

Section four: Understanding misconduct in a social work context

Developing an understanding of the risks posed was one of the most important lessons that we learnt and the GSCC put in place a Risk Assessment Framework to assist in making these decisions

As has been noted above, only a very small number of social workers are ever referred to the GSCC and only a very small number of these are taken to a misconduct hearing. These hearings are held by three independent panel members who are appointed by the GSCC, the majority of which are lay members including the Chair. At the panel hearing the allegations against the registrant are made and witnesses can be called and other evidence presented. The panel members make a decision about whether the alleged facts are proven based on the balance of probabilities, and also whether the registrant has committed misconduct. The panel also decides which sanction, if any, is appropriate.

Investigating cases and taking decisions on whether to take a misconduct case forward to a hearing

Once a complaint has been received the GSCC will conduct an investigation, looking at all the available evidence. A decision then needs to be taken as to whether the matter should be referred to a conduct panel. For a case to be referred to a conduct panel there must be a real prospect that the conduct panel will find misconduct. Misconduct is defined in our Rules as conduct which calls into question a registrant's suitability to remain on the register. Crucial to this decision is an assessment of the risk posed by the registrant. Developing an

understanding of the risks posed was one of the most important lessons that we learnt and the GSCC put in place a Risk Assessment Framework to assist in making these decisions.

The current Risk Assessment Framework was very much informed by the principles of ‘Right-touch regulation’.²¹ Our clear and overriding objective was to protect the public and people who use services from the risk of harm posed by unsuitable social workers. But we also took action in order to uphold the public’s confidence in the social work profession – this was because if the public was concerned that certain unsuitable people were legally permitted to practise social work, this would weaken their

trust in those social workers that they dealt with. And this sometimes meant taking action against social workers even where they had not harmed anyone or put anyone at a risk of harm.

The Risk Assessment Framework also acknowledges that the GSCC as the professional regulator is not the only body responsible for reducing the risk of harm and that in some instances employers (or other agencies such as the police) were better placed to deal with certain issues about the actions or behaviour of a social worker. We considered that we needed a good reason to take action where the public could be protected appropriately through action taken by the employer. This approach was

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21. See Council for Health Care Regulatory Excellence ‘Right-touch regulation’ August 2010 www.chre.org.uk/_img/pics/library/100809_RTR_FINAL.pdf

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very much informed by the fact that in the vast majority of cases, social workers are employed by organisations and very rarely operate in a self-employed capacity or as a sole practitioner unlike some other professionals.

The limited sanctions available to the GSCC for dealing with misconduct

Where a GSCC panel found a registrant had committed misconduct they could impose one of three types of sanction. They could remove them from the register, suspend them for a fixed period of time or admonish them (give them a warning). This range of sanctions was too limited particularly in cases where the misconduct concerned 'poor practice' (rather than 'inappropriate behaviour'). Other regulators are able to impose conditions on the practice of a professional while they remain in practice, such as to seek assistance with a health condition or

undertake extra training or supervision, where there are concerns with a particular area of performance. The GSCC learnt the importance of having this particular sanction at its disposal in order to deal effectively with issues of poor practice.

At the time of collecting the data for this report (30 September 2011), 369 cases concerning both social workers and social work students had been referred to the conduct panel of which 339 cases had reached a conclusion. Out of these 339 completed cases, misconduct was found proven in 278, resulting in 117 removals from the register, 51 suspensions, 105 admonishments (warnings) and no sanction in five cases. In the remaining 61 of the 339 cases, either the alleged facts were not found proven, the facts were proven but misconduct was not found or the case was withdrawn or joined to another case.

What we learnt:



The GSCC developed its approach to taking forward conduct cases as it learned more about the risks posed by the types of cases referred. The GSCC recognised the important role that employers and other agencies can play in mitigating the risk posed

by the poor practice and unacceptable behaviour of social workers.

The GSCC's conduct panels would have been able to respond to cases of poor practice more appropriately had conduct panels been able to impose conditions on the practice of a registrant.

Analysis of misconduct

We analysed the 265 cases where qualified social workers (as opposed to social work students) were found to have committed misconduct between October 2004 and September 2011. We assessed whether:

- the misconduct was related to the work of the individual as a registered social worker;
- the misconduct harmed or put at risk of harm an adult, child or neither an adult or a child;

- the frequency of different types of misconduct.

This analysis and categorisation of misconduct was done after the cases were heard and so the categorisation was developed on the basis of the information in the Notices of Decision which were produced by the GSCC's conduct panel. Any categorisation of this nature is therefore the product of interpretation and judgment. A full description of the categories used can be found in Annex A of this report.

Was the misconduct related to the role of the individual as a social worker?

We were interested in knowing whether the misconduct was related to the role of the social worker because this gives an indication of the extent to which the GSCC as the professional regulator took into account the actions and behaviours of social workers outside of their job role when determining their suitability to practise. When the GSCC was first established there

were concerns from the social work profession that the GSCC would police the private lives of social workers.²² However, the codes of practice requires social workers not to behave in a way, in work or outside of work which could bring their suitability to practise into question.²³ Our analysis here shows that in 69 per cent of the 265 cases all of the misconduct was work-related, in 13 per cent some of the misconduct was work-related and in 18 per cent of cases the misconduct was not related to the individual's role as a social worker (see **Table 9**).

Table 9: Analysis of how much of the misconduct in each case was 'work related'

How much of the misconduct in each case was 'work related'?	Cases	%
All	183	69%
Some	34	13%
None	48	18%
Total	265	100%

22. 'Reframing Conduct – A critical analysis of the statutory requirement for registration of the Social Work Workforce' Lel Meleyal Doctoral Thesis University of Sussex 2011 P.129

23. GSCC Code of Practice for Social Care Workers – Code 5.8 states as a social care worker you must not "Behave in a way, in work, or outside of work which would call into question your suitability to work in social care services"

Who the misconduct put at risk of harm

The cases were also categorised according to whether or not an individual (either adult or child) was harmed or put at risk of harm as a result of the misconduct to identify if any one group had been more affected. Where an individual is identified as harmed or put at risk of harm as a result of the actions or behaviour of a social worker this includes both people who use services and people who did not. In

the 265 misconduct cases no one group was more likely to be affected as a result of the misconduct. However, in 31 per cent of cases neither an adult nor child was harmed or put at risk of harm by the misconduct. (see **Table 10**) This relates to the fact that there were a large number of cases which the GSCC took forward which involved dishonesty and fraud (although this would exclude those situations where dishonesty and fraud can cause harm or put someone at risk of harm).

Table 10: Analysis of who was harmed by the misconduct in the 265 misconduct rulings made against social workers

Who did the misconduct in each case harm or put at risk of harm?	Cases	%
Children	86	32%
Neither adults nor children	82	31%
Adults	76	29%
Both adults and children	21	8%
Total	265	100%

The four categories above are mutually exclusive: only one was applied to each case. See Annex A for definitions.

Misconduct arising from ‘poor practice’ or as a result of ‘unacceptable behaviour’

Understanding the nature of the misconduct which the GSCC found is important because this can help identify those issues which the social work profession may wish to address through initial training, professional development or supervision in the work place. In categorising the types of misconduct we sought to make a distinction between ‘poor practice’ or the competence of a social worker and instances of ‘unacceptable behaviour’

related to the ‘character’ of the social worker.²⁴ It should be noted that these are not mutually exclusive categories; often a case involved both ‘poor practice’ and ‘unacceptable behaviour’. In only 19 per cent of the cases was the misconduct entirely related to the ‘poor practice’ of the social worker, whilst ‘unacceptable behaviour’ misconduct occurred in 80 per cent of the 265 cases, including the 23 per cent of cases where both ‘poor practice’ and ‘unacceptable behaviour’ misconduct occurred.

In only 19 per cent of the cases was the misconduct entirely related to ‘poor practice’

24. Under a fitness to practise model distinctions are often made between deficient performance and misconduct, with the latter relating to such things as theft, sexual harassment etc. (See Law Commission review of professional regulation in England). Because the GSCC operates a misconduct model – which incorporates deficient performance or ‘poor practice’ we have chosen to use the term ‘unacceptable behaviour’ to refer to those types of cases which are not about performance but which under other regulatory models would be referred to as ‘misconduct’.

This shows that the issues around poor practice and competence, whilst important, attracted proportionately less attention by the GSCC than issues concerning ‘unacceptable behaviour’. This is likely to have been because of the nature of the referrals which the GSCC received as well as the fact that many issues relating to deficient performance were dealt with by employers. The GSCC codes of practice also places less emphasis on competence issues which may also be a reason behind these findings. Nonetheless, the GSCC focused most of its conduct activity on those aspects of behaviour which were not directly about the competence of social workers. This is not

to say, however, that the other proven allegations of misconduct were not related to the work of the social worker. As noted above, in 69 per cent of the 265 cases the proven misconduct was entirely related to the registrant’s work as a social worker, which means that a substantial proportion of ‘unacceptable behaviour’ misconduct took place whilst the social worker was carrying out their work.

As **Table 11** shows, within each of these two categories there were certain types of allegations which were more prevalent than others.

Table 11: Summary analysis of the frequency of different types of misconduct

Frequency of types of misconduct	Cases in which this type of misconduct occurred	
	Number	%
Cases involving both poor practice and unacceptable behaviour	62	23%
Cases involving poor practice only	51	19%
Cases involving unacceptable behaviour only	152	57%
Total	265	100%*

*Percentage does not total 100% due to rounding

Table 12: Analysis of the frequency of different types of misconduct within the 265 misconduct rulings made against social workers before 1 October 2011

Frequency of types of misconduct	Cases in which this type of misconduct occurred	
	Number	%
Poor practice		
Poor safeguarding	48	18%
Failure to notify and share information appropriately	27	10%
Breach of confidentiality/privacy	26	10%
Poor record keeping	25	9%
Inappropriate/inadequate supervision of a child	13	5%
Falsifying records or information	12	5%
Failure to follow management instructions	10	4%
Failure to follow financial procedures	8	3%
Ineffective communication skills	6	2%
Inadequate staff management or supervision	6	2%
Working more than one job	5	2%
Allowing alcohol or drug use to impair practice	4	2%
Working while unfit due to ill health	2	1%
Inappropriate physical force	2	1%
Unacceptable behaviour		
Dishonest/misleading behaviour	120	45%
Inappropriate relationship	52	20%
Theft or fraud	35	13%
Other offensive or inappropriate behaviour	28	11%
Violence	24	9%
Sexual harassment	23	9%
Sexual abuse	13	5%
Driving offence	12	5%
Failure to safeguard a family member or friend	9	3%
Child pornography	6	2%
Drug possession or offence	6	2%
Drunk and disorderly	2	1%

***Note:** The categories are not mutually exclusive: typically more than one applied to each individual case. Hence the total number far exceeds 265 (the number of cases). Annex A of the report explains how each of the above categories was defined in this analysis.

In 45 per cent of the 265 cases analysed the social worker had engaged in dishonest and/or misleading behaviour. This reflects the importance placed by the GSCC's code of practice on the integrity and trustworthiness of social workers

Unacceptable behaviour: Dishonest/misleading behaviour

In 45 per cent of the 265 cases analysed the social worker had engaged in dishonest and/or misleading behaviour. This reflects the importance placed by the GSCC's code of practice on the integrity and trustworthiness of social workers as well as the value that employers and others referring information to the GSCC placed on these requirements. This 45 per cent of cases includes the 13 per cent of the cases where the proven misconduct involved theft and/or fraud. The access that social workers can have to personal information and the finances of vulnerable people who use services and

the trust invested in the social worker as a result, explains the seriousness attached to allegations of this nature

Unacceptable behaviour: Professional boundaries/ Inappropriate relationships

From the outset a significant number of the complaints received were about social workers forming inappropriate relationships with people who use services and their family members. A case would fall into this category if the registrant formed (or attempted to form) a personal or sexual relationship with a service user, a former service user or the family member of a service user. It does not include inappropriate

behaviour towards other types of people or sexual abuse. This is a significant issue for the profession with 20 per cent of the 265 cases concerning misconduct which involved an ‘inappropriate relationship.’ The GSCC has recently published guidance on this subject due to the significance of this concern.²⁵ Whilst this is not just a concern for the social work profession, the nature of the work that social workers engage in with people who use services has particular risks attached to it. This includes the vulnerable nature of people who use services as well as the fact that relationship building is key to performing social work. This is not to overstate the prevalence of this type of behaviour within the

profession. However, because of the significant harm which this causes to people who use services and their relatives it is a risk factor which the sector needs to be aware of.

Poor practice issues: Poor safeguarding

In 18 per cent of the 265 cases the misconduct involved the social worker failing to follow the procedures necessary to ensure the safety and wellbeing of people who use services. This was the most prevalent form of ‘poor practice’ misconduct and includes failing to develop a care plan, failing to take appropriate action to prevent harm to a service user, failure to undertake an adequate risk assessment, failure to ensure

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25. GSCC 2011 ‘Guidance for social workers on professional boundaries’ www.gsc.org.uk/cmsFiles/Conduct/GSCC_Professional_Boundaries_guidance_2011.pdf

that user's needs were met, failure to arrange or complete visits to service users, failure to respond appropriately to information received and failure to seek further information. Failings of this nature can have significant implications for the safety and well-being of people who use services and their families. Being competent and able in this part of the social work role is critical to being a registered professional.

**Poor practice issues:
Failure to notify and share
information**

The second most common form of 'poor practice' misconduct (in 10 per cent of cases) was the failure of

individuals to notify and share information. As has been identified in serious case reviews sharing information and notifying authorities, including employers and the police, about issues of concern are critical to ensuring the safety and well-being of service users. Some of the allegations within this category also relate to the failure of social workers to inform their employers about inappropriate relationships between other social workers and services users which they knew about.

What we learnt:



In most cases, findings of misconduct related to the conduct of the social worker at work. In 18 per cent of the 265 cases the misconduct was not related to the individual's role as a social worker.

In 31 per cent of the 265 cases of misconduct analysed neither an adult nor a child were harmed or placed at risk of harm which shows that the GSCC took seriously both protecting the public and upholding confidence in the profession.

80 per cent of the 265 cases involved some aspect of 'unacceptable behaviour' by the social worker whilst in 19 per cent of cases this related solely to the social workers' 'poor practice'.

The two most common types of 'unacceptable behaviour' were dishonest or misleading behaviour and inappropriate relationships. It was important for the GSCC to take action in these cases because of the position of trust that social workers hold and the nature of the relationships they need to form with vulnerable people as part of their practice.

The most prevalent form of 'poor practice' was poor safeguarding (a failure to follow the procedures necessary to ensure the safety and well-being of people who use services). Failing to notify and share information appropriately was the second most common. These aspects of social work are critical to delivering safe and effective practice.

Lessons from working with the Independent Safeguarding Authority (ISA)

The GSCC found that there needs to be clearer guidance about which cases the ISA wants to receive from professional regulators and the reasons why they decide to bar regulated professionals

The final stage of the conduct process is for the GSCC to make an assessment about whether to refer a registrant to the Independent Safeguarding Authority (ISA). Established under the Safeguarding Vulnerable Groups Act 2006, the ISA makes a decision about whether an individual is suitable to work with vulnerable adults and children. Anyone who appears on the ISA barred list cannot work in 'regulated activity' with vulnerable adults or children; regulated activity covers around five million possible jobs. And under this Act the GSCC, like all other professional regulators, has a duty to refer information to the ISA.

Where professional regulators have concerns that an individual may have harmed or may pose a risk of harm to vulnerable adults or children they are required to notify the ISA who will make a decision about whether to bar an individual. When the ISA have barred an individual the intention is that they will inform the professional regulators that they have done so, to avoid a barred individual

appearing on a professional register and being able to work as a registered professional.

The GSCC reviewed all of its conduct cases to see if they met the referral criteria to the ISA. As of 30 September 2011 the GSCC referred 47 individuals. Out of these 17 have been barred, 26 were not barred and at the time of writing this report the decision on four referrals were outstanding. These cases were the most serious of the cases that the GSCC had heard.

Undertaking this work required a dedicated team to ensure that all cases were assessed and any requests for information were dealt with. Complying with the requirements of the Safeguarding Vulnerable Groups Act therefore had substantial resource implications for the GSCC.

However, the GSCC and other professional regulators found that there needs to be clearer guidance about which cases the ISA wants to receive from professional regulators and the reasons why they decide

to bar regulated professionals. In most of the conduct cases that the GSCC took forward (see **Table 10**) there was a risk of harm posed to a vulnerable adult or child. But there was clearly not an intention for the GSCC and all other professional regulators to refer all of their cases to the ISA, as the ISA would then be duplicating the work of the professional regulators. This was particularly the case where professional regulators were dealing with an issue of 'poor practice' or professional competence. The GSCC were concerned that this lack of clarity threatened to confuse the public about the roles of the professional regulator and the ISA.

The GSCC was also keen to ensure that it was notified by the ISA of any decision to bar a social worker. This was because it would seriously undermine the integrity of the Social Care Register if an individual barred by the ISA continued to hold the title of 'social worker'. Unfortunately the Safeguarding Vulnerable Groups Act did not place a proactive duty on the ISA to

notify professional regulators if any of their registrants had been barred nor the reasons why. Again, the GSCC has noted this risk previously and whilst some improvements have been made as a result of legislative change under the Protection of Freedoms Act 2012, it is vitally important that professional regulators are made fully aware of any barring decisions by the ISA if they are to fully protect the public.

What we learnt:



There needs to be clarification about the respective roles of professional regulators and the Independent Safeguarding Authority (ISA) in protecting the public from harm, in particular which cases to refer to the ISA.

Effective exchange of information between professional regulators and the ISA is critical if the public are to be protected.

It is important that the ISA provide regulators with a notification of barring decisions and the reasons behind these decisions in order to maintain the integrity of their registers.