



Gofal Cymdeithasol **Cymru**
Social Care **Wales**

**Guidance on
Indicative Disposals
for the Fitness to Practise Panel
and
Interim Orders
imposed by the Interim Orders Panel and
Fitness to Practise Panel**

April 2017

INDICATIVE DISPOSALS FOR FITNESS TO PRACTISE PANELS

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This document should be read in conjunction with the following legal documents that regulate Social Care Wales' fitness to practise hearings process:

Regulation and Inspection of Social Care (Wales) Act 2016 (the Act);

<http://www.legislation.gov.uk/anaw/2016/2/contents/enacted>

Regulations

[Social Care Wales \(Extension of Meaning of Social Care Worker\) Regulations 2016 - June 2016](#)

<http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=16524>

[Social Care Wales \(Constitution of Panels Prescribed Person\) Regulations 2016 - June 2016](#)

<http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=16521>

[Social Care Wales \(Content of Register\) Regulations 2016 June 2016](#)

<http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=16523>

[Social Care Wales \(List of Persons Removed from Register\) Regulations 2016 - June 2016](#)

<http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=16522>

[Social Care Wales \(Proceedings before Panels\) Regulations 2016 - June 2016](#)

<http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=17273>

[Social Care Wales \(Specification of Social Care Workers\) \(Registration\) Regulations 2016 - June 2016](#)

<http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=16525>

This document refers to social care workers, which relates to social workers, social care workers, social care managers, social work students.

PART I:

INDICATIVE DISPOSALS GUIDANCE FOR FITNESS TO PRACTISE PANEL

1. GENERAL PRINCIPLES REGARDING DISPOSALS

1.1 The role of a Fitness to Practise panel in reaching its decision on a disposal involves a three-stage process.

Under the Social Care Wales (Fitness to Practise Hearings) Rules 2017 a panel shall:

- Stage 1: make findings on fact
- Stage 2a: determine if one of the 6 grounds for impairment is found proved, e.g., misconduct, health.
- Stage 2b: determine if current impairment of fitness to practise exists
- Stage 3: if current impairment exists, which disposal, if any, should be imposed

Purpose of a disposal

1.2 The primary purpose of a disposal is not to be punitive, but to protect the public and the wider public interest although it may have a punitive effect.

Concentrate on the 'now' not what has happened in the past.

Public Interest

1.3 There is clear judicial authority that the public interest includes:

- (a) The protection of members of the public;
- (b) The maintenance of public confidence in social care workers and the profession as a whole;
- (c) Declaring and upholding proper standards of conduct and competence.

1.4 The public interest may also be served by applying conditions relating to the registered person's return to work if he or she lacks certain skills, competencies, knowledge.

Proportionality and the burden and standard of proof

- 1.5. (1) The burden of proof in proceedings before the Fitness to Practise panel shall rest upon Social Care Wales.
- (2) Where facts are in dispute, the panel shall decide the facts on the civil standard, applying the balance of probabilities. (Social Care Wales Fitness to Practise Hearings Rules, rule 10). However, where the panel is considering the issue of impairment or where it is considering disposals, there is no burden or standard of proof.
- 1.6 The European Court of Human Rights in the case of *Soering v United Kingdom* [1989] 11 EHRR 439 referred to proportionality as, “*the search for a fair balance between the demands of the general interest of the community and the requirements of protection of the individual’s fundamental rights*”.
- 1.7 In deciding on the appropriate disposal the panel should apply the principle of proportionality, weighing the interests of the public (as above) against those of the registered person.
- In addition, the panel will need to consider any mitigating factors in relation to the seriousness of the impairment in question. The extent to which mitigating factors should influence a decision is dependent on the individual circumstances in the case and is at the discretion of the panel.
- Section 3 of this guidance contains further information on considering mitigating and aggravating factors, references and testimonials and expressions of regret.
- 1.8 The panel must ensure that when announcing reasons, proportionality is clearly shown to have been considered, see Approach, below.

Approach

- 1.9 A panel should approach the task of deciding which disposal to impose in all the circumstances of the particular case by starting with the least restrictive disposal and work upwards from there.

At each stage, a panel should state in their agreed reasons why a particular disposal was not appropriate or sufficient to protect the public and/or was not in the public interest and then move to the next (see ‘Reasons’ below).

A panel should continue in this way until it reaches the disposal it considers is appropriate. To sense-check its decision, the panel should always consider the next most serious disposal and whether it would be proportionate or disproportionate in comparison to the disposal it selected initially.

Reasons

- 1.10 A Panel must give full reasons for the imposition of a disposal in every case. The reasons must be adequate and must allow a registered person, or any other interested party, to understand why a particular disposal was chosen in preference to others that were available (see ‘Approach’ above).

- 1.11 The reasons should indicate why the decision taken by a panel is considered to be proportionate in all the circumstances. By setting out intelligible and adequate reasons, the registered person, Social Care Wales, the public, those who gave evidence to a panel and the Welsh Government will be able to see and understand why and how a particular decision has been reached.
- 1.12 As the registered person has the right to appeal to the First-tier Tribunal (Care Standards) a full explanation of the reasons for the decision will assist the registered person in deciding whether or not to exercise their right to appeal and, if that right is exercised, will help the Tribunal in determining any such appeal.

Writing reasons

- 1.13 The reasons for a decision of a panel should cover:
- the factual basis of the decision;
 - the legal basis of the decision, (with additional advice from the Legal Adviser if necessary);
 - the conclusions reached on the principal important controversial issues - disclosing how any issue of law or fact was resolved;
 - confirmation that a panel has or has not accepted legal advice given to it by the Legal Adviser;
 - a panel's conclusions on the submissions made to it by the parties or their representatives, including mitigating factors;
 - the panel's conclusions on any evidence given by witnesses or testimonial evidence submitted;
 - the reasons for any disposal imposed and why other disposals were not imposed.

Guidance on cases considered by a Fitness to Practise Panel

- 1.14 A Fitness to Practise panel which sits in public will consider charges against the registered person and decide whether the registered person's practise is impaired.

A Fitness to Practise panel may sit in private if the impairment may be due to the registered person's adverse physical or mental health and will consider medical evidence to establish if the impairment was caused by or substantially contributed to by the registered person's adverse mental or physical health.

Guidance on considering conviction cases and findings of facts by other regulators

- 1.15 As the primary purpose of a disposal is to protect the public and the wider public interest a panel should not take into account in its consideration that a registered person may already have suffered personally or professionally for their impairment in prior criminal proceedings, another regulatory body's proceedings or disciplinary proceedings by an employer.
- 1.16 A panel should bear in mind that a sentence or sanction previously imposed is not necessarily a definitive guide to the seriousness of the offence. There may have been circumstances that led the court or regulatory body to be lenient. For example, despite sentencing guidelines, judges differ in their approach to sentencing. There are also different sentencing powers available to the courts. Similarly, the range of sanctions and how they are applied may vary significantly between regulatory bodies.
- 1.17 A panel's role is to balance the nature and gravity of the offence/s, mitigating factors such as remorse and insight and length of time since the offence (see 'section 2 below')

and their bearing on the registered person's suitability to practise as a social care worker, against the need for the imposition of a disposal and its consequences upon the registered person's ability and suitability to practise.

2. MITIGATING AND AGGRAVATING FACTORS

2.1 A panel should weigh the mitigating factors against the aggravating factors relevant in each case. The registered person may raise or refer to mitigating factors at any point during the proceedings.

Mitigating factors

2.2 The following is a list of possible mitigating factors, although a panel should bear in mind this list is not exhaustive:

- length of time since the incident/s and any good practice in the meantime (with proof of such good practice supplied);
- co-operation with the investigation by Social Care Wales;
- compliance with any previous assessment or conditions;
- early admission of facts alleged;
- insight: can be defined as the expectation that a social care worker will be able to stand back and accept that, with hindsight, they should have behaved differently, and that it is expected that he or she will take steps to prevent a recurrence.
- behaviour was an isolated incident, which was not deliberate or premeditated;
- genuine expression of regret/apologies;
- acting under duress;
- previous good history;
- character and previous history of the registered person;
- evidence that rehabilitative/corrective steps have been taken;
- relevant and appropriate references and testimonials;
- circumstances leading up to the incident/s;
- impact on victim – to include both harm and potential harm;
- evidence that the behaviour would not have caused direct or indirect harm to an individual who uses services;
- the impairment took place outside work and not in performance of the registered person's professional duties;
- no individual who uses services was with the registered person at the time of the impairment;
- if a registered person was asked by the employer to act or carry out certain duties in order to meet targets.

Where a panel is addressed on mitigating factors, it should consider the relevance of those factors and the weight to be given to them in accordance with the terms of Section 3 (Disposals) in each case.

Aggravating factors

2.3 The following is a list of possible aggravating factors, although a panel should bear in mind this list is not exhaustive:

- dishonesty;
- abuse of trust;
- concealment of wrong-doing;

- pre-meditated actions;
- lack of insight: insight can be defined as the expectation that a social care worker will be able to stand back and accept that, with hindsight, they should have behaved differently, and that it is expected that he or she will take steps to prevent a recurrence;
- lack of regret/remorse;
- risk posed to and/or impact on complainant, victim/s and witnesses;
- failure to co-operate with Social Care Wales investigation;
- circumstances leading up to the incident/s;
- serious disregard for Social Care Wales Code of Professional Practice for Social Care;
- offending in the light of previous findings of misconduct/impairment;
- previous convictions;
- the impairment took place at work or during the course of the registered person's professional duties;
- an individual who uses services was with the registered person at the time of the impairment.

Where a panel is addressed on aggravating factors, it should consider the relevance of those factors and the weight to be given to them in accordance with the terms of Section 3, in each case.

Guidance on considering references and testimonials

2.4 The registered person may present references and testimonials. In considering these, a panel should explore and take into account the following factors:

- how recent they are;
- the "expertise" of the writer;
- the actual level of knowledge the writer has of the registered person and, where relevant, the registered person's recent practice;
- whether the writer is aware of the allegations;
- whether the writer is aware that their letter is to be put to a panel as mitigating factors evidence;
- whether the reference/testimonial is genuine;
- whether it has been signed and dated.

2.5 A panel must be satisfied of the validity of a document before it can be accepted and the above list should help them in this task.

2.6 A registered person may present references and testimonials as to their standing in the community or profession. These need to be weighed appropriately against the nature of the incident. The quantity, quality, and spread of references and testimonials will vary from case to case. This will not necessarily depend on the standing of a registered person.

There may be cultural reasons for not requesting references or testimonials. In addition, acquiring references and testimonials may pose a difficulty for newly arrived overseas qualified social care workers, or newly qualified and/or appointed social care workers.

2.7 The absence of references or testimonials may not necessarily count against a registered person.

- 2.8 All the factors outlined above should be considered when looking at references and testimonials.

Expressions of regret and apology

- 2.9 The social care profession and the public have a number of expectations, including that individuals who use services should be protected from similar events recurring, and social care workers should take positive steps to take responsibility and learn from their mistakes, or when things go wrong (Openness and honesty when things go wrong: the professional duty of candour).¹

- 2.10 The insight of the registered person is an important factor. A registered person should be able to admit that he/she has accepted that, with hindsight, they should have behaved or acted differently, and that it is expected that he or she will take steps to prevent a recurrence.

There may be cultural differences in the way that insight is expressed for example, how an apology or expression of regret is framed and delivered and the process of communication.

- 2.11 Cross-cultural communication studies show that there are great variations in the way that individuals from different cultures and language groups use language to code and de-code messages. This is particularly the case when using a second language, where speakers may use the convention of their first language to frame and structure sentences, often translating as they speak and may also be reflected in the intonation adopted. As a result, the language convention, subtleties, or nuances of the second language may not be reflected.

- 2.12 In addition, there may be differences in the way that individuals use non-verbal cues to convey a message, including eye contact, gestures, facial expressions, and touch. These issues may also apply to individuals with a sensory impairment. Awareness of and sensitivity to these issues are important in determining the following:

- how a registered person frames his or her insight;
- how a registered person offers an apology;
- the registered person's demeanour and attitude during the hearing.

- 2.13 The main factor is that the registered person has recognised that steps are required to be taken to remedy the failures and it is not simply the form in which this may be expressed that is relevant.

- 2.14 A panel should take account only of evidence actually put before it, for example, testimonials. A panel should not draw any adverse inferences from an absence of such evidence because:

- there may be cultural or other reasons why a registered person would not solicit testimonials from colleagues or individuals who use services; and such inferences would be likely to be influenced by assumptions about the sort of references that might have been produced, assumptions that are untested.

- 2.15 If a registered person's impairment shows they are fundamentally unsuitable for registration as a social care worker, no amount of remorse or apologies – or indeed

¹ The Care Council for Wales Explanatory guidance for social care professionals registered with the Care Council for Wales

positive personal qualities in other respects, can “mitigate” the seriousness of that conclusion and its impact on registration.

Persuasive evidence of rehabilitation and a credible commitment to high standards in the future will be directly relevant to the question of suitability to practise, to the registered person’s credit, even though there may have been a lapse in the past, possibly a serious one.

- 2.16 Evidence of mitigating circumstances surrounding proven impairment can be helpful in forming a picture of how a registered person has responded to stresses in life and professional practice, which may be significant in relation to the question of impairment. Evidence that lapses have been associated with extreme circumstances that no longer exist may give some degree of reassurance, but the risk of recurrence of stressful circumstances may be relevant to the evaluation of risk (and hence to the disposal).
- 2.17 Four issues to consider when deciding upon impairment:
- i) Has the registered person acted so as to pose a risk to an individual who uses services and/or is s/he liable to do so in the future?
 - ii) Has the registered person brought the profession into disrepute and/or is he/she liable to do so in the future?
 - iii) Has he/she breached one of the fundamental tenets of the profession and/or is he/she liable to do so in the future?
 - iv) Can his/her integrity be relied upon?²

3. DISPOSALS

- 3.1 A registered person’s fitness to practise may be impaired by reason of one or more of the following grounds:
- a) deficient performance as a social care worker;
 - b) serious misconduct (whether as a social care worker or otherwise);
 - c) adverse physical or mental health;
 - d) a conviction or caution in the United Kingdom for a criminal offence or a conviction or caution elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;
 - e) a determination by a relevant body³ to the effect that the person’s fitness to practise is impaired;
 - f) inclusion of the person in a barred list such as a list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006
- 3.2 Deficient performance as a social care worker may include;
- a) an instance of negligence;
 - b) a breach of an undertaking agreed with Social Care Wales;
 - c) a breach of an undertaking agreed with a Fitness to Practise panel;
 - d) a failure to comply with the Code of Professional Practise for Social Care.

² Dame Janet Smith produced the list of four issues to bear in mind when considering Impairment, in the 5th Shipman Report.

³ The Health and Care Professions Council (HCPC), the Nursing and Midwifery Council (NMC), The Scottish Social Services Council (SSSC), the Northern Ireland Social Care Council (NISCC), a body outside of the UK which is responsible for the regulation of activities which would, in Wales, be regulated by Social Care Wales

3.3 Serious Misconduct

'Serious misconduct' is not defined in the Act. However, there have been some judicial pronouncements on the meaning of serious professional misconduct as it applies to other regulators. For example, in *Roylance v. General Medical Council (No 2)* [2000] 1 AC 311 at 330-332, Lord Clyde said, "serious professional misconduct" is not statutorily defined and is not capable of precise description or delimitation. It may include not only misconduct by a doctor in his clinical practice, but misconduct in the exercise, or professed exercise, of his medical calling in other contexts, such as that in the giving of expert medical evidence before a court. As Lord Clyde might have encapsulated his discussion of the matter in *Roylance v. General Medical Council*, it must be linked to the practice of medicine or conduct that otherwise brings the profession into disrepute, and it must be serious.

As to seriousness, Collins J. in *Nandi v. General Medical Council* [2004] EWHC 2317 (Admin), rightly emphasised, the need to give it proper weight, observing that in other contexts it has been referred to as "conduct which would be regarded as deplorable by fellow practitioners."

Conduct that is removed from the professional practice of a registered person may amount to serious misconduct. In *A County Council v. W (Disclosure)* [1997] 1 FLR 574, the Court considered whether the alleged sexual abuse by a medical practitioner of his daughter was too remote from his profession. Cazalet J said, at p581, that: "it seems to me that this doctor can be said, if he had sexually abused his daughter, to have demonstrated conduct disgraceful to him as reflecting on his profession and/or indeed conduct disgraceful to him as a practising doctor."

3.4 Barred List

Some individuals may have been deemed unsuitable to work with vulnerable people and are therefore placed on a list which prohibits them from working in social care.

A barred list is defined in the Act as;

- a) a list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012).
- b) a list kept under section 1 of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp.14);
- c) a list maintained under Article 6 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (s.I. 2007/1351)

3.5 Disposals

Where a registered person's fitness to practise is deemed to be impaired, these are the disposals available to the panel;

- removal of the registered person's entry from the register by agreement;
- agree undertakings with the registered person;
- take no further action;
- a warning to the registered person in respect of future conduct or performance;

- a conditional registration order – imposing conditions on the registered person’s registration;
- a suspension order – suspending the registered person’s registration (including indefinite suspension orders);
- a removal order – removal of the entry relating to the registered person in the register.

A panel may not impose a removal order if the only ground on which the registered person’s fitness to practise is impaired is adverse physical or mental health.

3.5.1 Removal by Agreement

A removal by agreement would be open to the panel where a registered person has applied for their entry on the register to be removed by agreement and has agreed to a statement of facts.

Where a panel thinks that the public interest requires a full hearing of the allegations, the removal by agreement should not be granted.

In this context, the panel should be mindful of the fact that, where an individual is removed from the register by agreement pursuant to an application under section 92 of the Act, there are no restrictions on the ability of that individual to make an application to renew his or her registration at any time. In contrast, where a removal order is made under section 97 of the Act following fitness to practise proceedings, the individual may not make an application for restoration to the register for a period of 5 years beginning with the date that the order is made. It follows that the Panel should carefully consider whether removal by agreement is in the public interest where consideration of the case under the fitness to practise procedures is an alternative possibility.

3.5.2 Undertakings

An undertaking would be an option for the panel where a registered person admits his or her fitness to practise is impaired.

Where a registered person has;

- (a) admitted the allegation(s);
- (b) signed an agreed statement of facts;
- (c) admitted that his or her fitness to practise is impaired by reason of the matters set out in the agreed statement of facts;
- (d) agreed the terms of a proposed undertaking(s)

and the panel is satisfied that granting an undertaking would not be contrary to public interest, the undertaking may be granted by the Panel.

3.5.3 Warning

A warning may be open to the panel where, for example, a registered person has cooperated with Social Care Wales’s investigation, admitted the facts and impairment and showed insight, remorse and provided evidence, of remedial action taken to improve their practice since the allegations occurred.

The panel may give a warning in respect of the registered person’s future conduct or performance and may if appropriate and necessary, refer to specific parts of the Code of Professional Practice and any other relevant Practice Guidance.

3.5.4 Conditional Registration Order

A Conditional Registration Order must not exceed three years (but may be extended on review).

Conditions may be appropriate in cases involving particular areas of a registered person performance, for instance, following a single incident, or where there is evidence of shortcomings in a specific area or areas of the registered person's work, but where a panel is satisfied that it is appropriate for an individual to remain on the Register.

A panel should be satisfied that the registered person has displayed insight into their failings, and that there is potential for the registered person to respond positively to remediation/re-training, a health assessment where that is relevant, and/or to supervision of their work.

The purpose of conditions is, for example, to enable a registered person to remedy any deficiencies in their work and, where relevant and appropriate, to deal with their health issues while in the meantime protecting individuals who use services from risk of harm. In such circumstances, conditions might include requirements to undertake specific training e.g. alcohol awareness programmes or attaining specific qualifications.

The condition(s) should be SMART:

- **Specific**
- **Measurable**
- **Achievable**
- **Realistic**
- **Time bound**

In order to be **specific** the condition should impose clear requirements or restrictions. It must be clear to the registered person what is required.

An order should be **measurable** so that compliance with it can be monitored and reviewed where necessary.

All conditions should be **achievable**. No conditions should be imposed if it is unlikely or difficult to be complied with.

All conditions should be **realistic** as they should not impose a more onerous requirement than is required in order to protect the public and individuals who use services. However, in some extreme cases, very onerous conditions can be imposed.

Conditions should be **time bound** to ensure the registered person is clear when the condition should be complied with. The onus is on the registered person to produce relevant written evidence of compliance with the conditions to Social Care Wales.

There is no set time limit on its length – this will be for panel to set on a case by case basis, but the panel should ensure its length is realistic.

In formulating appropriate conditions a panel should also take into account the following questions:

- will the registered person be able to comply with these conditions?

- are the conditions proportionate and do they provide the necessary level of public protection?
- will they be enforceable if the registered person changes employment?

For example, if the conditions require the registered person to undertake specific training they should only be set at the standard reasonably required of and obtainable by a worker registered in that part of the Register.

i. Are the conditions directed at the right person and enforceable?

- do the conditions clearly impose obligations on the registered person?
- are any conditions mistakenly directed at someone else?
- are the conditions such that it is possible to determine when they have and have not been satisfied?

3.5.5 It is for the registered person to comply with the conditions which have been imposed, and in drafting conditions, care must be taken not to inadvertently impose a condition on a third party, such as an employer, which will not be enforceable. However the employer should support the registered person to fulfil the condition.

The panel should make it clear that the onus is on the registered person to find appropriate training courses or materials to meet the conditions and, if necessary should be paid for by the registered person.

This disposal may be appropriate when most or all of the following factors are present (this list is not exhaustive):

- the registered person is present and is able to confirm whether or not a condition is achievable and accepted;
- particular areas of the registered person's practice is in need of review, retraining or assessment;
- evidence of willingness to and potential to respond positively to further training and assessment;
- in cases involving adverse physical or mental health, evidence that the registered person has genuine insight into any health problem and is willing and able to abide by conditions relating to treatment, monitoring or supervision of the health problem;
- no evidence of harmful deep seated personality or attitudinal problems;
- insight;
- individuals who use services will not be put at risk directly or indirectly as a result of continued registration with conditions;
- the conditions will protect individuals who use services and the public during the period they are in force.

A panel may be convened to review and assess whether the conditions have been fulfilled. The review panel may vary the terms of the disposal or impose a different one.

3.5.6 Suspension Order

Suspension from the Register prevents a registered person from practising during the period of suspension. Removal from the register, albeit for an initial period of up to 12 months only, gives a clear message to the public and the profession about what is or is not appropriate conduct or practice for a social care worker.

Suspension from the Register may be an appropriate disposal for actions that are serious, although not at the most serious end of the spectrum and is not so serious as to

justify removal from the Register. For example, where there has been an acknowledgment of failings and where a panel is satisfied that the behaviour is unlikely to be repeated, and where the registered person has no psychological or other difficulties preventing them from understanding and seeking to remedy the failings and the failings are realistically capable of being remedied, then suspension may be appropriate.

A Suspension Order must specify the period for which it has effect. The length of the suspension may be for a period of up to 1 year and the duration is a matter of a panel's discretion taking account of all of the circumstances of the particular case.

The suspension order may state that it must be reviewed in accordance with the arrangements specified within it.

Suspension may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):

- serious incident of misconduct where suitability is impaired and where a lesser disposal is not sufficient, but removal is not warranted;
- behaviour is not fundamentally incompatible with continuing to be a registered social care worker in the long term;
- interests of individuals who use services and the public are sufficiently protected by suspension;
- no real risk of repeating the behaviour;
- no evidence of harmful deep-seated personality or attitudinal problems;
- no evidence of a repetition of the behaviour since the incident/s;
- insight;
- where the evidence demonstrates that the registered person will be able to resolve or remedy the cause of the impairment during the period of suspension.

Where a registered person's fitness to practise is impaired by reason of adverse physical or mental health alone and not on any other ground, the option of a removal order does not exist. A suspension order may be appropriate where the registered person's health is such that the registered person cannot practise safely even under conditions. In such cases, a panel may wish to direct a review hearing as to whether the registered person is then fit to resume practise either under conditions or unrestricted.

3.6 Removal

This is the most serious disposal that a panel can impose. A removal order may not be made if the only ground on which a panel has determined that a registered person's fitness to practise is impaired is adverse physical or mental health.⁴ This disposal is likely to be appropriate when the registered person behaviour is fundamentally incompatible with being a registered person and may involve any of the following (this list is not exhaustive):

- doing serious harm to others (individuals who use services or otherwise), either deliberately or through gross neglect and particularly where there is a continuing risk to users of services;
- abuse of position/trust (particularly involving vulnerable individuals who use services) or the violation of the rights of individuals who use services;
- dishonesty (especially where persistent or covered up);

⁴ Section 138(10) of the Act

- persistent lack of insight into seriousness of actions or consequences;
- blatant disregard for/serious departure from the relevant professional standards set out in the Code of Professional Practice for Social Care.

3.6.1 Removal should be used where there is no other way to protect the public, for example, where there is a lack of insight, continuing problems and a pattern of unacceptable behaviour or denial and there is no evidence that there is likely to be satisfactory remediation, and where confidence in the social services profession would be undermined by allowing the registered person to remain on the Register.

4. REVIEW HEARINGS

4.1 The Fitness to Practise panel has the ability to review a disposal made by a previous panel.

The panel must consider, based on the evidence submitted by the parties, whether the registered person's fitness to practise is still impaired and whether the disposal made by the previous panel is still relevant, necessary and proportionate.

4.2 A panel should have regard to the examples of impairment in section 5, below, in reaching its decision.

5. EXAMPLES OF IMPAIRMENT RELEVANT TO DISPOSAL

5.1 A panel may have regard to the examples of impairment in this section in reaching its decision (these are not exhaustive).

Cases of a sexual nature

5.2 This encompasses a wide range of conduct and can include, but is not limited to: criminal convictions for sexual assault and sexual abuse of children (including child offences involving indecent images of children), sexual misconduct with individual who use services, their carers and relatives, or with colleagues.

The behaviour is particularly serious however, where there is an abuse of the special position of trust that a registered person occupies, or where a registered person has been subject to notification requirements as a sex offender.

5.3 The risk to individuals who use services and the public is an important consideration. In such cases removal from the Register is likely to be the appropriate disposal to uphold public confidence in social services.

Sex offenders and offences involving indecent images of children

5.4 A panel should take account of the serious effect continued registration of those convicted of sexual offences has on the public and on individuals who use services. Such offenders will include those who are 'registered sex offenders'. Continued registration of convicted and/or registered sex offenders can seriously undermine public trust.

5.5 In determining the appropriate sanction in such cases, panels need to be aware that the Court of Appeal (in *R v Oliver* [2003] 1 Cr. App. R. 463) established a test for determining the seriousness of offences involving downloading indecent images of

children from the internet by reference to (1) the nature of the activity undertaken and (2) the nature of the images involved. In relation to the nature of the activity, consideration needs to be given to:

- proximity to, and responsibility for, the original abuse;
- taking the original photographs is more serious than downloading images, which, in turn, is more serious than merely locating images on the internet; and
- any element of commercial gain or activity, which although not for gain, fuels demand for such images (e.g. swapping of material).

In relation to the nature of the images, we use the Sentencing Council Guidelines on *Possession of indecent photograph of child/indecent photographs of children*. This classifies the images in the following way:

- Category A: Possession of images involving penetrative sexual activity. Possession of images involving sexual activity with an animal or sadism.
- Category B: Possession of images involving non-penetrative sexual activity.
- Category C: Possession of other indecent images not falling within categories A or B.

- 5.6 Panels should ensure that in cases involving indecent of children, they take account of the appropriate guidance of the *Oliver* criteria. Social Care Wales considers that all cases involving indecent images of children involve some degree of exploitation or abuse of a child and the viewing, downloading and reproduction of such images creates further demand for them. Therefore any conviction for such an offence will be considered a serious matter which may undermine trust in a registered person and the profession. In such cases the panel may conclude that removal from the Register is an appropriate and proportionate sanction.

Dishonesty

- 5.7 The Code of Professional Practice for Social Care states that social care workers must be honest and trustworthy (section 2.1) and, must recognise and use responsibly the power that comes from their work with individuals who use services and carers (section 3.4). There is a scale of dishonesty and panels need to keep in mind how they have ranked the dishonesty in each particular case and at the various stages of proceedings leading up to the disposal. They need to ensure that the disposal reflects their decision about where on the scale the dishonest conduct lies.
- 5.8 Dishonesty is particularly serious because it may undermine trust in social care services.

Examples could include, but are not limited to:

- theft, fraud or embezzlement;
- lying to individuals who use services;
- lying to a manager or colleague, for example, about whether a work task has been undertaken;
- improperly amending records relating to individuals who use services;
- falsifying evidence or submitting or providing false references and information on a job application.

The public must be able to place complete reliance on the integrity of registered persons.

- 5.9 'Research misconduct' is an example of dishonesty. This term is used to describe a range of misconduct, for example, presenting misleading information in publications. Such behaviour undermines the trust that both the public and the profession have in social care work, regardless of whether this leads to direct harm to individuals who use services. Since it has the potential to have far reaching consequences, this type of dishonesty is serious.
- 5.10 Individuals who use services, employers, colleagues and others have a right to rely on the professional integrity of social care workers. Sometimes, life-changing choices about the options available to individuals who use services and significant financial decisions are made on the basis not only of the skill of registered persons but also of their honesty. Dishonesty, particularly when associated with professional practice, is so damaging to a registered person's suitability and to public confidence in social care services that removal may be considered to be the appropriate sanction.

Failing to provide an acceptable level of care

- 5.11 Cases in this category are those where a registered person has not acted in the best interests of an individual who uses services and has failed to provide an adequate level of care, falling well below expected standards. For example, an adult care home manager who is accused of failing to make POVA⁵ referrals, or a manager or worker accused of fraud, theft or physical and/or mental abuse of individuals who use services.

A particularly important consideration in such cases is whether or not the social care worker has, or has the potential, to develop insight into these failures. Where insight is evident, it is likely that a lesser disposal may be appropriate or sufficient.

Other abuse/s of position / trust (particularly involving individuals who use services or violation of the rights of individuals who use services)

- 5.12 Social care work relies on the existence of a close professional relationship in circumstances in which individuals who use services have little choice but to be trusting.

Individuals who use services rely upon the professional's trustworthiness, which they are entitled to because of the registered person's training and registration. Individuals who use services have the right to be protected from a social care worker who seriously abuses the trust placed on them not only for sexual purposes, as referred to above, but also for financial gain, or for some other purpose contrary to the interests of the individual who uses services. Social care workers need to establish and maintain professional boundaries.

Other serious abuse/s of the privileged position enjoyed by registered professionals

- 5.13 In addition to the responsibilities that come with the relationship with individuals who use services, registered persons have other privileges which society has given them on the understanding that they will be used responsibly and for legitimate professional purposes. A social care worker who abuses the trust placed on them should forfeit the privileges which come with registration.

⁵ POVA – Protection of Vulnerable Adults

Impairment caused by deficient performance as a social care worker such as to call into question the continued ability of the worker to practice safely

- 5.14 A commitment to continuous development of knowledge and ongoing competence is an essential aspect of a social care worker. A Panel should consider whether a registered person who is proven to have neglected this responsibility should remain on the Register.

Behaviour that is fundamentally incompatible with professional registration

- 5.15 A registered person's behaviour or the attitudes they demonstrate identify them as being unfit to be a member of a caring and responsible profession. This problem could be evidenced by serious or persistent disregard for the safety, rights and dignity of others or by serious criminality such as violent behaviour.

PART II:

INTERIM ORDERS – IMPOSED AND REVIEWED BY THE INTERIM ORDERS PANEL OR FITNESS TO PRACTISE PANEL

1. INTRODUCTION

- 1.1 In some cases Social Care Wales will seek an Interim Suspension Order (ISO) or an Interim Conditional Registration Order (ICRO) by an Interim Orders panel (under the Social Care Wales (Interim Orders) Rules 2017) or an Interim Suspension Order by a Fitness to Practise panel (under the Social Care Wales (Fitness to Practise Hearings) Rules 2017). This part of the document has been produced to assist the panels in making decisions on the imposition of such orders.
- 1.2 The aim is to promote consistency and transparency in the decision-making process. The legal tests to be applied, and the principles and factors which the panels should consider when reaching their decisions on imposing an ISO and ICRO are set out below.

Interim Suspension Order (ISO)

- 1.3 An ISO is an Order that temporarily suspends a registered person from the Register, without prejudice, while investigation or final hearing proceedings are underway, and thus from working in that capacity.

An ISO can be imposed up to a maximum of 18 months. The Order must be reviewed every six months. Either party can apply for the ISO to be reviewed at any point in the process. Social Care Wales may apply to the Care Standards Tribunal to extend or further extend an Order.

A registered person can attend a panel hearing that is considering imposing an ISO and can be represented and call witnesses and cross examine Social Care Wales witnesses (if any).

Interim Conditional Registration Order (ICRO)

- 1.4 An ICRO is an Order that temporarily places conditions upon a registered person's registration while investigation is underway.

As with an ISO, the Order will have a maximum time of up to 18 months, with set review periods, with the option for Social Care Wales to extend or further extend by application to the Care Standards Tribunal.

A registered person is invited to attend the Interim Orders panel when considering imposing an Interim Conditional Registration Order, and can be represented and call witnesses and cross examine Social Care Wales witnesses (if any).

- 1.5 The process for imposing and reviewing an ICRO is the same as that for an ISO e.g. the registered person is able to be present and be represented when the panel is considering this Order.

1.6 The types of conditions that could be imposed include:

- the registered person undertaking specific training within a defined period and providing evidence of the successful completion of that training to Social Care Wales.

The legal tests to be applied

1.7 Interim Orders panel, or a Fitness to Practise panel (in the case of an ISO) may impose an ISO or ICRO if it is satisfied that such an order is:

- (a) necessary for the protection of members of the public, or
- (b) is otherwise in the public interest, or
- (c) is in the interests of the registered person,

1.8 When making a decision on an ISO or ICRO, the Interim Orders panel or Fitness to Practise panel, is making that decision based on the evidence before it. The panel should consider, on the evidence before it, the risk of harm to the public, in particular to individuals who use services, and/or to the registered person if the ISO or ICRO is not imposed.

Public interest

1.9 There is clear judicial authority that public interest includes:

- (a) The protection of members of the public.
- (b) The maintenance of public confidence in social care workers and in the profession as a whole.
- (c) Declaring and upholding proper standards of conduct and competence.

1.10 The Interim Orders panel or Fitness to Practise panel should take account of the fact that the public should have confidence in Social Care Wales as a regulator of the social care workforce registered with it by upholding proper standards of behaviour and conduct.

The public interest requires that the public and individuals who use services are protected from unsafe behaviour or practice and that confidence in the profession of social care work and the social care workforce in general is maintained.

It is part of Social Care Wales' role to maintain standards and to protect the public from the risk of behaviour or practice by registered persons who, for any reason, whether competence, character or conduct, are incompetent or not fit to practise.

Fairness

1.11 There is a duty on the Interim Orders panel or the Fitness to Practise panel to act fairly and in accordance with the Rules and Act and to take account of the Code of Professional Practice for Social Care when reaching a decision on imposing an ISO or ICRO. In any particular case, a panel that considers an application for an interim order will not then deal with the fitness to practise proceedings; this will involve a different panel. What constitutes the standards of fairness in any proceedings is not fixed, as it may change over time and will depend on the circumstances of each case.

Proportionality

- 1.12 The principle of proportionality requires that the consequences of the ISO or ICRO that are imposed must not be disproportionate to the risk of harm from which the ISO or ICRO is intended to protect the public and the individuals who use services. An ISO or ICRO therefore requires a proportionate response to the alleged impairment and the risks which that impairment creates.
- 1.13 The interests of the public and individuals who use services have to be weighed against those of the registered person. In doing this the panels will need to take account of the potentially serious effect of an ISO or an ICRO on the registered person both financially and professionally.

The panel will also be required to take into account the wider public interest to be served in the approach to imposing an ISO or ICRO. In reaching their decision a panel ought not to have only a particular individual who uses services or a group of individuals who use services in mind.

2. GENERAL PRINCIPLES TO BE TAKEN INTO ACCOUNT

- 2.1 The decision as to whether or not to impose an ISO or ICRO will depend on the particular allegations and circumstances of each case. However, the following are relevant factors which the panels must take into account in reaching a decision:
- the seriousness of the allegation/s;
 - the likelihood of the alleged impairment being repeated before the final determination in the case;
 - the severity of the harm or risk of harm if the alleged impairment was to be repeated;
 - the effect on public confidence in the integrity of the regulation of the social care profession;
 - the other steps which could be taken to protect against the risk of the harm;
 - the registered person's previous character and employment history;
 - the hardship which may be caused to a registered person by an ISO or ICRO;
 - the assurance that may be taken by a prospective employer or individual who uses services if the registered person remains on the Register, about the good character, conduct and competence of the registered person.

Examples of alleged impairment to be taken into account in assessing risk of harm when considering the imposition of an Interim Order

- 2.2 As one of the principal factors a panel is required to take into account is the assessment of harm or risk of harm to an individual who uses services and/or the public, the panel should have particular regard to the seriousness of the following types of alleged behaviour:
- allegation/s of inappropriate relationship/s with an individual who uses services;
 - allegation/s of sexual or violent or indecency offences;
 - allegations of alcohol and/or drug abuse;
 - allegations of dishonesty;
 - any convictions relating to the above;
 - allegations of consistently poor practice including poor record-keeping over a period of time usually involving several different cases;

- timescale: when did the alleged behaviour happen and would imposing an order more than a few months after the event be necessary or appropriate.

3. DECISION

3.1 Where a panel is satisfied that in all the circumstances there may be:

- i. behaviour which poses a real risk to the public, may otherwise adversely affect the public interest and/or the interests of the registered person; and
- ii. after balancing the interests of the registered person and the public, the ISO or ICRO is necessary to guard against that risk,

the panel should impose an ISO or ICRO. In doing so the panel should consider the legal tests to be applied as set out in Section 1 (above) and the general principles set out in Section 2 (above).

Reasons

3.2 The panel must give reasons for the imposition of the particular Order in every case. The reasons must be adequate and allow a registered person to understand why the ISO or ICRO has been imposed.

3.3 The reasons should indicate why the decision taken by the panel is considered to be proportionate in all the circumstances. By setting out intelligible and adequate reasons, the registered person, Social Care Wales, the public and any person who gave evidence to the panel, will be able to see and understand why a particular decision has been reached.

3.4 As the registered person has the right to appeal to the First-tier Tribunal (Care Standards), a full explanation of the reasons for the decision will assist the registered person in deciding whether or not to exercise their right to appeal and, if that right is exercised, will help the Tribunal in determining any such appeal.

3.5 The reasons for a panel's decision should cover:

- the factual basis of the decision;
- the legal basis of the decision;
- the conclusions reached on the principal important controversial issues;
- confirmation or otherwise that the panel has accepted any legal advice given to it by the Legal Adviser (and a particularly full explanation will be required where the panel has decided not to accept the Legal Adviser's advice);
- the panel's conclusions on the submissions made to it by the parties or their representatives;
- the reasons for the imposition of the ISO or ICRO, explaining the extent to which this guidance was taken into account, whether it was followed, and, if not, why not.