



Northern Ireland
Assembly

Committee for Health, Social Services and
Public Safety

OFFICIAL REPORT (Hansard)

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

13 January 2016

NORTHERN IRELAND ASSEMBLY

Committee for Health, Social Services and Public Safety

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

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Members present for all or part of the proceedings:

Ms Maeve McLaughlin (Chairperson)
Mr Alex Easton (Deputy Chairperson)
Mr Thomas Buchanan
Mrs Pam Cameron
Mrs Jo-Anne Dobson
Mr Kieran McCarthy
Ms Rosaleen McCorley
Mr Michael McGimpsey
Mr Daithí McKay
Mr Fearghal McKinney
Mr Gary Middleton

Witnesses:

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| 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 (Ms Maeve McLaughlin): I welcome Ms Christine Smyth, the deputy chief social work officer in the office of social services in the Department of Health, Social Services and Public Safety; Ms Lorraine Conlon, the head of governance and planning in the office of social services; and Ms Patricia Higgins, the director of regulations at the NISCC.

No issues were raised concerning clause 1 in the written submissions received. If Committee members have no comments to make on clause 1, I will invite the officials to brief the Committee on the issues raised about clause 2 in the written submission.

Ms Christine Smyth (Department of Health, Social Services and Public Safety): Sorry, Chair, can I clarify that you are referring to the written submission from the Northern Ireland Association of Social Workers?

The Chairperson (Ms Maeve McLaughlin): Yes, I am.

Ms Smyth: The Northern Ireland Association of Social Workers raised an issue about the need to rehearse fully the powers to disclose information about a registered person's fitness to practise. That is a very important issue, particularly for data protection considerations. It is understandable that there may be concerns about the inappropriate disclosure of sensitive information about a registrant. I will

ask Patricia Higgins, who is the Northern Ireland Social Care Council's director of conduct and standards, to explain more fully what the safeguards are and the reasons for the provision.

Ms Patricia Higgins (Northern Ireland Social Care Council): Thank you. The council can publish and share information within its existing legislative framework and its regulatory best practice for public protection, but the clause assists by specifying that more clearly. As we said in our response, information is disclosed on the outcomes of conduct hearings, in the interests of public protection. The council is subject to, as all other regulators are, statutory provisions, and it must comply with the Data Protection Act 1998 and the Human Rights Act 1998. Therefore, when taking decisions around information disclosure, we need to make sure that that disclosure is proportionate and balanced; that it is in the public interest — the public-interest test is paramount — that we take account of article 8 of the European Convention on Human Rights, as set out in schedule 1 to the Human Rights Act, which is on the right to a private life; and that we take account of the Data Protection Act.

You will note from our response that section 31 of the Data Protection Act provides an exemption for regulators such as us. It permits regulators to disclose information to protect members of the public from any professional who has been found to be dishonest, to be involved in malpractice or other seriously improper conduct, or to be unfit or incompetent. Clause 2 requires the council to consider the public-interest test when publishing or disclosing information. As I said, section 31 provides an exemption for regulators in their considerations about disclosing information.

The Chairperson (Ms Maeve McLaughlin): The Northern Health and Social Care Trust made specific comments on clause 2. May I ask you to respond to them?

Ms Higgins: Yes. In response to clause 2, the Northern Trust welcomed the inclusion of the power to obtain information, which will enable the council to indicate explicitly that it has a power to require employers to provide information. The trust also mentioned in its response its desire to work with the council to ensure that support is available for witnesses who have to appear in front of conduct hearings, and we welcome that. We have guidance for witnesses, and we attempt to work closely with employers to provide as much support as possible. We are therefore very happy to work further with the Northern Trust and other stakeholders in that regard.

The Chairperson (Ms Maeve McLaughlin): Do members have any comments to make on clause 2? No? OK.

No issues were raised concerning clause 3 in the written submissions. Do members have any questions on clause 3? No? OK.

I invite the officials to brief us on the issues raised about clause 4 in the written submissions.

Ms Smyth: The submission from the Royal College of Nursing (RCN) Northern Ireland raised two issues. First, it states that the Department and the Social Care Council have incorporated healthcare assistants within a framework for the statutory regulation of social care assistants. The RCN has raised concerns about that. The Social Care Council — I will clarify this for you — is governed by the Health and Personal Social Services Act 2001, which relates to the registration of social workers and social care workers only. The Social Care Council cannot and does not register healthcare assistants.

It is the responsibility of the proprietor or registered manager of a nursing home to determine the skills mix in that nursing home and the workforce that it needs to deliver a standard and quality of care in keeping with the required standards of the Regulation and Quality Improvement Authority and any professional standards. Normally, that skills mix will include nurses, and it can include healthcare assistants and/or social care workers. Where social care workers are employed in a nursing home, they must register with the Social Care Council, but there is no requirement for healthcare assistants to register with the council, nor is the council empowered to register healthcare assistants. It is therefore not quite accurate to say that we have incorporated healthcare assistants into the statutory framework. It relates only to social care workers.

It may be helpful to say that, broadly speaking, the role of a social care worker in a nursing home is to provide personal care to individuals in the nursing home and to assist with physical and social needs, whereas a healthcare assistant works under the delegated authority of a nurse and supports the treatment and care of individuals' conditions.

The Chairperson (Ms Maeve McLaughlin): To be clear, what you are saying is that it refers only to social care workers in that setting, not healthcare assistants.

Ms Smyth: Yes.

The Chairperson (Ms Maeve McLaughlin): Do members have any comments to make on what we have just heard? No? OK.

No issues were raised about clause 5 in the written submissions. Similarly, there were no issues raised about clause 6.

The College of Nursing raised a general concern about healthcare assistants being incorporated within the framework, and I think that you have answered that.

A number of issues raised were raised by Committee members at Second Stage. They asked what the nature of advice and warnings given under clause 1 will be; why a 14-day limit was chosen for clause 2; what consideration has been given in clause 3 to those registered with CORU; and who will pay the exam fees referenced in clause 4. Will you address those four issues, please?

Ms Smyth: Certainly. Clause 1 will introduce powers to issue formal advice and warnings to registrants, and that is similar to provisions for other healthcare regulators. I will ask Patricia to explain the nature of the advice that the council will be able to issue.

Ms Higgins: Advice is not a sanction. We envisage that it will be given in circumstances in which we are not taking a complaint any further — we may be closing a case — but, nevertheless, we may wish to remind registrants to abide by their code of practice, or draw their attention to that. That would be the tenor of a letter of advice.

The Chairperson (Ms Maeve McLaughlin): That would be the nature of the advice. It is not a sanction.

Ms Higgins: No.

The Chairperson (Ms Maeve McLaughlin): Is it a warning?

Ms Higgins: No, it is merely to draw registrants' attention to their code of practice and to provide advice in that regard.

The Chairperson (Ms Maeve McLaughlin): What about the issue of the 14-day limit in clause 2?

Ms Higgins: The clause is seeking a power to obtain information. Largely, it is for when we request information from employers to assist with our investigations. The clause will provide us with the power to require employers to provide that information. If the employer, for example, does not respond within the time frame that we have set, we can, within 14 days, seek a County Court order to require it to provide the information. It is a similar time limit to that in the Medical Act 1983 for the General Medical Council.

I have to say, though, that it is a power that we want to use judiciously. We work very closely with employers and stakeholders through engagement and are very clear about the information that we require when working with people. Nevertheless, it would be helpful to have a power that might assist employers to understand their requirements to release information, and, equally, if we do meet resistance, it would be helpful for us to have the power to take some action.

The Chairperson (Ms Maeve McLaughlin): Do you think that 14 days is adequate?

Ms Higgins: We believe that 14 days is adequate.

The Chairperson (Ms Maeve McLaughlin): Apologies. You were going to give more detail on warnings.

Ms Higgins: Yes. A warning is a sanction, obviously. That would arise in a case in which you discovered that someone had committed misconduct, albeit at a very low level. You would give that individual a warning. It is similar to admonishments that we use now. A warning could be placed on someone's registration for a period of one to five years, and that would be commensurate with the view of the council, or the committee of the council, on what it feels is appropriate as a warning to be placed on that individual's registration.

The Chairperson (Ms Maeve McLaughlin): For that period?

Ms Higgins: Yes. Anywhere between a year and five years.

The Chairperson (Ms Maeve McLaughlin): OK. The third issue raised relates to clause 3 and concerns whether any consideration will be given to those who are registered with CORU.

Ms Smyth: Yes. Clause 3 concerns social workers who are registered with other regulatory bodies in the UK. Under current provisions, a social worker who is registered with a recognised regulatory body in England, Scotland or Wales can practise in Northern Ireland without being registered with the Northern Ireland Social Care Council. The clause is trying to close that loophole to make sure that, if you are working here, you are registered with the council here. As such, you will then be subject to the same standards and requirements as every other social worker here.

The provision does not apply to social workers from the Republic of Ireland who are registered with CORU. They are covered by the provisions of the EU directive, which is about freedom of mobility for professionals within the European Union. It sets out the requirements for social workers from any other European country to register with the Social Care Council, should they wish to work in Northern Ireland. Therefore, the provision is very much about social workers in the UK being registered with the Northern Ireland Social Care Council, as there is a loophole in current legislation.

The Chairperson (Ms Maeve McLaughlin): Are there any issues flowing from that that relate to cross-border employment or mobility issues?

Ms Lorraine Conlon (Department of Health, Social Services and Public Safety): No. It is one of the issues that we worked through with the Attorney General to ensure that this was competent legislation. It is one of the concerns that his office raised. We had a series of meetings, and, in the end, the Attorney General was satisfied that it was within the competence and was content that it met EU legislation.

The Chairperson (Ms Maeve McLaughlin): Thank you for clarifying that. What about the exam fees in clause 4?

Ms Smyth: Clause 4 includes a provision that the council, through rules, may charge fees for the assessment of social workers against the agreed standards of proficiency. That has been included as a future-proofing of the legislation. There is currently no policy intent to introduce such fees, but the clause will allow the council to do that, should it decide to introduce them. It does not currently charge any fees for an assessment of the standards of proficiency.

Ms Conlon: I will add to that, Chair. If that were the case, it is a policy decision that would need to be considered by the Department, and it would be subject to consultation before any such move could take place. Therefore, it is part of future-proofing the other considerations in taking forward the recommendations and proposals in the Bill.

The Chairperson (Ms Maeve McLaughlin): What would be the impact of not including it?

Ms Smyth: In current practice, there is no charge, and the council awards certificates to individuals who attain the standards of proficiency. The council meets the cost out of its current grant in aid and from the income from fees. It is the intention that the council will continue to do that. As the register grows, more income will be generated through fees. The council hopes to be able to absorb those costs itself through those fees, as well as through the efficiencies that it hopes to realise through the amendments on managing conduct cases more efficiently and effectively. Therefore, the council hopes that the cost would be subsumed through registration fees.

Ms Conlon: It would allow the Department, in the current climate of efficiencies, to look at that some time in the future, if we needed to look at the budget for running the council. Christine mentioned that the NISCC has committed to becoming self-funding in its registration function. The clause would allow us to have that flexibility going forward.

The Chairperson (Ms Maeve McLaughlin): If members do not have any issues that they want to raise on those four issues, the Committee will now discuss what we have heard today and decide on any actions that might flow from that discussion. Where we decide to seek an amendment to a clause, we will write to you to ask whether the Department will make it. If that is the case, a response, including the text of the amendment, will be required for our meeting on 20 January, because of our tight timescale. I thank you all for attending today.