

**Notice of Decision of the Northern Ireland Social Care Council's Fitness to Practise Committee**

**Name:** Prasanth Sasidharan Pillai

**SCR No:** 6002687

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **08 October 2018**, made the following decision about your registration with the Northern Ireland Social Care Council:

**The Committee found the facts proved;**

**The Committee found that your fitness to practise is impaired by reason of your conviction;**

**The Committee decided to make an Order for removal of your registration from the Register ('a Removal Order').**

**Particulars of the Allegation:**

That, on 09 March 2018, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted of the following offence at Belfast Magistrates' Court:

1. Defendant on the 10th day of September 2016 intentionally touched [Injured Party A], the circumstances being that the touching was sexual, that she did not consent to the touching and you did not reasonably believe that she so consented, contrary to Article 7(1) of the Sexual Offences (Northern Ireland) Order 2008.

And that by reason of the matters set out above, your fitness to practise is impaired because of your conviction.

**Procedure:**

The hearing was held under the fitness to practise procedure.

**Preliminary Matters**

**Service**

The Registrant was neither present nor represented. The Council was represented by Mr Anthony Gilmore.

In a Notice of Hearing dated 31 August 2018, sent by Special Delivery and addressed to the Registrant at his address as it appears on the Register, the Council notified him of the date, time and venue for this hearing. The Notice was signed for on 01 September 2018. The Committee determined that the Notice of Hearing had been

served in accordance with Rule 3 of the NISCC Fitness to Practices Rules 2016 ('the Rules'), and the requirements of Paragraph 5 of Schedule 2 of the Rules.

### **Proceeding in the Absence of the Registrant**

Mr Gilmore made an application to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules, and submitted that the Committee should hear and determine the case in the absence of the Registrant. Mr Gilmore referred the Committee to the cases of *General Medical Council v Adeogba 2016* and *R v Jones 2003*, and submitted that the Council's position was that the Registrant had voluntarily absented himself from the hearing today. Mr Gilmore submitted that the Council had received no communication from the Registrant, and was not aware of any reason to suggest that he would be any more likely to attend on another date if the case was adjourned today. Mr Gilmore stated that it was in the public interest for the case to proceed today.

The Committee was mindful that the discretion to proceed in the absence of the Registrant should only be exercised with the utmost care and caution. In considering the application, the Committee sought to satisfy itself that all reasonable efforts had been made to notify the Registrant of the hearing and the importance of attending. The Committee heard and accepted the advice of the Legal Adviser.

The Committee paid careful consideration to the submission from the Council. The Committee took into account the detailed information contained within the Notice of Hearing, which provided the Registrant with details of the allegation, the time, date and the venue of the hearing and, amongst other things, the Registrant's right to attend and to be represented, as well as the Committee's power to proceed in his absence. The Committee considered the extent of the disadvantage to the Registrant in not being able to give evidence and present his account of events relating to the allegation. However, taking into account the seriousness of the allegation and the general public interest in this hearing taking place, the Committee considered that the public interest in having the matter heard outweighed the interests of the Registrant. The Committee had no information to suggest that the Registrant would be any more likely to attend on another date if the case was adjourned.

Taking all these factors into account and after careful consideration, the Committee decided to exercise its discretion to proceed in the absence of the Registrant. The Committee exercised this discretion with the utmost care and caution, balancing the rights of the Registrant against the wider public interest in the expeditious disposal of the case. The Committee decided that the Registrant has voluntarily absented himself from today's hearing.

### **Application to Admit Hearing Bundle**

The Committee heard an application from Mr Gilmore under Paragraph 12 of Schedule 2 of the Rules to admit a bundle of papers into evidence. The Committee was satisfied that the bundle met with the requirements of relevance and fairness and admitted the bundle (Exhibit 1).

Mr Gilmore made a further application to admit a second bundle containing two emails. The Committee heard that the Council noticed that the date of birth on the Certificate of Conviction varied from the date of birth on the Council's Register. The day was the same and the year was the same but there was a discrepancy over the month. Mr Gilmore sought to admit an email chain with the PSNI which confirms that the police hold the same date of birth as the Council, and an email from the Court Service to confirm that the Registrant's criminal record has now been amended to reflect the correct date of birth. Mr Gilmore submitted that there was no doubt that the Certificate of Conviction relates to the Registrant, but the emails were necessary as they established that the Council had made the necessary checks in respect of the date of birth. Mr Gilmore submitted that the two emails could be fairly introduced and did not cause any unfairness to the Registrant. The Committee heard that the emails had not been disclosed to the Registrant, the email from the Court Service only having been received on 05 October 2018. Mr Gilmore submitted this was not an attempt by the Council to introduce new evidence, rather to clarify the evidence already in the bundle.

The Committee heard and accepted the advice of the Legal Adviser. The Committee was satisfied that the emails met with the requirements of relevance and fairness and decided to admit the emails, notwithstanding the fact that the emails had not been disclosed to the Registrant. The Committee was satisfied that the emails were necessary to clarify the correct date of birth and that this did not cause any prejudice to the Registrant. The emails were admitted into evidence (Exhibit 2).

## **Background**

The Committee received submissions from Mr Gilmore on the background to this case. Mr Gilmore told the Committee that this was a direct transfer case under Schedule 1 Paragraph 19 of the Rules as it is a conviction case. The Registrant was employed as a social care worker at Bangor Care Home and was convicted of a sexual assault against a colleague in his place of work.

## **Evidence**

Mr Gilmore referred the Committee to the Certificate of Conviction in the bundle of papers.

The Committee heard that the offence in question occurred on 10 September 2016 in the work place. The Registrant was convicted of a sexual offence, namely, intentionally touching a colleague at work and the touching was sexual and she did not consent to the touching and he did not reasonably believe that she so consented.

The Registrant pleaded not guilty, however, a conviction was made and on 09 March 2018, he was sentenced to a Community Service Order being required to perform 200 hours of unpaid work over the next 12 months and to comply with the Sex Offenders Register for a period of five years.

Mr Gilmore referred the Committee to the employer's referral form in the bundle of documents. This form was received by the Council from Four Seasons Health Care on 21 February 2018 and was the first notification which the Council received in respect of the conviction. The employer advised the Council that the Registrant was

arrested by the PSNI on 11 September 2016 following an allegation of sexual assault from a colleague in Bangor Care Home. The Committee heard that the staff member who was the victim of sexual assault was traumatised.

### **Finding of Fact**

The Committee heard and accepted the advice of the Legal Adviser. The Committee reminded itself that the burden is on the Council to prove the facts as set out in the Particulars of the Allegation and that to find the facts proved, the Committee must be satisfied on the balance of probabilities. This means that for any fact to be found proved, the Committee must be satisfied that it is more likely than not to have occurred.

The Committee took into account the submissions from Mr Gilmore on behalf of the Council, and had careful regard to all the documentary evidence submitted. The Committee determined that, on the balance of probabilities, the facts as set out in the Particulars of the Allegation have been found proved. In reaching this decision, the Committee had regard to Paragraph 12 (5) of Schedule 2 of the Rules. The Committee was satisfied that the Certificate of Conviction proved the facts in the Particulars of the Allegation. The Committee noted that the Registrant pleaded not guilty to the criminal charge but was convicted and sentenced to 200 hours community service and has to comply with the Sex Offenders Register for a period of five years.

Taking all of this into account, the Committee found the facts proved on the balance of probabilities.

### **Fitness to Practise**

The Committee heard a submission from Mr Gilmore who invited the Committee to find that the Registrant's practice is currently impaired as a result of his conviction. Mr Gilmore reminded the Committee that impairment has been defined in the Rules as circumstances which call into question the suitability of a registrant to remain on the Register without restriction or at all. He referred the Committee to the Standards of Conduct and Practice for Social Care Workers which he suggested had been breached at Standard 5: 5.1, 5.2 and 5.8 and Standard 6: 6.6, 6.13. Mr Gilmore submitted that there was clear evidence that the Registrant's conduct had fallen far below the standard which should be expected of any registered social care worker and certainly calls into question his fitness to practise. Mr Gilmore submitted that this is a recent conviction and that there is evidence within the documentation to indicate that the victim was traumatised. He invited the Committee to conclude that there was no evidence that the Registrant has demonstrated any insight or any remorse. He suggested therefore that there was a risk of repetition. Furthermore, Mr Gilmore submitted that the public interest is engaged as the public would have a real and serious concern if a finding of impaired fitness to practise were not made when dealing with a registrant who was subject to the requirement to sign the Sex Offenders Register.

The Committee heard and accepted the advice of the Legal Adviser.

In considering whether the Registrant's fitness to practise is impaired, the Committee took into account the relevant provision of the Rules, along with the Guidance on Making a Determination of Impaired Fitness to Practise. The Committee first satisfied itself as to the reason for the alleged impairment of fitness to practise. The Committee was satisfied that the Registrant has been convicted of a serious sexual assault.

The Committee had regard to the NISCC Standards of Conduct and Practice for Social Care Workers. In the view of the Committee, the Registrant had breached the following Standards of Conduct:

**Standard 5: As a social care worker, you must uphold public trust and confidence in social care services. In particular you must not:**

- 5.1 Abuse, neglect or harm service users, carers or colleagues;
- 5.2 Exploit service users, carers or colleagues in any way;
- 5.7 Put yourself or other people at unnecessary risk;
- 5.8 Behave in a way, in work or outside work, which would call into question your suitability to work in social care services.

**Standard 6: As a social care worker, you must be accountable for the quality of your work and take responsibility for maintaining and improving your knowledge and skills. This includes:**

- 6.6 Informing NISCC and any employers you work for at the first reasonable opportunity if your fitness to practise has been called into question. This includes ill-health that affects your ability to practise, criminal convictions, disciplinary proceedings and findings of other regulatory bodies or organisations;
- 6.13 Working openly and co-operatively with colleagues and treating them with respect.

The Committee next considered whether the impairment is capable of remediation. Although this is a case of a serious sexual assault by a social care worker against a colleague in their place of work, the Committee concluded that the impairment was capable of remediation. However, there is no evidence that the Registrant has remediated his impairment. The Committee noted that there has been no communication from the Registrant today and there is no evidence of remorse on his behalf. The Committee could not make any determination in respect of his insight and could not therefore conclude that the Registrant understands the impact of his actions. He has been convicted of a sexual assault on a colleague and there is no evidence that he has reflected on the impact this had on the victim of the assault or the wider impact in terms of other social care workers who would be aware of his conviction, the families of the service users in the home, if not the service users themselves. The Committee concluded that without remorse and insight, there remains a real risk of repetition.

Finally, the Committee considered the public interest in this case. The Registrant has been convicted of a sexual offence at work. The Committee was in no doubt that public confidence in the social care workforce would be seriously undermined if a finding of current impairment was not made.

For these reasons, the Committee is satisfied that the Registrant's fitness to practise is currently impaired by reason of his conviction.

## **Sanction**

The Committee heard a submission from Mr Gilmore on the question of sanction. It heard and accepted the Legal Adviser's advice.

The Committee first considered the mitigating factors and noted that the Registrant:

- Has a good work history, no previous allegations are known to the Council; and
- Was employed by the same organisation from January 2010 until September 2016.

The Committee next turned to consider the aggravating factors and noted:

- This was a serious sexual assault conviction which occurred in the work place and constituted an abuse of trust;
- The Registrant did not inform NISCC when allegations were raised against him;
- There is a lack of insight;
- There is a complete absence of regret;
- The Registrant's actions had a serious impact on his work colleague and he posed a significant risk to that colleague;
- The Registrant has not engaged with the NISCC investigation; and
- By reason of his conviction, the Registrant has demonstrated a serious disregard for the NISCC's Standards of Conduct and Practice.

**Warning** - the Committee did not consider a Warning was appropriate or proportionate. The Registrant's actions were serious and could not be considered to be at the lower end of the spectrum. A Warning would allow the Registrant to work without restriction as a social care worker and without full insight from the Registrant, the Committee could not be satisfied that a Warning would provide adequate protection to the public.

**Conditions of Practice Order** - the Committee next considered a Conditions of Practice Order. The Committee noted the Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance') at Paragraph 4.3 which states that conditions may be appropriate in cases involving particular areas of a registrant's performance and where a Committee is satisfied that it is appropriate for an individual to remain on the Register. This case relates to a conviction for sexual assault as opposed to performance. The Committee has already determined that the Registrant has not demonstrated insight into his actions. The Committee concluded that conditions of practice could not be formulated which were workable, enforceable or verifiable and would adequately protect the public. Furthermore, given the seriousness of the Registrant's conviction, the Committee concluded that a Conditions of Practice Order would not be sufficient to meet the public interest in this case.

**Suspension** - the Committee did not consider that a Suspension Order would be an appropriate or proportionate sanction in this case. The Committee determined that this was a very serious case. The Committee determined

that a Suspension Order would not address the risk of repetition. The Committee considers the Registrant's conviction to be serious and evidence of behaviour that is fundamentally incompatible with unrestricted registration as a social care worker. The Committee took into account the Registrant's lack of insight. There was no evidence before the Committee that the Registrant could resolve the cause of his criminal offending during a period of suspension. The Registrant must comply with the notification requirements of the Sexual Offences Act for a period of five years. However, the maximum period of a Suspension Order is two years. In all of the circumstances, the Committee concluded that a Suspension Order would not be sufficient to mark the seriousness and unacceptable nature of the Registrant's conviction.

**Removal** - the Committee concluded that given the seriousness of the Registrant's impaired fitness to practise, a Removal Order was the only appropriate sanction. The Committee determined that the Registrant's actions caused serious harm to a colleague. The Committee considered sexual assault of a colleague to be a serious abuse of trust and a serious departure from the standards of behaviour expected of a registered social care worker. The Committee took into consideration Paragraph 5.4 of the Guidance document which refers to sexual misconduct as particularly serious where a registrant is subject to notification requirements as a sex offender. The Registrant in this case is subject to notification requirements for the next five years.

The Committee concluded that a Removal Order was the only sanction which would protect the public and meet the public interest in this case. The Committee determined that the reputation of the social care profession would be seriously undermined if a lesser sanction were imposed. The Committee also considered that public confidence in the social care profession would be undermined if a social care worker who was convicted of sexual assault against a colleague at work, were allowed to remain on the Register.

The Committee considered the potential impact of a Removal Order on the Registrant but determined that the safety of colleagues, service users and the wider public interest outweighed the impact on the Registrant.

The Committee concluded that a Removal Order was the most suitable, appropriate and proportionate sanction in all the circumstances of this case and should be imposed on the Registrant's registration with immediate effect.

The Interim Suspension Order currently in place is revoked with immediate effect.

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## **Legal Advice Given**

### **Service**

I have been shown the Notice of Hearing dated 31 August 2018, and the electronic proof of delivery dated 01 September 2018. The position as you have heard from Mr Gilmore is that the Notice was sent to the Registrant at his registered address along with a bundle of documents on 31 August 2018, and if I could start by directing you as a Committee to Paragraph 5 of Schedule 2 of the Fitness to Practice Rules 2016, which sets out that a hearing such as this should not be fixed for hearing earlier than 28 days after the posting of the Notice of Hearing. So we

are more than 28 days since the Notice was sent to the Registrant. As Mr Gilmore has quite correctly directed you to, Rule 3 deals with the service of the Notice and specifies that service is effected by sending the Notice by registered post or postal service in which delivery is recorded, and shall be treated as being served on the day after it was posted. As I have already said, I have been shown the track and trace signed receipt which confirms it was received on 01 September 2018. So it would be my advice to you as a Committee at this stage that it would be safe for you to proceed on the basis that service has been effected in accordance with the requirements of the Rules.

### **Proceeding in the Absence of the Registrant**

So the position as you have just heard is that you have received an application from the Council to proceed with this Hearing today in the absence of the Registrant.

The application has been made under Paragraph 15 of Schedule 2 of the Rules. Now, where you as a Committee are satisfied that the Notice of Hearing has been duly served on the Registrant, you do have a number of options available to you. You may either hear and determine the case in the absence of the Registrant or you may adjourn the hearing and give directions and this is a matter of discretion for you acting as a Committee.

As a starting point, I would refer you to the criminal case of **R -v- Jones** and as an experienced Committee you will be familiar with that case where Lord Bingham stated that the discretion to commence a trial in the absence of a defendant should be exercised with the utmost care and caution and that is a test you will apply in making your decision today.

Mr Gilmore has already referred you to and I would endorse as well the case of **GMC -v- Adeogba** and that is the 2016 Court of Appeal case in which Sir Leveson warned that **R -v- Jones** is a criminal case and it is important to acknowledge that there is a difference between criminal prosecutions and regulatory matters and as Mr Gilmore has highlighted to you, in a criminal case steps can be taken to enforce the attendance of the Defendant and this step is not open to you in a regulatory matter.

In a regulatory case such as this there is, however, an obligation on the Registrant to engage and there can be no premium for non-engagement. Therefore, you should consider whether an adjournment today may result in the Registrant attending proceedings at a later date, the timeframe which would be involved in any such adjournment and the extent of the disadvantage to the Registrant in not attending today and not being able to present his account of events.

You should also take into account the seriousness of the allegations and the degree of public interest in this case proceeding today.

The Registrant is entitled to a fair hearing, to attend or to be represented, to test the Council's case and to produce evidence on his own behalf. However, you may consider that he has had the knowledge or the means of knowledge of today's proceedings and has therefore voluntarily absented himself and you may decide therefore to exercise your discretion and proceed in his absence.



You must not reach any improper conclusion about his absence today but you must take all these factors into account and balance the interests of the Registrant against the public interest and the fairness and exercise your discretion about whether to proceed in his absence today and I would advise that you should retire to allow you to deliberate on your decision.

### **Application to Admit the Hearing Bundle**

The Rules do permit in these circumstances as outlined already by Mr Gilmore under Schedule 2 Paragraph 12 (4), you have the ability to admit evidence which has not been disclosed to the other side in advance of the hearing provided that there is a good reason and it is fair to admit that evidence and the evidence is necessary and a necessity outweighs any potential prejudice to the Registrant who has not previously seen the evidence. I think Mr Gilmore's submission is that there is indeed no prejudice to the Registrant as this is just simply an administrative point that the Council have been checking. So in those circumstances, obviously it is a decision for you as a Committee to make but that is the parameters within which you should operate as you make that decision.

### **Findings of Fact**

So it now falls to me to provide you with some advice at the fact finding stage of these proceedings. My advice to you will be short at this point as this is a conviction case and you are an experienced Committee.

We will start with the final point that Mr Gilmore raised and that is the burden and the standard of proof and you have correctly been directed to Paragraph 13 of Schedule 2 of the Rules. So the burden of proof rests with the Council and it is for the Council to prove their case. The standard of proof before you is the balance of probabilities, that is applied in civil proceedings and case law has made this a single and unvarying standard and it means that the facts will be found proved if you consider that it is more likely than not to have happened.

As this is a conviction case, again you have already being correctly directed to Paragraph 12 (5) of Schedule 2 which sets out that where a Registrant has been convicted of a criminal offence the findings of fact and certification of any UK Criminal Court or conviction at any time elsewhere or an offence which committed in the UK would constitute a criminal offence shall be conclusive proof of the facts or conviction so found.

There are limited occasions when a Registrant can ask you to look beyond the Certificate of Conviction, for example evidence that they are not the person named on the certificate or if there has been a successful appeal. These are set out in Paragraph 12 (7) of Schedule 2 and no such application or evidence has been adduced on the part of the Registrant in this case.

So it remains at this point for you to satisfy yourselves that the Certificate of Conviction contained within your bundle marked Exhibit 1, does match against the Particulars of the Allegation set out in the Notice appearing today.

## **Fitness to Practise**

So at this stage I am required to give you some brief advice in the matters that you can properly take into account as you reach this the fitness to practise stage of these proceedings.

As Mr Gilmore has outlined in his submissions, the first step in accordance with Rule 4 is for you to consider whether one of the gateways to impairment as set out in the Rules has been established. The facts of this case have been proved through the Certificate of Conviction within the bundle and the gateway that you are invited to conclude that it has been proven is the conviction ground.

The next step then is to consider whether the Registrant's fitness to practise is impaired and you have been directed to Paragraph 24 of Schedule 2 of the Rules which sets out the factors that a Committee should take into account when addressing whether impairment is present or not and Mr Gilmore has taken you through those in some detail so I do not propose to do so again but I will remind you that first is to satisfy yourself as to the reason for the alleged impairment then to look at the Standards of Conduct and Practice and Mr Gilmore has directed you to the Standards he believes which have been breached but I would remind you that it is your responsibility to go through those Standards yourself and to reach your own independent decision in respect of that. Then to address the issues of remediation, whether the impairment has been remediated, the risk of repetition and the public interest.

It is well established that panels such as yourselves considering the issue of impairment should do so in the present tense. That is to say, to determine whether the Registrant's fitness to practise is impaired at the relevant time of consideration i.e. today.

As set out in the case of **GMC -v- Meadows**, the purpose of Fitness to Practise procedures is not to punish a practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise.

You as a Committee should therefore look forwards not backwards. However, in order to form a view as to the fitness of the person to practise today, inevitably you have to take into account the way in which the person concerned has acted or failed to act in the past and that was the test established in Meadows.

I refer you to the decision of **CHRE -v- Grant**, which is a 2011 case, which you will be familiar with, and in particular to the comments of Mrs Justice Cox at paragraph 74 when she stated that:

*"In determining whether a practitioner's fitness to practice is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role but also the need to uphold proper professional standards and whether public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances."*

You have received submissions from Mr Gilmore on the public interest and that quote, I hope, will bear in mind that it is proper for you to take the public interest into account in your deliberations.

Mrs Justice Cox went on to refer to the formulation adopted by Dame Janet Smith in her fifth report for the

Shipman Inquiry and the tests which she formulated as the appropriate tests for Committees such as you when considering the question of impairment. You might find this test helpful to adopt in your own discussions and deliberations.

Firstly, has the Registrant acted in the past and/or is he liable to act in the future so as to put any service user or client at unwarranted risk of harm?

Has the Registrant acted in the past or is she likely in the future to behave in a way so as to bring the profession into disrepute?

Has the Registrant in the past or is he liable in the future to behave in a way so as to breach one of the fundamental tenets of the social care profession?

The fourth one deals with dishonesty which is not relevant to these proceedings today.

You have received some submissions from Mr Gilmore on the issues of remediation and it might be helpful if I directed you to Mr Justice Silber's guidance on remediation as set out in the case of Cohen in deciding whether fitness to practise is currently impaired, Mr Justice Silber directed that panels should take into account three questions.

Firstly, whether the conduct which led to the charge is easily remediable? Secondly, whether it has been remedied? And thirdly, whether it is likely to be repeated?

So the issue of remediation and that of future risk is undoubtedly an important one that you should take into account.

## **Sanction**

At this point it falls to me to give you some advice on the issues which you should properly take into consideration as you approach this, the sanction stage of these proceedings.

I will start by reminding you that it is not for the Council, although you have heard detailed submissions from Mr Gilmore, to seek to persuade you to take a particular course, rather it is for you exercising your own independent judgement to decide what is the appropriate response to the findings that you have made so far. The starting point, as you have been directed to, is Paragraph 26 of Schedule 2 of the Rules. Paragraph 26 (1) sets out the sanctions which are available to you and you have already outlined those for us so I do not propose to go over those again unless you need me to do so. You have also been directed to Paragraph 26 (2) which sets out the factors that the Committee shall take into account when deciding which sanction is to be imposed. Now there is the seriousness of the Particulars of the Allegation, the degree to which the Registrant has fallen short of expected standards, protection of the public, the public interest in maintaining confidence in social care services and the issue of proportionality.

I must remind you that the purpose of sanction is not to be punitive, although a sanction may have a punitive effect. Rather, the purpose of sanction is the protection of service users and the wider public interest. The public

interest includes the maintenance of confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour. As Lord Justice Laws said in the case of *Rashid & Fatnani -v- GMC*, and that's a 2007 case:

*"The panel is centrally concerned with the reputational standing of the profession rather than the punishment of the doctor."*

Again, this would equally apply to a social care worker.

You have been directed to the Indicative Sanctions Guidance produced by the Council and you should give those careful consideration and at Paragraphs 2.3 and 2.4 there is further guidance available to you on the public interest test.

In reaching your decision you must apply the principles of proportionality and fairness, that is weighing the public interest with the interest of the Registrant.

You should take into account the mitigating factors and the aggravating factors and the non-exhaustive list of the types of factors you may wish to consider are set out for you in the Guidance document at Paragraphs 3.2 and 3.3.

You should consider the sanctions that are available starting with the least restrictive and only working up the scale of restrictiveness if the options which you are considering are not proportionate or sufficient to meet the fitness to practise concerns which you have identified.

As Mr Justice Collins said in the case of *Giele -v- GMC*, and that is a 2005 case, you should decide whether the sanction is right for the misconduct in question or the conduct in question only after considering a lesser sanction.

I must remind you that you must give reasons for your decision and you should set out why you have chosen a particular sanction and why you have rejected any other sanction.

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**You have the right to appeal this decision to the Care Tribunal. Any appeal must be lodged in writing within 28 days from the date of this Notice of Decision.**

**You should note that the Fitness to Practise Committee's decision takes effect from the date upon which it was made.**

The effect of this decision is that your entry in the Register has been removed.

You are prohibited from working as a social care worker in any of the following positions:

1. A member of care staff at a:
  - a.) Children's home;
  - b.) Residential care home;
  - c.) Nursing home;
  - d.) Day care setting;
  - e.) Residential family centre.

2. A person who is supplied by a domiciliary care agency to provide personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
3. A manager of a:
  - a.) Residential care home;
  - b.) Day care setting;
  - c.) Residential family care centre; or
  - d.) Domiciliary care agency.

It is **compulsory** for the above social care workers to be registered with the Northern Ireland Social Care Council in order to work. This is pursuant to the Northern Ireland Social Care Council (Social Care Workers Prohibition) and Fitness of Workers Regulations (Northern Ireland) 2013 and the Northern Ireland Social Care Council (Social Care Workers Prohibition) and Fitness of Workers (Amendment) Regulations (Northern Ireland) 2017.

In accordance with Schedule 3, Paragraph 9 of the NISCC Fitness to Practise Rules, you may not apply to be restored to the Register within five years from the date of removal. This does not affect your right to appeal the Committee's decision to the Care Tribunal.

P.P. M. Stewart  
Committee Manager

11 October 2018  
Date