

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

Name: Andrea Elizabeth Thompson

SCR No: 6009158

NOTICE IS HEREBY GIVEN THAT the Conduct Committee of the Northern Ireland Social Care Council, at its meeting on **18 January 2016**, made the following decision about your registration with the Northern Ireland Social Care Council:

The Committee found the facts proved;

The Committee found that you have committed misconduct;

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

Charge:

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

1. On 02 October 2014 you were convicted of the following Charge at Coleraine Courthouse:-
Defendant on dates between 07/08/14 – 09/08/2014 in the County Court Division of Antrim, pursued a course of conduct which amounted to harassment of RN and which you knew or ought to have known amounted to harassment, contrary to Articles 3 and 4 of the Protection from Harassment (Northern Ireland) Order 1997;
2. On 02 October 2014 you were convicted of the following Charge at Coleraine Courthouse:-
Defendant on 03/09/14 in the County Court Division of Antrim, pursued a course of conduct which amounted to harassment of RN and which you knew or ought to have known amounted to harassment, contrary to Articles 3 and 4 of the Protection from Harassment (Northern Ireland) Order 1997.
3. On 06 July 2015 you were convicted of the following Charge at Coleraine Courthouse:-
Defendant on a date unknown between the 1st day of July 2014 the 31st day of July 2014 in the County Court Division of Antrim stole a bankcard belonging to PT contrary to Section 1 of the Theft Act (Northern Ireland) 1969;
4. On 06 July 2015 you were convicted of the following Charge at Coleraine Courthouse:-
Defendant on the 30th day of July 2014 in the County Court Division of Antrim, stole £70.00 belonging to PT, contrary to Section 1 of the Theft Act (Northern Ireland) 1969;

5. On 06 July 2015 you were convicted of the following Charge at Coleraine Courthouse:-
Defendant on the 17/10/14 in the County Court Division of Antrim, having entered as a trespasser a Dwelling house namely 14A NEW MARKET STREET, COLERAINE, LONONDERRY BT52 1EH stole a CD player headphones and a rucksack therein, contrary to Section 9 (1) (b) of the Theft Act (Northern Ireland) 1969;
6. On 06 July 2015 you were convicted of the following Charge at Coleraine Courthouse:-
Defendant on the 17th day of October 2014 in the County Court Division of Antrim without lawful excuse damaged or destroyed a window of a back door belonging BF intending to damage or destroy such property or being reckless as to whether such property would be damaged or destroyed contrary to Article 3 (1) of the Criminal Damage (Northern Ireland) Order 1977.
7. And your actions set out in 3, 4, and 5 were dishonest.

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. The Council was represented by Miss Nicola Dooher. In the Notice of Hearing, dated 19 November 2015, sent by Special Delivery and addressed to the Registrant at her address as it appears on the Register, the Northern Ireland Social Care Council ('NISCC') notified her of the day, time and venue of this Hearing. The Notice of Hearing was received and signed for on 20 November 2015. The Hearing Bundle was sent to the Registrant by Special Delivery post on 17 December 2015, and received and signed for on 18 December 2015.

The Committee considered an application from Miss Dooher, Council Solicitor, that the Notice of Hearing had been served in accordance with the Rules. The Committee is satisfied that the Notice of Hearing has been served in accordance with Rule 3 of Part 1 and Paragraph 4 of Schedule 2 of the NISCC (Conduct) Rules 2014 ('the Rules').

Proceeding in the Absence of the Registrant

Miss Dooher made an application to proceed in the absence of the Registrant, pursuant to Paragraph 14 of Schedule 2 of the Rules. The Committee was advised that there had been no response from the Registrant following service of the Notice of Hearing. The Committee is aware that the discretion to proceed in the absence of a Registrant should only be exercised with the utmost care and caution. Having considered the application, the Committee reached the decision that it was appropriate to proceed in the Registrant's absence. The Committee was satisfied that the Registrant had voluntarily waived her right to be present, and noted that there was nothing to suggest that she would be any more likely to attend at a future Hearing. The Committee balanced

fairness to the Registrant with the wider public interest and concluded, taking into account the serious nature of the Charges, 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. The Committee was satisfied that the bundle should be admitted. The bundle contained the following documents:

- Certificates of Conviction, dated 02 October 2014;
- Certificates of Conviction, dated 06 July 2015;
- Summary of a tape recorded interview, dated 11 November 2014;
- Letter from the PSNI to NISCC, dated 13 October 2014;
- Letter from the PSNI to NISCC, dated 31 October 2014;
- Letter from the PSNI to Tughans, dated 02 September 2015;
- Letter from the PSNI to Tughans, dated 18 September 2015;
- Letter from the PSNI to Tughans, dated 14 October 2015.

Background

The Registrant was convicted of six offences, none of which occurred within the workplace. In October 2014, she was convicted of two offences of harassment and in July 2015, she was convicted of four offences, one of criminal damage and three of theft.

Evidence

The Committee considered the contents of the bundle of evidence and, in particular, the details of the Certificates of Conviction. The Committee noted that the Registrant had pleaded guilty to all six Charges.

Finding of Facts

The Committee received and accepted a submission from Miss Doohar, that having regard to Paragraph 11 (5) of Schedule 2 of the Rules, the Certificates of Conviction were conclusive proof of the convictions so found. The Committee noted that the facts contained in the Charge, brought forward by the Council in these proceedings, were identical in all material respects to the Charges to which the Registrant had pleaded guilty, and of which she had been convicted. The Committee is, therefore, satisfied that the facts stated in the Charge at paragraphs 1–6 have been proved on the balance of probabilities. The Committee then considered whether the Registrant's actions, as set out in Paragraphs 3, 4 and 5 of the Charge were dishonest. The Committee considered, on the balance of probabilities, that these offences which involved the theft of a bank card, stealing of £70.00 and stealing of a CD player, headphones and rucksack, would be regarded as dishonest by the standards of reasonable and honest people. In addition, the Committee considered on the balance of probabilities that the

Registrant herself, in fact, realised that what she was doing was dishonest as she pleaded guilty to all three offences. Therefore, the Committee finds that the Registrant's actions as set out in Paragraph 3, 4 and 5 of the Charge were dishonest.

Conduct Procedure [REDACTED]

Misconduct

The Committee heard a submission from Miss Dooher, on behalf of the Council, and she referred the Committee to the NISCC Codes of Practice and, in particular, Code 2 (2.1) and Code 5 (5.8). She submitted that the Criminal Convictions for harassment, theft and criminal damage were evidence of behaviour falling well below the standard expected of an ordinary citizen. Miss Dooher went on to submit that the Registrant's actions must, therefore, amount to misconduct as the public expects a higher standard of behaviour from social care workers, particularly as they work with vulnerable members of society. She emphasised that the dishonesty aspect of the case was particularly concerning, as the Registrant could have access to vulnerable members of society. Although the offences did not take place within the workplace, Miss Dooher stated that they were still relevant to the Registrant's registration.

The Committee received advice from the Legal Adviser in relation to misconduct. The Committee was advised to review all the evidence, and to have particular regard to the Codes of Practice when assessing whether misconduct had been established. The Committee accepted the advice from the Legal Adviser. After careful consideration of all the material which was before it, the Committee was satisfied that the facts established amounted to misconduct. The facts, as established, demonstrate a significant departure from the acceptable levels of behaviour, and fall short of the standard expected of a registered social care worker. The Registrant had pleaded guilty to the Charges of harassment, theft and criminal damage. The Committee considers these offences to be serious, and to constitute misconduct which calls into question the Registrant's suitability to remain on the social care register.

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

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;

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

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

For these reasons, the Committee finds that the Registrant's actions amount to misconduct.

Sanction

The Committee heard a submission from Ms Dooher as regards sanction. She advised the Committee that the Registrant had no previous disciplinary record. She referred the Committee to the Indicative Sanctions Guidance (April, 2014), and to the nature of the criminal convictions. She indicated that the Registrant had not submitted references or testimonials, and that her actions were fundamentally incompatible with registration as a social care worker. She referred the Committee to the case of *Parkinson v NMC* [2010], and reminded the Committee that the Registrant had not engaged with these proceedings. She submitted that the Registrant appears to have no insight, and has not provided any evidence of rehabilitative steps.

The Committee heard and accepted the advice of the Legal Adviser in relation to the proper approach to the application of sanctions. The Legal Adviser explained that the Committee must apply the principles as set out in Paragraph 25 (2) of Schedule 2 of the Rules, and recognise that the purpose of sanctions is not to punish the Registrant. She advised the Committee that it was necessary to work from the least severe sanction, and only if it was considered necessary, consider the next most severe sanction.

The Committee accepts that the primary purpose of sanctions is to protect the public, and also to maintain public confidence in the integrity of the profession. The Committee has given careful consideration to the NISCC Indicative Sanctions Guidance and the available sanctions were considered as follows:

Admonishment – The Committee did not consider admonishment to be a suitable, appropriate or proportionate sanction. The Committee notes that admonishment may be appropriate where the behaviour is at the lower end of misconduct. However, in this matter, the Committee considers that the Registrant's behaviour was serious and that an admonishment would not provide adequate public protection. There is no evidence of insight or of a willingness to change on the part of the Registrant, and the Committee has not been provided with testimonials, references or evidence of corrective steps.

Suspension – The Committee did not think that suspension was the appropriate sanction in this case. A Suspension Order would prevent the 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. There is no evidence that the Registrant would be able to resolve or remedy the cause of her misconduct during the period of any suspension.

Removal – A Removal Order is the most serious sanction a Committee can impose. The Committee regards this sanction as being necessary because of the serious nature of the Registrant's misconduct, and the range of Criminal Convictions. The Committee took into account the Indicative Sanctions Guidance and in particular 4.18, 5.10, 5.11 and 5.18. The repeated offending on the part of the Registrant was a serious departure from the relevant professional standards as set out in the Code, and in the view of the Committee, demonstrated a persistent lack of insight into the seriousness of her actions and the potential consequences. The Committee regards the criminal offences committed by the Registrant as fundamentally incompatible with being a social care worker. The public must be able to place complete reliance on the integrity of the Registrant, and the

unacceptable behaviour of this Registrant would undermine confidence in the social care profession if she were permitted to remain on the Register.

The Committee took into account the consequences for the Registrant in imposing 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 safeguard the public and to 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 Rules.

Legal Advice Given

Service

My advice at this point is in relation to service. I have had the opportunity to consider all the documentation and, as advised by the Council's Solicitor, the Notice of Hearing was sent to the Registrant on 19th of November 2015. The Notice was sent by Special Delivery post to her registered address. I have been shown the electronic signature which was dated 20th of November 2015, and it confirms receipt of the Notice of Hearing. I would remind you that Paragraph 4 of Schedule 2 of the 2014 Northern Ireland Social Care Council (Conduct) Rules governs the requirement that a Hearing should not be fixed earlier than 28 days after the posting of the Notice of Hearing, and I can confirm that the Notice of Hearing was sent on 19th of November, and that is more than 28 days before today's Hearing.

In accordance with the Rules, service is set out as the sending of a Notice to the Registrant by postal service in which delivery or receipt of delivery is recorded, and the Rules specify that the Notice shall be treated as having been served on the day after it was posted. Furthermore, the Registrant was also sent a Hearing bundle on 17th of December 2015 and again, I have been shown the electronic signature that she received that on 18th of December 2015. I am satisfied, therefore, that service has been effected in accordance with the Rules, and that it would be safe for you to accept that service has been effected in this matter.

Proceeding in the Absence of the Registrant

You have now received an application on behalf of the Council, that you should proceed with this Hearing today in the absence of the Registrant.

When you are satisfied that the Notice of Hearing has been duly served, the options before you are either to hear and determine the case, or to adjourn and give directions. This is absolutely a matter of discretion for you. You will be familiar with the case of Jatta v NMC which is a 2009 case, England and Wales Court of Appeal, 824. In that case, the Fitness to Practise Panel of the NMC heard and determined disciplinary proceedings in the absence of the Registrant. Notice of the proceedings were duly and properly served by sending it to the Registrant's registered address, which was in accordance with the Nursing & Midwifery Council Fitness to Practise Rules. Posting of the Notice of Hearing was duly proved, it was sent by recorded delivery but returned

undelivered. The Court of Appeal held that there was no procedural irregularity in proceeding in the absence of the Registrant, as the Notice had been served in accordance with the Rules. I would remind you that the Registrant is entitled to a fair Hearing, to attend a Hearing, or to be represented, to present the points in her case, and to present evidence on her own behalf. You should consider whether she has voluntarily absented herself from these proceedings today, and whether an adjournment would result in her attending proceedings at a later stage. If that is your decision, you should consider how long such an adjournment would take. If you are satisfied that the Registrant had knowledge or the means of knowledge of today's proceedings, you may conclude that she has voluntarily absented herself and therefore, it is appropriate to proceed in her absence. In considering this, you should take into account the information provided to the Registrant in the Notice of Hearing, and consider whether it was sufficient to inform her of the importance of attending today.

I would remind you that the principle of fairness also applies to the Council in the presentation of the Council's case, and you have heard the submission from the Council's Solicitor that there is a public interest in this case proceeding today. When you are exercising your discretion, you must balance the rights of the Registrant against the wider public interest in disposing of this case today. If you conclude that the matter should proceed in the absence of the Registrant, I must advise you that it would be improper to reach any conclusion about her absence when considering the facts of this case. I would advise you that you should now retire to make your decision.

Finding of facts

You have now reached the fact finding stage of these proceedings, and my advice to you is when you approach the fact finding stage of any case pursuant to Rule 12 of Schedule 2 of the 2014 Conduct Rules, you must remind yourself that the burden rests with the Council to prove the facts contained within the Charge, on the balance of probabilities. The Registrant does not have to do anything; it is a matter for the Council to prove its case.

As I have said, the Council's Solicitor has highlighted for you that Charges 1 to 6 are in connection with the Registrant's convictions for criminal offences. She is correct in highlighting Rule 11 (5) of the Conduct Rules, which provides that the findings of fact of any certification of any UK Criminal Court of a conviction, shall be conclusive proof of the facts of the conviction. Therefore, the task before the Committee today is to satisfy yourself that the matters set out within the Certificates of Conviction contained within your bundle, establish the facts as contained within the Charge.

Now, you have had, highlighted to you, correspondence from the PSNI setting out the relevant background information, this is, however, hearsay evidence that has not been proven before you today. The Certificates of Conviction of the matter which give you the conclusive proof of the facts, not the other matters which the Council's Solicitor has highlighted to you in her submissions.

The final Charge in this case is one of dishonesty, and you have heard the submission that as the offences themselves are theft. Dishonesty is an essential element of those offences. Dishonesty is something that often Committees have difficulty with, and it might be helpful for me just to remind you of the task before you when dealing with the dishonesty type Charge. You will be familiar with the Ghosh test, and you will remember that that test had two limbs to it.

Firstly, one must decide whether according to the ordinary standards of reasonable and honest people, what was done was dishonest. Secondly, if it was dishonest by those standards, you would have to go on to consider whether the defendant, or in this case, the Registrant, realised themselves what they were doing was wrong by those standards. Now, since Ghosh there have been a number of other recent cases of dishonesty and, in particular, I would highlight to you the PSA v HCPC and David which is a 2014 case, which dealt with a social worker, and the problem in that case was that Ghosh was a criminal case and the subjective element of the Ghosh test was expressed in the language of the criminal standard of proof which was more likely than not the standard of proof, they must have understood what was addressed. So, the test was modified to bring it down to the civil standard of proof which is what regulators use, which is more likely than not on the balance of probabilities, as I was leaning towards there. So, that means you should consider, firstly, whether what this Registrant did was dishonest by the standards of reasonable, honest people, so were the convictions, were they dishonest by the standards of reasonable and honest people and, secondly, did the Registrant herself realise that what she was doing was dishonest?

Now, some of the case law talks about the first element of that test being the standards of reasonable and honest people, and other cases talk about the standards of social workers or social care workers, but you might find that those two have really very little difference between them; so was it that a reasonable and honest person would find that what she did was dishonest, and did she, herself, realise that what she was doing was dishonest and that would, I hope, assist you with that final Charge.

Advice given in Camera – [REDACTED]

Misconduct

We have now reached the misconduct stage of these proceedings, and you must consider all the information and evidence before you, and decide whether the facts found proved amount to misconduct. Misconduct is defined within the Rules as conduct which calls into question the suitability of a Registrant to remain on the Register. Guidance is found in the case of Roylance v GMC and that is a 1990 case. In that case, the Privy Council established that 'misconduct is a word of general effect, involving some act or omission which falls short of what would be considered proper in the circumstances'. The Code of Practice sets out for social care workers the proper standards and what would be expected of professionals working in that particular sector by the Council. The Council's Solicitor has highlighted for you and referred you to particular provisions of the Code which, she would submit, have been breached in this case. But I would advise you that you should consider the entirety of the Codes yourselves, and make your own determination using your own judgment as to whether you feel the conduct which you have found occurred, in fact, amounts to misconduct in contravention of the Code.

It has been highlighted that the offences did not occur within the workplace, but I would remind you that in the case of Remedy UK Ltd v GMC the Court, in that case, took the opportunity to review several of the relevant authorities in relation to the meaning of misconduct, and that may assist you. In that case, it was found that misconduct can include dishonourable conduct which brings the profession into disrepute, and it does not matter that the conduct is not directly related to the exercise of the professional skills. That would be my advice to the

Committee in respect of misconduct.

Sanction

My advice to the Committee at this, the sanction stage, is that Paragraph 25 of Schedule 2 of the 2014 (Conduct) Rules sets out the available actions open to you and, Madam Chair, you have just set those sanctions out clearly for the Committee. In determining the appropriate sanction, you are obliged to take into account the following factors:

- Firstly, the seriousness of the Registrant's misconduct;
- Secondly, the protection of the public;
- Thirdly, the public interest in maintaining confidence in social care services and;
- Fourthly, the issue of proportionality.

In reaching a view on the appropriate sanction, I would commend to you the Indicative Sanctions Guidance and ask you to read through the Guidance, and I would refer you to paragraphs 2.4, 2.5 and 2.6 of the Guidance which sets out the requirements for fairness and proportionality. I would remind you that you should look at the question of sanction in ascending order of severity, and by that I mean you should begin your deliberations by considering the least severe sanction first, that is admonishment. The primary purpose of sanction is protection of the public and it is not intended to be punitive. You have had highlighted by the Council's Solicitor, the case of Parkinson v NMC which you will be familiar with, as a case, but I would remind you that there has been further case law on the appropriate sanction in dishonesty cases, and we have the 2015 solicitor's case of R v Imran and that is EWHC 2572. In that case, it was held that strike off is not inevitable following a dishonesty conviction and findings must be carefully reasoned and explained. There may be exceptional circumstances which are relevant to the appropriate sanction in each individual case. So, my advice to you is to take into account the facts that are before you today, the Indicative Sanctions Guidance, and to use your own judgment to reach the appropriate sanction in this case.

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.

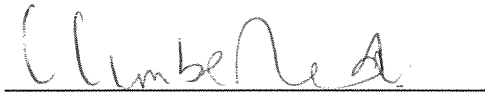
You should note that the Conduct Committee's decision takes effect from the date upon which it was made. The effect of this decision is that your entry in the Register has been removed with immediate effect.

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.

In accordance with Schedule 3, Paragraph 9 of the NISCC (Conduct) Rules, you may not apply to be restored to the Register within three years from the date of removal. This does not affect your right to appeal the Committee's decision to the Care Tribunal.



Committee Manager



Date