committee is explaining its choice between a range of sanctions, it is not adequate to just explain why it has preferred the chosen option. The Committee also needs to explain the range of other options it has considered and rejected, and its reasons for rejecting each of those options.

Mitigation

Mitigation should always be weighed carefully against the aggravating factors in each case. The Committee should consider seriousness in relation to the following factors:

- admission of facts alleged and/or evidence of insight into failings
- behaviour was an isolated incident, which was not deliberate; or premeditated
- genuine expression of regret/apologies
- acting under duress
- previous good history
- evidence that rehabilitative/corrective steps have been taken
- appropriate references and testimonials
- impact on victim – to include both harm and potential harm. Evidence that the behaviour would not have caused direct or indirect harm to a service user
- whether the offence was committed at work or outside work
- abuse of trust
- attempts to cover up wrong-doing
- offending in the light of previous warnings
- compliance with any previous assessment or conditions
- previous convictions.

Guidance on considering references and testimonials

When the registrant presents, in mitigation, references and testimonials, consider:

- how recent are they
- the “expertise” of the writer
- the credibility of the writer, which will need to be explored to satisfy the Committee that this is bona fide and has depth
- whether the writers are aware of the allegations
- whether the writers are aware that their letters are to be put to the Committee as mitigation evidence
- whether the reference/testimonial is genuine. The Committee need to be mindful of IT applications that can be used to fabricate documents. **The Committee must be convinced of the validity of a document before it can be accepted.**

The absence of references or testimonials should not count against a registrant; it is simply a factor that cannot be weighed in a registrant's favour.

Often the social care worker will present references and testimonials as to his or her standing in the community or profession. These need to be weighed appropriately against the nature of the incident. The quantity, quality, and spread of references and testimonials will vary from case to case; this will not necessarily depend on the standing of a registrant. There may be cultural reasons for not requesting them and the Committee should also be aware of this. In addition, acquiring references and testimonials may pose a difficulty for newly arrived overseas-qualified social care workers.

Expressions of regret and apology

The social care profession and the public have a number of expectations, including that people who use services should be protected from similar events re-occurring, and social care workers should take positive steps to learn from their mistakes, or when things go wrong.

The insight of the social care worker is an important factor in a hearing. Insight can be defined as the expectation that a social care worker will be able to stand back and accept that, with hindsight, they should have behaved differently, and that it is expected that he or she will take steps to prevent a re-occurrence. The Committee should be aware that there may be cultural differences in the way that insight is expressed; for example, how an apology or expression of regret is framed and delivered and the process of communication.

Cross cultural communication studies show that there are great variations in the way that individuals from different cultures and language groups use language to code and de-code messages. This is particularly the case when using a second language, where speakers may use the convention of their first language to frame and structure sentences, often translating as they speak and may also be reflected in the intonation adopted. As a result, the language convention, subtleties, or nuances of the second language may not be reflected.

In addition, there may be differences in the way that individuals use non-verbal cues to convey a message, including eye contact, gestures, facial expressions, and touch. Awareness of and sensitivity to these issues are important in determining the following:

- How a social care worker frames his or her insight
- How a social care worker offers an apology
- The social care worker's demeanour and attitude during the hearing.

The Committee should only take account of evidence, for example testimonials, put before it. The Committee should not draw inferences from an *absence* of such evidence, because

- there may be cultural or other reasons why a registrant would not solicit testimonials from colleagues or user of services, and
- in any event, such inferences would be likely to be influenced by your assumptions about the sort of references that might have been produced, assumptions that are untested.

If a registrant's conduct shows they are fundamentally unsuited for registration as a social care worker, no amount of remorse or apologies – or indeed positive personal qualities in other respects – can “mitigate” the seriousness of that conclusion and its impact on registration. Persuasive evidence of rehabilitation and a credible commitment to high standards in the future will be directly relevant to the question of suitability to practise, to the registrant's credit, even though there may have been a lapse in the past, possibly a serious one.

Evidence of mitigating circumstances surrounding proven misconduct can be helpful in forming a picture of how a registrant has responded to stresses in life and professional practice, which may be significant in relation to the question of misconduct. Evidence that lapses have been associated with extreme circumstances that no longer exist may give some degree of reassurance. But the risk of recurrence of stressful circumstances may be relevant to the evaluation of risk (and hence to the sanction).

Guidance on considering a referral to the health procedure

The Conduct Committee has the power, at any stage in the course of a hearing, to listen to the case under the Health Procedure, if it appears that the alleged misconduct may have been caused, or substantially contributed to, by the registrant's physical or mental ill health.

If the Committee determines that the registrant is unfit to plead, it should make a suspension order, until the registrant becomes fit to plead. (Rule 15(3))

A referral to the Health Procedure may arise from evidence presented to the Committee as part of the defence or mitigation (for example, the objective evidence of a psychiatric condition); or it could be based on the registrant's behaviour or demeanour on the day. In assessing this, the Committee should take account of cultural differences that affect behaviour, attitude and the process of communication.

Guidance on considering conviction cases and finding of facts from other regulatory bodies

Convictions refer to a determination by a criminal court in the United Kingdom, or elsewhere which, if committed in the UK, would constitute a criminal offence.

The findings of fact by any of the regulatory bodies set out in Schedule 4 of the General Social Care Council (Conduct) Rules shall be prima facie evidence of the facts found so found.

A conviction itself gives the Committee jurisdiction even if the criminal offence itself did not involve misconduct in the course of practice.

Where the Conduct Committee receive the findings of fact and certificate of conviction of any UK Criminal Court, or the finding of a Judge in any UK Civil Court, or the finding of facts by another regulatory body, unless it also receives evidence that the social care worker is not the person referred to in the conviction or findings of fact then the Committee is to accept the certificate as conclusive evidence of the offence having been committed.

The Committee should be concerned only to establish whether the offence amounts to misconduct, and to take due account of any mitigating circumstances. The Committee cannot seek to 'go behind' the conviction or reach another conclusion in relation to the matters that led to the conviction.

If the registrant does not admit misconduct, the parties will be invited to adduce evidence on the question of misconduct. If the Committee finds misconduct, it moves on to the mitigation stage.

The Committee should not take into account in its consideration that a registrant may already have suffered personally or professionally for his or her misconduct in prior criminal proceedings. The Committee's function is to protect members of the public and to maintain the high standards and reputation of social care services.

The Conduct Committee should bear in mind that the sentence or sanction previously imposed is not necessarily a definitive guide to the seriousness of the offence. There may have been circumstances that led the court or regulatory body to be lenient. For example, despite sentencing guidelines judges differ in their approach to sentencing, there are also different sentencing powers between the magistrates' courts and the crown courts. Similarly, the range of sanctions and how they are applied may vary significantly amongst regulatory bodies.

The Committee's role is to balance the nature and gravity of the offence(s), mitigating factors such as remorse and length of time since the offence and their bearing on the social care worker's suitability to practise as a social care worker, against the need for the imposition of a sanction and its consequences upon the ability of the social care worker to practice his or her profession.

Criteria for consideration of cases

The following pages provide a list of criteria to be considered by Committee members and caseworkers when assessing particular categories of cases, where suitability is affected to a significant extent. They are drawn from guidance published by the Council for Healthcare Regulatory Excellence. The criteria are intended to inform decision making and recommendations to the Preliminary Proceedings Committee.

The criteria are designed to include risk factors involved in each of the categories of cases. They include aggravating and mitigating factors, and take into account factors relating to culpability and harm, or potential harm, caused. The criteria are intended to facilitate systematic consideration of cases.

Harm is considered according to the following three principles: public protection, maintenance of confidence in social care services / system of regulation and deterrence. The personal culpability of the registrant is considered in terms of aggravating and mitigating factors. Circumstantial mitigating factors (such as systemic issues outside the registrant's power) are likely to carry more weight in favour of the registrant than personal ones (i.e. personal problems suffered by the registrant at the time).

CHILD PORNOGRAPHY CASES

	<i>Mitigating factor</i>	<i>Aggravating factor</i>
Direct risk of physical harm (e.g. access to children or evidence of inappropriate behaviour)	Low	High
Level of indirect harm (e.g. scope of involvement)	Low	High
Impact on public trust in social care services	Low	High
Where accessed	Home	Work/Public
Criminal conviction/sentence	Light	Severe
On Sex Offenders Register	No	Yes
Likelihood of re-offending	Low	High
Category of pornographic material	Low (level 1)	High (level 5)
Extent of material possessed (i.e. size of 'collection')	Small	Extensive
Paid-for access	No	Yes
Related offences	No	Yes
Insight	Apparent	Absent
Treatment	Underway	Not considered

DISHONESTY – FRAUD/THEFT

	<i>Mitigating factor</i>	<i>Aggravating factor</i>
Direct theft from service user (resulting in physical or psychological harm)	No	Yes
Abusing position of trust	No	Yes
Implications of actions (e.g. theft from employer resulting in reduced funding for service user care)	Minor	Direct evidence of harm
Location	Outside work	At work
Value of property stolen	Low	High
Frequency of actions (including previous history)	Low	High
Method (e.g. violence, threats, working with others)	Minor	Aggravated
Planned	Opportunistic	Highly prepared
Remorse	Paid back	No insight
Deliberate targeting of vulnerable	No	Yes
Done to feed drug habit	No	Yes
Intent (i.e. how much did they intend to steal?)	Small scale	Large scale

DISHONESTY – LYING ABOUT QUALIFICATIONS

	<i>Mitigating factor</i>	<i>Aggravating factor</i>
Outcome	None	Obtained job beyond competence
Frequency of dishonesty	One-off	Repeated
Nature of dishonesty	Omissions/economy with truth	Active lying
Magnitude/scale	Slight fabrication	Significant untruths
Insight	Apparent	Absent

COMPETENCE

	<i>Mitigating factor</i>	<i>Aggravating factor</i>
Many complaints from people who use services	No	Yes
Insight	Apparent	Absent
Mitigating factors (for poor performance)	Yes	No
Level of supervision (if working)	Inadequate	Adequate
Risk of continuing poor performance	Low	High
Long history of poor performance	No	Yes
Many categories of cause for concern/unacceptable (in relation to the Performance Assessment)	No	Yes
Followed previous recommendations of Committee? (if relevant)	Yes	No
Likelihood of rectifying areas of concern (Stage in career, age, attitude)	Strong	Poor
Evidence of efforts to address areas of concern	Yes	No
Cause for concern relates directly to treatment of people who use services	No	Yes
Improvement since first assessment (if relevant)	Yes	No
Compliance with assessment	Good	Poor
Insight/remorse	Apparent	Absent

POOR RECORD KEEPING

	<i>Mitigating factor</i>	<i>Aggravating factor</i>
Outcome/potential outcome	Minor	Serious
Frequency	Sole error	Part of a pattern
Deliberate	Oversight	Intentional falsification
Departure from established norms	Low	High
Destroying records	No	Yes
Insight	Apparent	Absent
Attempted to cover up rather than taking remedial action (including involving other people in covering up)	No	Yes
Deliberately tampering with colleagues' records	No	Yes
Use of inappropriate/offensive terms	No	Yes
Insight/remorse	Apparent	Absent

RESEARCH FRAUD

	<i>Mitigating factor</i>	<i>Aggravating factor</i>
Outcome/potential outcome	Minor	Serious
Fraudulently obtaining (limited) funding	No	Yes
Personal/institutional advantage	No	Yes
Using other researchers' names in research without their consent	No	Yes
Pressure from supervisor	Yes	No
Insight/remorse	Apparent	Absent

SEXUAL MISCONDUCT - INAPPROPRIATE RELATIONSHIPS

	<i>Mitigating factor</i>	<i>Aggravating factor</i>
Age of victim	Adult	Underage
Coercion (violence, threats)	No evidence	Apparent
Vulnerability of victim (e.g. drug or emotional dependency)	Low	High
Using knowledge of marital problems or abuse	No	Yes
Degradation of the victim	Low	High
Conviction	No	Yes
Meeting in course of practice	Social	At work
Abuse of professional position	No	Yes
Repetition with same person	Few times	Many times
Repetition with various people	One person	Many people
Insight/remorse	Apparent	Absent

SEXUAL MISCONDUCT - INDECENT ASSAULTS

	<i>Mitigating factor</i>	<i>Aggravating factor</i>
Conviction	No	Yes
Intimidation (violence, threats)	No evidence	Apparent
Age of victim	Adult	Underage
Vulnerability of victim	Low	High
Pretence of professional appropriateness	Absent	Apparent
Abuse of practice and procedures (e.g. no chaperones, breach of codes)	Absent	Apparent
Trying to cover up actions in service user's notes	Absent	Apparent
Insight/remorse	Apparent	Absent

VERBAL ABUSE

	<i>Mitigating factor</i>	<i>Aggravating factor</i>
Vulnerability of victim (i.e. deliberate targeting of a vulnerable service user)	Low	High
Sexual/racial element	Absent	Present
Location	Other	Work
Level of intimidation	Low	High
Abuse of position of power	No	Yes
Insight	Apparent	Absent

VIOLENT BEHAVIOUR

	<i>Mitigating factor</i>	<i>Aggravating factor</i>
Conviction	No	Yes
Number of victims	Few	Many
Number of offences against one victim	Few	Many
Victim	Other	Service user
Vulnerability of victim (i.e. deliberate targeting of a vulnerable service user)	Low	High
Location of action	Other	Work
Previous history	None	Other cases
Degree of violence (e.g. use of weapon, acting in a group, conviction)	Low	High
Sexual motivation	Absent	Present
Health of registrant	In treatment	Not an issue
Motivation (e.g. alcohol induced, premeditated, gratuitous)	Unplanned	Planned
Racially or religiously motivated actions	No	Yes
Registrant subject to provocation (e.g. racial harassment)	Apparent	Absent
Insight	Apparent	Absent