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

Disposals Guidance for Social Care Wales Regulatory Panels

September 2025

Contents

SECTION 1: INTRODUCTION 4
Purpose of this document 4
How do referrals to our fitness to practise team end up as hearings? 4
What is the purpose of a panel disposal? 5
Proportionality 5
Panel role in different types of hearing 6
The staged decision-making process 6
SECTION 2: GROUNDS OF IMPAIRMENT 8
Deficient performance 8
Serious misconduct 8
Barred Lists 9
Convictions and findings by other regulators and courts 9
Insight 11
Equality, Diversity and Inclusion 15
Impairment that is of a sexual nature 16
Cases involving child abuse images 16
Dishonesty 17
Failing to provide an acceptable standard of care 19
Failing to keep professional boundaries 19
Deficient performance - concerns about ability to practise safely 20
Behaviour that is fundamentally incompatible with professional registration 20
SECTION 3: SURROUNDING CIRCUMSTANCES 22
Submissions about mitigating circumstances 22
References and testimonials 23
Expressions of regret and apologies 23
SECTION 4: UNDERSTANDING THE DISPOSALS AVAILABLE TO PANELS 25
Interim Orders – imposed by the Interim Orders Panel 25
Panel reasons 27
Registration Appeals Panel 27
Applications to register / renew registration 28
Applications for restoration 28
Fitness to Practise Panel outcomes 30
Removal by Agreement 30
Consensual undertakings 30
Finding of no impairment – disposals 31
No impairment and how entries appear in the Register 32
Finding of Impairment - Non-consensual disposals 32
SECTION 5: PANEL REASONS 41
The importance of panel reasons 41
Writing reasons 41
APPENDIX 1: HOW DO PANEL DISPOSALS FIT INTO THE FRAMEWORK OF SOCIAL CARE REGULATION IN WALES? 43
Understanding the regulatory framework 43
Which workers are subject to regulation by Social Care Wales? 43
How is the registration requirement enforced and how are workers held accountable for their conduct? 45
How do fitness to practise panels function? 45

APPENDIX 2: THE LEGISLATIVE FRAMEWORK FOR PANELS MAKING DECISIONS IN SOCIAL CARE WALES HEARINGS 48
Primary Legislation that is relevant to panel work 48
Regulations 48
APPENDIX 3: WARNING TEMPLATE 50

Section 1: Introduction

Purpose of this document

This document is intended as a general guide for Social Care Wales (SCW) regulatory panels that are making decisions about appropriate disposals in interim order, review hearings, final hearings and registration, renewal and restoration applications.[1] It is not an exhaustive guide or a substitute for the Regulation and Inspection of Social Care (Wales) Act 2016 ('the Act'), the associated regulations or the Social Care Wales Rules, all of which set out panel decision making duties and powers.

Appendix 1 explains how panel disposals fit into the framework of social care regulation in Wales. The legislation that governs panel activities is listed in Appendix 2. Panels should expect anyone scrutinising their decisions, such as the Care Standards Tribunal, to refer to these documents.

How do referrals to our fitness to practise team end up as hearings?

When our Fitness to Practise team (FtP) receives a referral about a registered person's fitness to practise, they look at whether the alleged behaviour creates a risk to public safety and/or the reputation of the social care profession. If they decide that it does, they look at whether the risk can be safely addressed using FtP officer powers (such as a Warning or Undertaking) or, if the risk is deemed higher, the team moves on to consider restrictions on the person's practice such as a suspension or conditions of practice, while they carry out further investigations.

Some conduct presents such a serious risk to public safety and/or the reputation of the social care profession that it may warrant referral to a Fitness to Practise Panel final hearing panel without an interim order put in place. This includes situations where the registered person has:

- been convicted of an offence for which a custodial sentence has been or could have been imposed
- been included in a barred list
- been given a caution for an offence for which a custodial sentence could have been imposed
- had a finding of impaired fitness to practise made against them by a relevant regulatory body.[2]

As well as making referrals in line with the requirements of the Act, Social Care Wales must refer eligible matters to a panel where it is satisfied that:

- there is a realistic prospect of the panel finding that the registered person's fitness to practise is impaired, and

[1] The document replaces the 'Guidance on Indicative Disposals for the Fitness to Practise Panel and Interim Orders Imposed by the Interim Orders and Fitness to Practise Panel'.
[2] See s121 of the Regulation and Inspection of Social Care (Wales) Act 2016 and Part II of the Social Care Wales (Investigation) Rules.

- it is in the public interest to refer the matter.[3]

What is the purpose of a panel disposal?

The primary purpose of a panel disposal is to protect the public and the wider public interest. The concept of 'public interest' is not easy to define, but it is possible to establish what it includes in the context of our work, since our objectives are set out in section 68 of the Act, and panel disposals must reflect these objectives. They are as follows:

Social Care Wales' main objective in carrying out its functions is to protect, promote and maintain the safety and well-being of the public in Wales

In pursuing that objective SCW must exercise its functions with a view to promoting and maintaining –

a) high standards in the provision of care and support services
b) high standards of conduct and practice among social care workers
c) high standards in the training of social care workers, and
d) public confidence in social care workers

Panels should be guided by these objectives when selecting an appropriate disposal but should keep in mind that interfering with a person's freedom to work is a restriction upon their civil rights and one with potentially serious and far-reaching consequences. Whilst it will be necessary in many cases to nevertheless put restrictions on an individual's practice in the interests of public protection, the public interest or the maintenance of professional standards, such decisions must be made carefully and in line with the principle of proportionality. It should be clear from a panel's reasons that it has taken this principle into account.

Proportionality

Proportionality has been described by the European Court of Human Rights 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.[4]

In simple terms, this means that the disposal should not go beyond what is necessary to achieve the legitimate aims of the panel, nor should it leave an unjustified risk to the public or undermine the high standards that Social Care Wales is required by law to promote and maintain.

[3] s126(2) Regulation and Inspection of Social Care (Wales) Act 2016.
[4] *Soering v United Kingdom [1989*] 11 EHRR 439.

Panel role in different types of hearing

In **Interim Order Panel** hearings, the panel's role is to consider whether there is a need to put restrictions on a registered person's practice to reduce any risk of harm to the public, if its otherwise in the public interest or in the interest of the registered person, whilst a matter is being investigated and, where relevant, before a final hearing has taken place.

In **Interim Order Panel Review** hearings, the panel's role is to consider if, based on current or new evidence, the order imposed at the first hearing is still relevant, necessary and proportionate and whether existing restrictions need to be retained, amended, or revoked. The review panel will have to be satisfied that the interim order remains to be necessary for the protection of the public, is otherwise in the public interest, or is in the interests of the registered person.

In a **Fitness to Practise Panel**, final hearing, the panel considers if a registered person's fitness to practise is impaired, and where a panel finds that a fitness to practise is currently impaired, its role is to determine whether it is necessary to put restrictions on the person's ability to practice. The panel may impose a disposal that requires a review hearing to be held at a later date, to assess whether or not the registered person's fitness to practise remains impaired and if they have adhered to any conditions or restrictions imposed.

In Fitness to Practise Panel review hearings, the panel's role is to consider whether a person's fitness to practise is still impaired and, if so, whether restrictions on their practice are still necessary. They will look at whether the public protection and/or public interest concerns that led to the order being put in place have been addressed. The panel consider whether existing restrictions need to be retained, amended, or revoked. They may also be asked to look at new concerns about the person's fitness to practise that have arisen since the original disposal was put in place.

The **Registration Appeals Panel** role is to consider appeals against the Registrar's decision to refuse registration or renewal of registration. The Panel also considers applications for restoration to the Register by workers who were removed after a finding of impairment by a Fitness to Practise Panel final hearing.

The staged decision-making process

Fitness to Practise Panel final hearings reach decisions using a staged process, as set out in the relevant Social Care Wales (Fitness to Practise Hearings) Rules. The stages are as follows:

Stage 1: make findings of fact

Stage 2a: determine whether one of the 6 grounds of impairment is established

Stage 2b: determine whether there is current impairment of fitness to practise

Stage 3: if current impairment is found, decide which disposal, if any to impose[5]

When determining whether a person's fitness to practise is impaired, panels need to consider the following four questions: [6]

- Has the registered person acted in a way that poses a risk to users of care and support and/or are they likely to do so in future?
- Has the registered person brought the social care profession into disrepute and/or are they liable to do so in future?
- Has the registered person breached one of the fundamental tenets of the profession and/or are they liable to do so in future?
- Where dishonesty has been proved - has in the past acted dishonestly and/or is liable to act dishonestly in the future

[5] Panels can also use some disposals in cases where they have not found impairment.
[6] Shipman Enquiry, *Fifth Report: Safeguarding Patients: Learning from the Past – Proposals for the Future* (paragraph 25.63) 9 December 2004, Command Paper CM 6394 https://webarchive.nationalarchives.gov.uk/20090809044405/http://www.the-shipman-inquiry.org.uk/5r_page.asp?id=4799.

Section 2: Grounds of Impairment

As set out in section 117(1) of the Act, a registered person's fitness to practise may be impaired by reason of one or more of the following grounds:

- deficient performance as a social care worker
- serious misconduct (whether as a social care worker or otherwise)
- adverse physical or mental health
- 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
- a determination by a relevant body to the effect that the person's fitness to practise is impaired [7]
- inclusion of the person in a barred list such as a list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006.

Deficient performance

As set out in section 117(2) of the Act, deficient performance as a social care worker includes:

- an instance of negligence
- a breach of an undertaking agreed with Social Care Wales
- a breach of an undertaking agreed with a Fitness to Practise panel
- failure to comply with the Code of Professional Practice for Social Care.

Serious misconduct

'Serious misconduct' is not defined in the Act, but the UK courts have commented on what serious professional misconduct means in the context of several cases involving other regulators and some of these comments are set out below.

Panels should note that conduct that is removed from the professional practice of a registered person may amount to serious misconduct for the purposes of a fitness to practise hearing.

"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.

[7] 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.

It must be linked to the practice of medicine or conduct that otherwise brings the profession into disrepute, and it must be serious".[8]

"…conduct which would be regarded as deplorable by fellow practitioners".[9]

"*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"*.[10]

Barred Lists

Some individuals are deemed unsuitable for work with children or vulnerable adults by the Disclosure and Barring Service (DBS) and their names are added to relevant barred lists.[11] Inclusion in a barred list may come following a disclosure, a referral to the DBS or an automatic barring offence (autobar). Those on barred lists are unlikely to be suitable for roles in the social care sector, where many users of care and support are likely to be classed as vulnerable and/or are children. Most roles in social care require a DBS certificate, therefore barring means they are prevented by law from working in a regulated role.

A barred list is defined in section 117(3) of the Act as:

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

Panels should work based on the factual information that is available to them at the time about whether an individual's name is on one or more barred lists.

Convictions and findings by other regulators and courts

As with all other cases, when a panel is considering the impact of a criminal conviction on a person's current fitness to practise, it should focus on whether it is safe and in the public interest for the individual to remain on the Register and, if so, with or without restrictions. It is not the role of a panel to punish or make an example of the individual, though some disposals will undoubtedly have a punitive effect

The Legal Adviser will guide the panel about what amounts to a 'relevant criminal offence'. Where required, they can also offer broad guidance about the nature of a

[8] '*Roylance v. General Medical Council (No 2)* [2000], 1 AC 311 at 330-332.
[9] *Nandi v General Medical Council* [2004] EWHC 2317 (Admin).
[10] *A County Council v. W (Disclosure)* [1997] 1 FLR 574, 581.
[11] See Disclosure and Barring Service website - https://www.gov.uk/government/organisations/disclosure-and-barring-service/about.

particular offence. The Sentencing Council's 'Sentencing Guidelines', which are freely available online and are updated regularly, also provide information about offences.[12] The Legal Adviser will provide advice and information on such matters where necessary.

In assessing an individual's suitability to remain on the Register, with or without restrictions, panels should note that there are specific offences covering vulnerable victims, abuse of a position of trust and those working in the care sector. They should be particularly concerned where a registered person has been involved in an offence of this nature or any of the offences listed below:

- sexual offences
- violent offences
- domestic abuse offences
- possession of firearms or other offensive weapons
- public order offences
- offences involving dishonesty
- stalking
- harassment
- involvement in any kind of trafficking
- money laundering
- hate crime.[13]

The commission of offences that are aggravated by a racial, religious, homophobic or other 'hate crime' element is indicative of values that are not compatible with our Codes of Professional Practice for Social Care Workers, or registration with Social Care Wales.

Panels considering referrals based on convictions should consider factors such as:

- the nature and gravity of the offence
- any aggravating factors that may have increased the seriousness of the offence or the impairment
- relevant mitigating circumstances
- whether the person has shown remorse or insight (see below for more information on what 'insight' means) into the causes and effects of their offending behaviour and
- the amount of time that has passed since the offence was committed.

[12] To access the Sentencing Council Guidelines, please see: https://www.sentencingcouncil.org.uk/ This site is updated regularly.

[13] The Police and Crown Prosecution Service define hate crime as 'any criminal offence which is perceived by the victim or any other person, to be motivated by hostility or prejudice based on a person's race or perceived race; religion or perceived religion; sexual orientation or perceived sexual orientation; disability or perceived disability and any crime motivated by hostility or prejudice against a person who is transgender or perceived to be transgender'.

Insight

Evidence of the registered person's insight and any steps they've taken to improve and strengthen their practice or behaviour will be at the forefront of a panel's decision-making process when considering impairment and fitness to practise. This consideration is important because the events that led to the registered person's actions and their referral to us will have happened in the past.

Taking consideration of 'context' surrounding the allegations will also be helpful when looking at insight as it may help the panel understand what sort of actions or steps the registered person would have been expected to take to remedy past events.

The panel must assess insight and remediation by considering the following questions when looking at the evidence before them:

- can the conduct be addressed
- has the conduct been addressed
- is it highly unlikely that the conduct will be repeated.

Can the conduct be addressed

The panel should consider the full circumstances and context of the case before them and question are there steps the registered person could take to address the problem?

Whilst it may be difficult or impossible to put right the outcome of the conduct or poor practice, especially when it may have resulted in harm to an individual, the panel could consider whether the conduct or poor practice could be addressed by taking steps to mitigate any risk, such as through imposing a disposal with a requirement to undertake specific training or undergo a period of supervised practise. However, the panel's role is to protect the public and to maintain standards and uphold public confidence in the profession. In some cases the conduct may have fallen so far short of the standards set in our Code that it may be unlikely that any training or conditions of practise will address the conduct and will not meet the standards the public expect of our registered persons.

Examples of conduct that may not be possible to address through training or supervised practise may include:

- Criminal convictions, especially those that led to a custodial sentence
- Inappropriate or sexual relationships with users of care and support or other vulnerable people, or abusing their position to exploit, coerce or for personal gain
- Harassment, in any form whether in work or outside work
- Dishonesty

- Violence towards or neglect or abuse of users of care and support, children or vulnerable adults.

Has the conduct been addressed?

The registered person is expected to be able to demonstrate to the panel that they recognise the concern and that they acknowledge the impact of their actions on others, in particular on users of care and support. When a registered person shows insight, they will usually be able to:

- Step back from the situation and look at it objectively and with honesty
- Recognise and identify what went wrong and how their actions contributed to what happened
- Accept their involvement in what happened
- Recognise and identify what they could and should have done differently
- Recognise and identify what they must do differently in the future to avoid repetition of the same problems happening again.

The panel will need to look at more than whether the registered person has shown 'some' insight or not. They will need to consider the 'quality', i.e. is there evidence to show this insight.

The panel will also need to be aware that public interest may outweigh any insight the registered person may have shown and this may influence the decision making process more than the registered person's evidence of insight.

A registered person's denial of responsibility may not impact on the registered person's ability to show insight. They may not have insight into the specific events or incidents that happened, but they may show insight by understanding the need to minimise the risk of repetition and therefore be able to identify the steps they need to take to achieve this. Showing accountability for their actions is equally important to insight as it shows they have reflected and identified that they fell short of the standards expected of them.

Is insight enough?

The panel will need to assess whether the insight shown is enough to address the concerns before them. What is 'sufficient insight' will depend on the case. Each case must be considered on its own facts and evidence. However, the list below may be helpful to consider whether the insight shown is sufficient:

- Did they cooperate with the employer's or any other investigation into the concerns (if they had the opportunity to do so)
- Did they accept the concerns against them when first raised by their employer (if the employer was involved)

- Did they themselves bring any personal failings or errors to the employer's attention

- Did they refer themselves to Social Care Wales when a referral by someone else may not have been submitted

- Did they accept responsibility for any failings or inappropriate behaviour

If they didn't accept responsibility at the opening of the investigation, have they since reflected and accepted responsibility in light of any evidence shared with them.

Do they acknowledge:

- any harm or risk to others
- any damage to public confidence in the social care profession
- how they've not met the standards set in the Codes
- their own responsibility for the issues without blaming others, including their employer and/or colleagues.

A registered person is more likely to have insight if they can:

- genuinely accept with humility that they should have behaved differently
- show empathy (with respect to the effect of their behaviour on others, such as users of care and support, colleagues, their employer or family members)
- show they have and will continue to take steps to remediate, including apologising to those affected (before regulatory body investigations and hearings take place), if they've undertaken training, and how they've worked with their employer to help with remediation
- demonstrate how they apply insight to their social care practice to avoid reoccurrence of similar allegations, should they be allowed to continue working in social care.

Registered persons may seek to blame their employer, citing poor management support or poor training, or where they seek to justify their actions by saying that they were no different from those of their colleagues'. Whilst these may be true and there may be institutional issues, this kind of response may raise concerns that they are not taking responsibility for their own actions, regardless of the actions of others.

Panels should be mindful that the way a registered person apologises, expresses regret or displays empathy may be influenced by cultural differences.

If a registered person is not forthcoming in displaying their insight clearly and openly, the panel may ask open questions to test the registered person's level of 'insight'. These questions could be:

- What have you learned from this/from these allegations
- How do you feel about what happened
- What is the biggest impact of this allegation
- Who was/is affected by this allegation

Where a conviction that led to the referral to FtP involves 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, this will increase the seriousness of the matters before the panel.

Panels should be wary of submissions to the effect that a registered person has already suffered personally or professionally because of criminal proceedings, another regulatory body's proceedings, or an employer's disciplinary proceedings. This is because panels are asked to consider the risks to the public, professional standards and the reputation of the profession. Information about the extent to which they have suffered because of other proceedings is likely to be of limited value, unless its purpose is to demonstrate, for example, their insight, remorse, or ability to address personal failings that may affect their professional practice.

Panels should be aware that the sentence imposed on a particular individual by a court, or the disposal used by another regulatory body, will not necessarily be indicative of the seriousness of the offence or impairment. Their sentences or disposals may sometimes appear inconsistent with outcomes in similar cases. The court may have had access to information about previous convictions that are now spent, or different witness impact statements or evidence, for example.

Panels should also note that courts and other regulatory bodies allow those who come before them to offer evidence in mitigation. There are also appeal rights in relation to their decisions. They should therefore be wary of any attempts to minimise offences and any unsupported claims of unfairness in relation to previous hearings, including allegations of miscarriages of justice. They should focus on the information before them.

Panels should exercise caution in selecting any disposal that relies on a high level of compliance and cooperation from the registered person in cases where the individual has demonstrated a failure to comply with a criminal court order, such as a Community Order or restraining order, or where they have committed offences whilst subject to a suspended sentence or conditional discharge.

Panels may be presented with a family court finding of fact in relation to abuse, including sexual abuse. This is a formal finding with legal weight and panels should treat it as such. The same considerations apply with respect to the assessment of risk and potential for harm in these cases. Legal advisers will be able to guide panels about these matters and, as family court judgments involve sensitive information and are often private and not for publication or sharing with other bodies, they will also be able to help panels avoid infringements of privacy rights when they are writing their reasons in such cases.

Where a registered person has been given any of the orders listed below, panels should be particularly concerned:

- a restraining order
- a non-molestation order
- a domestic violence protection notice
- a domestic violence protection order
- a domestic abuse protection notice (DAPN)

- a domestic abuse protection order (DAPO).[14]

This is because these orders are likely to be a marker for violence or other unacceptable conduct, which those using care and support services need to be protected from. Those involved in acts of violence or abuse do not hold the values that we require from the social care workforce and, in this respect, we support the UK and Welsh Governments in their efforts to tackle domestic abuse.

Domestic abuse is defined in detail in the Domestic Abuse Act 2021. Whilst panel members will not be expected to be aware of or remember this definition word for word, they should ensure that they are given legal advice and guidance to ensure they are broadly familiar with the type of behaviour it covers.

Panels should be wary of stereotypes of victims and perpetrators of domestic abuse and should recognise that it occurs in many different types of relationships and settings and can affect, for example, parents, siblings and ex-partners, as well as current partners.

Equality, Diversity and Inclusion

Panels should be mindful if any of the individuals referred to in the allegations/evidence consider themselves as disabled, or of a specific race or religion, or sexual orientation. Whilst it may be difficult to identify such protected characteristics, panels should be aware and vigilant of any potential identifying characteristics that may require additional consideration and acknowledgement of how, if at all, such information steered their decision-making process.

A Panel should also be mindful of language and cultural differences of registered persons and witnesses, who do not have English or Welsh as their first or second language. Our Register contains workers from overseas, and whilst they may be able to live and work in the UK using English and Welsh, and perhaps their mother tongue, their vocabulary for contributing during regulatory proceedings may not be strong and this may affect their understanding of, and participation in, the process.

The panel, should establish trust and confidence to ensure the registered person and witnesses participate fully in a hearing. For example, where translators or interpreters have been booked for a hearing, the panel should ensure the interpreter has an opportunity to speak to the person they're asked to provide their service to, to establish an understanding of their language and dialect, and ensure they've had an opportunity to look at any documents the panel is likely to be referring to during questions, to ensure their service is used fully to support and help the registered person, witnesses, Social Care Wales and the panel.

The Equal Treatment Bench Book (May 2025) may help further.

[14] The Domestic Abuse Act 2021 introduces DAPNs and DAPOs. In the context of domestic abuse cases, these will eventually replace the other available protective orders. However, panels will continue to see these protective orders for other matters and for domestic abuse cases that pre-date the implementation of the relevant changes in the Domestic Abuse Act 2021 – the Domestic Abuse Act 2021 can be found here - https://www.legislation.gov.uk/ukpga/2021/17/enacted

Impairment that is of a sexual nature

Panels may be asked to consider impairment of a sexual nature, such as:

- sexual assault
- sexual abuse of children
- production, distribution, or possession of child abuse images
- sexual misconduct with a user of care and support (or their carers or relatives)
- sexual misconduct with a colleague.

Some of these examples involve criminal offences and professional misconduct. Others involve a breach of professional contracts, codes and boundaries but are not necessarily criminal in nature. In all cases, panels are expected to focus on the question of whether the person is suitable for the Register and, if so, with or without restrictions.

Allowing a convicted and/or registered sex offender to remain on the Social Care Wales Register could put users of care and support at risk of serious harm and is likely to undermine public confidence in the profession and the Register. Panels need to be mindful of this when making decisions about disposals in these cases.

If the offence is one of 'Fail to comply with notification requirements', which falls within the Sex Offences Act 2003, this should be seen as a relevant factor in an assessment of the risk associated with an individual's continued registration. This is because it may be indicative of a lack of insight into the seriousness of the offences and/or a lack of respect for the law on the part of the registered person.

Cases involving child abuse images

The United Nations Convention on the Rights of the Child 1989 (UNCRC), of which the UK is a signatory, requires states to protect children from all forms of abuse and exploitation and, as a public body, we have a duty to ensure that our panels take this into account.[15] This is especially important in relation to our work, since children who use care and support services are amongst the most vulnerable members of society and are in need of special protection. Wales has taken extra measures to elevate the status of the UNCRC and we support the Welsh Government in this approach.

In determining the appropriate disposal in cases involving child abuse images, panels need to be aware that in the case of R v Oliver [2003],[16] the Court of Appeal established a test for determining the seriousness of offences involving the downloading of 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:

[15] Articles 19, 34 and 36 of the UNCRC are particularly important in relation to this issue - https://www.unicef.org.uk/what-we-do/un-convention-child-rights/
[16] *R v Oliver* [2003] 1 Cr. App. R. 463.

- 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 locating images on the internet
- any element of commercial gain or activity, which although not for gain, fuels demand for such images (for example, 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.

Panels should ensure that in cases involving indecent images of children, they use the guidance in the Oliver case. They should also note that Social Care Wales considers that all cases involving indecent images of children involve some degree of exploitation or abuse and that the viewing, downloading or reproduction of such images creates further demand for them and perpetuates the exploitation of the child.

Although this material is sometimes referred to as 'child pornography', Social Care Wales considers this to be inappropriate terminology and panels should not use it in the context of our hearings.

A conviction for this kind of offence is a serious matter and is likely to undermine trust in the registered person and the profession. In such cases the panel may conclude that removal from the Register is an appropriate and proportionate sanction.

Dishonesty

The decision about which care and support services to use can be life changing for the individuals involved. It can have huge emotional, practical and financial implications for families. Those making such decisions should be able to rely on the professional integrity of social care workers and have confidence that they will always be honest and trustworthy. Care and support service providers, social care colleagues and members of the public should also be able to trust the social care workers they come across.

The Code of Professional Practice for Social Care Workers directs that social care workers must be honest and trustworthy and that they must recognise and use the power that comes from their roles responsibly when dealing with users of care and support and carers. It should not be the case that a worker can only be trusted where temptation is removed, or where they are subject of constant monitoring – they need to always be honest and trustworthy.

At the various stages of proceedings leading up to the disposal stage, panels need to note how they have assessed the seriousness of a particular incident of dishonesty.

This is because they need to ensure that the disposal reflects their assessment of the seriousness of the matters before them and that it is proportionate.

The following list provides examples of the dishonesty panels may come across:

- theft, fraud, or embezzlement
- perjury
- bribery
- money laundering or allowing bank accounts to be used for such purposes
- handling stolen goods
- lying to users of care and support services
- misuse of bank accounts, bank cards, cash, belonging to users of care and support
- lying to a manager or colleague about whether a task has been undertaken;
- presenting misleading information in publications
- improperly amending records relating to individuals who use services;
- falsifying evidence
- submitting or providing false references and information in relation to a job application
- failing to notify the authorities of a change in circumstances affecting benefit claims.

In cases involving a failure to notify the authorities of a change in circumstances in relation to a claim for state benefits, panels should look at factors such as the period of time covered and the amount of any overpayment. The longer the period, the more opportunities the person would have had to notify the authorities of the change and the more the panel should be concerned about the person's conduct. This is because, aside from the potential dishonesty involved, a registered person who does not recognise the importance of providing accurate information and complying with rules could put a user of care and support at risk.

A registered person who has been involved in money laundering, including acting as a money mule, allowing a personal bank account to be used for money laundering or allowing a business to be used for money laundering, presents a risk of harm to users of care and support, especially vulnerable users of care and support. Panels need to take this into account when considering disposals in such cases. Cuckooing and 'mate crime' sometimes involve the use of the bank accounts, homes or other property of vulnerable users of care and support for the purposes of financial crime and drugs offences. Where a social care worker has placed a user of care and support at risk of such offences, whether directly or indirectly, panels should regard this as a matter of serious concern.

Dishonesty, particularly when associated with professional practice, is so damaging to a registered person's credibility and public confidence in the profession that removing the person's name from the Register may be an appropriate disposal.

Failing to provide an acceptable standard of care

Panels may be asked to consider cases in which a registered person has not acted in the best interests of an individual using care and support services or has provided substandard care. For example, where an adult care home manager has failed to make a safeguarding referral, or a worker in a children's care home fails to act on information that a child is being groomed by a county lines drug gang.

A particularly important consideration in such cases is whether the registered person has developed insight into their failings, or has the potential to do so, and whether they have shown commitment to remedying any shortcomings. In this respect, panels should be wary of attempts to minimise incidents on the basis that no one was harmed. For example, a registered person who attempts to justify a failure to report a child or young person going missing from a residential setting overnight on the basis that the child/young person eventually showed up unharmed will not have demonstrated an understanding of the risk of harm to which they may have been exposed, such as the risk of sexual exploitation or targeting by county lines drug gangs. Panels should focus on the risk of harm and the extent to which the registered person has accepted the need to behave differently in future.

Where genuine insight is evident and the individual is demonstrably committed to making improvements, a disposal involving fewer restrictions may be appropriate. However, it will depend on the circumstances of the case and the panel's assessment of whether any risks associated with the person's registration can be safely managed and without undermining public safety or the social care profession.

Failing to keep professional boundaries

Social care relies on the existence of close professional relationships between users of care and support and care workers in circumstances where users of care and support may feel that their reliance on care and support workers leaves them with little choice but to trust the worker to do their job to a high standard. This is especially true of vulnerable users of care and support with little or no support from friends or family.

Social care workers have a duty to establish and maintain professional boundaries at all times, which is something they are advised of in their Code of Professional Practice and in their training and ongoing professional development. Whereas a failure to keep professional boundaries may arise in a context of good intentions or inexperience, it is nevertheless a professional failing and one that shows that the worker has not been able to follow instructions. Failing to follow instructions in a care role could result in serious harm to a user of care and support.

Those who fail to keep professional boundaries put users of care and support at risk and may bring the social care profession into disrepute. This is why panels need to consider carefully whether it is appropriate to allow someone who has abused the trust that comes with their job to remain on the Register. They will need to be sure that the person has shown insight and is committed to making improvements.

Deficient performance - concerns about ability to practise safely

Ongoing competence, professionalism and commitment to the continuous development of knowledge are essential aspects of a social care worker's role. Social care workers are reminded of this throughout their careers and their employers have legal duties in relation to their training and development. Panels should consider whether a registered person who is found to have neglected this responsibility should be able to remain on the Register at all and, if so, whether there is a need to put restrictions on their practice to keep the public safe.

It may be more difficult for panels to justify a decision to allow an individual to remain on the Register where there has been deficient performance over a long period and there are large gaps in the person's knowledge or skills. This is also true where there has been deficient performance over a shorter period but there are critical gaps in the person's knowledge or skills that could create a risk of serious harm to users of care and support. Panels considering allowing such individuals to remain on the Register with restrictions on their practice need to consider the feasibility of any proposals in the context of the person's role and the extent to which such proposals meet the public protection and public interest duties of Social Care Wales.

Behaviour that is fundamentally incompatible with professional registration

Serious or persistent disregard for the safety, rights and dignity of others and serious criminality, such as violent behaviour, are fundamentally incompatible with professional registration.

Unacceptable conduct that is motivated by factors such as racism, religious bigotry, homophobia, transphobia or any other 'hate crime' element is indicative of values that are not compatible with our Code of Professional Practice for Social Care Workers or registration with Social Care Wales.

Membership of, or involvement with, proscribed organisations is incompatible with our values and a role in the social care sector.[17]

Aggravating factors

Any of the following may be considered aggravating factors that increase the seriousness of the impairment, although panels should bear in mind that the list is not exhaustive:

- dishonesty
- abuse of trust
- concealment of wrongdoing
- premeditation
- lack of insight

[17] More information about proscribed organisations in the UK can be found here: https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2

- lack of regret/remorse
- impairment had a significant impact on or posed risks to the complainant/colleagues/victims/witnesses
- registered person failed to co-operate with the Social Care Wales investigation
- serious disregard for the Social Care Wales Code of Professional Practice
- disregard for previous findings of misconduct/impairment and/or advice
- repeat offending
- hostility towards a person with a protected characteristic or a vulnerable person.[18]

[18] The protected characteristics covered in the Equality Act 2010 are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

Section 3: Surrounding Circumstances

Submissions about mitigating circumstances

A registered person may offer evidence in mitigation at any stage in the proceedings. Where a panel is presented with such evidence, it should consider whether it is relevant to the question of the person's suitability to remain on the Register in the circumstances of the case.

The following is a non-exhaustive list of mitigating factors that a panel may be asked to consider:

- evidence that the individual was acting under duress
- evidence that the act or omission was not deliberate or premeditated
- evidence to show that the incident occurred because of pressure to meet targets from the person's employer
- challenging circumstances, personal or professional, leading up to the incident/s
- evidence of insight
- evidence of efforts to address shortcomings and/or remedy any damage
- isolated nature of the acts or omissions
- evidence of co-operation with FTP team or early admission in relation to allegations not already established through, for example, a conviction or other regulatory proceedings
- length of time since the incident/s occurred and evidence of good practice thereafter
- evidence that they have taken steps since the incident occurred to improve their practice
- genuine expression of regret/apologies
- previous good character and history of the registered person
- relevant and appropriate references and testimonials
- evidence that the behaviour would not have caused direct or indirect harm to an individual who uses services
- incident/s occurred outside the workplace and not in the performance of the registered person's professional duties
- compliance with any previous conditions or requirements.

Evidence of mitigating circumstances in relation to proven impairment can be helpful in forming a picture of how a registered person has responded to stress in their personal and professional life. For example, evidence that lapses of professional judgment have occurred in extreme circumstances that no longer exist may give some degree of reassurance to the panels. However, when selecting an appropriate disposal, panels need to consider the risk of a recurrence of such circumstances and how the registered person might react in future. This will help with the assessment of whether the person's registration presents a risk to the public and, if so, whether this risk can be safely and effectively managed.

Panels should be wary of submissions in mitigation that relate to criminal offences or impairment, where the mitigation has already been considered by a court or regulatory body and is reflected in their sentence or disposal, unless this information is clearly relevant to the impairment under consideration and the associated assessment of risk.

References and testimonials

A registered person may offer a panel references and testimonials about their standing in the community or professional field. Such evidence needs to be weighed carefully and appropriately in the context of the allegations.

When considering the value, authenticity, validity and relevance of such documents, panels should take the following non-exhaustive list of factors into account:

- whether the reference or testimonial appears genuine
- whether the reference or testimonial has been signed and dated and clearly applies to the relevant time of the proceedings
- how recent the references or testimonials are
- the expertise of the writer
- how well the writer knows the registered person and how familiar they are with their recent practice
- whether the writer is aware of the allegations against the registered person and that they are aware of the hearing process that is underway
- whether the writer is aware that their letter is to be used as evidence in mitigation in a hearing.

The quantity, quality, and spread of references and testimonials will vary from case to case and is not necessarily indicative of a registered person's standing in their community or professional field.

The absence of references or testimonials from a person's evidence will not necessarily count against them. There may be cultural reasons for a registered person's decision not to solicit references or testimonials. In addition, acquiring such evidence may be difficult for some workers, such as workers who have recently arrived in the UK/Wales and those who are internationally qualified, newly qualified or newly appointed.

Persuasive evidence of rehabilitation and a credible commitment to high standards will be directly relevant to the question of a person's suitability to practise. The registered person should be given credit for such evidence even though there may have been a lapse in their standards, and possibly a serious lapse, in the past.

Expressions of regret and apologies

If a registered person's impairment shows that they are fundamentally unsuitable for registration as a social care worker, no amount of remorse, apologies, or demonstration of positive personal qualities in other areas of their life is likely to offer the necessary reassurance that they are suitable for the Register.

Those using social care services, social care colleagues and the public expect to be protected from the recurrence of conduct that led to a person being referred to an FtP panel. Social care workers are therefore expected to take responsibility for their

mistakes, learn from them and demonstrate awareness and understanding of the professional duty of candour.[19]

Panels should consider whether the registered person has shown insight, accepted that they should have behaved or acted differently and taken steps to prevent a recurrence of the events that led to fitness to practise proceedings.

Panels should be aware that there may be cultural differences in the way an individual shows insight, apologises or expresses regret. This is because cross-cultural communication studies show that there can be significant variations in how different cultures use language to code and de-code messages. This is particularly relevant in relation to second language speakers, who sometimes use the conventions of their first language to frame and structure sentences and give intonation to their words. The language conventions, subtleties and nuances of the person's second language may distort the message they are trying to convey or the spirit in which their words are spoken and received.

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 cultural issues or the communication needs of the individual is important to gain an understanding of:

- the way they express themselves, especially insight
- the way they apologise
- their attitude and demeanour during a hearing.

The main thing the panel should be looking for is evidence that the registered person has recognised that they need to take steps to remedy their failings. The way this is expressed is less relevant than the question of whether the sentiment is genuine and whether the person shows commitment to meeting the standards required for registration with Social Care Wales.

[19] 'Openness and honesty when things go wrong: the professional duty of candour – explanatory guidance' – see https://socialcare.wales/dealing-with-concerns/codes-of-practice-and-guidance.

Section 4: Understanding the disposals available to panels

Interim Orders – imposed by the Interim Orders Panel

In some cases, following a referral to our Fitness to Practise team about a registered person's fitness to practise, Social Care Wales will ask an Interim Orders Panel to make an Interim Suspension Order (ISO) or an Interim Conditional Registration Order (ICRO).

An ISO is an order that suspends a person's registration, without prejudice to any final decision, whilst a fitness to practise investigation or proceedings are underway. It would be unlawful for an individual who is subject to an ISO to work in a registered social care role in Wales during the period of their suspension. An ISO is therefore a serious interference with a person's rights and such decisions should not be taken lightly.

An ICRO is an order that temporarily places conditions on an individual's registration whilst an investigation into their fitness to practise or relevant fitness to practise proceedings are underway. This would have the effect of restricting their ability to work in a social care role whilst an investigation or FtP proceedings were underway, but it would not stop them from holding such a role altogether. Although less restrictive than an ISO, it is also a serious restriction on a person's rights.

Both orders are placed on the Register, which the public can access on our website, for the duration of the order.

The legal test to be applied

A panel can impose an interim order if it is satisfied that such an order:

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

Panels must act fairly and in accordance with the requirements of our legislative framework. Any panel that considers an application for an interim order cannot then be involved in the fitness to practise proceedings for the case.

Any restrictions imposed by an ISO or ICRO must be proportionate to the risk of harm the order is designed to address. The interests of the public and the individuals who use services must be weighed against those of the registered person. Panels need to consider the potentially serious effect, professional and financial, of an ISO or an ICRO on the registered person.

The panel will also be required to consider 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.

There is clear judicial authority to support the view that the 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) the declaration and upholding of proper standards of conduct and competence.

General principles to be considered by Interim Orders panels

Interim Orders panels will often be asked to work based on the limited evidence available at the outset of our investigation. It is never necessary for an allegation to be proved at an interim hearing. However, a bare allegation which is disputed by the registered person may be sufficient to establish the need for an interim order. The panel will be asked to assess whether there is evidence which is sufficient to demonstrate the existence of a risk.

The decision about whether to impose an ISO or ICRO will depend on the allegations and circumstances of each case. However, the following are relevant factors which the panels must consider 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 is repeated
- the effect on public confidence in the integrity of the regulation of the social care profession
- the other steps that could be taken to guard against the particular risk of harm identified
- the registered person's previous character and employment history
- the hardship that may be caused to a registered person by an ISO or ICRO
- the assurance that may be taken by a prospective employer or users of care and support about a registered person's character, conduct and competence from their continued registration (with or without restrictions).

Assessing risk of harm in interim orders proceedings – issues to be considered

In assessing the risk of harm to users of care and support and the wider public, panels should keep in mind that Social Care Wales regards the following matters as likely to create a serious risk of harm:

- 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.

Panels would also be expected to consider the timescales relating to the alleged impairment and whether, for example, the imposition of an order more than a few months after the alleged incidents took place would be necessary or appropriate.

Where a panel, applying the appropriate legal test, 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 and should do so in line with the requirements of our legislative framework and rules.

Panel reasons

Panels must give reasons for the imposition of a particular order in every case. The reasons must be adequate and must allow a registered person to understand why the ISO or ICRO has been imposed. This is an important aspect of the right to a fair hearing under Article 6 of the European Convention on Human Rights, as applied in England and Wales by the Human Rights Act 1998.

The reasons should indicate why the decision taken by the panel is considered proportionate in all the circumstances. Setting out clear, detailed reasons will help the registered person, Social Care Wales, the public and any person who gave evidence to the panel to understand the basis of the decision.

As the registered person has the right to appeal to the Care Standards Tribunal following the imposition of an interim order, a full explanation of the reasons for the decision will help the registered person to decide whether to exercise their right of appeal and help the Tribunal to assess the merits of any such appeal.

The panel's reasons should cover:

- the factual basis of the decision
- the legal basis of the decision
- the conclusions reached in relation to the most important or contentious issues
- information about whether the panel has accepted any legal advice from the Legal Adviser
- where the panel has decided not to accept the Legal Adviser's advice, a detailed explanation of this decision will be required
- the panel's conclusions about the submissions of 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.

Registration Appeals Panel

When considering applications for registration, the Registrar will have in mind the statutory objective of Social Care Wales, which is public protection. However, Social Care Wales may be required to consider some applications in more detail where certain

information is declared, such as historic behaviour, previous convictions, or employer disciplinary actions.

The Registrar and the Registration Appeals Panel, if one is held, will need to keep in mind the values underlying any declared behaviour and whether any mitigation mentioned by the applicant minimises the risk of repeated behaviour to reduce the concern about public protection as well as maintain the public's trust in our regulatory function.

Some behaviour, even if historic, may be so serious that it is still damaging to the reputation of the social care profession, and to the public's confidence in Social Care Wales in maintaining high professional standards in social care. It will require robust assessment of the applicant's demonstration and evidence of insight, remorse, remediation and empathy.

Applications to register / renew registration

Social Care Wales must consider the applications for registration and renewal carefully and the Registrar will only grant applications that meet the requirements for registration.

For applications for registration or renewal of registration, Social Care Wales can:

- Grant registration
- Refuse registration

Where the Registrar has refused an application for registration or renewal of registration, the worker can appeal the decision, which will be referred to a Registration Appeals Panel (the Panel).

The Registration Appeals Panel can:

- confirm the original decision
- change the original decision and replace it with one that could have been made
- refer the matter back to the Registrar with instructions about how it should be settled.

Applications for restoration

Where a registered person has had their name removed from the Register by a Fitness to Practise panel they can apply to get back on the register after five years, and this is referred to as a 'restoration' application. Restoration applications are considered by a Registration Appeals Panel.

The Panel will need to consider the general principles in relation to registration, in Section 1, and consider the submissions of Social Care Wales and the applicant. Witnesses may be called by either party to give evidence.

The burden of proof will be on the applicant to show the panel that they are fit to practise and meet the criteria of registration. The applicant will be expected to refer to the allegations that led to their removal from the register and show what they have done to remedy their practice or behaviour while they've been removed from the register. The panel should expect to see evidence of their insight, remorse and remediation, including actions they've taken since being removed which the applicant thinks shows their good character and current fitness to practise in a registered role.

The panel can make one of the following decisions:

- Grant the application for restoration to the Register
- Not grant the application for restoration to the Register

Granting an application

A panel should only grant an application for registration/restoration when they are satisfied that a person is fit to practise and has met the registration or restoration criteria, for example, that a social worker applying for restoration has completed the return to practise requirements and that it has been approved by Social Care Wales.

The panel will need to be satisfied that when granting registration any risk to public protection is low or being managed (such as any declared health conditions). The Panel would also need to be satisfied that despite any declared behaviour or health condition, there would be minimal risk to the reputation of the profession if the person was registered.

It is likely that a worker's insight and evidence of any remedial steps taken since any poor behaviour will be key factors in deciding whether to grant their application. The panel will require evidence from the worker of their understanding of the concerns to satisfy the panel that they are fit to practise and be registered. The Panel may also benefit from any testimonials or witness testimony from current employer/s to satisfy the panel that the person is safe to practise and that they are supported in their role.

A restoration panel will benefit from the evidence of any current employers to satisfy the panel that the worker's previous behaviour or conduct has been remedied and has not been repeated.

Demonstration and evidence of insight, remorse and remediation will be particularly relevant in the context of applications for restoration.

Even if the applicant intends to work in a different part of the register from the part they were removed from, they will still be expected to demonstrate that they have reflected upon the allegations that led to their removal and how they have applied, and will apply in future, any learning to any registered social care role.

Refuse registration/renewal/restoration

A panel must refuse an application if it is not satisfied that the worker is fit to practise.

Refusal of an application will prevent them from working in their chosen registered social care role.

Whilst a worker can apply again for registration should their application be unsuccessful, there are restrictions on the number of times a worker can apply for registration/restoration in a given period.

The Act and the Registration Rules will provide more detail, which the Legal Adviser will provide at a hearing.

Fitness to Practise Panel outcomes

Removal by Agreement

A decision to allow a person to be removed from the Register while under fitness to practise investigation – which is called a removal by agreement, is open to a panel where an individual has applied (to FtP) for their entry in the register to be removed by agreement under section 92 of the Act and where FtP has referred the matter to a panel under section 135 of the Act.

The panel can only allow removal by agreement where the registered person agrees a statement of facts in relation to the allegations about their fitness to practise.

This approach is rarely taken, as removal by agreement is usually processed by the Fitness to Practise team internally without referral to a panel hearing.

Where an individual has been removed by agreement, their name will be added to a 'list' on the register to show that their name have been removed via this consensual process.

Panels should note that removal orders (imposed by a Fitness to Practise Panel) lead to a five-year prohibition on applications to re-join the Register (restoration).

Workers who have been removed from the Register via the Removal by Agreement process without a panel's consideration, are also not able to apply to re-join the Register (restoration) within five years of removal.

There is also a difference in approach to the publication of information about a removal following a hearing and a removal by agreement, including the extent to which the public is made aware of the matters that led to the fitness to practise referral. Panels should keep this in mind when considering removal by agreement.

Consensual undertakings

The use of undertakings is an option for the panel where a registered person has admitted that their 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 panel may use undertakings.

Finding of no impairment – disposals

Take no further action

Where no impairment is found and the panel does not see any need to give advice, a warning (or both of these things), it may decide to take no further action.

Give advice

The panel may give advice to the registered person, or any other person involved in the proceedings, in relation to the matters that gave rise to the FtP allegations. This may be appropriate where, despite the finding of no impairment, there is a need for the registered person or another person involved in the proceedings, such as an employer, to make themselves aware of, for example:

- steps that may help them to remove risk factors that were present in the case and that could arise again in future
- changes to relevant legislation, policy or guidance, including forthcoming changes, that they did not appear to be aware of during the hearing
- relevant good practice guidance that they did not appear to be aware of resources that may help them to make improvements.

Warning

The panel may give a warning to the registered person in respect of future conduct or performance where, for example, despite the finding of no impairment, the panel considers that the registered person needs to be reminded about parts of the Code of Professional Practice or other professional requirements for which non-compliance may lead to future fitness to practise referrals. Where the registered person is present at the hearing, they should be given an opportunity to respond to the panel's proposal to impose a Warning. The warning should be specific, detailed and relevant to the person's future practice. The wording of the Warning should make it clear why the panel thought a Warning was proportionate to the allegations and the evidence they considered.

Warnings are normally put in place for a minimum of 6 months and maximum of 3 years. However, panels can move outside these parameters if they feel that they have good reason for doing so and will be able to evidence their reasoning clearly.

Warnings imposed where there is no impairment come into force immediately. Appendix 3 contains a warning template.

A warning may be appropriate where, despite the finding of no impairment in this instance, the panel considers that:

- a repetition of the matters that led to the referral would be likely to lead to a finding of impairment in future
- concerns remain about the results of a performance assessment and there is a need for the person to ensure that they address these issues in order to continue to meet the required standards for registration
- the registered person accepts that they have acted improperly or failed to meet acceptable standards but has offered information or evidence that strongly supports the view that there will be no recurrence of the conduct that led to the referral.

A warning is not a suitable disposal in cases involving health matters only.

No impairment and how entries appear in the Register

Panels should note that when they issue advice and/or a warning to a registered person following a finding of no impairment, the fact that they have had a warning will appear in the Register and on our website for a specified period and may be taken into account in relation to relevant FtP matters in future.[20] They should therefore consider carefully whether a formal warning is necessary or whether, for example, the same objective could be achieved by issuing advice.

They would need to consider the fairness and proportionality of the warning in the context of the case, the finding of no impairment and the objectives of panels. They will also need to explain why a warning was considered appropriate so that all interested parties will understand the nature of the warning, how it addresses the public protection objective and the potential consequences of a failure to regard the warning.

Finding of Impairment - Non-consensual disposals

Summary of options

For panels considering non-consensual disposals following a finding of impairment, the available disposals are set out in order below, from the least restrictive to the most restrictive:

- take no further action
- issue a warning to the registered person in respect of future conduct or performance
- impose a conditional registration order – imposing conditions on the registered person's registration
- impose a suspension order – suspending the registered person's registration (including indefinite suspension orders)
- impose a removal order – removal of the entry relating to the registered person in the register.

[20] Panels can find information about this in the Social Care Wales (Content of Register) Regulations 2016 and the Social Care Wales Publication Policy.

Panels should start by considering the least restrictive disposal available and work upwards through the disposals until they arrive at what they consider to be the most appropriate and proportionate disposal. As a final check, they should consider the next disposal in the list and whether it would be more proportionate than the disposal they propose to use.

No Further Action

A decision to take no further action following a finding of impairment is likely to be exceptional and there would need to be clear evidence that either the registered person does not present a risk to the public or the reputation of the profession, or that other actions have been taken, outside of panel responsibilities, to remove or manage any risk that the person presents.

Panel Warning

The panel may give a warning in respect of the registered person's conduct or performance and may, where considered appropriate and necessary, refer to specific parts of the Code of Professional Practice and any other relevant practice guidance.[21] The warning must be clear in terms of what the person is expected to do (or refrain from doing) in future and the potential consequences of failing to respond appropriately to the warning.

Warnings are normally put in place for a minimum of 6 months and a maximum of 3 years. However, panels can move outside the normal parameters if they feel that they have good reason for doing so. Warnings imposed where there is a finding of impairment come into force 28 days after the registered person is notified of the Warning, unless the decision is appealed. A warning template is shown in Appendix 3.

The wording of the Warning should make it clear why the panel thought a Warning was proportionate to the allegations and the evidence they considered.

A warning would be open to the panel in cases involving a finding of impairment where the panel considers that the impairment is not so serious as to necessitate restrictions on practice but where there are relevant matters that the person needs to be warned about in relation to future conduct. It may also be relevant in cases that may have led to limited restrictions on the person's practice but for clear evidence of insight/remorse and successful steps to improve practice since the impairment occurred.

Conditional Registration Order

Conditions may be appropriate in cases where there is evidence of shortcomings in a specific area of the person's work and where the panel believes that these can be remedied whilst the person is on the Register and without putting the public at risk. The conditions would restrict the person's practice for a specified period and the public

[21] The Codes of Professional Practice and guidance can be found here: https://socialcare.wales/dealing-with-concerns/codes-of-practice-and-guidance.

would be alerted to the relevant restrictions through an entry in the Register and the Social Care Wales website.

A conditional registration order would not normally take effect immediately.[22] However, the Act allows panels to make immediate orders for conditional registration where they are satisfied that the order:

- is necessary for the protection of the public
- is otherwise in the public interest; or
- is in the interests of the registered person.

Before deciding on a conditional registration order, a panel should satisfy itself that the registered person has demonstrated insight into their failings and has the motivation and capacity to respond positively to corrective action such as re-training, supervision of their work or, where appropriate, a health assessment.

The purpose of conditions is to enable the registered person to address any deficiencies in their work or, where relevant, deal with their health problems in such a way that they can remain on the Register without presenting a risk to the public. Conditions may involve the need to undertake specific training, gain specific qualifications or attend a relevant course aimed at addressing the reasons behind the impairment, such as a stress management course or an alcohol awareness course.

Conditions may be appropriate when most or all of the factors in the list below are present, although this list is not exhaustive, and other issues may be relevant in a particular case:

- there is no evidence of harmful, deep-seated personality or attitudinal problems
- the registered person is present and can confirm whether a condition is achievable and accepted
- the registered person is working in a regulated social care role at the time of the hearing
- the registered person can provide evidence that their current employer is able to confirm they will support the registered person's compliance with conditions
- specific areas of the registered person's practice need review, retraining or assessment
- there is evidence of willingness and potential to respond positively to further training and assessment
- in cases involving adverse physical or mental health, there is 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
- the registered person shows insight
- individuals who use services will not be put at risk directly or indirectly because of continued registration with conditions
- the conditions will protect the public and individuals who use services during the period they are in force.

[22] The Regulation and Inspection of Social Care (Wales) Act 2016, s 140-141.

The public interest may also be served by putting conditions on the registered person's practice where, for example, they lack certain skills, competence or knowledge that is necessary for their role. The use of conditions in these circumstances could help to keep the public safe and raise standards in the social care sector

Any conditions imposed should be clear, measurable and subject to a time frame, such that the registered person will be clear about how their performance will be monitored and reviewed and the deadlines for compliance. The condition(s) should be SMART:

- Specific
- Measurable
- Achievable
- Realistic
- Time bound.

The onus is on the registered person to provide Social Care Wales with relevant written evidence of compliance by the specified date/s. However, Social Care Wales has a duty to monitor compliance with conditions and to refer those suspected of breaching conditions to a review panel. This also applies where there are new concerns about the person's fitness to practise or where, for other reasons, the conditions are no longer considered appropriate. The review panel may vary the terms of the disposal or impose a different one.

Any conditions imposed by a panel should be realistic, including any timescales for compliance, and they should not go beyond what is required to protect users of care and support and the wider public. They should not be imposed if it is unlikely that the registered person will be able to comply with them.

If the conditions require the registered person to undertake specific training, this should be at the standard reasonably required of and appropriate to a worker registered in that part of the Register. Panels should make it clear to the registered person that they need to take responsibility for finding appropriate training courses or materials to meet any conditions set and, where relevant, to pay for these. However, employers are expected to support registered persons in their efforts to fulfil any conditions.

Panels should keep in mind that evidence of attendance on a course alone is unlikely to offer insight into the extent to which the person has addressed the issues that led to the conditions.

In setting appropriate conditions, a panel should also consider the following questions:

- Do the conditions directly address the risk to the public and/or public confidence in the profession?
- Do the conditions provide the necessary level of public protection and are they proportionate?
- Do the conditions relate to standards that apply to all such social care workers?
- Do the conditions clearly impose obligations on the registered person?
- Are any conditions unintentionally directed at someone else, such as the employer?

- Is it likely that the registered person will be able to comply with these conditions and within the specified time?
- Are the conditions enforceable?
- Will the conditions be achievable and enforceable if the registered person changes jobs?
- Will it be possible to easily determine whether the conditions have been satisfied?

Panels should also refer to the Social Care Wales 'Conditions Bank' when considering conditions.

Suspension Order

A person who is suspended from the Register is prohibited from practising in a social care role in Wales during the period of suspension. This gives a clear message to the public and the social care profession about our standards and what is and is not appropriate conduct or practice for a social care worker. However, whereas a suspension order is likely to have a punitive effect, this is not the intention behind a suspension order and panels should focus on the question of public protection and public confidence in the profession when deciding whether a suspension order is appropriate in a particular case.

Suspension from the Register may be an appropriate disposal for actions that are serious, but not so serious as to justify removal from the Register. This may include situations where, for example, the registered person acknowledges their failings, is considered unlikely to repeat the offending behaviour, is committed to making improvements and has a realistic prospect of being able to do so within a reasonable amount of time. Suspension may also be appropriate in situations where:

- the person's behaviour is not fundamentally incompatible with registration as a social care worker in the long term
- the interests of individuals who use services and the public are sufficiently protected by a suspension
- the panel considers that there is no real risk of the person repeating the behaviour
- there is no evidence of harmful, deep-seated personality or attitudinal problems
- there is no evidence to suggest that there has been a repeat of the behaviour since the incident/s
- the individual has shown insight
- the evidence demonstrates that the registered person will be able to successfully address the cause of the impairment during the period of the suspension.

A suspension order may be appropriate where the registered person's health is such that they cannot practise safely even with conditions on their registration. Panels may wish to include arrangements for a review of the order in such cases, to allow for consideration of whether the person is fit to resume practise and, if so, with or without restrictions. However, Social Care Wales has a duty to monitor all such cases and can request a review at any stage.

A suspension order may be imposed for a period of up to 12 months in the first instance. The duration of the order is a matter for the panel, considering the particular circumstances of the case and the specific risk that the person presents to the public and the reputation of the profession.

A suspension order is underwritten by an expectation that something may change during the period of the suspension, such that the risk that led to the suspension will be removed. Panels should therefore be very careful about the use of suspension orders where there is significant doubt about whether there is anything that can be done to remove the risk within the stated time. For example, in a case involving serious dishonesty, it is difficult to imagine what might change within a 12-month period such that the perceived risk that led to the order is dramatically altered.

It is not appropriate for a panel to use a suspension order as a form of deferred decision making - there is a risk that this is what will happen if panels do not think carefully about what they are trying to achieve when making such orders.

A suspension order does not normally take effect immediately.[23] However, the Act allows panels to make Immediate Orders for suspension where they are satisfied that the order:

- is necessary for the protection of the public
- is otherwise in the public interest; or
- is in the interests of the registered person.

Using an Immediate Order will alter the date on which the main order takes effect and panels should seek legal advice before providing the registered person with details of the start and end dates of the actual suspension order to avoid any confusion.

Whereas the panel imposing the suspension order can specify that a review must take place at a particular point in time, there is in any case a duty upon Social Care Wales to monitor the registered person's compliance with any restrictions on their practice, including suspension orders, and to arrange reviews as appropriate. It is not the case that the order will simply expire and that the person will simply return to their role at the end of the order. This is because, legally, the Registrar can only register those whose fitness to practise is not impaired. It is therefore always going to be necessary to review such orders before they expire.

Panels should also be aware that Social Care Wales can request a review hearing if and when it becomes clear that an order has been breached or that circumstances have changed such that the order is no longer appropriate. For example, where there is evidence of new concerns about the person's fitness to practise or evidence that they are unlawfully working in another role for which registration with Social Care Wales is required.

Where a panel nevertheless feels that it is necessary to include a specific requirement for a suspension order to be reviewed, they should think carefully about the timing of the review and why they feel that a formal review is necessary at this point.

[23] The Regulation and Inspection of Social Care (Wales) Act 2016, s 140-141.

Review hearings should take place no less than 28 days before the end of the suspension period. However, specifying that a review of a 12-month suspension order should take place within, for example, six months raises questions about what the panel expects to find at this stage. If the panel feels that it is possible that a person subject to a 12-month suspension order will be fit to practise within 6 months, a 12-month order is unlikely to be appropriate. The panel is expected to address specific risks and to make proportionate orders - making a longer order 'just in case' or because it is possible to do so is not appropriate.

Panels should also ensure that they do not make suggestions to the registered person that may be taken as conditions. This is because, whereas it may be acceptable in some cases for panels to make suggestions about the steps that the registered person may wish to take to demonstrate to a review panel that they are now fit to practise, the panel cannot lawfully impose conditions alongside, or as part of, a suspension order.

The panel should also keep in mind that:

- a panel's role is to protect the public and not to remedy the individual's failings
- the standards that social care workers must meet are clearly set out in the relevant Codes of Professional Practice and other guidance, so they should be in no doubt about our expectations

- it should be clear from the panel's written reasons why it has concluded that the person's fitness to practise is impaired and, therein, the matters that they will need to address to avoid future restrictions upon their practice

- a registered person who is given a list of things to do prior to a review of their suspension may develop a mistaken belief that the suspension will be lifted if they do these things

- a panel imposing a suspension order cannot bind a future review panel to a particular course of action or outcome - setting conditions or expectations may give a different impression.

Removal Order

A removal order is the most restrictive disposal available to a panel. It is not available where a registered person's fitness to practise is only impaired by adverse physical or mental health and no other ground of impairment.

Panels should not regard removal orders as something to be avoided at all costs, since there will be many cases in which they are entirely necessary and appropriate and, indeed, where the use of less restrictive orders will either fail to address the risks or will fail to address them adequately until a later stage (this can lead to a form of deferred decision making).

Removal orders are likely to be appropriate where the registered person's behaviour is fundamentally incompatible with a role in the social care profession. The non-exhaustive list below provides some examples:

- causing serious harm to others, whether they are people who use care and support services or others, and whether deliberately or through gross negligence and particularly where there is a continuing risk of harm to users of care and support
- abuse of a position or trust, especially where this involves vulnerable users of care and support
- dishonesty, especially where this is persistent or where the person covers it up or attempts to do so
- persistent lack of insight into the seriousness or consequences of actions
- blatant disregard for, or serious departure from, the relevant professional standards set out in the Code of Professional Practice for Social Care.

Removal orders should be used where there is no other way of protecting the public from the risks that the registered person presents. For example, where the following are evident:

- lack of insight
- a pattern of unacceptable behaviour or denial
- limited prospects of remediation
- a risk of damage to public confidence in the social care profession if the registered person is allowed to remain on the Register.

A removal order does not normally take effect immediately.[24] However, the Act allows panels to make immediate orders for removal.

Immediate Order

Immediate orders are available in relation to removals, suspensions and conditional registration orders if one or more conditions are met.

The panel must be satisfied that an immediate order:

- is necessary for the protection of the public
- is otherwise in the public interest; or
- is in the interests of the registered person.

These are the same conditions that apply in the case of interim orders, with the main difference being that a panel imposing an immediate order will already have found impairment, whereas a panel imposing an interim order will be assessing the risk posed by an individual whilst an allegation of impairment is investigated.

An immediate order covers the period between the date on which the person is notified of the panel's decision and the date on which the standard order that the panel has made (the removal, suspension or conditional registration order) comes into effect. This period usually allows time for the registered person to lodge an appeal with the Care Standards Tribunal (usually within 28 days of notification of the panel's outcome). It is a way of managing the risk posed by the individual during this time. It is not an order

[24] The Regulation and Inspection of Social Care (Wales) Act 2016, s 140-141.

that the registered person can appeal against, even though they can appeal against the main order.

Where a panel has decided that one or more of the conditions for an immediate order are satisfied, they must remember to explain this part of their decision in their reasons. They should state which of the conditions they have relied on and why. This is to help the person understand why they have not been allowed to challenge the restrictions before they are put in place as would normally happen with a standard order of this type.

If there is no appeal against the main order, the removal order takes effect 28 days after the person has been notified of the panel's decision – the immediate order covers the period in between. If there is an appeal, the main order will only come into effect when the appeal is withdrawn, discontinued or dismissed – the immediate order covers the period up to this point. If there is an appeal and it leads to the Care Standards Tribunal making a different decision from that made by the original panel, this will determine what happens to the main order.

Panels should exercise caution and seek advice if they include timescales of the immediate order and removal order in the panel reasons and make sure their explanation is accurate, clear and easy to understand. In particular, they should note that the end date should be based on when the main order takes effect and not when the immediate order takes effect.

Section 5: Panel Reasons

The importance of panel reasons

A panel must give full reasons for the use of a particular disposal in every case and these must allow the registered person and any other interested party to understand why the disposal was preferred over others that were available.

Where the panel has made an immediate order, it must explain reasons for the disposal and the decision to make an immediate order. This is an important aspect of the right to a fair hearing under Article 6 of the European Convention on Human Rights, as applied in England and Wales by the Human Rights Act 1998.

The panel's reasons should indicate why the decision is considered proportionate in all the circumstances. This will make it easier for all parties to understand the basis of the decision. This includes: the registered person and their representatives; Social Care Wales; the public; employers; those who gave evidence to the panel and the Welsh Government.

The reasons are how the panel conveys its decisions to the registered person, to Social Care Wales and to the public.

A panel may convey wider observations arising from a hearing within a feedback process to Social Care Wales, via the Hearings Manager, therefore it is unnecessary and not appropriate for a panel to include in the formal panel reasons observations, suggestions or concerns about the investigation carried out by Social Care Wales or other organisations' investigations or working practices.

The reasons should reflect the correct pronouns used by the applicant/ registered person

The registered person has the right to challenge the panel's decision by appealing to the First-tier Tribunal (Care Standards). A full explanation of the reasons for the decision will assist the registered person when they are deciding whether to exercise their right of appeal and will help the tribunal judge assess the merits of the case. Inadequacy of written reasons can, of itself, form the basis of a successful appeal.

Writing reasons

The reasons are formed during the panel's private deliberation and decision-making process, which the Legal Adviser will type up with contributions from the panel members.

The panel's reasons should succinctly and accessibly, through use of plain language, cover:

- the factual basis of its decision
- the legal basis of its decision (including additional advice from the Legal Adviser)
- its conclusions about substantive issues

- how any issue of law or fact has been resolved
- whether it has accepted advice from the Legal Adviser
- whether it has accepted any advice from the Medical Adviser (if present)
- its conclusions about the submissions of the parties or their representatives, including any submissions in mitigation
- its conclusions about any evidence given by witnesses or any testimonial evidence
- why it has chosen a particular disposal over other disposals that were available
- where it has directed a review hearing, or imposed a disposal with a timeframe, include a clear timeframe and the basis for doing so along with confirmation what the review hearing will be looking at to help the registered person understand what is expected of them while the order is in place and what the panel will expect to see at the review to evidence the registered person's compliance and any learning and changes to their practise and conduct.

The reasons should be firm but fair and, as stated above, reflect the panel's consideration of the evidence before them.

Appendix 1: How do panel disposals fit into the framework of social care regulation in Wales?

Understanding the regulatory framework

1.1 The current regulatory framework for the social care sector in Wales has its roots in the Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016 ('the Act'), which aim to improve the wellbeing of people who use care and support services in Wales.[25]

1.2 Regulation helps to protect those who use care and support services from harm by ensuring that only those who are suitably qualified and fit to practise in a social care role can lawfully work in the social care sector in Wales. Regulation also helps to bring about high-quality care and support services and raise awareness of the valuable role played by the social care workforce in Wales.

1.3 The Care Inspectorate Wales (CIW) regulates social care and support service providers, like care homes, in Wales, and Social Care Wales regulates the social care workforce. The two organisations are independent of one another, but they work together to improve standards in the social care sector.

1.4 Social Care Wales' objectives are set out in section 68 of the Act, which states the following:

1. Social Care Wales main objective in carrying out its functions is to protect, promote and maintain the safety and well-being of the public in Wales

2. In pursuing that objective Social Care Wales must exercise its functions with a view to promoting and maintaining –

   a) high standards in the provision of care and support services

   b) high standards of conduct and practice among social care workers

   c) high standards in the training of social care workers, and

   d) public confidence in social care workers

Which workers are subject to regulation by Social Care Wales?

1.5 This guidance only applies to those who are registered with Social Care Wales, as only these workers can be subject to our fitness to practise proceedings. This does not mean that unregistered social care workers are not accountable for the standard of their work - their employers have legal duties to ensure that they meet the standards in the Codes of Professional Practice and can be penalised for failing to do so. Those who do not meet the standards will not be able to work in a social care role in Wales.

[25] The Social Services and Well-being (Wales) Act can be found here: https://www.legislation.gov.uk/anaw/2014/4/contents.

1.6 Through regulations, the Act sets out which groups of social care workers must register with Social Care Wales. The list of workers who are required to register can be adjusted over time, through new regulations, and employers and workers are given time to prepare for any changes.[26]

1.7 Those carrying out any of the roles listed immediately below cannot lawfully work in the social care sector in Wales unless they are registered with Social Care Wales in line with regulatory requirements.

- social workers
- social work students
- residential childcare managers
- residential childcare workers
- domiciliary care managers
- domiciliary care workers
- adult care home managers
- adult care home workers
- secure accommodation services managers
- secure accommodation services workers
- residential family centre managers
- residential family centre workers
- adoption service managers
- adult placement managers
- advocacy managers
- fostering service managers
- special school residential managers[27]

1.8 Social Care Wales has a legal duty to publish a register of these workers ('the Register') including information about any restrictions on their practice. We also have a duty to keep a list of the those whose names have been removed from the register following concerns about their fitness to practise ('the List').[28]

1.9 The Register and the List help to keep the public safe by ensuring that anyone using regulated care and support services in Wales can check whether those providing them with services are fit to practise and whether there are restrictions on their professional practice or, in some cases, whether there have ever been restrictions on their practice. We use online versions of the Register and List, both of which can be found on the Registration pages of our website.

Details of our forthcoming hearings can be found on the Hearings page of our website.

[26] To keep up to date with which groups are on the list, you can check our Registration pages - https://socialcare.wales/registration/why-we-register.
[27] It is expected that Special School Residential Workers will be required to register by September 2026.
[28] The Social Care Wales (Content of Register) Regulations 2016, The Social Care Wales (List of Persons Removed from the Register Regulations) 2016 and the Social Care Wales (Content of Register) Rules 2020.

The outcomes of public hearings can be found in the individual's entry in the Register or, where relevant, the List.

We also have a list of people whose names have been removed from the Register under the Removal by Agreement (RBA) process (which doesn't involve a panel).

How is the registration requirement enforced and how are workers held accountable for their conduct?

1.10 The requirement for social care workers to register with Social Care Wales is enforced through regulations that place regulated care and support services in Wales under a duty to ensure that their staff are fit to practise, suitably qualified and, where relevant, registered with Social Care Wales.[29] These organisations are accountable to CIW.

1.11 Local authorities are under a similar duty to ensure the fitness to practise of the care and support staff that they use in adult and children's social services. They are accountable through their Directors of Social Services and wider public sector duties. Under section 116 of the Act, the Welsh Government can direct local authorities to take the Social Care Wales codes of practice into account when making decisions about the conduct of any of their social care workers.

1.12 When workers or students are admitted to the Social Care Wales Register, they are held to the relevant Code of Professional Practice by Social Care Wales and their employers or course providers. The Codes are explained to them as part of their induction and training and they have a duty to familiarise themselves with them and relevant practice guidance - they are also advised that they need to stay up to date with any changes. More information about the Codes of Professional Practice can be found on the Social Care Wales website.[30]

How do fitness to practise panels function?

2.1 Part 8 of the Act sets out Social Care Wales' duty to establish panels to make determinations about the fitness to practise of registered persons and the suitability of applicants to the Register. Panels also consider applications from Social Care Wales for interim restrictions on a person's practice. There are regulations and rules governing the activities and composition of our panels.[31]

2.2 Panels share the objectives that are set out for Social Care Wales in section 68 of the Act. However, they make their decisions independently of Social Care Wales and are guided by independent legal advisers and a framework of

[29] The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017 and The Regulated Services (Service Providers and Responsible Individuals (Wales) (Amendment) Regulations 2019.
[30] For information about the Codes of Professional Practice, please see - https://socialcare.wales/dealing-with-concerns/codes-of-practice-and-guidance
For information about the training and qualification requirements, please see - https://socialcare.wales/registration/qualifications-needed
[31] The Social Care Wales (Proceedings before Panels) Regulations 2016 and the Social Care Wales (Panel Constitution) Rules 2020.

legislation, rules and guidance documents. This includes the Regulation and Inspection of Social Care (Wales) Act 2016 (and associated regulations) and the Social Care Wales Rules.

2.3 As a public body, Social Care Wales' decisions may be subject to judicial review. The main grounds for a judicial review are illegality, procedural unfairness and irrationality. Any judicial review claims in relation to the actions of our panels would be taken against Social Care Wales as an organisation, rather than panels. We therefore need to ensure that our panels work within the legislative framework, listen carefully to legal advice, follow relevant guidance and exercise discretion cautiously.

2.4 We expect our panels to reflect our values, demonstrate awareness of our Code of Conduct and make decisions that are lawful, fair and reasonable. This is to ensure that we meet our objectives and that those who are registered with us are treated fairly and in a way that helps them to understand our standards and expectations.

2.5 The Social Care Wales (Proceedings before Panels) Regulations 2016 require panels to deal fairly and justly with cases, which includes:

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
(b) avoiding unnecessary formality and seeking flexibility in the proceedings;
(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
(d) using any special expertise of the panel or SCW effectively;
(e) avoiding delay, so far as that is compatible with a proper consideration of the issues.

2.6 Conducting a fair hearing also involves:

- ensuring that decisions are made in an unbiased way;
- taking all relevant information into account;
- interpreting and applying the law correctly;
- making decisions in a transparent way;
- demonstrating reasonableness and proportionality; and
- providing clear reasons for decisions.

2.7 As well as being guided by social care legislation, panels must be mindful of the fact that Social Care Wales operates within a broader legislative framework that includes, but is not limited to:

- The Human Rights Act 1998
- The Equalities Act 2010
- The Data Protection Act 2018
- The United Nations Convention on the Rights of the Child 1989
- The United Nations Convention on the Rights of Persons with Disabilities 2006.

Although panels are independent, they are regarded as part of Social Care Wales and are therefore covered by the same legislation. We do not expect, or indeed need, our panels to understand this legislation in detail, as there are legal advisers to guide them. However, we need them to be aware of the broad principles of the legislation and how it affects our work.

2.8 Social Care Wales is also influenced by the good practice guidance of the Professional Standards Authority (PSA)[32] and the wider policy aims of the Welsh and UK governments. They may also find the 'Equal Treatment Bench Book' to be a useful learning tool. This is used by the judiciary, is freely available on the Sentencing Council website and is updated regularly. The Hearings Team regularly refer to the Equal Treatment Bench Book for guidance on suggested arrangements for individuals attending a hearing who may require some support, to ensure they are able to participate as fully as possible.

2.9 Panels play a role in supporting government policy in relation to matters such as: domestic abuse; violent crimes against women; equalities; modern slavery; human trafficking. Those responsible for such activities often target vulnerable members of society, including some of those who use care and support services. As a result, social care roles may be attractive to such individuals. Panels should be mindful of these wider policy objectives when considering the potential impact of any incidents that led to our proceedings and any consequent risk associated with an individual's registration.

2.10 Legal Advisers provide advice on points of law and procedure and even though it is panels that decide whether the individuals referred to them are suitable for our Register, panel members need to take note of any advice given and remember that any decisions to deviate from or disregard such advice will need to be justified.

2.11 Panels should write their decisions in a way that makes it easy for the registered person and the public to understand them. This includes the applicant or registered person before a panel, people who have made referrals, employers, the press and anyone else with an interest in a case or hearing.

2.12 In line with the requirements of our legislation and the need for fairness, we need to ensure that our decision-making process is transparent. Sometimes we are asked for transcripts of hearings or copies of panel reasons by members of the public or the press.

2.13 Registered persons may request a transcript of a hearing. It is therefore important for panels to note any guidance provided by Social Care Wales or Legal Advisers in relation to writing decisions. This is to ensure that, in operating transparently, we do not unlawfully infringe the rights of any parties that may be entitled to have certain information protected. This includes, for example, children, people with spent convictions and people with health conditions.

[32] www.professionalstandards.org.uk
https://www.professionalstandards.org.uk/publications/detail/standards-of-good-regulation-2019

Appendix 2: The Legislative Framework for panels making decisions in Social Care Wales Hearings

Primary Legislation that is relevant to panel work

The Regulation and Inspection of Social Care (Wales) Act 2016 (RISCA)
http://www.legislation.gv.uk/anaw/2016/2/contents/enacted

The Social Services and Well-being (Wales) Act 2014
https://www.legislation.gov.uk/anaw/2014/4/contents

The Human Rights Act 1998
https://www.legislation.gov.uk/ukpga/1998/42/contents

The Data Protection Act 2018
https://www.legislation.gov.uk/ukpga/2018/12/enacted

The Equality Act 2010
https://www.legislation.gov.uk/ukpga/2010/15/contents/enacted

United Nations Convention on the Rights of the Child
https://ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx

United Nations Convention on the Rights of Persons with Disabilities
https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html

Regulations

Regulations specifying social care workers

Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016 - June 2016
http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=16525

Social Care Wales (Extension of Meaning of Social Care Worker) Regulations 2016 - June 2016
http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=16524

The Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2018
http://www.legislation.gov.uk/wsi/2018/192/made

The Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2020
http://www.legislation.gov.uk/wsi/2020/286/contents/made

Regulations relating to the Content of the Register/List of persons removed

The Social Care Wales (Content of Register) Regulations 2016
http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=16523

The Social Care Wales (List of Persons Removed from Register) Regulations 2016 - June 2016
http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=16522

Regulations about Panels

The Social Care Wales (Proceedings before Panels) Regulations 2016
http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=17273

The Social Care Wales (Proceedings before Panels) (Amendment) Regulations 2017
http://www.legislation.gov.uk/wsi/2017/140/contents/made

Social Care Wales (Constitution of Panels Prescribed Person) Regulations 2016 - June 2016
http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=16521

Social Care Wales Rules

Registration, Fitness to Practise and Hearings Rules
https://socialcare.wales/dealing-with-concerns/fitness-to-practise-hearings-rules-and-guidance

Appendix 3: Warning Template

1. Briefly state the facts

- as found proved in a hearing and agreed by Social Care Wales and the registered person (if present), or

- Include wording exactly as recorded in a conviction and sentence or a caution (unless the conviction is spent).

For example:

On 29 January 2024, you were convicted of driving whilst over the prescribed alcohol limit, driving without due care and attention and failing to stop after a road traffic accident, which caused minor injuries to a Young Person in your care who was a passenger in the car. You were sentenced to complete a Community Order and disqualified from driving for two years.

2. Briefly state the consequence of the concerns (one or more)

a. state whether the concerns are relevant to social care practice
b. state whether the concerns risk undermining public confidence
c. succinctly cite any breach of the Code of Professional Practise

For example:

This constituted a breach of the Code of Professional Practise for Social Care, and particular Section X which provides: [insert quote from the relevant part of the Codes]:

[Note here which codes are relevant]

Behaviour of this nature risks bringing the social care profession into disrepute

3. Warn of the need to ensure there is no repetition

For example:

- *This behaviour must not be repeated*
- *Any repetition is likely to lead to a finding of impaired fitness to practise, or*
- *Any repetition is likely to lead to further fitness to practise proceedings at which a different disposal may be considered.*

4. **Confirm the imposition of a Warning, its duration and when it is effective from;**

   For example:

   - **Where there is no finding of impairment (effective <u>immediately</u>);**

     We therefore impose a Warning for a period of [between 6 months and 3 years] from today.

   - **Where there <u>is</u> a finding of impairment (<u>not</u> effective immediately):**

     We therefore impose a Warning for a period of [between 6 months and 3 years] from the day on which this Warning comes into effect

5. **Confirm that the warning will be placed on the registered person's entry on the Register for the duration of the Warning** and confirm their ability to work

   This Warning will be placed on your entry on the Register for [chosen timeframe] and will be removed when it expires.

   You will be able to carry on working in a registered social care role while this Warning is in place.