

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

Name: Maria Francesca Morelli

SCR No: 6001075

NOTICE IS HEREBY GIVEN THAT the Conduct Committee of the Northern Ireland Social Care Council, at its meeting on **06 and 07 January 2016**, made the following decision about your registration with the Northern Ireland Social Care Council:

The Committee found the facts proved in Charge 1.

The Committee found the facts in Charge 2 not proved.

The Committee found that you have committed misconduct;

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

Charge:

That, being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended):-

1. You inappropriately had in your home personal and/or confidential information relating to Service Users from your former place of work, Dympna House.
2. You inappropriately had in your home personal and/or confidential information relating to a Belfast Health and Social Care Trust Service User.

And your actions as set out above amount to misconduct, such as to call into question your suitability to remain on the Social Care Register.

Preliminary Matters

Service

The Registrant was neither present nor represented at this Hearing. The Council was represented by Mr Conrad Dixon. In a Notice of Hearing dated 08 December 2015, sent by Special Delivery and addressed to the Registrant at her address as it appears on the Register, the NISCC notified her of the day, time and venue for this Hearing. The Notice of Hearing was returned to the Council via Royal Mail on 04 January 2016 because it had not been called for. The Northern Ireland Social Care Council re-sent the Notice of Hearing on 04 January

2016 by First Class post via Royal Mail. Mr Dixon advised the Committee that attempts were made by the Council on 30 December 2015 to telephone the Registrant without success. He confirmed that there had been no communication from the Registrant in relation to any of the documentation.

The Committee in all the circumstances is satisfied that the Notice has been served in accordance with Rule 3 of Part 1 and Rule 4 of Schedule 2 of the NISCC (Conduct) Rules 2014 ('the Rules').

Proceeding in the Absence of the Registrant

An application was made to proceed in the absence of the Registrant under Rule 14 of Schedule 2 of the 2014 (Conduct) Rules. The Committee was advised that there had been no response from the Registrant to any of the documentation forwarded to her. Mr Dixon advised the Committee that the Council had contacted the Police Service of Northern Ireland ('the PSNI') to establish whether or not there was any other known address for the Registrant. The PSNI advised the Council that the Registrant's registered address is her last known address, and that this had been confirmed by the Social Security Agency. Mr Dixon further advised the Committee that the PSNI had spoken with the Registrant's mother, who confirmed that her daughter still lives at her registered address.

In considering this application under Rule 14, the Committee considered the factors identified by the Courts in the case of *R v Jones* [2003] 1 AC 1 in relation to the exercise of its discretion, and has accepted the advice given by the Legal Adviser. The Committee is aware that the discretion to proceed in the absence of a Registrant is one which should be exercised with the utmost care and caution, that the crucial question is whether the Registrant has voluntarily waived her right to be present or represented at these proceedings, and that it must strike a careful balance between fairness to the Registrant and the wider public interest.

The Committee considered the matter very carefully in light of the submission made by Mr Dixon, and was satisfied that with knowledge or means of knowledge of the proceedings, the Registrant has voluntarily waived her right to be present, and noted that there is nothing to indicate that she would be more likely to attend at a future Hearing if the matter was adjourned today. The Committee must strike a careful balance between fairness to the Registrant and the wider public interest. In the circumstances of this case and taking into account the serious nature of the Charges, the Committee has decided that the balance of fairness is in favour of proceeding in the Registrant's absence.

Application to admit Hearing Bundle

The Committee received an application, under Paragraph 11 of Schedule 2 of the Rules, to admit a bundle of papers into evidence. Mr Dixon advised the Committee that this bundle contained:

- A Witness Statement (with appendices) from Witness 1, Team Leader, West Belfast Community Learning Disability Team, Belfast Health and Social Care Trust ("the Trust");
- A Witness Statement from Witness 2, former Deputy Manager at Dympna House, Belfast;
- Emails from a Detective Constable, of the PSNI.

The Committee heard and accepted the advice of the Legal Adviser. The Committee was satisfied that the bundle should be admitted and that it met the requirements of fairness and relevance.

Application to Admit Witness Statement

The Committee received an application, under Paragraph 11 of Schedule 2 of the Rules, to admit a witness statement from Witness 2, dated 30 September 2015, into evidence without formal proof. Mr Dixon advised the Committee that Witness 2 was unable to attend the Hearing due to personal health issues. He indicated that he had spoken with Witness 2 for the purposes of preparing her statement, and that she had signed the statement and that the original was available for inspection by the Committee.

The Committee accepted the advice of the Legal Adviser. In considering this application, the Committee noted that Witness 2's statement was served on the Registrant and that she had raised no objections to its contents. The Committee is satisfied that this statement should be admitted into evidence as it meets the requirements of fairness and relevance. However, the Committee reminded itself that the statement contains hearsay evidence which has not been subject to question and, accordingly the Committee, in considering the Charges, will place appropriate weight on the evidence within the statement.

Background

The Registrant is registered on Part 2 of the Register, and was employed as a Care Assistant at Dympna House, Belfast, which is a residential home for vulnerable adults with complex needs. The Home was originally run by the St John of God Association and was taken over by the Cedar Foundation on 01 September 2012. In July 2013, the PSNI notified the Council concerning issues relating to the Registrant, and a subsequent referral was received from the Belfast Health and Social Care Trust. The PSNI advised the Council that on carrying out a search of the Registrant's apartment, they had discovered personal details of service users.

Evidence

The Committee heard evidence from Witness 1, who said that on 11 July 2013, the PSNI informed the Trust that they had searched the Registrant's home, and discovered personal details referring to service users. Witness 1 gave evidence that on 26 July 2013, she attended Grosvenor Road Police Station where she was provided with an overview of the investigation in relation to the Registrant. Witness 1 gave evidence that she was shown documents which comprised of handwritten information of a personal and confidential nature on pieces of paper and envelopes, along with medical card information. As a result of this information, an Adult Safeguarding meeting was held on 21 August 2013. Witness 1 told the Committee that an initial joint investigation by the PSNI and the Fraud Department of the Social Security Agency was arranged. The PSNI advised, at this meeting, that they had no evidence to show that the Registrant had made fraudulent claims using the information found at her home. Witness 1 indicated that it was agreed that a more widespread check would take place in relation to residents at Dympna House, and that the Trust would carry out their own investigation of the matter.

Witness 1 gave evidence that on 08 October 2013, she attended an Adult Safeguarding meeting, when it was agreed that investigations should continue into the financial affairs of all the residents of Dympna House. Witness 1 indicated that on 30 March 2015, she was advised by the PSNI that the Registrant had been interviewed in relation to the documentation found in her home. The PSNI advised Witness 1 that the Registrant had stated that she had taken the documentation home whilst studying for a National Vocational Qualification 3 ('NVQ 3'). Witness 1 was told by the PSNI that the Registrant admitted that she should not have had these documents at her home address, and that the NVQ 3 was completed in 2011. The Registrant further alleged that the personal information must have fallen out of the files that she had taken home, and that she must not have noticed. **[REDACTED]** Witness 1 confirmed that the documentation discovered by the PSNI referred to four service users as follows:

- Service User A – A medical card, a sheet of paper showing the name of A's GP and Benefit Disability Living Allowance Number, and a cigarette card end inscribed with A's National Insurance Number;
- Service User B – A piece of brown envelope showing B's name, the name of his GP, his bank sort code and account number, and his address;
- Service User C – a medical card;
- Service User D – A letter addressed to D about his income support; a sheet of paper inscribed with D's bank sort code and account number; a brown envelope showing D's address, a previous address and the Registrant's old address.

Witness 1 gave evidence that Service User A was not a resident at Dympna House and, after investigation by the Trust, it was discovered that he had accessed addiction services in the past but was no longer involved with the Trust. She said that Service Users B, C and D all have learning disabilities, with Service User B having been an infrequent user of respite care at Dympna House, and C and D having been residents. She confirmed that the Trust spoke to Service Users B, C and D and available next of kin, and they were unable to add anything to the investigation. She indicated that, on interview, Service User C was shocked and very distressed on being advised of the circumstances relating to the Registrant. She was unable to provide any information to the Committee as to a connection between the Registrant and Service User A. She confirmed to the Committee that in the Registrant's role as a care assistant, there would be no reason to access service users' personal information. She gave evidence that she is aware of the NVQ 3 training structure and that this qualification relates to direct care standards. She said there would be no reason for a case study (within this qualification) to require access to files dealing with personal information, such as those discovered by the PSNI in the Registrant's home.

The Committee had sight of a witness statement from Witness 2, who was a Deputy Manager at Dympna House up until July 2013. She indicated that the Registrant was a care worker at Dympna House, working day shifts either in the morning or afternoon. She indicated that there were 10 residential workers in the Home, who were responsible for administering medication to service users, their finances, and liaising with social workers

regarding issues relating to National Insurance and personal property. Witness 2 indicated that care assistants were responsible for service users' personal care and housekeeping, and that there was no requirement for them to ever have access to service users' personal information which was kept in a locked chest of drawers. Witness 2 also indicated that no member of staff should take personal information relating to residents home with them.

The Committee had sight of various emails between the PSNI and the Council Solicitor. [REDACTED] This email also indicated that the PSNI had been unable to serve the Preliminary Enquiry papers on the Registrant, and that her solicitor was unable to contact her. [REDACTED] In an email dated 11 July 2013 from a Detective Constable of the PSNI to the Council, specific details were given concerning the nature of the documentation found by the PSNI on searching the Registrant's flat.

Approach of the Committee

The Committee has considered all of the documentary evidence placed before it and the evidence of the Council's witnesses. The Committee has approached the matter in the following way:

- a. Firstly, to decide whether the facts in the Charge have been proved on the balance of probabilities;
- b. Secondly, to decide if the established facts amount, as particularised, to misconduct; and
- c. Finally, if misconduct is found, to decide, once the panel has considered any evidence provided in mitigation, what sanction should be applied.

In approaching the task of determining the facts, the Committee was mindful that the burden of proof rests with the NISCC. The Registrant herself is not required to prove anything. The Committee reminded itself that the absence of the Registrant added nothing to the Council's case, and that the Council at all times was required to discharge the evidential burden at the fact finding stage. The standard of proof to which the NISCC is required to prove matters is the civil standard on the balance of probabilities.

The Committee heard and accepted the advice of the Legal Adviser at various stages in the Hearing, and has accepted that advice as set out in this Notice. The Committee has exercised the principle of proportionality at all times.

Finding of Facts

The Committee listened carefully to the evidence it received from Witness 1. The Committee also considered the witness statements prepared for the Hearing, the documents exhibited to the statements and the documentation contained within the bundle of evidence. As the Registrant was not in attendance or represented at the Hearing, the Committee recognised its responsibility to test all the evidence so as to be satisfied as to its veracity. The Committee has accepted the advice of the Legal Adviser that the burden of proof rests with the NISCC and that the standard of proof is on the balance of probabilities.

In relation to the particulars of the Charges, the Committee finds as follows:

Charge 1: You inappropriately had in your home personal and/or confidential information relating to Service Users from your former place of work, Dympna House.

The Committee finds the facts proved. In considering this Charge, the Committee accepted the evidence of Witness 1 that the personal and confidential information found by the PSNI in the Registrant's home related to Service Users B, C and D, who were all service users of Dympna House where the Registrant worked. The Committee noted the evidence from both Witness 1 and Witness 2 that personal information and documentation belonging to service users should not be in the possession of a care assistant in the circumstances as alleged, nor should it be taken from the secure confines of Dympna House without authorisation. A Detective Constable, from the PSNI, in her email of 24 January 2014 indicated that the Registrant advised her that she was in possession of the documents and information for the purposes of an NVQ 3 course, and that the information must have fallen out of the files she had taken home. However, the Committee noted and accepted the evidence from Witness 1 as to this personal information being copied onto envelopes and cigarette cards, which would not in any way accord with the Registrant's explanation. The Committee further noted that the Registrant conceded to a Detective Constable, from the PSNI, that she should not have been in possession of the information and documentation. In any event, the Committee accepted Witness 1's evidence that there were no circumstances where completion of an NVQ 3 course would require access to service users' personal and financial information. Whilst the Committee did not have an opportunity to question Witness 2, it noted that her evidence, as regards a care assistant not requiring access to service users' personal details, is corroborated by Witness 1. Therefore, the Committee finds that it was inappropriate for the Registrant to have this information in her home. The Committee finds, on the balance of probabilities, this Charge to be proved.

Charge 2: You inappropriately had in your home personal and/or confidential information relating to a Belfast Health and Social Care Trust Service User.

The Committee finds the facts not proved. In considering this Charge, the Committee noted the evidence from Witness 1 that the personal details found in the Registrant's home regarding Service User A did not relate to an individual who was a service user of the Trust at the time of the police search. Witness 1 gave evidence that this individual would not have had contact with the Registrant during her previous employment with the Trust, and had no contact with the Registrant whilst working in Dympna House. The Committee had no evidence as to whether or not the information found in the Registrant's home relating to this individual was inappropriately in the Registrant's possession. In the circumstances the Committee finds, on the balance of probabilities, this Charge not proved.

Misconduct

The Committee accepted the advice of the Legal Adviser, who drew its attention to the definition of misconduct as provided for in the Rules as 'conduct which calls into question the suitability of a Registrant to remain on the Register.' In addition, the Committee reminded itself of the definition of misconduct provided by Lord Clyde in *Royle v GMC* as 'a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and

standards ordinarily required to be followed by a medical practitioner in the particular circumstances...it is not any professional misconduct which would qualify. The professional misconduct must be serious.'

The Committee further reminded itself that it must exercise its own independent judgement in deciding whether the Registrant has committed misconduct, and that it is not required to observe any burden or standard of proof.

The Committee heard a submission from Mr Dixon, who referred to the NISCC Code of Practice for Social Care Workers at Paragraphs 2, 2.3, 5, 5.1, 5.3 and 5.8. He submitted that the Registrant's actions constituted a serious departure from the standards expected of a registered social care worker. He submitted that the Registrant was in a position of responsibility and trust at Dympna House, and that she had abused this trust in obtaining access to service users' personal information when she was not entitled to do so. He said that in copying service users' personal details and taking them to her home, she placed service users at risk. He submitted that the Registrant had in her possession, at home, information that was accessible to any person living with her, and this also had the potential of causing harm to service users. He referred the Committee to Witness 1's evidence that Service User A was shocked and distressed when she heard what had happened. He submitted that service users and their families expect personal information to be treated with respect, and to be kept in a secure place with access given to appropriate persons, and that the Registrant's actions in inappropriately accessing this information, damaged public confidence in the social care profession.

Taking into account all the evidence, the Committee considered misconduct to be proved in this matter. The Committee considered that the Registrant's actions as found in Charge 1 amount to a serious breach of trust, and demonstrate a departure from the acceptable levels of behaviour of a registered social care worker. The Registrant both accessed and copied service users' personal details to which she was not authorised, and took this information to her home, placing at risk confidential service user information. The Committee noted the distress caused to Service User C when he was advised by the Trust of the actions of the Registrant. The Committee finds the Registrant's explanation to the PSNI for possession of the information to be in no way credible.

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

Code 1: As a social care worker, you must protect the rights and promote the interests of service users and carers. This includes:

1.4 Respecting and maintaining the dignity and privacy of service users;

Code 2: As a social care worker, you must strive to establish and maintain the trust and confidence of service users and carers. This includes:

2.1 Being honest and trustworthy;

2.3 Respecting confidential information and clearly explaining agency policies about confidentiality to service users and carers;

Code 3: As a social care worker, you must promote the independence of service users while protecting them as far as possible from danger or harm. This includes:

3.8 Recognising and using responsibly the power that comes from your work with service users and carers.

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

5.1 Abuse, neglect or harm service users, carers or colleagues;

5.3 Abuse the trust of service users and carers or the access you have to personal information about them or to their property, home or workplace;

5.8 Behave in a way, in work or outside work, which would call into question your suitability to work in social care services.

Sanction

In deciding which sanction to be imposed, the Committee must take into account:

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

The Committee heard a submission from Mr Dixon on the issue of the appropriate sanction to apply in this case. The Committee was advised that the Registrant had no previous disciplinary findings against her. Mr Dixon submitted that admonishment was not the appropriate sanction, and would not protect the public and service users, or uphold the public interest. Mr Dixon directed the Committee to the Indicative Sanctions Guidance, and submitted that the factors referred to at Paragraph 4.10 were not present in this case. Mr Dixon directed the Committee to the evidence that the Registrant's actions had a direct impact on service users, in particular Service User C who was distressed and shocked on being told of the Registrant's actions. He submitted that the Registrant's actions were deliberate, and that there is no evidence before the Committee to show any insight or willingness on her behalf to change her behaviour. He referred the Committee to its finding that Paragraph 2.1 of the Code had been breached, and submitted that honesty and trustworthiness were fundamental to the work carried out by a social care worker. He submitted that the Registrant's actions severely damaged public confidence in the social care services. Mr Dixon submitted that when considering a Suspension Order, the Committee should take into account the evidence of the Registrant [REDACTED], and her lack of engagement or reassurance that her actions would not be repeated. He submitted that there is little faith in the Registrant not repeating her actions, or the public being protected by an Interim Suspension Order. However, he acknowledged that consideration of an appropriate sanction is a matter of determination for the Committee.

The Committee recognised the need to strike a careful and proper balance between the interests of the Registrant, and the interests of the public and service users. The Committee is aware that the primary purpose

of a sanction is not to be punitive, although it may have a significant effect on a Registrant both in terms of reputation and financially.

The Committee considered the mitigating and aggravating factors in this case. The Committee has considered the sanctions in ascending order as follows:

Admonishment – The Committee did not consider that admonishment was a suitable, appropriate or proportionate sanction. This sanction may be more appropriate where the behaviour is at the lower end of the spectrum of misconduct. The Committee considered that the Registrant's behaviour constituted serious misconduct and caused harm to Service Users B, C and D and that her behaviour was not isolated but deliberate in nature. The Committee had no evidence of insight or a willingness to change on the part of the Registrant, nor were references or testimonials provided. Whilst the Committee noted that the Registrant had no previous disciplinary record, there is no evidence as to the Registrant's employment or circumstances since she ceased her employment in Dympna House. Therefore, the Committee did not consider that admonishment would be sufficient to protect service users and the public.

Suspension – A Suspension Order would prevent this Registrant from working for a period of up to two years. However, the Committee considers that a period of suspension would not address the serious nature of the Registrant's misconduct, nor the lack of evidence of insight by the Registrant. The Committee considers the Registrant's behaviour to be fundamentally incompatible with continuing to be a registered social care worker in the long term. The Committee is not convinced that the interests of service users and the public would be sufficiently protected by suspension, particularly in light of the failure by the Registrant to demonstrate any remedial action arising out of her misconduct.

Removal – A Removal Order is the most serious sanction a Committee can impose. The Committee took into account the Indicative Sanctions Guidance at paragraphs 4.16 - 4.19. In particular, the Committee noted that removal is intended to give a clear message to the public and the profession as to what is appropriate conduct for a social care worker. The Committee considered that the Registrant's actions, which were deliberate, constituted an abuse of trust involving vulnerable service users. In particular, the Registrant abused her position of trust in accessing and removing vulnerable service users' personal confidential details, and this constituted a serious departure from the professional standards as set out in the Code of Practice for Social Care Workers. The Registrant's actions damaged the public confidence in the social care profession, and the Committee took into account the Indicative Sanction Guidance at paragraphs 5.13 in this regard. Importantly, the Committee finds that those who use social work services have a right to rely on the professional integrity and trustworthiness of social care workers and, in this instance, the Registrant's actions evidenced a blatant disregard for service users and their families.

The Committee considered the consequences of a Removal Order, which will prevent the Registrant from working in her chosen professional field. However, the Committee determined that there is no other way to protect the public and protect the reputation of the social care workforce.

The Committee, therefore, makes a Removal Order under paragraph 25 (1) (c) of Schedule 2 of the Conduct Rules and the Interim Suspension Order, currently in place, is hereby revoked with immediate effect.

Legal Advice Given

Service

At this stage, I will give you the standard advice in relation to service of the proceedings. You have heard the application from Mr Dixon. Under Paragraph 4 of Schedule 2 of the Social Care Council (Conduct) Rules 2014, the requirement is that a Hearing should not be fixed, for Hearing, earlier than 28 days after the posting of a Notice. In fact, in this particular matter, you will be aware that the documentation advising of the Notice of Hearing was sent to the Registrant at her last registered address by way of correspondence dated 08 December 2015 and in accordance with the Rules, and that is Rule 3, Part 1, service should be treated as having been effected on the day after posting, which would be 09 December 2015.

I have had an opportunity to examine the documentation and in accordance with the application from Mr Dixon, this service application is in order and has been complied with, and I can advise you it is then open to you to accept that service has been effected in accordance with the Rules.

There is correspondence that has been prepared by the Council that sets out the information that Mr Dixon has given you, and I think it would be of benefit if this could be submitted to the Committee, just to give them the timeline in case they didn't have an opportunity to get all those dates that you gave them. Subject to your consent, I think that should be done.

Proceeding in the Absence of the Registrant

You, in view of the Registrant's absence, must now consider whether to proceed in her absence today.

An application has been made by Mr Dixon under Paragraph 14 of Schedule 2 of the Rules, for the matter to proceed in the Registrant's absence. You have detailed information from Mr Dixon in relation to the various attempts made by both the PSNI and the Council to ascertain the current whereabouts of this Registrant, and you have been advised that to the best of everyone's knowledge, the Registrant still resides at her registered address. You have a number of options at this stage. Where you are satisfied that the Notice of Hearing has been duly served on the Registrant, and you have made an Order in accordance with that, you may either hear and determine the case in her absence, or adjourn the Hearing and give directions, and this is a matter of discretion for you. I would refer you to the well-known case of R -v- Jones [2003], with which you are familiar. This is a criminal case but it has been approved as applicable in regulatory matters. In this case, Lord Bingham stated, and I quote:

"That the discretion to commence a trial in the absence of a defendant should be exercised with the utmost care and caution".

Therefore, today you should consider whether an adjournment may result in this Registrant attending the proceedings at a later date. You should consider any time involved in the adjournment, and the extent of disadvantage to this Registrant in not being able to present her account of events. In addition, you should look at the seriousness of the allegations before you today, and the general public interest in this matter being dealt with, along with the interests of any victims. I would remind you that this Registrant is entitled to a fair Hearing, to attend the Hearing or be represented, to test the Council's case and present evidence on her behalf. However, if this Registrant had knowledge or the means of knowledge of today's proceedings, you may conclude that she has voluntarily absented herself and proceed in her absence.

In considering this, you should look at whether the information provided to her was sufficient to advise her of the importance of attending here today, and you will have copies of the Notice sent to the Registrant to assist you in that regard.

You should also consider if the allegations made against her have been particularised enough so that she can understand the case against her, along with the importance of attending an oral Hearing. The Notice of Hearing has specific information as regards these Charges, the Hearing dates and also the powers of the Committee that will be hearing the case, and your powers to proceed in her absence. This principle of fairness applies equally to the presentation of the Council's case. Therefore, in exercising this discretion, you must balance the rights of the Registrant against the wider public interest in the expeditious disposal of the matter. If you do consider that this matter should proceed in the absence of the Registrant, you must avoid reaching any improper conclusions about her absence, and must not treat her absence as an admission of guilt in any way.

Application to admit the hearing bundle

This is an application that you have heard under Paragraph 11 of Schedule 2 of the 2014 Conduct Rules. This allows a Committee to admit evidence, either oral or documentary, or other, whether or not it would be admissible in a Court of Law, subject to the requirements of relevance and fairness. To assist you, relevance means having some reasonable connection to the evidence in the case, having value or a tendency to prove a matter of fact significant to the case, and when considering fairness, you should direct yourselves to the issues of equality, reasonableness, public interest and the interests of justice.

Mr Dixon has indicated that the documents in the bundle are relevant to the Charges before you, and you have been advised that the bundle was served on the Registrant, and there have been no objections received, or indeed any response to that from the Registrant. Therefore, in those circumstances, I would advise you that there does not appear to be any unfairness to the Registrant in admitting this bundle.

However, you should be aware that within the bundle there may be hearsay evidence and in considering this, you must take account of the fact that the person who may be the source of that evidence is not before you and therefore, you and the parties may not have the opportunity to question or assess that person's credibility. Equally, that evidence may not be tested by way of cross-examination or challenged. Therefore, taking that into account, it is important when you are considering such evidence, to be careful in terms of what weight, if any, you

give to the evidence, directing yourselves to the nature of the evidence, and the reason why a witness is not present here before you today to give oral evidence, and also whether there is any second-hand evidence or hearsay evidence within the documents.

Application to admit witness statement

As you have heard from Mr Dixon, the Council has experienced difficulties in relation to this particular witness and the application before you today is to admit the statement of Witness 2 without formal proof.

I have previously given you advice in relation to the evidence that you can consider and I would refer you to Paragraph 11 of Schedule 2 of the Rules and that allows you to admit, as evidence, documentary evidence, whether or not it would be admissible in a Court of Law, again subject to the requirements of relevance and fairness. In this particular instance, you have had an opportunity to consider the contents of the statement of Witness 2 as it is provided in the bundle of documents that you admitted at the start of the proceedings. I would also remind you that this bundle of documents was served on the Registrant, and there are no apparent objections to any of the contents. So that is something that you should take into consideration.

On the basis of the contents of that statement, I would advise you that the contents pass the test of relevance and it is for you to consider whether it is fair, in the circumstances, to admit that document.

You will be aware that the document is now hearsay evidence and may also contain secondary hearsay evidence, and in considering that you will be aware that the source of the evidence is not before you today. You will not have an opportunity to question or assess the person's credibility, nor will there be an opportunity to challenge or cross-examine in any way. Therefore, it is for you to decide what weight would be relevant and should be given to such evidence.

Finding of the Facts

At this, the fact finding stage of the proceedings, you must now consider all the evidence you have received bearing in mind that the burden of proof lies with the Council, and that the standard of proof is on the balance of probabilities. The Council has brought these proceedings and it is up to them to prove its case. I would remind you that the Registrant does not have to prove she is innocent of these Charges.

In this regard, I would direct you to Schedule 2 of the Northern Ireland Social Care Council (Conduct) Rules 2014 at Paragraphs 12 and 22 and this means that a fact will be found proved if you consider it more likely than not to have happened. Therefore, your decision today must be based on the evidence presented to you by way of documentary evidence and oral testimony. You have heard sworn oral evidence from Witness 1, and you have a bundle of documents before you which includes a written and a signed statement from a Witness 2, who hasn't attended today, and you also have a number of emails and documentation that are annexed to Witness 1's statement.

I would remind you again that you should draw no adverse inference as a consequence of the Registrant not attending to give evidence today. Therefore, you must determine whether on the balance of probabilities, the

facts in each of the two Charges have been proved. You should consider each particular Charge in turn, weighing and balancing the evidence presented, and use your own judgment as to the credibility of Witness 1 as she is the only live witness before you today, and determine whether you consider her evidence is truthful and reliable. Then subject to the considerations of fairness and relevance, you must give the documentary exhibits such weight as you consider necessary and appropriate, again, to determine what facts as alleged in the Charges are proved on the balance of probabilities.

Misconduct

At this stage, you have found the facts proved in Charge 1 and you are now at the stage where you must proceed to consider whether those facts amount to misconduct. Misconduct has been defined in the Northern Ireland Social Care Council (Conduct) Rules 2014 as conduct which calls into question the suitability of a Registrant to remain on the Register.

I would remind you that there is no admission of misconduct in this case. In considering the question of misconduct, reference must be made to the Northern Ireland Social Care Council Code of Practice and Mr Dixon has specifically referred you to a number of sections in the Code. You, therefore, must consider whether any breaches of the Code have occurred and you must consider the conduct, which you have found, has occurred in the findings of fact and consider and decide whether this amounts to misconduct in contravention of the Code. In doing this, you should take account of the oral and documentary evidence that you have heard, and also the submissions from Mr Dixon. As previously advised, subject to the considerations of fairness and relevance, you must give the documentary evidence such weight as you consider necessary and appropriate. You will find guidance, in considering this, in the case of *Roylance v GMC* which is a 1990 case. In this case, the Judicial Committee of the Privy Council indicated that 'misconduct is a word of general effect, involving some act of omission which falls short of what would be proper in the circumstances. The standards of propriety may be found in the rules a practitioner is required to follow.' You have the Code of Practice to guide you in this regard. In addition, the professional conduct in question which, in this case, is that of a social care worker, must be of serious nature.

Importantly, when considering the issue of misconduct, you will bring your own professional expertise to bear. In the 2007 case of *Mallon v GMC*, misconduct was described as, and I quote:

"Wrongful or inadequate mode of performance of professional duties."

In the case of *Meadows v GMC*, the Court of Appeal indicated that misconduct should not be viewed as anything less than serious professional misconduct, and that the conduct in any given case must be serious before being branded as misconduct in a professional context. The 2010 case of *Remedy UK v GMC* reviewed several relevant cases in relation to the meaning of misconduct and will be of assistance to you. It indicated that misconduct may involve sufficiently serious misconduct in the exercise of professional practice or conduct of a morally culpable or otherwise disgraceful kind which may occur outside the course of professional practice. This includes dishonourable conduct which brings the profession into disrepute and it does not matter that the conduct

is not directly related to the exercise of professional skills.

Sanction

Paragraph 25 of Schedule 2 of the Northern Ireland Social Care Council Rules sets out the available sanctions open to you at this stage, and you have already referred to those at the opening of this portion of the proceedings.

In determining the appropriate sanction you are obliged to take into account the following factors:

Firstly, the seriousness of the Registrant's misconduct; secondly, the protection of the public; and thirdly, public interest in maintaining confidence in social care services and; lastly, I would ask you to consider the issue of proportionality which means the weighing on the one part of the Registrant's interests against, on the other part, the interests of the public.

I would also refer you to the Northern Ireland Social Care Council Indicative Sanctions Guidance, and this is documentation you have before you and which has also been provided to the Registrant, and remind you that the purpose of sanctions is not punitive.

Paragraphs 2.4, 2.5 and 2.6 of the Guidance deals with the considerations of fairness and proportionality. You should also consider the question of sanction in ascending order of severity, beginning your deliberations by considering admonishment first.

The primary purpose of sanctions is the protection of the public, and also maintaining the reputation of the profession. I would refer you, in that regard, to paragraphs 2.2 and 2.3 of the Guidance. This directs that the public should have confidence that the Northern Ireland Social Care Council will uphold proper standards of behaviour and conduct in regulating social care workers.

Public interest requires that both the public and social care users are protected from unsafe practice and that confidence in the social care workforce is maintained. In serving that public interest, the purpose of sanctions is to ensure that social care workers do not have an opportunity to repeat the misconduct, and also to maintain the reputation of the profession.

I would refer you to Paragraphs 2.4 and 2.6 of the Guidance which remind you that any limitation of the right to practise one's profession should be no more than is necessary in the circumstances, and that you have a duty to act fairly. You will be aware that you must give cognisance to any aggravating or mitigating factors. In this particular case, you have no evidence from the Registrant and very little evidence in terms of mitigation, as regards her current circumstances.

Right of Appeal

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


You should note that the Conduct Committee's decision takes effect from the date upon which it was made.

The effect of this decision is that your entry on the Register has been removed with immediate effect.

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

- Care staff in a children's home, residential care home or nursing home.
- Manager of a residential care home, day care setting or domiciliary care agency.

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

 C. Lambert

Committee Manager

14 January 2016.

Date

