

How we assess the ability of a manager in terms of their skills, knowledge and experience, to manage a care service

Guidance for Care Inspectorate staff

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Introduction

Regulation 7(1) of The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 SSI 2011/210 (“the Regulations”) says that a person must not act as a manager of a care service unless they are fit. People who are unfit include anyone who is not of integrity and good character (regulation 7(2)(a)), anyone who does not have the skills, knowledge and experience necessary for managing a care service (regulation 7(2)(c)) or anyone who is legally required to be registered with a professional body, but isn’t (regulation 7(2)(d)).

When to use this guidance

It is the responsibility of the provider to assess the fitness of the person they have identified to manage their care service. Providers have the right to appoint any person they wish provided they are “fit” as defined in the regulations. However, there may be limited circumstances where the Care Inspectorate also has to consider whether a particular manager is fit to manage the care service. Our role in such circumstances is to assess the manager’s fitness against the criteria in the regulations and not their suitability for the particular job. This guidance aims to help Care Inspectorate staff assess the skills, knowledge and experience of the manager in terms of regulation 7(2)(c) only. The guidance is not concerned with other aspects of fitness such as the requirement to be registered or be a person of integrity and good character and other relevant Care Inspectorate guidance should be looked at (such as guidance relating to the fitness of nurse agency managers) in respect of those issues where appropriate.

Where there is more than one manager

Sometimes there may be more than one manager of a particular care service. The fitness of both managers should be assessed in a similar fashion. Occasionally, we will also come across a situation where one of the managers has not been appointed by the provider, but by another organisation such as the NHS for example. In such cases we would need to be sure that the provider is very clear about the roles and responsibilities of each manager. This is because the NHS manager won’t have been recruited according to the provider’s own policies and procedures.

Registration

We will often consider the fitness of a manager at the point of registration of a service. As part of the registration application the applicant must provide us with details about the manager and in particular their skills and experience. This is because section 60(3) of the Public Services Reform (Scotland) Act 2010 (“the Act”) says that before it grants an application for registration, the Care Inspectorate has to be satisfied that the new service will be able to comply (amongst other things) with the regulations made under the Act. This includes regulation 7(2)(c).

Information about the manager we can take into account

Information about the manager we can take into account when considering their skills, knowledge and experience would include, but isn't limited to:

- the manager's qualifications and any training they have attended. We consider that regulation 9(2)(b) of the Regulations which states that employees must have the necessary qualifications, extends to managers because they are also employees
- formal written references from previous employers which give information about the manager's practice in a care setting. It is the case that many referees will provide hardly any detail at all about former employees. Unfortunately some previous employers do not provide a sufficient level of detail, but do provide a reliable reference which is accurate as far as it goes. Our expectation of previous employers is that they should provide accurate and comprehensive references which speak to the appropriateness of a person for a post, but can only consider the issue of fitness based on the information we are given.
- the regulatory history of any care services the manager has previously managed either on a permanent or temporary basis – there is no set limit as to how far back we can go when we are looking at the manager's experience. However the older the information is, the less relevant it may be. For example, the manager may have gained additional qualifications and experience over time and as a result improved their practice (or not). Also, we have to remember there may be differences between services the manager has previously managed and the service they are now looking to manage. This is an important distinction. For example, the service type or client group might be different and the manager's skills and experience might be more suited to one type of service or client group than another. Another thing we have to bear in mind is that even if the manager previously managed a service which was failing, this may have been due to factors outwith their control. For example, the provider may not have provided enough resources for the proper provision of the service or interfered in the running of it, thus not supporting the manager.
- information from the SSSC or another professional regulatory body – however we need to be sure before we take any account of such information that we have permission from the SSSC, or other body, to discuss it with the applicant as part of our decision making.
- the skills and knowledge of the staff group as a whole may also be relevant in assessing the manager's fitness and also the roles and responsibilities of the particular post being considered

Information about the manager we can't take into account

Information about the manager we can't take into account when considering their skills, knowledge and experience would include, but isn't limited to

- information from a single unknown source which we can't verify, such as an anonymous email or web complaint about the manager's practice

Information about the manager we may be able to take into account

Information about the manager we may be able to take into account when considering their skills, knowledge and experience would include, but isn't limited to:-

- information we have received from known third parties but which we cannot verify - we have to think about how reliable the source of the information is and how likely it is to be true when looked at alongside the other information we have. We also need to be sure before we take any account of information we cannot verify that we have permission from the third party to discuss it with the applicant as part of our decision making.
- any information we hold about the manager's practice when they were working in care services before they became a manager – it would be open to us to look at what the manager did in care settings before they became a manager. This may be particularly relevant in the case of someone who has never managed a care service on a permanent basis before. However, as explained above, we have to remember that we might not be comparing like for like care services and over time the manager may have gained more experience and qualifications. Also, we will have to take into account the specific roles and responsibilities the manager had at the relevant times, how much opportunity they had to take accountability for their own practice and how well (or poorly) they themselves were managed and directed. All these things, and others, may have affected the manager's past performance.

How do we make a decision about ability to manage?

In each case we must look at the information we have and decide what is relevant and what isn't. We must not decide, for example, that we will always automatically conclude the proposed manager doesn't have the ability to manage the care service if any previous service managed by them was failing. That is a factor we can take into account, but we also have to consider all the other information we have, put it in context and weigh it up.

We would need to take account of any conditions placed on the manager's registration with the SSSC, or other professional regulatory body, when making any decisions.

We can place more weight on some pieces of information than others if we think one factor is more relevant than another. We may decide that one source of information is more reliable than another, perhaps because it is more recent for example. Another example could be that, we decide on some occasions to place more weight on the regulatory history of care services during the time they were managed by the proposed manager, than on the manager's qualifications. This might be because we decide evidence of the manager's practice is more relevant than their studies. However this might not always be the case, especially if we are not comparing like for like care services.

What if we want to refuse the registration application?

If we are thinking about refusing the application because we do not think the manager has the ability to manage, we should speak to the applicant and get their view about the things we have concerns about before making a decision. Any decision we make must be capable of being linked to the Regulations and we also have to take into account the National Care Standards and SSSC Codes of Practice. We should also think about whether our concerns could be addressed by putting appropriate conditions on the registration of the new service rather than refusing the application outright. We can also use the Care Inspectorate's decision making model and discuss our decision with our team manager, the case holding inspector and contact manager where appropriate to do so.

Regulation 17(1) of the Regulations provides that each service must have a manager who is in full time day to day charge of the service. We can therefore refuse an application where no fit manager has been identified (unless this issue can be dealt with by the use of an appropriate condition on the registration – for example that no people will be admitted to using the service until a fit manager has been appointed). Each case has to be looked at on its own merits: without ensuring this, we may be open to any legal challenge the applicant makes, even if we have reached the “correct” decision. This is because the courts will not only look at the merits of the decision but also the process we have followed to see if it was fair.

Account must also be taken of the Scottish Government document entitled “Scottish Regulators' Strategic Code of Practice” which was made under section 5 of the Regulatory Reform (Scotland) Act 2014. The Code applies to named regulators, including the Care Inspectorate and we must have regard to it when we exercise our regulatory functions. This will include deciding what conditions should be attached to a certificate of registration. In particular, the Code requires us to pursue outcomes which contribute to sustainable economic growth and to take business factors appropriately and proportionately into account in our decision making processes. However, it is the Care Inspectorate's position that where compliance with the Code would be inconsistent with our statutory obligation to ensure that the safety and wellbeing of those who use and are eligible to use care services is to be protected

and enhanced, the welfare of service users should take priority.

A link to the Code can be found here: -

<http://www.gov.scot/Resource/0046/00467429.pdf>.

Post – registration

We may from time to time also have to consider the ability of a manager to manage a care service after it has been registered. It is an offence under regulation 19(1) of the Regulations to continue to employ a manager who is not fit.

This may apply especially in the case of services which are already registered but which want to appoint a new manager and send us a notification to advise us. If we are of the view that the manager is not fit, there are a number of things we can do. The first response should be discuss the issue with the provider of the service. If service users are at risk, whether this is in part due to the manager's lack of ability or not, we can always take action. However we should approach our concerns from the point of view of outcomes for the people using the service. Where possible, any requirements or enforcement action should focus on improving those outcomes directly and not on trying to establish whether the manager is fit as that in itself won't necessarily improve outcomes for people using the service.

Rarely, we may have concerns regarding the abilities of a manager which are so serious or immediate, they can't be alone or sufficiently quickly addressed by reference to outcomes for people using the service. We may also have to consider whether we should report the matter to the manager's regulatory body and also consider whether formal enforcement action may be appropriate.

Conclusion

When we get an application for registration of a service, one of the things we may have to look at is the ability of the proposed manager to manage the service. To do that we may have to consider many different things such as their qualifications and experience and any soft information we have. We might also have to look at the manager's previous practice. When doing this, we should think about:-

- the differences between the services the manager has previously managed (or worked in) and the service they are now looking to manage;
- any factors outwith the control of the proposed manager which might have adversely affected their ability to manage; and
- any improvement (or not) in their skills, knowledge and experience over time

For services which are already registered we can act to protect service users if we have concerns about the abilities of the manager, even if we can't interfere in the employee/employer relationship. However, any action we take against the service as a result should if possible be directed at service user outcomes.

Headquarters

Care Inspectorate
Compass House
11 Riverside Drive
Dundee
DD1 4NY

web: www.careinspectorate.com

email: enquiries@careinspectorate.com

telephone: 0345 600 9527



@careinspect

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