

FROM THE MINISTER FOR HEALTH,
SOCIAL SERVICES AND PUBLIC SAFETY



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Dear

HEALTH AND PERSONAL SOCIAL SERVICES (AMENDMENT) BILL

Thank you for your letter dated 18 December 2015.

You requested a response to comments raised in written submissions to the Health Committee ahead of the evidence session planned with Departmental officials scheduled for 13 January 2016.

I note that the Committee received comments from the NI Association of Social Workers, the Northern HSC Trust and the Royal College of Nursing NI.

A response to the comments made by each of the respondents is attached for your information at Appendix 1 which I hope is helpful in addressing the issues raised.

The Committee's support in progressing this important piece of legislation is appreciated.

Yours sincerely

SIMON HAMILTON MLA

QUESTION 1

Submission from NI Association of Social Workers

Clause 2

NIASW suggest that the powers to disclose information about a registered person's fitness to practice require to be more fully rehearsed and should also be explicitly referenced to data protection considerations.

RESPONSE

- NIASW's suggestion to more fully rehearse the powers to disclose information about a registered person's fitness to practice raises an important issue in relation to data protection considerations.
- The Care Council, similar to other healthcare regulators, manages the disclosure of information taking into account data protection considerations in relation to a registered person's fitness to practice in line with the Care Council's agreed Information Disclosure Policy. This existing practice has been established in the best interests of public protection and adheres to current regulatory best practice.
- The amendment contained within Clause 2 will not change current practice, but it will give the Care Council **an explicit statutory power** to disclose information about a registrant's Fitness to Practise. This is in line with existing powers of other workforce regulators, for example, the General Medical Council.
- It is understandable that NIASW may be concerned about the inappropriate disclosure of sensitive information about a registrant, however the Care Council does and will continue to redact information of a sensitive nature and which is not in the public interest when releasing information following the determination of a registrant's fitness to practise.
- In relation to NIASW's point about reference to the data protection considerations, it is important to note that the Care Council by law must operate in accordance with the Data Protection Act 1998.
- In particular **Section 31 of the Data Protection Act**, provides an exemption to regulators such as the Care Council, which permits it to disclose information, to protect members of the public against any professional, who

has been found to be dishonest, involved in malpractice or other seriously improper conduct or has been found to be unfit or incompetent.

QUESTION 2

Submission from Northern HSC Trust

Question: Clause 2

It is already practice within the NHSCT that should there be areas of concern regarding a Trust employee referred to NISCC that other employees (ie. managers, colleagues etc) are required to provide witness statement and evidence at hearings if so deemed necessary. The enforcement of this latter point as set out within Clause 2 will support the Trust's current practice and is therefore welcomed. As an employer advice and guidance is offered to potential witnesses within this process.

It is recommended, however, that NISCC review its current guidance and support to such witnesses and the Trust is willing to work collaboratively with NISCC on this issue.

RESPONSE

- The NHSCT's response in relation to Clause 2 is helpful and provides support for the need for this specific amendment.
- The NHSCT's recommendation that the current guidance and support to witnesses is reviewed is welcomed and the Care Council will work with the NHSCT and other organisations to consider the issues and how support to witnesses might be best provided and by whom.

QUESTION 3

Submission from Royal College of Nursing NI

Introduction

Whilst the lack of progress at a UK level towards the statutory regulation of health care assistants is attributable to factors beyond the control of the DHSSPS, the RCN believes it to be regrettable that the DHSSPS and the NISCC have chosen to ignore these expressed concerns in proceeding inappropriately to incorporate health care assistants within a framework for the statutory regulation of social care assistants. The inherent problems that this has created have been compounded by the fact that health care assistants working within a professional framework of nursing accountability are now subject to fitness to practise procedures designed for, administered by, and adjudicated upon, by members of an entirely different profession who, through no fault of their own, lack the professional expertise and credibility to be able to discharge these important statutory functions.

Clause 4

Clause 4, covering the recognition of attainment of standards by social workers, makes reference to the power to make rules relating to the standard of proficiency to be attained by social workers. The RCN is inherently suspicious of this type of “catch-all” provision being inserted into legislation and we urge the Committee to require that full and open public consultation is conducted in advance of this power being exercised.

RESPONSE

- The RCN state in their response that the DHSSPS and the NISCC (Care Council) have *incorporated health care assistants within a framework for the statutory regulation of social care assistants*.
- However, this information is incorrect as the Care Council is governed by the Health & Personal Social Services Act (NI) 2001 which relates to the registration of social workers and social care workers. The Care Council does not register health care assistants and therefore the concerns raised by the RCN about Health Care Assistants being subject to the Care Council’s Fitness to Practise arrangements and the impact of the proposed amendments in the Bill, do not apply.
- To-date the Care Council has registered on a compulsory basis social workers and social care workers in the following settings:
 - i. residential homes; and
 - ii. nursing homes.
- The Care Council is currently rolling out compulsory registration to social care workers in the following settings:
 - iii. day centres; and
 - iv. domiciliary care.

It is anticipated that roll out will be completed by December 2016 and will deliver on the Department’s original policy intent to register the social care workforce in Northern Ireland.

- In relation to RCN’s comments on Clause 4 with regard to the power to make rules in relation to the standards of proficiency to be attained by social workers, it is important to note that any changes to Rules governing standards of proficiency are subject to the scrutiny and approval of the Department (DHSSPS).