



Northern Ireland
Assembly

Committee for Health, Social Services and
Public Safety

OFFICIAL REPORT (Hansard)

Health and Personal Social Services Act (Northern
Ireland) 2001:
Department of Health, Social Services and Public
Safety and Northern Ireland Social Care Council

2 July 2014

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Members present for all or part of the proceedings:

Ms Maeve McLaughlin (Chairperson)
Mr Roy Beggs
Mr Mickey Brady
Mrs Pam Cameron
Mr Gordon Dunne
Mr Kieran McCarthy
Mr David McIlveen
Mr Fearghal McKinney

Witnesses:

Ms Lorraine Conlon	Department of Health, Social Services and Public Safety
Ms Christine Smyth	Department of Health, Social Services and Public Safety
Ms Patricia Higgins	Northern Ireland Social Care Council

The Chairperson: I welcome Ms Christine Smyth, who is the director of the office of social services in the Department; Ms Lorraine Conlon, who is head of governance and planning in the office of social services; and Ms Patricia Higgins, who is the director of regulations and standards in the Northern Ireland Social Care Council (NISCC). I invite you to make a 10-minute presentation, after which we will open up the meeting for questions and comments from Committee members.

Ms Christine Smyth (Department of Health, Social Services and Public Safety): Thank you, Chair. You have already introduced my two colleagues, Lorraine and Patricia. Lorraine is the head of the Bill team, and Patricia is a member of the Bill team.

We welcome the opportunity to update you on the Department's proposals for amendments to the Health and Personal Social Services Act (Northern Ireland) 2001. You will have received a briefing paper that outlines the background, the policy objectives of all the proposed amendments, and key areas of development. I do not intend to rehearse the detail in the briefing paper; rather, I will highlight key points on the main areas for amendment. We will then be happy to take any questions that you may have.

You will all be aware that the council was established by the 2001 Act and is responsible for the regulation of the social work and social care workforces in Northern Ireland and for the regulation of professional training courses for social workers. It is important that the model of regulation used by the council is fit for purpose, is efficient and cost-effective, and commands the confidence of the workforce and the public. The current system has been in place since 2003. Although it has been

robust, it has not kept pace with developments in regulatory practice and is no longer up to date. The intention is to build on the strengths of the existing system and, at the same time, bring it into line with best practice, into line with other workforce regulators, notably healthcare regulators, and into line with broader developments in how education and training is delivered in the 21st century.

The proposed amendments to the 2001 Act aim to do two things: first, to modernise the council's model of regulation; and, secondly, to extend the council's powers to formally recognise social workers' learning achievements. The current model of regulation is based on a determination of misconduct. The current range of sanctions available to the council to enable it to take appropriate action against registrants includes admonishments, suspension from the register and — the most serious of all sanctions — removal from the register. Compared with other healthcare regulators, that range of sanctions is limited and restricts the council's ability to respond flexibly and proportionately to individual cases, particularly where there are issues regarding health or competence. In some cases, because the council has fewer options for the disposal of cases, that may lead to individuals being treated more harshly or, at times, more lightly than other professions for matters of misconduct.

The General Medical Council, the Nursing and Midwifery Council and the Health and Care Professions Council all have a broader range of sanctions. More recently, the Pharmaceutical Society of Northern Ireland's legislation was amended to provide for a wider range of powers, similar to those regulators'.

The proposed amendments will bring the council's model of regulation into line with the practice of other regulators and with what is currently considered to be best practice. The broader range of sanctions will include undertakings and conditions in addition to the existing sanctions of the admonishment, suspension and removal.

The second main area of proposed amendments relates to extending the council's powers to formally recognise social workers' learning achievements. Registration with a council requires that registrants maintain and improve their knowledge and skills in order to be accountable for the quality and safety of their work with vulnerable people. The proposed amendments will extend the council's powers so that it can recognise learning and development achieved by social workers to improve their knowledge and skills through a range of approaches to education and training. Currently, the legislation allows the council to award certificates to social workers only for the successful completion of formal training courses. The proposed amendments will enable the council to award certificates to recognise learning achieved through alternative approaches, such as in-service training provided by employers, e-learning, distance learning, and learning through experience and reflection. Formal recognition of learning by the council will provide additional assurance to employers and to the public on social workers maintaining and improving their skills and knowledge throughout their career. All the proposed amendments were subject to public consultation in 2012. Consultees included registrants, employers, trade unions, and key stakeholders from the statutory and voluntary sectors, as well as the professional body, professional organisations and universities. The results of the consultation indicated support for implementing the proposed amendments.

In summary, the proposed amendments are intended, first, to modernise the model of regulation and ensure that it is fit for purpose, reflects best practice and is efficient and cost-effective. Secondly, the proposals to extend the powers of the council to award certificates in recognition of learning achieved by social workers through a range of methods are in response to the changes and advances in the way in which people learn and, in particular, the growing use of technology in supporting learning and development. Formal recognition of learning achievement contributes to public confidence in the competence of staff and to improving standards.

Chair, I thank you for the opportunity to brief the Committee today. I hope that it has been useful. We are happy to take any questions, and we look forward to working with you to take the work forward.

The Chairperson: Thank you, Christine. To clarify, the proposal is around two aspects: modernisation and recognising social workers' learning achievements.

Ms Smyth: Yes.

The Chairperson: Is modernisation about bringing in a broader range of sanctions?

Ms Smyth: It is. It is to bring in a broader range of sanctions, and there are some other minor amendments to tidy up some of the legislation; for example, putting a duty on people to cooperate with

the council in the provision of information and for the investigation of conduct cases. The broader range of sanctions is the key bit of the amendment.

The Chairperson: You mentioned best practice when talking about modernisation. Will that reflect on, for example, the huge debate currently in social work around a code of conduct?

Ms Smyth: Absolutely. I am not sure whether you are aware that the Northern Ireland Social Care Council recently carried out a review of its codes of practice for social care workers. The codes of practice were over 12 years old, and the council is updating those to reflect modern-day practice and the differences between social workers and social care workers. That work is ongoing.

Patricia, would you like to say anything?

Ms Patricia Higgins (Northern Ireland Social Care Council): No. I do not think that I need to add anything to what you have said.

The Chairperson: It does —

Ms Smyth: It is part of a range of improvement measures.

Mr Dunne: Thank you very much, ladies, for coming in today. How will you regulate the alternative training and ensure that it is up to the required standard before it is given the necessary approval?

Ms Smyth: The council will be setting standards for the learning outcomes to be achieved, against which it will assess whether an award can be made. There will be some regulation of the training, but it will involve a lighter touch than the formal regulation.

Ms Higgins: We will have standards to gauge the training against what we would recognise as good-quality training. At the minute, we are really able to provide only for courses, but we want to be able to acknowledge the fact that social workers do a wide range of high-quality training and learning.

Mr Dunne: Do you have a system of validation? Do you intend to have such a system?

Ms Higgins: Yes. We are developing a system of validation beyond the system that we have now for courses that we approve.

Mr Dunne: I appreciate how training has changed. Will there be a personal development plan for each of the staff to carry through?

Ms Higgins: Yes, as part of their registration, we require staff to have personal development plans that identify the training that they are required to do. We also carry out audits twice a year of those people who are renewing their registration, and, as part of that, we ask to see their personal development plan.

Mr Dunne: It is a requirement to meet that plan.

Ms Smyth: It is a registration requirement that those registered with the council will undertake ongoing training and development. Therefore, you would expect to see that reflected in their plan. It is a requirement to undertake training and development.

Mr Dunne: Obviously, on an ongoing basis.

Ms Smyth: To keep the knowledge and skills up to date. That is absolutely right.

Mr Dunne: On the other issue, do you see a real need for modernising the model of regulation? If so, why do you see a real need?

Ms Smyth: I will let Patricia come in on this, but I think that the experience of running conduct cases over the past number of years has been that the options that are open to dispose of those cases amount to a very blunt instrument. Essentially, you are either on or off the register. Somebody might

get an admonishment, but you cannot set a condition for somebody who, for example, has a competence issue and needs to do more training. There might be a health issue that you cannot dispose of without either removing the person from the register or suspending the person for a period but without the ability to take corrective action.

Ms Higgins: That is absolutely right. The modernisation of and increase in sanctions will make our regulation system more robust. It is difficult for us: as Christine said, you are either on or off the register, so we are not able to identify that someone needs to undergo additional training to improve his or her practice and address the matters that are before the council, whereas having conditions will allow us to do that.

Mr Dunne: It means that they are still on the register, but it is conditional.

Ms Higgins: They are still on the register, but it is conditional, so you can set conditions on practice, training or, as Christine mentioned, health. It may well be that, if someone presents with a particular health issue that requires attention, you may be able to restrict practice and therefore attach conditions. Those are options that other regulators have that, unfortunately, we do not.

Ms Smyth: Moreover, if people are suspended from the register, you are able to put a condition on that during the suspension so that they will undertake a piece of training or something else that will allow them back on to the register. That means that corrective action has been taken, and it can be monitored that that has been done. That is not open to the council at the minute, so it is limited.

Mr Dunne: There are benefits both ways — for the employee and the employer.

Ms Higgins: Yes, that is absolutely right.

Mr McKinney: The first consultation began around June 2012, and I assume that conversations had taken place significantly before that. Why has it taken so long to get to this point?

Ms Smyth: It has taken so long partly because we had a change of personnel in the middle of bringing forward the proposals for the legislation. The time that it took to replace a member of staff and get the Bill team re-established has delayed the work.

Mr McKinney: I ask the question because you pointed out that some people would have been subjected to a blunter instrument than you propose they should be subjected to. How many people will have been subjected to that blunt instrument in the meantime, while there is a delay in getting the legislation through?

Ms Smyth: I do not think that I can give you the numbers between the delay in the legislation and now, but we can give you statistics on the number of complaints that the council has received in the last year.

Ms Higgins: In the past year, we have received 258 complaints in total about social workers and social care workers — the totality of the register. Not all those complaints will end up in a hearing as we investigate all of that. I am sorry, but I do not have the statistics to answer your exact question.

Mr McKinney: You can see the point that I am making, though. There are clearly people who have now been taken off the register but, had the process been sped up and done in a timely manner, they would not have been subjected to that. Can we find out the numbers involved?

Ms Smyth: We can find out the number of people who have been removed from the register during the period of the delay.

Mr McKinney: But that is inconsistent with other jurisdictions. In other words, technically speaking, they should not have been taken off the register, potentially.

Ms Smyth: Not necessarily — potentially.

Mr McKinney: It would be interesting to know the number. Can those cases be revisited in any sense?

Ms Higgins: No. Maybe I need to say that, obviously, every case is dealt with on its own merits and the evidence is presented to the independent conduct committee, which will make a determination as to the best course of action, based on indicative sanctions guidance that we provide. So, it will have made a determination as to whether the matter was severe enough for someone to be removed or suspended from the register, or admonished, which means that the person remains on the register. From the range of sanctions that was available to the committee, it will have determined, based on the evidence and information in front of it, which was the appropriate sanction to apply.

Mr McKinney: Within the range.

Ms Higgins: Yes.

Mr McKinney: Is there anything that can be done retrospectively in the legislation to revisit anything? Is that off the wall?

Ms Smyth: We would have to explore that. It has not been looked at.

Can I come back to the point about the removal? It is important to put in context that removal from the register is a very serious step, because, obviously, people cannot continue their career in social care or social work. It is the most extreme sanction. Since November 2007, from when NISCC has been hearing conduct cases, the number of people who have been removed from the register is 38 in total. There have been seven social workers and 31 social care workers removed from the register between November 2007 and June 2014. So, it is a very small proportion of the number of complaints and of the total number of people registered. We will get the statistics for the number who have been removed during the delay in bringing forward the legislation.

Ms Lorraine Conlon (Department of Health, Social Services and Public Safety): On the number of revised and new sanctions, part of the reason that we are very keen to get the legislation under way is to bring about efficiencies in the NISCC system, thereby dealing with the more minor cases, identifying them and getting them dealt with more quickly. That will allow NISCC to be more effective and efficient in how it runs its business. That is the incentive for taking this forward.

Fearghal, I take your point about the most serious cases. Obviously, a case that is of a very serious nature is not dealt with lightly. It will be investigated and explored because, as Christine pointed out, of its very serious nature. That kind of case would not be done in a very short timescale.

Mr McKinney: I take on board what you are saying, particularly that some of the options may include further training so that you do not lose somebody who is trained.

Is there another process by which, when you find yourself a man down, you can reach to another resource? This sounds as though it should have been a speedy process. The legislation got broad support in both consultations and should have gone through at least a year or more ago, yet we are sitting here two and a half years later.

Ms Smyth: We explored options for getting in other expertise that could lead a Bill team. However, within the group that I work in, there were commitments to other legislation, including the Mental Capacity Bill and the Adoption and Children Bill. We were unable to free up the expertise that we needed and had to recruit from another Department to help us take the Bill forward.

Mr McCarthy: Thanks very much for your presentation. Is there any reason why these measures were not considered in the recently enacted Health and Social Care Bill? Would it not have been more efficient for the amendments to be included in that?

Ms Smyth: Is that the —

Mr McCarthy: The Health and Social Care Bill that was recently passed.

Ms Smyth: We did not consider bringing them forward with another piece of legislation, because they amend primary legislation; namely, the 2001 Act. We needed to bring it forward in that context. I am not sure what the timescale for the other Bill was.

Mr McCarthy: I just thought they might have fitted into that.

You mentioned the small numbers of people removed from the register. Although the numbers may be small, the people involved obviously committed a really serious offence. Should those people have been in the job in the first place, given that they have to deal with very vulnerable people?

Ms Smyth: That is a very valid question. Certainly, the registration with the council should involve looking at people's suitability to work in the sector, criminal checks and fitness-of-character tests. However, we also depend on the recruitment processes of employers being rigorous, proper references being taken, criminal access checks being made and people being supported in their job. We would prefer to prevent unsuitable people coming into the workforce rather than have to remove them when they do something that is very serious.

Mr McCarthy: How important is the read-across with Transforming Your Care? If we are asking for more activities to be conducted with the community, is there an inescapable requirement to tighten up the regulation? Transforming Your Care is the journey that we are all on.

Ms Smyth: Absolutely. We see a very strong interface between the regulation of the social care workforce and Transforming Your Care, with the former supporting the latter. If the aim is to have more people being cared for in their own home by staff, we need to make sure that the staff are suitable to be going into those homes, are providing an appropriate standard and quality of care, and are safe. Registration is one part of assuring the quality and safety of those workers, along, as I said, with employers' responsibilities and those of the service regulator.

Mr Beggs: One of the points that you made was that you are going to authorise a certification of recognised training that employers provide for employees. Can you elaborate on what assessment there will be of the learning of in-house courses? Will there be any independent validation to make sure that the completion of certain courses is not just a paper exercise?

Ms Smyth: It is very, very important that it is not just a paper and tick-box exercise. Employers invest a lot of money in staff training, and there is training on the joint protocol for the investigation of child abuse and investigations into safeguarding. That is very highly developed training, which is well run and of a high quality.

The council will set standards to recognise training and regarding the expected learning outcomes. Individuals will have to demonstrate how they have taken that learning and applied it in practice. So, there will be a process put in place. It will not just be the case of someone saying, "I've attended a course and therefore I am going to get an award". There will have to be a process whereby the learning is applied in practice and whereby you are demonstrating the knowledge and skills required to do so.

Ms Higgins: That is absolutely right. To recognise learning, we will look at outcome and impact, so the question will not just be, "What did you learn?", but "How has that impacted on your practice? How has that improved your practice with service users?". We will look for that before we recognise the learning and training that has been undertaken.

The Chairperson: Subject to Executive agreement, there is talk that the timetable will be for the Bill to be introduced in the Assembly by November 2014. Is that correct?

Ms Conlon: Yes. We anticipate Royal Assent by next May or June.

The Chairperson: OK. Thank you for your time. It has been informative.

Ms Smyth: Thank you.