

Our Ref: **LG/45/2021**

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To: Branches with Social Worker members in England
(Wales, Northern Ireland, Scotland – for information)
Regional Heads of Local Government

31 August 2021

Social Work England (SWE) updated fitness to practise referral guidance for employers and for social workers

English branches are asked to alert social worker members that their professional regulator Social Work England (SWE) has updated their fitness to practice referral guidance for employers and social workers. Branches are also asked to advertise the UNISON/SWE webinar on 23 September to brief members on how to respond to a fitness to practise referral made to SWE and when to make a self-referral about their fitness to practise. The webinar will also help members decide what (if anything) to declare when they join to the register for the first time, restore to the register or renew their registration.

UNISON has worked with the social worker regulator Social Work England (SWE) to update SWE's fitness to practise referral guidance for employers and social workers. The updated guides are here:

[Guidance for employers - Social Work England](#)

[Safe and effective practice - Social Work England](#)

The revised versions are more user friendly with more accessible language and inclusion of case studies. There is improved synergy and read-across between the two guidance documents. UNISON views these documents as 'two faces of the same coin'. There should be the same understanding for the employer as the Social Worker.

Attached as an appendix is a precis of improvements made and the items UNISON has raised and have not been adopted. We will keep the updated guidance under review as part of our regular meetings with SWE.

We have organised a webinar to brief members on how to respond to a fitness to practise referral made to SWE and when to make a self-referral about their fitness to practise. It will also help members decide what (if anything) to declare when they join to the register for the first time, restore to the register or renew their registration.

UNISON and SWE speakers will take members through fitness to practise procedures and what is expected regarding a social worker's ability to practise safely and effectively.

The webinar will take place on **Thursday 23 September 2021 at 12.30-1.30pm.**

The webinar will be advertised on the website, on social media and via UNISON centre email to individual social worker members. Branches are also asked to cascade details of the webinar as the email sent from UNISON centre will only go to social workers who have agreed to be contacted by UNISON for marketing purposes.

The link for social workers to register for the webinar is:
<https://attendee.gotowebinar.com/register/1765564303187493647>

After registering, applicants will receive an automated confirmation email containing information about joining the webinar. For those who can't attend, a recording of the webinar will be made available online after the event.

Branches are asked to alert social worker members to the updated fitness to practice referral guidance and advertise the webinar on 23 September.

If you have any queries, please contact Gill Archer or James Bull.

With best wishes

A handwritten signature in black ink that reads "Jon Richards". The signature is written in a cursive style with a large initial "J" and "R".

Jon Richards
National Secretary
Local Government, Police and Justice Section

Social Work England (SWE) updated fitness to practise referral guidance for employers and for social workers

Overview on Improvements made

Improvements in both documents are:

- Improved synergy and read-across between the two guidance documents. UNISON view these as ‘two faces of the same coin’. There should be the same understanding for the employer as the Social Worker as to what is a regulatory matter.
- Much more prescriptive by:
 - providing real life examples, reducing confusion
 - greater explanation of terms – i.e., such as what is meant by ‘serious’ in relation to a concern
 - a greater explanation of the SWE process and what is to be expected
- More user friendly with:
 - A softening of the language used
 - Better lay-out
 - Hyperlinks to other helpful documents and Fitness to Practise terms

1. Fitness to practise guidance for employers

a. General comments

UNISON believes the inclusion of:

- examples
- hyperlinks to other SWE guidance documents
- other organisations who may provide assistance such as ACAS
- referencing the legal parameters in which SWE, Employers and social workers operate

will assist the employer in ensuring they are acting in accordance with their duties and responsibilities.

Importantly, this includes a duty of care for their social work employee. In the many discussions with Social Work England, it was imperative that social workers must feel confident irrespective of who they work for, that any referral to their regulatory body is fair and consistent as possible.

For our members, it is vital the employer referral document makes clear the employer's responsibility within the workplace before considering a referral to SWE. The go-to guidance for the employer also needs to be clear that an assessment of a practitioner's fitness to practice is not for an employer. This is firmly the responsibility of the social workers' regulatory body.

Whilst most of UNISON's suggested amendments were accepted in the guidance document, not all were. Below is a list of the main changes which were and our suggested changes which were not adopted:

b. Key Changes adopted:

In addition to the overview provided, specific changes are

- Fuller explanation about the purpose and objective of the guidance with a specific section inserted on the role of the employer.
- Specific wording stating that not all performance and disciplinary issues are to be referred.
- Imbedded reference to the employer's duties under the Equality Act 2010.
- Greater explanation of the importance of context and complex circumstances that may surround a concern.
- Explicit explanation of what is meant by Fitness to Practise.
- Important distinction between employment and regulatory law, which centres on an employee's ability to remediate with certain regulatory concerns, avoiding unnecessary referrals.
- SWE triage test explained, which assists in referral consideration.
- Section inserted explaining what is deemed as 'serious.'
- Greater explanation of when not to refer, with links to ACAS and Safe and Effective Practise guidance for employees.
- New section on Newly Qualified, Agency and Locum Social Workers.

c. Suggested Changes Not Adopted:

- Section on 'What we can deal with' - the bullet point 'Hiding mistakes or blocking an investigation'. There is concern that the wording will give some employers latitude to misinterpret. As an example, there are instances when UNISON representatives are required to provide a robust response when an investigation is unfair or not in keeping with expected natural justice.
- Under the same sub-heading 'What we can deal with' the bullet point on 'A fraudulent, omission, or incorrect entry onto our register'. This is poorly worded and could potentially cover instances where a Social Worker has simply entered a typo. It is not believed this was in the mind of SWE when framing the point.

- UNISON remains concerned about the phrasing under ‘risk of harm’. *“Social workers also have very clear responsibilities to protect the public by intervening if another person is putting people at risk of unnecessary harm. A social worker’s failure to intervene in response to specific evidence of risk of harm by others (including fellow professionals) is as serious as if they had committed those acts themselves.”* In an extreme example, if a social worker takes a service user out in the public and another member of the public becomes violent, with this wording the social worker is expected to step in, if they fail to do so it as if they themselves were responsible. Perhaps an example or caveat that this is within reason.
- UNISON would have preferred a specific request for the employer’s equality impact information under ‘What we need from you as the employer’. This measure would further reduce potential discrimination on referrals.

2. Safe and effective practice declarations and fitness to practise self-referrals.

a. General Comments

UNISON’s priority was that the document spoke to our Social Work members and was as clear as possible in explaining Social Work England’s requirements.

UNISON found the original document too legalistic and remote, and we thank SWE for adopted many of our suggested changes. Not all our suggestions have been written in, most notably the title of the document. UNISON suggested calling it as it is ‘Self-Referral Guidance’ rather than its original title of ‘Safe and Effective Practise Guidance’.

SWE have chosen to combine the names because this guidance is aimed at social workers declaring their fitness to practice for inclusion on the register as well as social workers self-referring.

b. Key Changes Adopted

In addition to the overview provided, specific changes are:

- Fuller explanation about the purpose and objective of the guidance with a specific section on how the guidance relates to the role of SWE.
- Meaningful example of where professional standards relates to action required.
- Reference to seeking advice from a trade union.
- Further clarity provided on when to declare criminal proceedings and made clear being investigated is alone, not a ground for impairment.
- Vulnerable group guidance provided.

- Clearer and more expansive explanation of when and why health conditions are to be disclosed. References responsibility of the employer.
- Improved explanation of when employment processes are relevant or not relevant to fitness to practice matters.

c. Suggested changes not adopted

- Name of the document. UNISON suggested a separate document for registration and restoration to avoid confusion with self-referral.
- The triage section does not link the SWE triage guidance like the employer's guidance.
- The section 'What You Need to Declare' should state specifically in that section that some of the listed points 'may' impact your fitness to practise. As an example, not all employment or disciplinary proceedings impact a registrant's fitness to practise. This is clarified later in the document but can be misleading as currently presented. It is thought not clarifying early on that not all employment/disciplinary proceedings impact on a registrant's ftp may result in SWE getting unnecessary referrals and we ask SWE to keep this under review.
- Health concerns section – the examples inadvertently may be interpreted that should a registrant have a relapse they need to self-refer, even though it explains if a registrant recognises the risk you don't have to. This may be confusing to someone who has relapsed [mental or physical] and takes time off, whether they need to self-refer, when arguably the act of taking time off shows insight and protects the public.