



The Scottish Social Services Council:

A Register for the Future

March 2022

Introduction

UNISON is Scotland's largest trade union with more than 150,000 members across the public, private and voluntary sectors. We represent members across the regulated workforce in early learning and child care, social work, social care, and housing support as well as in the SSSC. In addition to crucial roles in the changing delivery of social care, UNISON members are widely involved in the planning, commissioning, procurement, management and monitoring of services.

We welcome the opportunity to comment on the proposed changes to registration and qualifications. Our response is informed by legal advice from Thompson's solicitors and by views and information provided by our members.

Context from a UNISON Perspective

Although the consultation focuses on some very specific reforms, these measures cannot be extracted from the wider context of regulated work, particularly in social care, childcare and early years.

UNISON has always observed that the SSSC has a complex and demanding remit. UNISON acknowledges and values the need to safeguard those who use regulated services and to build confidence in the register. However, there is an ongoing imbalance in the regulation of these key services. Scotland has invested heavily in safeguarding service users but we have a deep deficit in our care for regulated workers.

Many of the services regulated by the SSSC face either challenge or crisis. Many are low paid and attempts to build service quality are hindered by staff turnover driven by poor job quality and unfair working conditions.

The assertive manner in which the SSSC has approached the challenge of protection and safeguarding has tended to exacerbate staff turnover problems, not alleviate them. We regret to report (below) that assertive enforcement of Fitness to Practice (FtP) standards has, on

occasion, breached human rights protections. We welcome reform on these issues but further progress on fair treatment is required (below)

The measures in this consultation may have a beneficial effect on recruitment, retention, career progression and sector development. However, any beneficial effects will be dwarfed by the ongoing detrimental effect of an excessive, invasive and punitive FtP culture. UNISON members continue to make challenging and worrying reports about their engagement with SSSC processes.

Scotland needs greater fairness in the registration of regulated jobs and we desperately need greater investment in the fair work, job quality and career development capacity of regulated work. Without greater investment in service quality and job quality, the well-intentioned reforms under consultation will have a marginal effect on the challenge and crisis faced by regulated occupations.

Fitness to Practice – A Case Study in Excessive Regulation

Protecting service users from harm has tended to be prioritised over other sector development needs. We perceive that to be an institutional “bias” dating back 20 years.

Fitness to Practice (FtP) issues have had a defining influence on the culture and development of the SSSC. These issues are being addressed and UNISON repeats its recognition of the progress made to date.

However, it is unfortunate that efforts to streamline and improve FtP work have not been included in this consultation – partly because all reforms are interlinked and partly because further reform is needed.

In very short summary, UNISON welcomes improvements in the resourcing and leadership of the FtP service. We also welcome action to reduce the frequency and adverse impact of failed investigations.

However, we repeat our longstanding calls for reform including:

- Further measures to raise the threshold for investigation thereby reducing the incredible number of investigations undertaken by FtP
- Further measures to improve and clarify the basis on which employers refer matters to the SSSC
- Action to strengthen the Employers’ code and to liaise with the Care Inspectorate over improved compliance by employers
- Further measures to ensure that SSSC investigations are concluded in a reasonable time.
- An ECHR compliance review of the practice of issuing draft decisions to reduce the number of full hearings

- An ECHR review of the practice of defaulting to decisions and sanctions without full hearings unless requested
- An ECHR review of the access to justice available to registrants in terms of the location, duration, complexity and power imbalances within the procedures attached to FtP work

UNISON will continue with successful ECHR challenges where the application of FtP procedures create excessive, protracted or unjustified detriments for registrants.

We welcome the ongoing private dialogue with stakeholders around these and related matters. We do not assert that these issues are completely overlooked. However, it is the firm view of UNISON members that FtP processes shape the relationship between registrants and the SSSC. FtP processes are, on occasion, an unnecessary and unjustified disruption of their careers and human rights.

Insofar as the consultation purports to address how the SSSC meets the changing needs of the sector, it cannot address those needs holistically by overlooking the pronounced impact of the FtP service. And the consultation cannot overlook the need for further investment in all regulated occupations so that employers have both the requirement AND the resources needed to develop and retain skilled workers

Overriding Need for Investment

Many of the regulated professions face acute labour shortages. UNISON welcomes some of the proposals insofar as they seek to assist workforce and sector development. However, in sectors including residential care, care at home and early years, the experience of many UNISON members is that SSSC registration is one factor that drives labour turnover.

Brexit and post-covid burn out are other factors driving labour turnover. These deep-seated problems tend to impact on the issues the consultation purports to address. For example, the proposal to reduce the permitted training period from five years to three years (social care). It has always been difficult for employers to release staff from duty to attend training and to backfill that job or shift. That barrier to training is more pronounced now as staff shortages increase.

Reducing the permitted qualifying period from five years to three years simply intensifies a pre-existing workforce development problem. Employers struggle to fill care shifts today, increasing the need to release staff for training is only realistic if the change is matched by investment. Otherwise, high turnover and staff shortages make it increasingly difficult to drive up care standards through training, qualifications and regulation.

In UNISON's submission there is one overriding factor that will influence the success of measures under consultation – investment in the regulated professions.

Reducing the Parts of the Register

The very fragmented nature of the register does not appear to meet any pressing need of workers or service users. A smaller list of broader groupings has three advantages.

1. Some UNISON members move between different jobs and can be hindered in job changes by a system that requires separate registrations for jobs that are not radically different in terms of issues requiring registration or regulation.
2. Some UNISON members hold multiple part time contracts, and, in some instances, these jobs fall in different parts of the register. Unifying or integrating these registrations would be helpful.
3. Some commissioning bodies are integrating or clustering different services within larger services or consortium arrangements. Reducing the classification of regulated jobs to broader groupings may assist employers and workers in services that are larger and staff are deployed flexibly across a more diverse range of integrated activities.

Although helpful, this exercise places a new and additional burden on SSSC staff during the transition phase. That requires recognition and resourcing.

Although beneficial for the sector the scale of the beneficial impact is not expected to be great given the scale of the problems in regulated sectors. This raises a cost benefit question from a SSSC staff perspective.

The proposed five new Register parts

Regarding whether these accurately describe the workers concerned:

- (1) Early Education and Childcare Workers forms one discrete part to the Register and it is proposed that this registration category should include **anyone** working in children's residential school care accommodation services.
 - a. In our view children's residential care should be separated from Early Education and Childcare given that these staff are engaged in social care roles rather than education.
 - b. To avoid confusion, clarification is needed that social workers who work in residential childcare should register under the Social Work Part and not under the Part in which children's residential childcare eventually sits.
- (2) The proposals maintain the status quo regarding the Social Work Assistant role within statutory social work teams which currently sits outside the Register. Assessing the advantages of registration could have presented a challenge for this group given the absence of a training and development offer and the detrimental impact of being brought within Fitness to Practice processes.

The timescale for new starts to apply to register

UNISON is aware that there are unregulated providers seeking to operate in sectors where social service clients are vulnerable. We are aware of anecdotal accounts of staff being fired and re-hired in a churning process that evades the obligation to register within six months of appointment. If true, this is a concern.

The question we pose is whether there is sufficient evidence to justify this significant tightening of the registration process?

We also question the proportionality of this measure. There are still unregulated roles where staff have close contact with vulnerable service users. Which is more important – consistently registering and regulating all relevant occupations, or tightening and accelerating the grip on those jobs already in scope?

In terms of the specific proposal, we understand the reasoning is to address the administrative logjam as the 6-month deadline approaches. However, we think the likely outcome will be to shift the logjam to the earlier deadline.

We are concerned about the impact of the proposed reduction in the timescale for our low paid social care members. Social care workers are mostly on the breadline. In our experience, the main reason people don't register immediately is because they cannot afford it, especially when they have started a new job and haven't been paid yet and cannot afford to pay it out of their first couple of pay packets. In the context of their broader working conditions, the registration fee is seen as a further injustice by many social care workers.

Our preferred solution is for employers to pay the annual registration fee as a cost to the business, rather than to the employee. This is the most effective measure for increasing the speed of registration, as demonstrated by the outcome of the Scottish Government's decision to cover the cost of registration fees for new starts. This has had an immediate impact in speeding up applications for registration.

A second option would be to allow individuals to apply, with the fee being payable only at the end of the registration process. According to the SSSC it takes an average of 27 days to process an application once it is received. This would give our low paid members more time to put money aside towards the cost of their registration.

Registration and trade union membership

We propose, as part of this review of the registration process, that the benefits of trade union membership should be promoted by the SSSC to registrants at the point at which workers join the Register. This is in the interests of everyone: the regulated workforce, the regulator, employers and service users. The SSSC should consider including literature with initial

registration packs or directing new registrants to online membership information, training or other resources provided by trade unions.

Public Register online

UNISON has serious concerns about the efficacy and legality of the proposal to publish more information on registrants online. Career information including qualifications, registration etc is personal data. Registrants have GDPR rights underpinned by the ECHR right to enjoy privacy.

Is there a credible, independent ECHR assessment of this proposal? Can it truly be said that it is necessary and effective to reveal more private data about registrants?

UNISON asserts that the registrants and the tax payer invest in the SSSC advice on the suitability of registered workers. It is for the SSSC to review qualifications and practice and to come to an informed view, it is not appropriate for public vigilantes to read personal data about workers and form a separate, personal view on the suitability of registered workers.

We are particularly opposed to the proposed change regarding FtP and/or conditions placed on practice. Sanctions taken against registrants are already publicly available on the SSSC website. This change will mean this information will be made publicly visible alongside the registrants name on the Register. In our view this is punitive, unnecessary, and unjustified.

In summary, we see no added value in publishing personal data and we therefore question the legal competence of the proposal.

Registration period

The introduction of a continuous registration period involving the completion of an annual declaration represents a significant change for registrants and if it proceeds will require an excellent communication strategy to get the change across. We suggest that a reduction to 2 years at least for an interim period might work better.

We propose that there would need to be some agreement on a 'no fault' missing of the date in the first year of this new regime while awareness beds in.

Should the SSSC be more flexible and accept SVQ units gained in adult or childcare settings for registration in other roles?

Adult social care qualification level

Nothing highlights the way that failed social care reforms are interlinked more effectively than the proposal to increase the qualification level to SCQF 7. The point is very simple.

Of course the SSSC, employers and state funders have failed to recognise and credit the range of skills required for care work. However, increasing the formal requirement for registration from SCQF 6 to SCQF 7 is fraught with difficulty if it is not adopted within a wider range of measures.

In any other profession, raised qualifications are linked to grading, pay and reward. If there was a parallel obligation on employers to increase pay, the effect on recruitment and retention would be positive.

If, as proposed, there is an intensification of the training obligation on workers, with no increase in pay, this undermines sector recruitment, drives turnover and reduces both that capacity and quality of care as a whole.

There is no other sector in which the state would demand, and enforce, high vocational training standards with no parallel investment in pay. It typifies the "something for nothing" policy towards social care that is closely linked to the gender segregated and under valued nature of the work.

Regulated care in Scotland has all the safeguarding, skills, training and qualifications obligations of other professions. The missing piece in the puzzle is pay. Care skills have a value, so SCQF comes at a price. This will not go unchallenged.

We anticipate this proposal will create significant salary issues and have a substantial equal pay impact. Our Staff Shortages survey of social care workers last autumn highlighted the problems in terms of the existing lack of pay differential between care workers and team leaders/supervisors. By exacerbating these existing problems, this proposal may lower morale and aggravate pay grievances.

Flexible qualification that move with different roles

We understand the rationale for having a new SVQ qualification for registration that would be accepted for different roles and settings and would enable social care workers to work more flexibly within different areas of the sector, including between child and adult services.

This proposal would not address other outstanding barriers to labour supply related to qualifications. These include the lack of access to placements so that people can complete their SVQ, and a shortage of assessors, which means there is a constant backlog of people waiting to be assessed. These additional practical barriers also require to be addressed.

Timescale to gain qualifications for registration

The proposal is to reduce the timescale from 5 to 3 years for people to complete the required qualifications for their role. We understand the current average time is 27 months.

We think the proposed reduction in timescale may disadvantage certain groups who are more likely to need to take time out from study for example female students with dependents, or disabled students including individuals with mental health difficulties, or people doing zero hours jobs.

It must be taken into consideration that very many social care staff are having to study for qualifications unpaid in their own time, while also facing considerable pressure to work extra shifts or longer hours. In our Staff Shortages survey 49% of social care workers said they feel pressured to work beyond their contracted hours with an additional 11% saying they are forced to do so.

We are also aware that the original timescale to gain qualifications for registration was 3 years, but that this was extended to 5 years because of the pressures on assessment centres. Currently the pressures on the management, oversight and assessment of training are even more acute because of the staffing crisis which has necessitated social care managers moving to front line work. The practicality of the proposed reduction has to be considered within this wider context.

Social Work Return to practice

We understand the proposal is to develop return to practice standards for social workers who have come off the Register for over two years and want to rejoin and for social workers who have not practised in Scotland within the last two years (or longer). We understand the proposal does **not** apply to social workers who have maintained their registration but are not working as a social worker for whatever reason.

Individuals will need to evidence that they have met the continuous professional learning (CPL) requirements and to demonstrate how they have updated their skills and knowledge.

We have queries and concerns around the requirement to demonstrate evidence of CPD during time out of the workforce:

- If an individual has taken time out and is not able to provide evidence of CPD, then how will the SSSC support individuals to do that? What support will be offered to enable an individual to re-enter the workforce?

A more detailed explanation of what is being proposed and what this would look like is needed so that we can evaluate the impact on our social work members.

Continuous professional learning (CPL) requirements

We agree that, as with all learning and skills, there is a need to review whether current arrangements meet workforce and sector needs.

In social care this review cannot be separated from the development of the National Care Service. Learning and skills in health and social care is firmly established as an issue best addressed by joint or partnership arrangements between employers and trades unions. The intention regarding mandatory induction training appears to be for the SSSC to have authority to set a standard to be met by private and third sector providers as a route to address the failings highlighted during the public health pandemic. We must emphasise that if training is to be mandatory then it must also be made mandatory for employers to pay their employees to complete it.

The equalities impacts of mandating learning and skills development for a mainly low paid female workforce need full consideration. Social care workers tell us about the difficulties of fulfilling an expectation to do training in their own time. Any pressure to meet mandatory learning and development standards will be felt most strongly by social care staff with dependents, long term health issues, or in need of overtime or a second job to meet the cost of living.

As with other proposals in relation to skills and qualifications, these issues require to be addressed within the context of a wider holistic investment in Fair Work and job quality. The proposals should therefore go to the appropriate joint or partnership forum in local government, NHS or, in time, the National Care Service.

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