

THE HIGH COURT

[2021 No. 318 MCA]

IN THE MATTER OF SECTION 60 OF THE MEDICAL PRACTITIONERS ACT
2007 AND IN THE MATTER OF A REGISTERED MEDICAL PRACTITIONER
AND ON THE APPLICATION OF THE MEDICAL COUNCIL

BETWEEN

MEDICAL COUNCIL

APPLICANT

AND

SYED WAQAS ALI BUKHARI

RESPONDENT

Ex-Tempore JUDGMENT of Mr. Justice David Barniville, President of the High Court,
delivered on the 29th July, 2022

Introduction

1. This is my judgment on an application brought by the Medical Council (the “Council”) for certain orders pursuant to s. 60 of the Medical Practitioners Act 2007 (the “2007 Act”). Among the orders sought by the Council are orders directing that the registration of the respondent’s name in the register of medical practitioners maintained by the Council pursuant to the 2007 Act be suspended until steps or further steps are taken under Part 7 and, if applicable, under Parts 8 and 9 of the 2007 Act. Part 7 is the part which concerns complaints to the Preliminary Proceedings Committee (the “PPC”) concerning registered medical practitioners. Section 60 is included in Part 7. Part 8 is the part which concerns complaints referred to the Council’s Fitness to Practise Committee (the “Committee”). Part 9 is the part which concerns the imposition of sanctions on registered medical practitioners following reports of the Committee.
2. In addition to seeking suspension of the respondent’s registration in the register, the Council also seeks an order that the respondent be prohibited from engaging in the

practice of medicine until steps or further steps are taken under Part 7 and, if applicable, under Parts 8 and 9 of the 2007 Act. It also seeks an order that the Council be at liberty to communicate the terms of the order to several persons or bodies including the Minister for Health, the Chief Executive Officer of the Health Service Executive, the Chief Executive Officer of the General Medical Council in the United Kingdom, the General Manager of a named General Hospital, the President of a foreign Medical Commission and a named Superintendent of An Garda Síochána. Various other orders are sought by the Council but these are the main orders.

Procedural History

3. The Council brought this application on 25th November, 2021, and, following the delivery of replying affidavits by the respondent, the application came before Irvine P. on 20th December, 2021. On that date, certain undertakings were agreed as between the Council and the respondent. Those undertakings were accepted by Irvine P. and certain other orders were made by her on that date. She directed that the application be listed again before the Court on 1st July, 2022, and provided that that listing could be vacated in certain circumstances.
4. When the application came before Irvine P. again on 1st July, 2022, certain disclosures were made to the Court on behalf of the respondent including the fact that the respondent had breached one of the undertakings given by him to the Court on 20th December, 2021, in that the respondent had been convicted by the District Court for driving without a licence and insurance and received a sentence of five months imprisonment in respect of that offence which the respondent was appealing. There is no dispute that that was a breach of one of the undertakings given by the respondent to the Court on 20th December, 2021. Irvine P. was also informed on 1st July, 2022, that the respondent was also convicted by the District Court of the offence of driving

while disqualified and driving without insurance, for which he was also sentenced to a period of five months imprisonment and which was also under appeal by the respondent.

5. On hearing that information, the Council decided to proceed with this application for orders under s. 60 of the 2007 Act, including the suspension of the respondent's registration and an order prohibiting him from engaging in the practice of medicine until further steps were taken under the 2007 Act. Irvine P. gave directions for the exchange of further affidavits and listed the matter for hearing before me on 27th July, 2022. I will refer later in this judgment to the evidence contained in the further affidavits and to the submissions made at the hearing.
6. I should note at this stage, however, that in the course of his reply and having heard counsel for the respondent confirm that the respondent would comply with the undertakings given to the Court on 20th December, 2021 and, if necessary, with other undertakings, counsel for the Council provided the Court with a list of additional undertakings which would be acceptable to the Council in the event that I was not disposed to grant the orders which it was seeking under s. 60 of the 2007 Act (the "New Undertakings"). It was, however, made very clear that the Council was not in any way backtracking on its application for the various suspension orders which it was seeking and that securing those orders was the Council's principal objective. A copy of the New Undertakings was provided to the respondent's counsel and he was afforded time to take instructions from the respondent. Having done so, the respondent's counsel confirmed that the respondent was prepared to give all of the New Undertakings sought by the Council. It will be necessary later in this judgment to consider the nature and extent of those undertakings and their implication for the Council's application for suspension orders against the respondent.

Factual Background and History

7. The respondent was, until earlier this month, employed as a surgical registrar at a named General Hospital having been appointed to that post in 2018. His contract ended on 8th July, 2022 and was not renewed or extended. The respondent qualified and received his medical training abroad and moved to Ireland in 2014 to pursue his medical career. He had appointments around the country prior to his posting in the named General Hospital.
8. At a meeting on 7th May, 2021, the Council decided to make a complaint to the PPC in respect of the respondent. That complaint arose out of a response given by the respondent to a question contained in his Annual Retention Application Form (“ARAF”) which was submitted to the Council on 22nd May, 2020 (the “2020 ARAF”). Question 7 of the form asked:

“Have you ever been convicted of any criminal offences in or outside this State or are you aware of any criminal investigations in process against you?”

In his 2020 ARAF, the respondent answered “yes” and provided the following additional information: - “careless drink driving with no insurance”.

9. A member of staff of the Council’s Professional Standards section sought further information arising from that response on 24th November, 2020. The respondent provided further information on 6th December, 2020. In an email of that date, he stated that he was:

“charged in ...Court with drunk careless driving with no insurance and possession of marijuana. I have to do 240 hours of community service and banned from driving for at least five years. There was no third party involved and case is closed in court.”

10. In an email dated 5th May, 2021, the Council requested the respondent to confirm the date of his conviction. He responded on the same day, informing the Council of:
- (a) the date of the conviction;
 - (b) the fact that the offence was “driving under influence of alcohol with no insurance and licence”; and
 - (c) the penalty was 240 hours of community service and ten years disqualification.
11. The respondent sent a further email on 6th May, 2021, confirming that the disqualification period was ten years. At its meeting on 7th May, 2021, having considered the position, the Council decided to make a complaint to the PPC in respect of the respondent. The PPC’s investigation of that complaint was ongoing at the time the Council issued its application seeking suspension orders against the respondent in November 2021 and is still ongoing.
12. At a meeting on 30th June, 2021, the PPC directed that the respondent be invited to provide the PPC with any further information he believes should be considered pursuant to s. 59(6) of the 2007 Act and that a copy of the record of the respondent’s conviction, be obtained. That information was requested from the respondent on 8th July, 2021. He replied on 22nd July, 2021, stating that he had requested an “official verdict of [the] Court hearing”, but that it would take a few more days to obtain. He provided the information which he had obtained verbally in court that day and assured the PPC that he would forward the “official verdict” as soon as he received it. He further stated in that email that although he accepted that it was a “*serious mistake on [a] personal front, it has not affected [his] professional life*”. He noted that, although he had been working in Ireland for the past six years, he “never had a single complaint made against [him] and referred to references from senior doctors with

whom he had been working in his previous placements”. Those references were furnished by the respondent. He also stated in the email that *“I will make sure that it will not happen again”*. He requested that the PPC *“will find kindness in their heart to give [him] a chance so that [his] future is not jeopardised, as it took [him] more than ten years [his] graduation to get here”*. The PPC followed up with the respondent on 8th October, 2021, noting that a copy of the official document from the District Court hearing had not been provided by the respondent. On 22nd October, 2021, the respondent provided a copy of the District Court order, which concerned the drink driving charge (which was referred to in the order as “Charge No. 1”). There was no reference in that order to the conviction for careless driving or for driving with no insurance or for possession of marijuana (to which the respondent had referred in his email of 6 December, 2020). There may be other relevant orders from that date but they have not yet been provided by the respondent.

- 13.** It also came to the Council’s attention (in circumstances which are not fully explained in the Council’s affidavit) that the Council was informed of another conviction received by the respondent for a driving related offence in the District Court in another location for which he was fined and banned for a considerable period for dangerous driving. The respondent appealed to the Circuit Court and he pleaded guilty to a lesser charge which was acceptable to the prosecution and to the Court. The respondent was fined a larger amount and banned for a lesser period for careless driving by that court. It appears that the respondent was driving at such a high speed that a garda driving at considerably above the legal speed limit was unable to catch up with him.
- 14.** Apart from the 2020 ARAF, the Council also carried out a review of the other ARAFs submitted by the respondent in the years between 2017 and 2021. Of note is that in

the ARAF for 2018 the respondent answered “no” to question 7 in that form which asked him:

“Have you ever been convicted of any criminal offences in or outside this State or are you aware of any criminal investigations in process against you.”

The ARAF for 2018 was submitted by the respondent on 29th May, 2018. The respondent had been convicted of the road traffic offence in 2016 and, on appeal to the Circuit Court had pleaded guilty to the offence in January 2017.

15. While the PPC was investigating the Council’s complaint against the respondent over the course of 2021, the catalyst for the Council’s application for suspension orders under s. 60 appears to have been a letter which it received from a named Superintendent dated 15th November, 2021. In that letter, the Superintendent stated with reference to the respondent:

“I refer to the above named doctor, who I understand is employed as a medical practitioner in the surgical and general wards at ... General Hospital...

I communicate with you on the basis of serious concerns held at this office regarding the ability of [the respondent] to discharge his duties without risk of serious harm or death to the patients he comes into contact with as a registered medical practitioner.

While [the respondent] is employed in ... General Hospital, he also resides within the ... Garda District. This has resulted in the subject coming into contact with An Garda Síochána on a number of occasions, most recently in July 2021.

In accordance with obligations placed on me under the Garda Síochána Act 2005 (Duty to Protect Life) and the European Convention on

Human Rights (Article 2), I am to inform you that [the respondent] has had a number of convictions imposed on him under the Road Traffic Act 1961, as amended, and also the Misuse of Drugs Act 1997/84.

*In some cases the subject has come into contact with Gardai while en-route to/from work and in surgical scrubs and as advised **I have what I believe to be valid and genuinely held patient safety concerns.***"

(emphasis added)

16. Following receipt of that letter, the Council's staff sought to obtain further information from the Superintendent. In a memorandum prepared by a Council staff member on 18th November, 2021, following a conversation with the Superintendent, the Superintendent is recorded as stating:

"SP noted that in relation to the incident which occurred on [date], Gardai who were on patrol in [location] stopped a vehicle which was being driven by [the respondent]. SP noted that [the respondent] is known to the Gardai as he has come to their attention previously. SP stated that when they stopped [the respondent] they could immediately smell cannabis and formed the view that [the respondent] was under the influence of cannabis. SP also noted that upon searching the vehicle, he seized a sum of cannabis, however, SP could not confirm how much was seized. SP confirmed that [the respondent] was before the District Court in relation to these offences recently which also included the offence of driving while disqualified and driving without insurance. SP noted that in circumstances where they are awaiting the result of a drug analysis test, [the respondent] is on remand."

17. In the same memorandum, the Superintendent referred to a previous conviction, where the respondent was convicted of an offence pursuant to s. 3 of the Misuse of

Drugs Act 1977. The memorandum records the Superintendent as being “*concerned for patient safety*”.

18. As I mentioned earlier, it appears to be the Superintendent’s belief that the respondent was convicted of a drugs offence, in addition to the driving offence referred to earlier. No copies or any details of any relevant convictions under the Misuse of Drugs Acts have been provided to date by the respondent.
19. The respondent attended a meeting with the Council on 24th November, 2021. All of the above matters were raised at that meeting and the respondent was given the opportunity of addressing the Council. In response, he made the point that his work was not “*directly affected*” by the “*reckless things*” which he had been doing and that he had not “*let this affect [his] work life*”. He requested that his “*personal matters should be separated from [his] work as this has not affected [his] work in any sort of way*”. He also offered to provide the Council with references. In answer to a question raised by a member of the Council as to how it was that he was driving in July 2021, when he was, by that stage, disqualified from driving for ten years, the respondent explained that he had been led to believe by his insurance brokers that he was permitted to drive and that he had insurance. He stated that he was advised by his brokers that if he obtained an international licence, he would be able to drive and blamed the insurance broker for providing him with misleading information. He also stated, in answer to a question as to whether he had ever been stopped by the Gardaí while wearing his scrubs, that on a particular occasion, he had gone to a friend’s house after work and had not changed his clothes but was not driving to or from work at the time.
20. Having considered the position, the Council decided to apply to the Court pursuant to s. 60 of the 2007 Act to suspend the respondent’s registration as it considered that that

was necessary to protect the public until steps or further steps were taken under the 2007 Act.

21. The reasons for the Council's decision to make the application were stated by Dr. Crowe, the Council's President, when announcing the decision at the end of the meeting. Dr. Crowe stated that the Council considered that the bringing of the application was necessary to protect the public for a number of reasons. The first was the Superintendent's letter to the Council of 15th November, 2021, which expressed serious concerns about risks to patient life and safety due to the pattern of behaviour by the respondent observed by the Gardaí. As noted earlier, a complaint was already under consideration by the PPC when that letter was received. Dr. Crowe referred to the activities involved including driving at very high speeds, driving under the influence of drugs and alcohol, including when wearing scrubs which suggested that he may have been travelling to and from hospital as well as driving when uninsured, disqualified and without a driving licence. It was suggested that those behaviours appeared to be "*escalating*" even though a complaint was already being considered by the Council. Dr. Crowe stated that the Council's concern for public safety was compounded by declarations made by the respondent in the ARAF forms which were untrue or incomplete in terms of the disclosure of the relevant behaviour. She stated that the respondent's explanations to the Council at the meeting did not assuage those concerns in any way, although she made clear that the Council had reached no view on the truth or otherwise of those matters. She further stated that in the event of adverse findings ultimately being made against the respondent, if they included a relevant medical disability relating to alcohol or substance misuse, the likely sanction would be cancellation of registration or the imposition of very stringent conditions. Without a relevant medical disability, she stated that "*adverse findings will be such as*

to merit sanctions likely to include erasure or suspension of registration". The Council requested that the papers from the meeting be sent to the PPC for further consideration.

The s.60 Application

22. The Council issued its application for the s. 60 suspension orders on 25th November, 2021. The application was grounded on an affidavit sworn by Dr. Crowe on that date. The respondent was put on notice of the application which was adjourned to be heard by Irvine P. on 20th December, 2021.
23. The respondent swore two replying affidavits in response to the application. In his first replying affidavit sworn on 10th December, 2021, the respondent set out his qualification and work history in Ireland (which I have touched on earlier). At para. 5 of that affidavit, he stated:

"I acknowledge that I have had issues with alcohol and substance abuse. However, I reject any suggestion that I have ever allowed the safety of my patients to become compromised in any way, including as a result of the consumption of alcohol or any other substance."
24. He confirmed and swore that he had never attended work at the named General Hospital, or at any other hospital, while under the influence of alcohol or any other substance. He stated that he never had any complaints made against him by any patient or colleague in terms of his professional practice.
25. The respondent referred to the Superintendent's letter of 15th November, 2021. In response, he stated that he had never attended at work while under the influence of alcohol or any other substance. With respect to the incident on 19th July, 2021, he rejected the allegation that he was either going to or coming from work under the influence of cannabis. He stated that, while he was wearing his scrubs on that

occasion, he was returning home from a friend's house having spent the night there after his shift ended the previous evening and that he had left the hospital in his scrubs. He accepts that "*wrongfully*" he had cannabis in his possession and had consumed cannabis on that occasion. He asserted, however, that he was off duty and was not going to or coming from work and that there was, therefore, no risk to the safety of his patients. He further stated that, other than the incident on 19th July, 2021, he had not been stopped by the Gardaí on any other occasion while wearing his scrubs.

26. The respondent provided copies of references from two consultants under whom he worked at the named General Hospital. One was from a Consultant General and GI Surgeon in the named General Hospital dated 6th December, 2021. He stated that he had not "*found or heard of any incidents where [the respondent] was a risk to patient safety at any time during his work in [the] department*". He also stated that the respondent was "*very repentant and is keen to get help to reform himself*". Another reference was provided by a Consultant General and Colorectal Surgeon in the named General Hospital dated 2nd December, 2021. He stated that he did not find the respondent "*to be a risk to patient safety*" and that he was an "*excellent team player and always very keen to help out his colleague*". He also stated that he had never found the respondent to be intoxicated at work and that he had never seen the respondent "*compromise patient safety*". The respondent also referred to references previously provided from his prior posts in Ireland.
27. The respondent disputed the Superintendent's contention that he had convictions under the Misuse of Drugs Act, although he stated that he intended to plead guilty with respect to the incident on 19th July, 2021, which included a charge of possession of cannabis. It is not clear whether there was ultimately any prosecution against the

respondent for that charge. The respondent accepted that he had “*certain issues*” which he was continuing to address and that he had consumed cannabis on occasion, including on 19th July, 2021, when he was stopped by the Gardaí while driving. He accepted that he had also twice been convicted of driving under the influence of alcohol and driving while disqualified. He stated that that was “*utterly unacceptable behaviour of which [he is] deeply ashamed*”. He explained that he had issues with substance abuse which began [REDACTED]. He referred to becoming frustrated and that that ultimately led him to take alcohol and to engage in substance misuse. However, he asserted that those activities never affected his professional life, although acknowledging that he was wrong to engage in that type of behaviour. He stated that he had remarried in Ireland, and that his wife is an “*enormous stabilising presence*” in his life. The respondent stated that he was seeking to address his issues and confirmed that he had not consumed alcohol or any illegal substances in any capacity since August 2021, that he was seeking help with the AA since November, 2021, was attending multiple meetings each week and had a sponsor who was helping him. He stated that he was determined to continue abstaining from alcohol and substance abuse.

28. The respondent stated that his profession was his only source of income and that he does not have financial resources. He confirmed his willingness to engage with the Council’s Health Committee, if the Court or the Council felt that appropriate. He also undertook and promised not to drive any motor vehicle while banned, although he recognised that a court might view that undertaking with some suspicion given that he had a number of previous road traffic offences. He asked the Court to take a “*generous view*” of his position noting that he was in the process of reforming and

that he wished to effect “*meaningful change*” to his life. He explained that in terms of transport, he had the assistance of his wife and friends and was currently taking public transport to and from work.

29. The respondent swore a second replying affidavit on 15th December, 2021. In that affidavit, he confirmed that he had never attended at work while under the influence of alcohol or of any other substance including on 19th July, 2021. He reiterated that, on that occasion, he was returning home from a friend’s house having spent the night there after his shift the previous evening when he had left the hospital in his scrubs. He exhibited a copy of a letter from his friend and colleague confirming that position. He reiterated that he was not working or on duty on 19th July, 2021 and exhibited a letter from a senior colleague dated 15th December, 2021 confirming that position. In his letter of that date, the colleague stated that, according to his schedule, the respondent was “*offsite*” on 19th July, 2021 “*to study with his colleagues at home*”. The respondent stated that, having left his colleagues home on 19th July, 2021, he was returning to his home when he was stopped by the Gardaí.
30. The respondent also exhibited to that affidavit a number of other references from the Clinical Nurse Managers of Wards, Theatre, Emergency Department and Endoscopy in the named General Hospital. It is fair to say that all of those references are extremely positive and recorded the respondent as being either excellent or very good in respect of all of the relevant criteria including professionalism, clinical judgment and conduct.

The Hearing on 20th December 2021: Undertakings Given

31. When the application came before Irvine P. on 20th December, 2021, the Council and the applicant agreed a series of undertakings in lieu of the suspension orders sought.

Those undertakings were accepted by the Court. Those undertakings may be summarised as follows:

- (1) Pending the determination of the Council's Fitness to Practise Inquiry, the respondent undertook to "*fully cooperate*" with the Health Committee and with any medical practitioners nominated by that committee and also with his own medical practitioners and to follow all medical advice and to cooperate with any treatment regimes recommended, including those directed in the areas of psychiatry, counselling and narcotic anonymous settings;
- (2) Pending the determination of the Council's Fitness to Practise Inquiry, the respondent undertook to undergo any regime of testing for substance intake recommended to him or required by the Health Committee or any medical practitioners nominated by it and also by his own medical practitioners with any modality or frequency recommended or required;
- (3) Pending the determination of the Council's Fitness to Practise Inquiry, the respondent undertook to authorise his medical practitioners to communicate with the Council and its committee (as may be required) in respect of his care including the provision of medical reports on his condition, progress, prognosis and test results;
- (4) The respondent undertook to follow all health and safety and infection control guidelines in place in his employing hospital;
- (5) The respondent undertook to "*uphold the law in terms of driving licence and insurance legislation, and the Misuse of Drugs Act*"; and
- (6) The respondent undertook to notify the Council in advance, if he intended leaving his employment at the named General Hospital before his contract ended in July, 2022.

- 32.** In addition to those undertakings, Irvine P. made certain further orders including that the Council was at liberty to communicate the terms of the undertakings to certain persons including the General Manager of the named General Hospital and the Health Committee and PPC of the Council. The Council had liberty to apply if notified that the respondent intended to leave his employment at the named General Hospital. The President also directed that the application be listed before the Court again on 1st July, 2022, unless the respondent's contract of employment with the named General Hospital was extended or renewed beyond its current expiration date in July, 2022, in which event the listing on 1st July, 2022, could be vacated by the parties.
- 33.** That is where matters stood as of 20th December, 2021. There were a number of significant developments between that date and 1st July, 2022. They are described in an affidavit sworn by John Gleeson, a member of the Council and Chairperson of the PPC, on 30th June, 2022. Mr. Gleeson explained that, following completion of certain investigations (described earlier), the complaint against the respondent was brought back before the PPC on 26th January, 2022. The PPC made a number of directions on that occasion including that a statutory notice be issued to the respondent pursuant to s. 59(7) of the 2007 Act, requiring him to provide certain information including:
- (i) details of each conviction under the Road Traffic Act 1961 (as amended) and under the Misuse of Drugs Acts 1977 – 1984, including detailed information in relation to each such conviction;
 - (ii) details of all or any ongoing criminal investigations concerning the respondent including details of all or any criminal charges brought against him.
- 34.** The PPC further directed that information be obtained from An Garda Síochána in relation to all convictions imposed on the respondent and all charges brought against him under both of those legislative codes.

35. On foot of those directions, the respondent provided certain information to the case officer assigned to assist the PPC in relation to the complaint. On 3rd March, 2022, he advised that officer that he had applied to the Data Protection Unit of An Garda Síochána for a copy of the record of all his convictions and ongoing investigations. He subsequently notified that officer that the Data Protection Unit wrote to him on 7th March, 2022, asking for a list of all of his previous addresses. The respondent informed the officer on 24th April, 2022, that he was still waiting to receive the record from An Garda Síochána. Not having heard from him, the officer wrote to the respondent on 3rd June, 2022, seeking an update. No response was received and the officer contacted the respondent again on 29th June, 2022, in advance of the listing before the President on 1st July, 2022. An update was sought in respect of the outstanding information. The respondent confirmed that he did receive the record from An Garda Síochána and that he instructed his solicitor to liaise with the officer. However, the information was not provided to the PPC and that remained the position as of the hearing on 27th July, 2022. In addition, the Council's solicitors wrote to the respondent's solicitors on 22nd June, 2022, inquiring whether the respondent's contract with the named General Hospital had been extended or renewed beyond 2022. On 29th June, 2022, the respondent's solicitors replied confirming that the respondent's contract with the HSE was "*not being renewed or extended beyond... July, 2022*".

The Hearing on 1st July 2022

36. When the Council's application came before the President on 1st July, 2022, the respondent's counsel informed the President that since the matter was last before her on 20th December, 2021, the respondent had been convicted of two driving offences, namely:

- (i) Driving while disqualified and driving without insurance. It appears that the respondent pleaded guilty and received a sentence of five months imprisonment. The respondent is appealing that sentence.
- (ii) Driving without a driver's licence and insurance. The respondent pleaded guilty and received a sentence of five months imprisonment in respect of that offence. The President was informed that the respondent was also appealing that sentence.

37. The respondent's counsel informed the President of the respondent's explanation for the events in relation to the second incident. This explanation was set out in a further affidavit sworn by Dr. Crowe on 13th July, 2022. The explanation given on behalf of the respondent was that he was attending a friend's house with his wife when his wife became ill. The respondent suspected his wife was having a coronary event and as he believed that it was not safe to wait for an ambulance or a taxi, he put his wife into the car and drove her to the hospital together with his friend who the respondent stated had not driven previously. The respondent was stopped by the Gardaí on the way to the hospital. The respondent explained to the Garda that he was taking his wife, who had since regained consciousness, to hospital. The respondent stated that his wife had to undergo various medical tests at the hospital. The respondent's counsel informed the President that the respondent was prepared to swear an affidavit to that effect. In light of these developments and, particularly in light of the incident here described, the Council instructed its counsel to inform the Court that the Council would be applying to the Court for the suspension orders originally sought in circumstances where the Council could have no trust or confidence in the respondent's ability to comply with the undertakings given to the President on 20th December, 2021. Reference was made specifically to the undertaking (5) referred to above. On that

basis, the President directed a further exchange of affidavits and adjourned the matter for hearing to 27th July, 2022. The respondent gave an undertaking through his counsel not to practice medicine after his contract of employment with the named General Hospital ended in July, 2022, pending the hearing before the Court on 27th July, 2022.

Further Affidavits

38. On foot of those directions, Dr. Crowe swore her affidavit on 13th July, 2022. A replying affidavit was sworn by the respondent and by his wife on 22nd July, 2022.
39. In her affidavit, Dr. Crowe explained the developments before the President on 1st July, 2022. She also referred to correspondence which the Health Committee of the Council wrote to the respondent on 30th June, 2022 and 5th July, 2022, in which it requested the respondent to provide medical reports from his treating doctors. No response was received by the respondent at the time of that affidavit although in his replying affidavit, the respondent stated that he was in the process of responding to those communications.
40. Dr. Crowe stated that it was a matter of considerable concern to the Council that the respondent had not complied in full with the undertakings given to the President on 20th December, 2021. She noted that, despite being disqualified from driving, the respondent was observed by An Garda Síochána driving a motor vehicle less than eight weeks from the date on which he gave his undertaking to the President. She noted that while the respondent had offered an explanation for that, nonetheless that he had received a prison sentence in the District Court arising from that incident (albeit that that sentence is under appeal). Dr. Crowe noted that it was particularly concerning that, although the PPC was seeking information from the respondent in connection with his criminal convictions and any ongoing criminal investigations in

which he was involved since January 2022, the information was not provided to the PPC. It is notable that ,although the respondent communicated with the PPC officer on 3rd March, 2022 and 24th April, 2022, the respondent did not inform the officer or anyone else within the Council of the additional incident that had occurred. Dr. Crowe also referred to undertaking (6) referred to above. She pointed out that the Council was not told that the respondent’s contract in the named General Hospital was not being renewed until 29th June, 2022, a short number of days prior to the expiration of the contract. However, it was accepted on behalf of the Council at the hearing on 27th July, 2022, that this was not a breach of undertaking (6).

41. Dr. Crowe explained that, in all of the circumstances, the Council had lost all trust and confidence in the respondent’s willingness and ability to comply with the undertaking as given and also that the respondent had displayed “*a worrying lack of insight into his conduct*” which “*by its very nature has brought the profession into serious disrepute*”. The Council did not, therefore, believe that, pending the procedures under Part 7 and, if applicable, Parts 8 and 9 of the 2007 Act, the public would be adequately protected by undertakings such as those given by the respondent in December 2021. The Council was also concerned as to its ability effectively to monitor the respondent’s compliance with its undertakings with respect to his working environment, particularly if the respondent was to seek work on a locum basis. The Council maintained, therefore, that the suspension orders originally sought should be granted and that the Council be at liberty to reflect any such orders on its public-facing register.
42. Dr. Crowe outlined the reasons for the Council’s decision to pursue those reliefs. They may be summarised as follows:

- (i) The Council believes that the suspension is necessary to protect the public as the respondent is on the general register and is free to practice.
 - (ii) It believes that the respondent has shown as “clear lack of insight” into his conduct.
 - (iii) The Council does not have any confidence or trust in the respondent’s compliance with further undertakings in light of the breach of undertakings (v) and (vi) (although counsel accepted at the hearing on 27th July, 2022 that the respondent had not breached undertaking (vi)).
 - (iv) The Council was concerned that the respondent’s lack of engagement with it in respect of 14th February, 2022 incident.
 - (v) It also noted the difficulty inherent in monitoring compliance with voluntary undertakings.
- 43.** In his replying affidavit of 22nd July, 2022, the respondent accepted that “*most regrettably and directly contrary*” to one of the undertakings given on 20th December, 2021, he was apprehended by the Gardaí driving a motor vehicle while disqualified and uninsured. He explained the circumstances in which this occurred. He and his wife were at the home of a friend when his wife suddenly started having severe lower abdominal pains and dizziness. His wife then collapsed. She had “*cold clammy skin and was having sweats all over, with somewhat laboured breathing*”. The respondent and his friend immediately put her in the car as he thought her life was in danger. He felt it was not safe to wait for an ambulance or a taxi as he thought that it could be a “cardiac event”. The friend had never driven a car before (it seems that the respondent’s wife had driven the respondent and herself to the friend’s house originally). The respondent explained that while driving his wife to hospital, with the friend in the car, a member of An Garda Síochána stopped the car. The respondent’s

wife had regained consciousness in the meantime and informed the Garda about her condition and how she would have otherwise been driving. The respondent then stated that his wife underwent a lot of investigations and scans before being deemed healthy. It is notable, however, that the respondent did not provide any further details in relation to these investigations. Nor did he explain where they took place. One might have got the impression from the respondent's affidavit that they took place in the named General Hospital. However, it seems that it is not so. When asked at the hearing on 27th July, 2022, the respondent's counsel stated, on instructions from the respondent, that the respondent and his wife went abroad shortly afterwards and underwent "*a suite of tests*" and various investigations. Fortunately, the outcome of those investigations was positive and the respondent's wife was apparently deemed "healthy" (according to para. 3 of the respondent's replying affidavit).

44. The respondent stated that he was "*very sorry to have breached the road traffic laws and to have breached [his] specific undertakings*" to the Court. However, he stated that he did not consider that he had any great choice given the circumstances. He was charged in connection to the incident. He pleaded guilty to the charge in the District Court and received a prison sentence of five months which is under appeal. It was confirmed by the respondent's counsel at the hearing that the explanation for the second incident, offered to the Court on 1st July, 2022, and outlined in the respondent's affidavit was relied on by way of mitigation in the District Court.
45. The respondent confirmed that he had not breached any of the other undertakings given to the Court and that, apart from that one occasion, he had not driven a motor vehicle since the undertakings were given.

46. The respondent went through each of the undertakings given by him to the President and recorded in the order of 20th December, 2021, I summarise below what the respondent stated in respect of each of those undertakings:
- (1) He stated that he has not failed to cooperate with the Health Committee of the Council and that the first communication he received from the Health Committee was on 30th June, 2022, which was followed by an email of 5th July, 2022. He stated that he was *“in the process of responding to these communications”*.
 - (2) He stated that he has not failed to undergo any regime of testing for substance intake recommended by the Health Committee and that no such regime has been recommended or proposed. He confirmed on affidavit that he has not *“consumed any alcohol or narcotic since giving the undertaking”*.
 - (3) He stated that he has not failed to authorise communication between his medical practitioners and the Council and that no request for such communication was made apart from the request contained in the Health Committee’s letter of 30th June, 2022, in which he was requested to provide a medical report from his doctor dealing with eight particular matters. He stated that he was in the process of addressing that correspondence.
 - (4) He stated that prior to the end of his employment in the named General Hospital, he followed all health, safety and infection control guidelines.
 - (5) He accepted that he breached the law when he drove his wife to the hospital (although it appears that he did not in fact drive his wife to the hospital on that occasion). He stated that he has not breached the Misuse of Drugs Act since he gave the undertakings to the Court.

47. With respect to the other undertakings offered by him to the President on 20th December, 2021, which were not recorded in the order, the respondent stated that he provided the relevant consents contained in those undertakings. With respect to undertaking (6), he stated that he did not leave his employment at the named General Hospital prior to the end of his contract and that the contract came to an end in July, 2022. He has not engaged in the practice of medicine since then. He disputed the suggestion that he had breached this undertaking. The Council has accepted that that is so.
48. The respondent further stated that since the matter was before the Court on 20th December, 2021, he had attended to all of his professional obligations and responsibilities in a competent and safe manner. He noted that there was no suggestion in Dr. Crowe's affidavit that his clinical work had been substandard in any respect and he disputed the suggestion that he posed any risk to the public. Finally, he stated that if the Court was prepared to permit him to continue to practice medicine pending the determination of any Fitness to Practise hearing, he was willing to engage with the Council in terms of any undertakings that might reasonably be put in place such as those given in December 2021.
49. The respondent's wife also swore an affidavit on 22nd July, 2022. She explained that she had driven the applicant and herself to the friend's' house on 14th February, 2022. While at the house, she stated that she began to feel ill and collapsed. She was unable to drive and her husband drove her "*with the intention of going to the named General Hospital*". They were stopped by An Garda Síochána enroute. She says that she explained the situation to the Garda. She does not state whether they continued on to the hospital and does not refer to any further investigations or tests carried out whether in Ireland or elsewhere.

50. That is the evidence relevant to this application.

Section 60 of the 2007 Act

51. The Council’s application is made under s. 60 of the 2007 Act. It provides as follows:

“(1) The Council may make an ex parte application to the Court for an order to suspend the registration of a registered medical practitioner, whether or not the practitioner is the subject of a complaint, if the Council considers that the suspension is necessary to protect the public until steps or further steps are taken under this Part and, if applicable, Parts 8 and 9.

(2) An application under subsection (1) shall be heard otherwise than in public unless the Court considers it appropriate to hear the application in public.

(3) The Court may determine an application under subsection (1) by—

(a) making any order it considers appropriate, including an order directing the Council to suspend the registration of the registered medical practitioner the subject of the application for the period specified in the order, and

(b) giving to the Council any direction that the Court considers appropriate.

(4)”

52. This application was heard otherwise than in public under section 60(2).

53. The principles applicable to applications under s. 60 of the 2007 Act are now well established. The High Court has a wide jurisdiction in dealing with such applications and the Court is “not limited to a simple binary choice between either granting or refusing the order: the court may, rather, make whatever order it sees fit” at para 4.48, p.110 (Mills, Ryan, McDowell and Burke, *Disciplinary Procedures in the Statutory Professions* (2011))

54. An order made under s. 60 pending the determination of proceedings under the 2007 Act in respect of a medical practitioner is likely to have significant adverse consequences and to work considerable hardship on the practitioner in terms of his livelihood and reputation. For that reason, it was stated by Morris J. in *Medical Council v. Whelan* (Unreported, High Court, (Morris J.), 20th February, 2001) that since such an order could have such adverse consequences, the Court “*should only make such an order when no other order will serve to protect the community*” (at 7). In that case, the Court refused to grant an application for an interim suspension and instead directed that the doctor gave undertakings to the Court on oath to comply with certain conditions.
55. In *Casey v. Medical Council* [1999] 2 I.R. 534, Kelly J. noted that interim suspensions should be “*reserved for exceptional cases where a doctor has to be suspended from practice because it is in the public interest to do so*” (at 549).
56. The conflicting and competing interests involved were described by Keane C.J. in the Supreme Court in *Medical Council v. P.C.* [2003] 3 I.R. 600. He said:
- “Undoubtedly, the High Court ... must be satisfied that the public interest requires that this be done and that that public interest outweighs the constitutional right of the medical practitioner concerned to carry on his or her practice and earn his livelihood as a doctor. The High Court is obliged to weigh those two matters before making an order and decide which of the two matters is to bring down the scales, as it were ...”* (at 602)
57. The need to carry out this balancing exercise was stressed recently by Irvine P. in *Medical Council v. Waters* [2021] IEHC 252. She stated (at para. 21):
- “It is also important that when asked to make an order under s. 60, that the court seeks to balance the right of the public to be protected from a medical*

practitioner who poses a risk to their care and welfare against the right of the medical practitioner to continue his or her practice until such time as an adverse finding may or may not be made against them. Accordingly, subject to the considerations in Whelan, the question I must ask myself on the present application is whether on the facts as disclosed to me the public interest outweighs the constitutional rights of the respondent to carry on his practice and earn his livelihood as a doctor and his right to avoid the reputational damage associated with the making of an order suspending his practice.”

- 58.** At para. 22, Irvine P. stated that it is clear from the authorities that whether the conduct at issue such as to amount to a threat to the public will depend on the facts of the individual case and that if a suspension order is to be made “*clear reasons must be offered as to why the public needs to be protected on the specific facts of that case*”. Later in her judgment in that case, Irvine P. considered the impact of the s. 60 suspension on patients. She considered that the evidence in that case led her to conclude that the health, safety and welfare of the respondent’s patients and the relevant community could only be adequately protected by the making of the suspension order.
- 59.** The authorities also make clear that in considering an application under s. 60 of the 2007 Act, the Court must review the Council’s decision to proceed with such an application. The factors to be considered by the Council before applying for orders under s. 60 were identified (in the context of the Nurses Act 1985) by Barron J. in the Supreme Court in *O’Ceallaigh v. An Bord Altranais* [2000] 4 I.R. 54. The three matters which Barron J. stated had to be considered by the Nursing Board in that case (and which apply equally to the Council) when determining whether an application should be made to the Court for an interim suspension were:

- (i) the nature of the complaint on which the application for an inquiry is based in terms of the seriousness of the conduct complained of;
- (ii) the apparent strength of the case against the relevant practitioner; and
- (iii) whether in the event of an adverse finding, the appropriate sanction would be to “strike off” the practitioner either permanently or for a definite period:
(*O’Ceallaigh* per Barron J. at 96; *Medical Council v. F.C.M.* [2018] IEHC 616, per Kelly P. at para. 40 and *Medical Council v. Waters* per Irvine P. at 24).

60. With respect to the third factor referred to, it was made clear by Kelly P. in *F.C.M.* that even if the ultimate outcome of a hearing before the Fitness to Practise Committee resulted in a conditional registration and cessation from practice until certain conditions are fulfilled rather than a strike off, the public interest might nonetheless demand that a suspension order be made pending the determination of the inquiry.

Application of the Relevant Principles

61. There is no dispute between the parties that these are the relevant principles to apply. The issue between them is whether on the facts the Council have demonstrated that the suspension order sought is necessary to protect the public pending the determination of the complaint (or complaints) against the respondent under the 2007 Act. The Council maintains that the suspension order sought is necessary to protect the public and that it is necessary for the Court to carry out a balancing exercise between the need to protect the public from the risk of harm and the interests of the respondent in terms of his entitlement to earn a livelihood and to his reputation. It contends that the balance clearly lies in favour of making the order sought. The Council relies in that regard on the risk profile of the job carried out by the respondent

in terms of the likelihood or otherwise of a member of the public being harmed by his conduct as well as the nature of the behaviour alleged to give rise to the risk.

62. The Council stresses that the respondent has accepted that he has (or at least had) issues with alcohol and substance abuse. It also stresses the period of time over which the relevant behaviour has taken place which is, at least, between 2016/2017 and 2021, a lengthy period of time. It first emphasises that the respondent has been given a number of opportunities by the District Court and Circuit Courts in context of the road traffic prosecutions in 2016/2017 and in 2020. It relies on the apparent lack of any real insight on the part of the respondent of his conduct and in those circumstances, it is difficult to be confident that the underlying issues will be addressed. The Council further relies on the fact that at least one of the undertakings given to the Court on 20th December, 2021 (undertaking (5)) was breached and that, although the respondent was in contact with the PPC in the first number of months of 2022 after the undertakings had been given to the Court on 20th December, 2021, and although he was being asked specific questions about convictions under the Misuse of Drugs Acts and about ongoing criminal investigations and criminal charges, the respondent did not inform the Council of the second incident until the hearing before the President on 1st July, 2022. The Council relies on the unquestionable and undisputed breach of undertaking (5) during that occasion. That incident and the failure by the respondent to inform the Council led to a breakdown in its trust and confidence that the position could be addressed by the undertakings given in December 2021. The Council was doubtful as to the ability to monitor undertakings on those terms. When asked about the likely time period within which procedures under the 2007 Act could be completed, counsel for the Council stated that investigations and procedures where suspension orders had been made are prioritised

but that nonetheless it could be twelve months or more before matters were brought to a conclusion under the 2007 Act.

63. In response, reliance was placed on behalf of the respondent on the various matters set out in his affidavit. It was stressed that the critical matter for the Court to consider was in an application for a s. 60 suspension order is the risk of harm to the public. It was noted that the catalyst for the Council's application was the Superintendent's letter of 15th November, 2021. It was argued that the respondent disputed a number of the factual allegations contained in that letter and in particular the contention that on 19th July, 2021, he was travelling to or from work. He relied also on the references provided by the two consultant surgeons in the named General Hospital, by the Clinical Nurse Managers at the hospital and by consultants under whom he had worked in previous positions in other hospitals in Ireland. The respondent referred to a "*glaring omission*" in the Council's position in that it was unable to point to a risk to the health and welfare of patients. It was accepted on behalf of the respondent that it was "*hugely regrettable*" that the second incident occurred and that the respondent had clearly breached the undertaking (5) on that occasion. However, it was contended that the respondent did not pose a risk in his professional work, that he had taken steps to address his issues and that he had not consumed alcohol or any illegal substances since August 2021. The main focus of the respondent's response to the application was that he did not pose any risk to the public or to patients and that it would not, therefore, be unsafe to permit him to practice between now and the conclusion of any inquiry which may take place under Part 8 of the 2007 Act. The respondent relied on the fact that his income from practising medicine was his sole source of income and that he was prepared to comply with the undertakings previously given and with other undertakings which might reasonably be required by

the Council although his initial position was that he ought not to be required to inform potential employers of the fact of the PPC investigation and of this application.

64. In reply, counsel for the Council maintained that its position was that the s. 60 suspension orders should be made. However, reasonably and responsibly, the Council's counsel took instructions as to whether counsel might accept further undertakings in the event that the Court was not prepared to make those orders. Entirely without prejudice to its principal position, therefore, the Council provided a list of undertakings to the respondent. Undertakings (1) – (5) of the New Undertakings were in almost identical terms to undertakings (1) – (5) of the undertakings given on 20th December, 2021.

65. Undertakings (6) – (8) of the New Undertakings went further. I will set out undertakings (6) – (8) below:

“(6) The respondent will:

- (a) notify any prospective employer, at least five working days in advance of taking up employment, of the existence of the complaint under Part 7, and if applicable Parts 8 and 9 of the Medical Practitioners Act 2007 and the details of the undertakings at (i) – (v) above; and*
- (b) notify the Professional Standards Department of the Medical Council, at least five working days in advance of taking up employment, of the details of any such employer and consent to the Professional Standards Department of the Medical Council engaging with any such employer regarding the undertakings at (i) – (v) above.*

(7) The respondent consents to the applicant reflecting on the applicant's public-facing register the following:

‘The respondent has provided health related voluntary undertakings to the High Court. If you require this information please write to:

Professional Standards, Medical Council...or email...’

(8) *The applicant be at liberty to communicate the terms of the undertakings so given at (i) – (vi) above to:*

(a) *the Health Committee of the Medical Council;*

(b) *the Preliminary Proceedings Committee of the Medical Council; and*

(c) *such other committee within the Medical Council as may be required.”*

66. The respondent’s counsel was afforded an opportunity to take instructions from the Council on these undertakings. Having done so, he informed the Court that the respondent agreed to give undertakings (1) – (8) of the New Undertakings to the Court.

Decision

67. I deferred for a day or so giving my ruling on the Council’s application as I wanted to reflect on whether, notwithstanding the fact that the respondent was prepared to give those undertakings to the Court, it was nonetheless necessary to protect the public that I should make the orders sought by the Council under section 60. The Council have made it clear that its primary position is that the Court should make those orders and that the undertakings which they produced at the end of the hearing, to which the respondent has agreed, could only arise in the event that I were minded to refuse to grant the orders sought under section 60.

68. I have to bear in mind and apply the legal principles applicable to applications under s. 60 which I referred to earlier in this judgment. I must bear in mind that such orders should only be made where “*no other order will serve to protect the community*” (per Morris J. in *Whelan*) and that orders of this type should only be made in “*exceptional*

cases”. I must also be satisfied that the orders sought are necessary in order to protect the public and must be satisfied that the public interest outweighs the respondent’s constitutional right to carry on his practice and earn his livelihood as a doctor. I am not so concerned in this case about the respondent’s right to his reputation, in circumstances where he has pleaded guilty to, at least, a number of serious road traffic offences. While the respondent has received prison sentences in respect of the convictions in April 2022 and May 2022, those sentences are under appeal. It will be entirely a matter for the Circuit Court as to whether those sentences stand. Nor is it a matter for me to make any findings or express any concluded views as to the circumstances in which the respondent came to be driving during the second incident, in breach of undertaking (5) given to Irvine P. on 20th December, 2021. While the respondent’s explanation for that incident was raised by way of mitigation before the District Court, it may well be a matter which will arise for further consideration by the Circuit Court on appeal and PPC or, if it arises, by the Council’s Fitness to Practise Committee and it could be inappropriate for me to express any conclusions on what occurred.

- 69.** While the conduct admitted by the respondent in terms of his road traffic convictions and his consumption of illegal substances does him very little credit, I must also bear in mind the fact that the respondent has offered an explanation for his behaviour and has referred to his issues with alcohol and substance abuse following the breakdown of his previous marriage. I must also take account of the fact that the respondent has sworn that he has not taken alcohol or any illegal substance since August 2021 and has taken steps to assist in his abstinence from those products and substances. On the other hand, the respondent’s failure to disclose the events of the second incident, in circumstances where he was involved around that time in communications with the

PPC or his conviction arising out of that incident until the Court hearing on 1st July, 2022, reflects very badly on him.

70. I can easily see, on the basis of the information which was before the Council in November 2021, why it brought the application at that time in light of the various factors referred to by Barron J. in *O'Ceallaigh*, namely, the seriousness of the conduct complained of, the strength of the case against the respondent and whether, in terms of likely outcome, if findings were ultimately made against the respondent, what the likely sanction would be. I can also fully understand why the Council accepted the undertakings given by the respondent to Irvine P. on 20th December, 2021. I can equally see how, having received the disclosures made by the respondent's counsel to the Court on 1st July, 2022, the Council decided to press ahead with its application for orders under Section 60.
71. I am, however, faced now with the difficult task of balancing the competing interests involved. I regard the balance in this case as an extremely fine one. I am just about satisfied that the balance just about and barely tilts in favour of accepting the New Undertakings put forward by the Council and agreed to by the respondent at the hearing on 27th July, 2022, in place of making the s. 60 suspension orders sought. The main reason for that conclusion is the absence of evidence of a threat to the health, safety and welfare of the patients of the respondent. All of the references received from the consultants with whom and under whom the respondent has worked, not only in the named General Hospital but elsewhere in Ireland, and from others with whom the respondent has worked, including the Clinical Nurse Managers in the named General Hospital are very positive in terms of the respondent's professional conduct and clinical judgment. Apart from the discreditable conduct on the part of the respondent in terms of his driving offences (and possibly also drugs

offences, although the picture is somewhat unclear in that regard), the Council has not provided evidence to contradict the positive references provided by the respondent in respect of his professional conduct at work. That is not to say, of course, that conduct taking place outside the workplace cannot amount to professional misconduct. Of course, it can. However, it is relevant in terms of the difficult balancing exercise which the Court has to undertake in deciding whether to exercise its discretion to grant an order under s. 60 that there is no evidence before the Court at this stage to demonstrate any threat to the health, safety and welfare of the respondent's patients.

72. I am conscious that the Council only provided the New Undertakings as a fallback position and in the event that I was not disposed to grant the orders under Section 60. Nonetheless, the Council has clearly thought carefully about those undertakings and must be satisfied, at least, that they might work. I appreciate that the respondent has previously breached an undertaking given to the Court. Despite that, I must still conduct the balancing exercise required and I must take account in that balance of the fact that the respondent is currently unemployed and has no other source of income other than the income he can earn from the practice of medicine. Weighed against the absence of any evidence at this stage of a risk to the health, safety and welfare of the respondent's patients, I am just about satisfied, and by the finest margin possible, that I should exercise my discretion to accept the New Undertakings provided by the Council without prejudice to its application for the s. 60 orders and accepted by the respondent. Those undertakings must be given on oath to the Court by the respondent. It must be clear to the respondent that this is very much a last chance for him and that any breach of these New Undertakings will almost inevitably lead a court to grant the orders sought by the Council.

73. In addition, there must be no slippage by the respondent in complying with those undertakings which require him to provide information to the Health Committee or to the PPC or to the Council or any of its other committees. The information requested by the Health Committee on 30th June, 2022, and again on 5th July, 2022, must be provided by the respondent as a matter of urgency. The information which the respondent was requested to provide on foot of the PPC's direction of 26th January, 2022, being details of each conviction received by the respondent under the Road Traffic Acts and under the Misuse of Drugs Acts must also be provided by the respondent as a matter of urgency. While the respondent maintained in his replying affidavit (and again in submissions to the Court on 27th July, 2022) that he is "*in the process of responding*" to the communications and correspondence from the Health Committee, it is not acceptable that the information requested has not yet been provided by the respondent. Any further culpable delay in the provision of the outstanding information for which the respondent is responsible will have serious consequences for the respondent and will provide a basis for the Council to re-enter its application for s. 60 suspension orders.
74. For the reasons set out above, therefore, I am prepared to accept the New Undertakings provided by the Council once the respondent provides them on oath (whether at the time of the delivery of this *ex tempore* judgment or by affidavit sworn within seven days of today's date). I further direct the applicant to provide the information which has been requested of him by the Health Committee on 30th June, 2022, and 5th July, 2022 and by the PPC on foot of its directions of 26th January, 2022, as a matter of urgency. I will list the matter for review at 2pm on 7th October, 2022. I will give liberty to the Council to apply on 48 hours notice in the event of any failure to comply with the New Undertakings or any culpable failure to provide the

outstanding information to the Health Committee or the PPC as a matter of urgency. If it becomes necessary for the Council to apply in those circumstances, there will be a very real risk that I will grant the s. 60 suspension orders sought by the Council. I will, in any event, review the position on the review date of 7th October, 2022. I will hear Counsel for the parties as to whether any other orders are required at this stage.

Note: This judgment was amended and redacted on 21/12/2022 pursuant to an order of the President of the High Court of that date.