

Notice of Decision of the Northern Ireland Social Care Council's Conduct Committee

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Name: Wilmer Trondillo Pinuela

SCR No: 2000620

**NOTICE IS HEREBY GIVEN THAT** the Conduct Committee of the Northern Ireland Social Care Council, at its meeting on **27 February 2015**, made the following decision about your registration with the Northern Ireland Social Care Council:

**The Committee found the facts proved;**

**The Committee found that you have committed misconduct;**

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

**Charge:**

That, being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), and whilst employed as a Care Assistant at Hawthorn House, Four Seasons Health Care:

1. On 19 July 2013, you were convicted of the following offences at Belfast Magistrates Court:  
Charge 1: Defendant on the 26th day of December 2011 in the County Court Division of Belfast unlawfully assaulted [Adult female] contrary to section 42 of the Offences Against the Person Act 1861.  
Charge 2: Defendant on the 26th day of December 2011 in the County Court Division of Belfast unlawfully assaulted [Juvenile female] contrary to section 42 of the Offences Against the Person Act 1861.
2. On 22 May 2014, you were convicted of the following offences at Belfast Magistrates Court:  
Charge 3: Defendant on 28th day of October 2013 in the County Court Division of BELFAST, intentionally touched [Adult female], 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 your actions as set out above amount to misconduct, such as to call into question your suitability to remain on the Social Care Register.

## **Preliminary Matters**

### **Service**

A Notice of Hearing, dated 26 January 2015, was sent to the Registrant by Special Delivery post and addressed to him at his last known address, informing him of the date, time and venue for this hearing. This Notice of Hearing was received and signed for by the Registrant on 27 January 2015. The Hearing bundle was sent to the Registrant by Special Delivery post on 12 February 2015, and was received and signed for by him on 13 February 2015.

The Committee considered an application from Mr Conrad Dixon, Council Solicitor, that the Notice of Hearing had been properly effected in accordance with the Rules, and took account of the advice from the Legal Adviser.

The Committee is satisfied that the Notice of Hearing has been served on the Registrant in accordance with Rule 3 of the NISCC (Conduct) Rules 2014.

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

Mr Dixon made an application to proceed in the absence of the Registrant, pursuant to Paragraph 14 of Schedule 2 of the 2014 Rules. The Committee was advised that it had a discretion as to whether to proceed in the Registrant's absence. The Legal Adviser emphasised that this was a discretion which the Committee had to exercise cautiously. She referred it to a number of factors which it should consider, and that the Registrant had not notified the Council of any intention to attend or be represented at today's hearing. The Committee also noted that the Registrant had not made any application to postpone the proceedings.

Having considered the issue, the Committee reached the unanimous decision that it was appropriate to proceed in the Registrant's absence. The Committee was satisfied that the Registrant had voluntarily waived his right to attend the hearing, and took the view that there was a public interest in proceeding without further delay. The Committee observed that if it was to postpone the hearing, there was no reason to believe that the Registrant would be any more likely to attend on a future date.

### **Application to admit Hearing Bundle**

Mr Dixon made an application for admission of a bundle of documents, by way of evidence, under Paragraph 11 of Schedule 2 of the 2014 Rules. He advised the Committee that these documents provided background information as regards the Charges, and this was highly relevant to the hearing today. He referred the Committee to the Certificates of Conviction within the bundle as referred to in the Charges. He confirmed that the bundle had been served on the Registrant, and that the Registrant had raised no objections as regards its contents.

The Committee accepted the advice of the Legal Adviser and, having considered Mr Dixon's submissions, decided it would be appropriate to admit the bundle of documents into evidence. The Committee notes that the Registrant was provided with a copy of this bundle of documents and has raised no objection to this information

being put before the Committee at this hearing. The Committee reminded itself to take into account issues as regards hearsay evidence in considering this bundle of documents, and the appropriate weight to be given where there is no opportunity to question or assess credibility.

The Committee further notes the typographical error on the Certificates of Convictions, which spell the Registrant's surname as 'Pinela'. The Committee has taken account of both the Registrant's application for renewal of registration with the NISCC, and the letter of 01 July 2014 from the PSNI, both of which confirm the Registrant's surname as being spelt 'Pinuela'. In particular, the Committee notes that the Registrant's renewal application acknowledges, and makes reference to, the Certificates of Conviction as included in the hearing bundle. In view of this, the Committee accepts the Certificates of Conviction and is satisfied that, taking into account relevance and fairness, these Certificates of Conviction refer to the Registrant.

## **Background**

The Registrant is registered at Part 2 of the Social Care Register. The Registrant was employed as a care assistant at Hawthorn House Care Home, Four Seasons Health Care, from August 2004. The Registrant first registered with the NISCC in June 2008, and his employer referred him to the NISCC on 09 June 2014 as regards the Registrant being convicted of a sexual offence. The Registrant applied to renew his registration with the NISCC on 10 June 2014 and revealed the convictions as set out in the Charges. He indicated that the conviction on 22 May 2014 for a sexual offence was under appeal.

The Registrant was dismissed from his employment on 30 July 2014 due to his failure to disclose criminal convictions.

The Registrant's appeal against his conviction for sexual assault was dismissed on 29 September 2014.

## **Evidence**

Mr Dixon referred the Committee to the Certificates of Conviction against the Registrant contained in the bundle of documentary evidence. He drew the Committee's attention to the conviction on 19 July 2013 when the Registrant was convicted of unlawful assault of two females, which occurred on 26 December 2011, and to which he pleaded guilty. The Court on this occasion imposed a sentence of imprisonment of two months suspended for two years for each of these two offences. Mr Dixon further referred the Committee to the Certificate of Conviction, on 22 May 2014, when the Registrant was convicted of intentional sexual touching without consent, and was sentenced to probation for two years, with his name being placed on the Sex Offenders' Register for five years. The Registrant had pleaded not guilty to this Charge and subsequently appealed the decision of the Magistrates' Court. This appeal was heard on 29 September 2014 and was dismissed with the original sentence confirmed.

In view of the finding on 29 September 2014, the Court considered the two months' suspended sentence and decided to take no further action.

In addition, Mr Dixon referred the Committee to a letter dated 01 July 2014 from the PSNI, Detective Chief Inspector Peter Galbraith. This correspondence confirmed that, in relation to the convictions for common assault, the Registrant admitted to assaulting two females and holding a knife up to scare them. The police described this matter as a domestic incident, with an initial report from the women that the Registrant had been violent and aggressive to them. This correspondence also gave information regarding the Registrant's conviction on 22 May 2014 for sexual assault, arising out of an incident which occurred on 28 October 2013. On this occasion, the police received a report from a female that the Registrant had sexually assaulted her at her home, causing injury. The police who attended on this occasion observed a bruise to the female's stomach and photographic evidence was obtained.

Mr Dixon further referred the Committee to the application form received from the Registrant for renewal of his registration, dated 10 June 2014. Within this renewal application, the Registrant provided details of his criminal convictions as set out in the Charges, and also indicated that the conviction of sexual assault was in the process of being appealed.

### **Finding of Facts**

In light of all of the documentary evidence and the submissions from Mr Dixon, the Committee accepts the Certificates of Conviction as conclusive proof in accordance with Paragraph 11 (5) of the NISCC (Conduct) Rules 2014.

In relation to the background to these Charges, the Committee took into account all of the documentary evidence produced and, in particular, the letter from Detective Chief Inspector Peter Galbraith, dated 01 July 2014. This letter provides detailed background to the circumstances surrounding the Charges, and the Committee is therefore satisfied that the facts as stated in the Charges have been proven on the balance of probabilities.

### **Misconduct**

Having made a determination on the facts, the Committee next turned to consider the issue of misconduct against the Registrant. In this regard, the Committee heard a submission from Mr Dixon on behalf of the Council. Mr Dixon referred the Committee to the NISCC Code of Practice and, in particular, to Paragraphs 5.7 and 5.8. He submitted that the Registrant's criminal convictions for common assault against two females, and sexual assault against another female, was evidence of behaviour falling well below the standard expected of an ordinary citizen, and therefore must amount to misconduct. In addition, he stated that the Registrant's actions also fall below the standards expected of a social care worker. He submitted that the public expectations as regards a social care worker were high, particularly when working with vulnerable members of society. He submitted that this behaviour had brought the professional practice of social care into disrepute and adversely affected the public confidence in the profession. The Committee also heard and accepted the advice of the Legal Adviser.

The Committee reminded itself that misconduct is defined in the Conduct Rules 2014 as 'conduct which calls into question the Registrant's suitability to remain on the Register'. The Committee also took account of the definition of misconduct recited in *Roylance v GMC (No.2)* [2000] 1 AC 311 at 330. In that case, the Privy Council said that 'misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances...it is not any professional misconduct which would qualify. The professional misconduct must be serious.'

The Committee reminded itself of the requirements of Paragraph 12 (1) of Schedule 2 of the Rules. The Council has brought these proceedings against the Registrant. The burden rests upon the Council to prove that the Registrant has acted in a manner which amounts to misconduct.

The Committee considers that the Registrant is guilty of misconduct. The facts as proved demonstrate a significant departure from acceptable levels of behaviour and fall short of the standard expected of a registered social care worker. The Registrant pleaded guilty to the Charges of common assault on females, and the Committee notes his use of a knife during this incident and his threats to kill. As regards the Registrant's conviction for sexual assault, the Committee notes that the female concerned was physically injured and that, as a result of the conviction, the Registrant was placed on the Sex Offenders' Register for a period of five years, and a Probation Order of two years was imposed. The Committee considers the Charges to be serious and to constitute serious misconduct, calling into question the Registrant's suitability to remain on the Social Care Register.

Having considered the NISCC Code of Practice for Social Care Workers, the Committee is satisfied that the Registrant breached the following sections of the Code:

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

- 5.7 Put yourself or other people at unnecessary risk; or
- 5.8 Behave in a way, in work or outside work, which would call into question your suitability to work in social care services.

### **Sanction**

The Committee heard a submission from Mr Dixon as regards sanction. He referred the Committee to the Indicative Sanctions Guidance and, in particular, Paragraph 5.4 which deals with sexual misconduct. He submitted that the Registrant's convictions were serious and his actions caused harm to three separate individuals. In particular, he submitted that the Registrant had re-offended when under a suspended sentence, and that this evidenced a lack of insight or remorse in relation to his behaviour. He asked the Committee to reflect on the serious nature of the criminal convictions and consider marking the Registrant's conduct by applying a suitably severe sanction. In addition, he submitted that the Committee should take account of the

failure by the Registrant to attend the hearing and demonstrate either remorse or insight, or provide testimonials or assurances of no repetition of his actions. Mr Dixon drew the Committee's attention to the letter from the Registrant, dated 02 October 2014, in relation to an Interim Suspension Order hearing. Mr Dixon said that it was clear from this correspondence that the Registrant no longer wished to be registered with the NISCC. Mr Dixon advised the Committee that the Registrant was currently subject to an Interim Suspension Order, which is due to expire on 09 March 2015.

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

In deciding which sanction to impose, the Committee has taken into account:

- a. The seriousness of the Registrant's misconduct;
- b. The protection of the public;
- c. The public interest in maintaining confidence in social care services; and
- d. The issue of proportionality.

The Committee has considered all sanctions available to it and, having considered the NISCC Indicative Sanctions Guidance for Conduct Committees (April 2014), has decided to make an Order for removal of the Registrant's registration from the Register.

Taking into account all of the evidence provided in this case, the Committee notes the very serious nature of the Registrant's criminal convictions. The Committee was advised that the Registrant has no previous disciplinary dealings with the NISCC, however no information was available as regards the financial impact on the Registrant of any Order the Committee makes. In considering sanction, the Committee notes that the Registrant failed to advise his employer of his convictions for two offences of common assault. In addition, the Committee notes that these criminal convictions relate to three injured parties and that, although they took place outside the work place, physical injury was sustained. The Committee notes that there is no evidence of remorse or apology from the Registrant, nor were references or testimonials provided. However, in addition, the Committee notes the Registrant, in his letter dated 02 October 2014, indicated that he no longer wished to be a registered member of the NISCC.

The Committee notes that the primary function of a sanction is to address public safety from the perspective of the risk which a Registrant may pose to those who require his or her services. The Committee has given appropriate weight to the wider public interest when reaching its decision on sanction:

**Admonishment** – the Committee did not feel that admonishment was the appropriate sanction in the circumstances of this case. Referring to Paragraph 4.10 of the Indicative Sanctions Guidance, the Committee observed that the Registrant satisfied virtually none of the factors set out there. Admonishment may be appropriate where the behaviour is at the lower end of the spectrum of misconduct. The Committee concluded that the Registrant's behaviour was at the higher end of the spectrum of misconduct. Further, the Committee did not think that a sanction of admonishment provided adequate public protection. Whilst the Committee was

advised that the Registrant had no previous disciplinary dealings with the NISCC, there are no details concerning his character or personal circumstances, and the Committee could not be satisfied that he posed no risk to the public or to vulnerable service users.

**Suspension** – the Committee did not think that suspension was the appropriate sanction in this case. The Registrant was convicted of common assault against two females and sexual assault against another female. These are serious offences, and the Committee notes the circumstances surrounding these convictions as set out in the letter from Detective Chief Inspector Peter Galbraith, dated 01 July 2014. The offence in Charge 1 took place on 26 December 2011, and the second offence in Charge 2 took place on 28 October 2013. The Committee notes that the Registrant committed the sexual assault whilst under a suspended sentence which had been imposed by the Court on 19 July 2013. The Committee considers that the Registrant's actions showed evidence of repeated behaviour with no insight into the effects of his actions. The Committee considers that the Registrant's behaviour was fundamentally incompatible with him continuing to be a registered social care worker. The Committee considers that suspension would not sufficiently protect the interests of any service user or the public at large, and there is no evidence before this Committee of any effort by the Registrant to remedy or resolve the cause of his misconduct. In the absence of any such evidence, the Committee is not satisfied that there is no real risk of the Registrant repeating the behaviour as evidenced in his criminal convictions.

**Removal** – the Committee regards this sanction as being necessary because of the serious nature of the Registrant's misconduct. In considering this sanction, the Committee had particular regard to Paragraph 5.1 – 5.6 of the Indicative Sanctions Guidance. The Registrant's criminal convictions for common assault and sexual assault are very serious matters. In addition, the Committee has taken into account the sentence imposed on the Registrant as regards his sexual assault conviction, with him being registered on the Sex Offenders' Register for five years from May 2014. The Committee considers that the Registrant's behaviour constituted a serious departure from the relevant professional standards as set out in the Code of Practice for Social Care Workers. As stated above, the Committee considers the Registrant's behaviour to be fundamentally incompatible with being a registered social care worker. The Committee considers that confidence in the social care profession would be undermined by allowing the Registrant to remain on the Social Care Register.

The Committee took into account the real prejudice to the Registrant in imposing a Removal Order, and thereby depriving him of a means of livelihood. However, any prejudice to him in imposing a Removal Order is easily outweighed by the interests of the public, service users, potential social care employers and the social care profession generally, in maintaining confidence in the social care profession, and in the NISCC as a professional regulator.

The Committee is satisfied that, in the circumstances of this particular case, a Removal Order is wholly proportionate and necessary.

The Interim Suspension Order currently in place until 09 March 2015 is hereby revoked.

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## Legal Advice Given

### Service & Proceeding in Absence

I have had an opportunity to consider the documentation and, as you are aware, Paragraph 4 Schedule 2 of the Conduct Rules governs the requirement that a hearing must not be fixed for hearing earlier than 28 days after posting of the Notice except with the agreement of the Registrant, and in this case I have had an opportunity to examine the documentation and the letter and Notice was sent by way of special delivery on the 26th, as Mr Dixon has said, of January 2015 and signed on the 27th January 2015. You have also got evidence of the bundle of documents being forwarded on the 12th February 2015. Can I just for the record confirm the bundle was sent on the 12th February 2015 and served on the 13th February 2015.

Where a Committee is satisfied that the Notice of Hearing has been duly served on the Registrant, you may either hear and determine the case in the absence of the Registrant or adjourn the hearing and give directions. This is a matter for your discretion. I would refer you to the case of Regina -v- Jones, which is a 2003 criminal case, and you will be familiar with this, and although it is a criminal case it has been proved as applicable in regulatory matters. In this case, Lord Bingham states that, and I quote:

*'The discretion to commence a trial in the absence of a defendant should be exercised with the utmost care and caution.'*

Therefore, as indicated by Mr. Dixon, you should consider whether an adjournment may result in the Registrant attending the proceedings at a later date, the time involved in an adjournment and the extent of the disadvantage to the Registrant in not being able to present his account of events. You should also, on the other hand, look at the seriousness of the allegations and the general public interest in this matter being dealt with, and also the interests of any victims.

I would remind you this Registrant is entitled to a fair hearing, to attend or to be represented, to test the Council's case and present any evidence he has on his own behalf. If, however, he has knowledge or the means of knowledge of today's proceedings, you may conclude that he has voluntarily absented himself and proceed in his absence. In considering this, you should look at whether the information provided to the Registrant was sufficient to advise him of the importance of attending here today, and you have a copy of the Notice and confirmation that he has had service of the Notice, which contains the information that the Rules say should be provided to him.

You should consider any information before you as to why this Registrant is not present, whether this was a decision made by him not to attend today, and whether this decision was made on an informed basis. You should look at the charges and the allegations, and consider if they have been particularised so that this Registrant understands the case against him and the importance of attending today.

The principle of fairness applies equally to the presentation of the Council's case. Therefore, in exercising your discretion, you must balance the rights of the Registrant against the wider public interest in the expeditious



disposal of the matter. If you consider the hearing should continue in the absence of the Registrant, you must avoid reaching any improper conclusions about his absence and must not treat this absence as admission of guilt in any way.

### **Finding of Facts**

At this stage, the fact finding stage of the proceedings, you as a Committee must consider all of the evidence received, bearing in mind that the burden of proof lies with the Council and that the standard of proof is on the balance of probabilities. The Council has brought the proceedings and it is up to them to prove its case. I would remind you that the Registrant does not have to prove he is innocent of these charges, and I would direct you to Schedule 2 of the NISCC Conduct Rules at paragraphs 12 and 22 in this respect. This means that a fact will be found proved if you consider it more likely than not to have happened. Your decision must be based on the evidence presented to you, and in this matter you have been presented with a bundle of documentary evidence and, in particular, three certificates of conviction which Mr. Dixon has highlighted to you along with the letter from the PSNI, dated the 1st July 2014, in which Detective Chief Inspector Peter Galbraith sets out the background to the charges.

I would again remind you not to draw any adverse inference as a consequence of this Registrant not attending today. You should consider each particular charge in turn, weighing and balancing the evidence that has been presented to you. As you are aware, and as Mr. Dixon has already highlighted, Paragraph 11 (5) of Schedule 2 of the Rules refers to the submission of a certificate of conviction, stating that the finding of facts and the certificate of conviction of any United Kingdom criminal court shall be conclusive proof of the facts or convictions so found. These certificates of conviction are a matter of public record and, in the circumstances, I would advise you it is proper for you to accept those certificates.

There is what I would suggest is an error in the spelling of the Registrant's name on those certificates of conviction, which appear to leave out one letter and I think the letter is 'U'. But I think you have enough evidence before you in terms of the solicitor's correspondence, the letter from Detective Chief Inspector Galbraith and the Registrant's own acknowledgment of the certificates to accept those certificates. Paragraph 11 of Schedule 2 of the Conduct Rules allows you to admit documentary evidence, whether or not it would be admissible in a court of law, subject to the requirements of relevance and fairness, and I think these certificates bring you within that ruling. These documents are relevant to the charges, and they have been served on the Registrant, and I do not think there, therefore, is any unfairness in you accepting those documents.

### **Misconduct**

Misconduct has been defined in the Northern Ireland Social Care Council Rules as conduct which calls into question the suitability of the Registrant to remain on the Register. I would remind you that, as Mr Dixon has indicated, there is no admission of misconduct in this case. In considering this question, reference must be made to the Northern Ireland Social Care Council Code of Practice. You have been specifically referred to Sections 5,

5.7 and 5.8, and you must yourselves as a Committee consider whether any breaches of the Code have occurred, and you must be satisfied that it is more likely than not that the conduct which you have found occurred in your findings of fact amounts to misconduct in contravention of the Code.

You should take into account all the documentary evidence before you today and, as previously advised, subject to the considerations of fairness and relevance, you must give this documentary evidence such weight as you consider necessary and appropriate.

Guidance is found in the case of *Roynance -v- General Medical Council*. It is a 1999 case. In this case, the Judicial Committee of the Privy Council stated that:

*'Misconduct is a word of general effect involving some act or omission which falls short of what would be proper in the circumstances. Standards of propriety may be found in the rules a practitioner is required to follow. In addition the professional conduct in question...'*, which in this case is that of a social care worker, *'...must be of a serious nature.'*

Importantly, when considering the issue of misconduct, you will bring your own professional expertise to bear. You are aware, as always, that it is the Council's responsibility to discharge the burden of proving misconduct. You will be aware that the more serious the allegation the more cogent the evidence required to prove it.

In the 2007 case of *Mallon -v- General Medical Council*, misconduct was described as *'Wrongful or inadequate mode of performance of professional duty.'*

In the case of *Meadows -v- General Medical Council*, the Court of Appeal indicated that misconduct should not be viewed as anything less than serious professional misconduct, and that conduct in any given case must be serious before being branded as misconduct in the professional context.

In the 2010 case of *Remedy UK Limited -v- General Medical Council*, the Court took the opportunity to review several relevant cases in relation to the meaning of misconduct and it is of assistance to you. It indicates that:

*'Misconduct may involve sufficiently serious misconduct in the exercise of professional practice or conduct of a morally culpable or otherwise disgraceful kind which may occur outside the course of professional practice. This includes dishonourable conduct which brings the profession into disrepute and it does not matter that the conduct is not directly related to the exercise of the professional skills.'*

I would again repeat my previous advice that you should not draw any adverse inference as a consequence of the Registrant not giving evidence or attending today.

## **Sanction**

Paragraph 25 of Schedule 2 of the Northern Ireland Social Care Council Conduct Rules 2014 sets out the available sanctions open to you as a Committee at this stage and you, Madam Chair, have already set out your powers for the benefit of the record. In determining the appropriate sanction, you are obliged to take into account the following factors: firstly, the seriousness of the Registrant's misconduct; secondly, the protection of the

public; thirdly, the public interest in maintaining confidence in social care services. Overarching this, you have to consider the issue of proportionality, weighing on the one part the Registrant's interest against, on the other part, the interests of the public. I would also refer you to the Indicative Sanctions Guidance, and remind you that the purpose of sanctions is not punitive. Paragraphs 2.4, 2.5 and 2.6 of the Guidance deal with the considerations of fairness and proportionality.

You should consider the question of sanction in ascending order of severity, beginning your deliberations by considering admonishment first. The primary purpose of sanctions is the protection of the public and the maintaining of the reputation of the profession, and you will be guided by Paragraphs 2.2 and 2.3 in the Guidance as regards this. This directs you, and reminds you, that the public should have confidence that the NISCC will uphold proper standards of behaviour and conduct in regulating social care workers. Public interest requires that both the public and social care users are protected from unsafe practice and that confidence in the social care workforce is maintained. In serving that public interest, the purpose of sanctions is to ensure that the social care worker does not have an opportunity to repeat the misconduct and also maintain the reputation of the profession.

In relation to consideration of any aggravating or mitigating circumstances, you have the submissions of Mr Dixon. Unfortunately, you have no evidence before you as to any mitigating factors other than this Registrant has no previous disciplinary involvement with NISCC. You also have no information as to the financial impact of any Order you consider or will make on the Registrant. I would direct you to pay attention to the Registrant's letter of 2nd October 2014. You have also been advised there is currently an Interim Suspension Order in place, and that is due to expire on the 9th March 2015.


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### **Right of Appeal**


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 Conduct Committee's decision takes effect from the date upon which it was made.**

**The effect of this decision is that your entry on the Register has been removed with immediate effect and you are prohibited from working as a social care worker.**



Committee Manager



Date