

Notice of Decision of the Northern Ireland Social Care Council's Fitness to Practise Committee

Name: Diane Elizabeth White

SCR No: 6004924

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **01 July 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 your fitness to practise is impaired by reason of your misconduct and a conviction in the United Kingdom for a criminal offence;

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

Particulars of the Allegation:

That, being registered as a social care worker under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), and whilst employed as a care assistant at the Rosemount Care Home, Portadown:

1. On 01 April 2016, you were convicted of the following criminal offence:

Defendant on the 24th day of November 2014, in the County Court Division of Craigavon, being an officer on the staff of or otherwise employed in a nursing home, namely Rosemount Care Home ill-treated [Service User A], a patient for the time being receiving treatment for a mental disorder as an in-patient in the said nursing home, contrary to Article 121 (1) of the Mental Health Order 1986.

And that by reason of the matters set out above, your fitness to practise is impaired because of your misconduct and a conviction in the United Kingdom for a criminal offence.

Preliminary Matters

Service

The Registrant was neither present nor represented. The Council was represented by Mr Anthony Gilmore, Solicitor, Directorate of Legal Services, Business Services Organisation. In a Notice of Hearing dated 02 June 2016, sent by Special Delivery and addressed to the Registrant at her address as it appears on the Register, the Council notified her of the date, time and venue for this hearing. The Notice was signed for on 03 June 2016. The Committee, in all the circumstances of the case, is satisfied that the Notice of Hearing has been served in

accordance with Rule 3 of the NISCC Fitness to Practise Rules 2016 ("the Rules"), and the requirements of Paragraph 5 of Schedule 2 of the Rules.

Proceeding in the Absence of the Registrant

Mr Gilmore made an application to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules, and that the Committee should hear and determine the case in the absence of the Registrant. Mr Gilmore advised the Committee that the Registrant had not responded in any way to the Notice of Hearing. Mr Gilmore invited the Committee to conclude that the Registrant's absence was voluntary.

The Committee was mindful that the discretion to proceed in the absence of the Registrant should only be exercised with the utmost care and caution. In considering the application, the Committee sought to satisfy itself that all reasonable efforts had been made to notify the Registrant of the hearing, and accepted the advice of the Legal Adviser.

The Committee bore in mind the public interest in the expeditious disposal of the hearing and that there was no evidence to indicate that the Registrant would be more likely to attend a future hearing if the matter was adjourned. Therefore, after careful consideration of all the issues, the Committee decided to exercise its discretion to proceed in the absence of the Registrant, taking into account the nature of the allegation and striking a careful balance between fairness to the Registrant and the wider public interest.

Application to Admit Hearing Bundle

The Committee heard an application from Mr Gilmore under Paragraph 12 of Schedule 2 of the Rules to admit a bundle of papers into evidence. He advised the Committee that this bundle of papers had been served on the Registrant by way of Special Delivery on 14 June 2016, with service signed for on 15 June 2016. The bundle contained the following:

- A Certificate of Conviction, dated 18 April 2016;
- A Police Witness Statement of Witness A, a Care Worker at Rosemount Care Home, dated 22 January 2015;
- A Letter dated 26 April 2016, from Detective Inspector Peter Galbraith to the Northern Ireland Social Care Council ("the Council"); and
- An extract from the Portadown Times, dated 08 April 2016.

On receiving advice from the Legal Adviser and there being no objection from the Registrant, the Committee was satisfied that the bundle met with the requirements of fairness and relevance and should be admitted.

Background

The Registrant is registered at Part 2 of the Register. Mr Gilmore advised the Committee that at the time of the allegation, she was employed as a Care Assistant at Rosemount Care Home ("the Home"), run by Zest Care Homes. He said that the Registrant was first registered with the Council on 06 December 2012, and this matter was the first time that she had been referred to them. He advised the Committee that on 24 November 2014, the

Registrant's co-worker, Witness A, reported an incident involving the Registrant's behaviour towards a service user to her manager and as a result the Registrant was suspended, with investigations commenced by her employer and a referral made to the Safeguarding Team. He told the Committee that the Registrant commenced maternity leave on 28 February 2015, and the Registrant's employer notified the Council of the events on 04 September 2015.

Evidence

Mr Gilmore referred the Committee to the Certificate of Conviction dated 18 April 2016, which confirmed that the Registrant was convicted, under Article 121 (1) of the Mental Health Order 1986, on 01 April 2016 at Craigavon Magistrates' Court, of ill-treating a patient at Rosemount Care Home. She being an officer (Care Assistant) on the staff in the Home and the patient was receiving treatment for a mental disorder as an in-patient in the Home. He advised the Committee that the Registrant initially pleaded "not guilty" to the charge and the matter proceeded to hearing where she was convicted and sentenced to 180 hours community service. He referred the Committee to the police Witness Statement from Witness A, a Care Worker at the Home and the Registrant's co-worker on the shift on 24 November 2014. Witness A indicates, in her statement, that on this date she and the Registrant were attending to the care of Service User A, in his own bedroom at the Home, whom she described as an "elderly gentleman" suffering from dementia, with "no mobility". Witness A and the Registrant were attending to Service User A's toileting needs and assisting him to bed. Mr Gilmore referred the Committee to Witness A observing the Registrant commencing hoisting Service User A on her own, with this normally being a two person procedure. Witness A further states that she observed the Registrant "pulling around the top of Service User A's t-shirt, around his neck and shoulder area", and "forcing him roughly by pulling him by his clothes". Witness A refers to the Registrant swearing at Service User A, and commenting on the smell in Service User A's bedroom. Mr Gilmore referred the Committee to Witness A's comment that she was "angry" about what she had observed, and that she found the Registrant's actions to be "unacceptable". Witness A states that she was unaware of any injuries caused to Service User A because of the incident.

Mr Gilmore referred the Committee to the letter from Detective Inspector Galbraith, to the Council, dated 26 April 2016. He submitted that the correspondence provided background detail as regards this allegation and details of the Registrant's denial of assault against Service User A.

He further referred the Committee to the extract from the Portadown Times dated 08 April 2016 which reported the trial of the Registrant. He submitted that this provided evidence that this matter was in the public arena and therefore, of public interest.

He submitted that in accordance with Paragraph 12 (5) of Schedule 2 of the Rules, the Certificate of Conviction is conclusive proof of the conviction against the Registrant, and he advised the Committee that the Registrant did not appeal her conviction. Accordingly, he submitted that this allegation was proved on the balance of probabilities.

Finding of Facts

The Committee reminded itself that the burden is on the Council to prove the facts as set out in the allegation, and that to find the facts proved the Committee must be satisfied on the balance of probabilities. This means that for any fact to be found proved, the Committee must be satisfied that it is more likely than not to have occurred.

The Committee heard the submissions from Mr Gilmore on behalf of the Council, and had regard to all of the documentary evidence in this case. The Committee accepted the advice from the Legal Adviser. The Committee finds, on the balance of probabilities, that the facts contained within the allegations have been established. Taking into account Paragraph 12 (5) of the Rules, the Committee was satisfied that the Certificate of Conviction proved that the Registrant ill-treated Service User A on 24 November 2014, at the Home.

Impairment of Fitness to Practise

Mr Gilmore addressed the Committee in relation to the allegation that the Registrant's fitness to practise is impaired because of her misconduct and her conviction for a criminal offence. He submitted that given the circumstances of this case, the Registrant cannot safely practise her profession. He referred the Committee to the Standards of Conduct and Practice for Social Care Workers at 5.1 and 5.8. He reminded the Committee that Service User A was a vulnerable, elderly man suffering from dementia, who was immobile and dependant on others for all aspects of his care. He submitted that the Registrant ill-treated Service User A in his own bedroom, and subjected him to physical and verbal abuse. Mr Gilmore referred the Committee to Rule 4 and Paragraph 24 Schedule 2 of the Rules. In addition, he reminded the Committee that the Rules define impaired fitness to practise as circumstances, 'which call into question the suitability of a Registrant to remain on the Register without restriction, or to be registered at all.' He submitted that the Registrant's ill-treatment of Service User A and subsequent conviction, are sufficient to satisfy the Committee as regards the Registrant's impaired fitness to practise. He submitted that there is no evidence that the Registrant's impairment is capable of remediation, or has been remediated. He referred the Committee to there being no evidence from the Registrant expressing an apology or remorse for her actions. In light of this, he submitted that there was a risk of repetition of this behaviour by the Registrant. As regards the public interest in this matter, he submitted that the public has an interest in being reassured that elderly, vulnerable patients are not exposed to ill-treatment and are properly cared for.

The Committee considered the submissions of Mr Gilmore on behalf of the Council and had regard to all of the evidence in this case. The Committee accepted the advice of the Legal Adviser.

The Committee considered whether the Registrant's fitness to practise is impaired by reason of her conviction, as set out in the Particulars of the Allegation, and her misconduct.

The Committee had regard to the Standards of Conduct and Practice for Social Care Workers and the Council guidance entitled, "Making a Determination of Impaired Fitness to Practise: Guidance for Committees on

Remediation.” The Committee is satisfied that the Registrant’s actions were in breach of the following Standards of Conduct:

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

The Committee notes that whilst this was a single incident, it was serious and involved an elderly, vulnerable service user who was immobile and suffering from dementia. The service user required assistance with the most personal elements of his care and was totally dependent on others for this care. The Registrant’s ill-treatment of Service User A was compounded by her actions taking place in the resident’s bedroom and in the presence of a co-worker. In subjecting Service User A to physical and verbal abuse, the Committee finds that the Registrant’s actions constituted a serious departure from the standards to be expected of a registered social care worker. The Committee considers that the Registrant’s behaviour towards Service User A placed him at unwarranted risk of harm, and notes the statement from Witness A, who was the Registrant’s co-worker, where she says the Registrant’s actions were “unacceptable” and made her “feel really angry.”

The Committee concludes that the Registrant’s actions constituted clear misconduct and a serious breach of her duty of care to Service User A.

The Committee considered the question of remediation. However, it notes that it is difficult to “put right” the outcome of behaviour involving verbal and physical abuse. The Committee notes there to be no evidence from the Registrant that she has remedied the concerns arising from her conviction and behaviour, nor is there any evidence of remorse or regret. Accordingly, the Committee considers that the Registrant has shown no insight into her behaviour, and therefore there are no grounds on which to conclude that she will not repeat her behaviour.

The Committee finds that the Registrant’s actions, in ill-treating Service User A, a vulnerable, elderly and highly dependent patient, breached a fundamental tenet of the social care profession and brought the profession into disrepute.

The Committee also considered the public interest in this matter. The Committee took into account the need to protect service users and members of the public, uphold proper standards of behaviour and maintain public confidence in the social care profession. In the circumstances, the Committee concludes that a finding of impaired fitness to practise is necessary for the maintenance of public confidence in the social care profession and the Council as its regulator. Further, given the seriousness of the registrant’s conviction in this case, for the ill-treatment of Service User A, public confidence in the social care profession and in the Council, as its regulator, would be undermined if a finding of impaired fitness to practise was not made.

Therefore, the Committee concludes that the Registrant's fitness to practise is impaired by reason of her conviction and misconduct.

Sanction

In reaching its decision on sanction, the Committee considered the submissions of Mr Gilmore on behalf of the Council and had regard to all of the evidence in this case.

It accepted the advice of the Legal Adviser.

The Committee has applied the principles of fairness, reasonableness and proportionality, weighing the public interests with the Registrant's interests, and taking into account any aggravating and mitigating factors in the case. The public interest includes the protection of members of the public, including service users, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour within the profession. The Committee has taken account of the Council's Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ("the Guidance"), bearing in mind that the decision on sanction is one for its own independent judgement.

The Committee recognises that the purpose of sanction is not to be punitive, although a sanction may have a punitive effect. The Committee considered the aggravating and mitigating factors in this case.

The Committee considers the aggravating factors to be:

- Service User A was a vulnerable, immobile, elderly patient suffering from dementia;
- The Registrant's ill-treatment of Service User A took place in the presence of a co-worker and in the service user's bedroom, and related to his personal care;
- The Registrant has demonstrated no insight or remorse for her actions;
- There is no evidence of remediation, and the Committee has identified a risk of repetition; and
- The Registrant provided no personal mitigation or testimonials;

The Committee considers the mitigating factors to be:

- There were no previous concerns raised with the Council;
- There was no evidence of a pattern of behaviour; and
- This was a single incident relating to one service user.

The Committee was advised that the Registrant had no previous disciplinary record with the Council.

Warning – The Committee considered the issue of a Warning in this case. It bore in mind that the imposition of a Warning for a period of time would not protect the public from the risk of repetition and consequent risk of serious harm to patients. The Registrant's impairment of fitness to practise is not at the lower end of the spectrum, nor are the circumstances such that the Committee would be confident that this sanction would

provide adequate public protection as far as the Registrant's suitability is concerned, bearing in mind that a warning would entitle the Registrant to work as a social care worker.

Conditions of Practice Order – The Committee next considered a Conditions of Practice Order. The Registrant has demonstrated no insight into her actions, nor expressed her desire to remediate her misconduct. The Committee concludes that the Registrant's actions arose from an attitudinal issue which could not, therefore, be addressed by a Conditions of Practice Order, and that such an Order would not be sufficient to protect the public. The Committee also concludes that a Conditions of Practice Order would not be sufficient to meet the public interest, in this matter, given the seriousness of the Registrant's departure from the standards expected of a registered social care worker.

Suspension – The Committee next considered a Suspension Order. The Committee accepts that this was a single incident, however it was concerned that the Registrant's actions arose from a harmful, deep-seated, attitudinal problem. It had no evidence of remorse, remediation or insight from the Registrant and identified a serious risk of repetition. The Committee considered the public interest in this matter. The Committee considers that the public would perceive the Registrant's misconduct as falling short of what would be expected of a registered social care worker. In all the circumstances, the Committee concludes that a Suspension Order would not be sufficient to mark the seriousness and unacceptability of the Registrant's criminal conviction and misconduct.

Removal – The Committee then considered a Removal Order. In considering this, the Committee took into account the Guidance at 4.26 – 4.28. It concludes that, given the seriousness of the Registrant's criminal conviction and her lack of insight into and remediation of her failings, a Removal Order is the only sanction sufficient to protect the public and maintain public confidence in the social care profession and the Council as its regulator. The Committee considers the Registrant's actions to constitute a serious departure from the professional standards as set out in the Standards of Conduct and Practice for Social Care Workers. The Registrant's ill-treatment of Service User A through verbal and physical abuse, placed him at unwarranted risk of harm. The Committee has identified a significant risk of repetition and consequent risk of harm to patients. The Registrant, by her actions, abused the trust placed in her as a social care worker and has brought the social care profession into disrepute. The Registrant has shown no insight or remorse, has taken no remedial action and has failed to engage with the Council in the investigation of this matter. In all the circumstances, the Committee concludes that a Removal Order is the only sanction available to it to protect the public and meet the public interest in upholding confidence in the social care profession and its regulator, by marking the seriousness and unacceptability of her actions. The Committee considers that public confidence in the social care profession and the Council as its regulator, would be undermined if a social care worker, who was criminally convicted and acted without remorse, insight or remediation as the Registrant did, was allowed to remain on the Register.

The Interim Suspension Order imposed on the Registrant is hereby revoked.

Legal Advice Given

Service

I confirm that I have already had an opportunity to examine the documentation prior to the Hearing today and to ascertain that the dates that Mr Gilmore has referred to are in fact correct.

Just, generally, to give you advice in relation to the aspect of service. You will be aware that Paragraph 5, Schedule 2 of the Social Care Fitness to Practise Rules 2016, governs the requirements that a Hearing should not be fixed for hearing earlier than 28 days after the posting of the Notice, except with the agreement of the parties. In this case, you have heard from Mr Gilmore that the Notice was sent on 02 June and this was by recorded delivery post and that there is evidence that it was signed for on 03 June 2016. As in accordance with the Rules, this was sent by registered post and in the circumstances; my advice to the Committee would be that it would be safe to accept service has been effected.

Proceeding in the absence of the Registrant

The Committee now in view of the Registrant's absence must consider whether to proceed with the matter today and you have heard an application from Mr Gilmore under Paragraph 15 of Schedule 2 of the Rules, for the matter to proceed in her absence. You have nothing before you from the Registrant today in relation to an application for an adjournment, or even an acknowledgement that the matter is proceeding today. Where you are satisfied that the Notice of Hearing has been served, you have a number of options; you may proceed to determine the matter in the absence of the Registrant, or you may adjourn the Hearing and give directions and this is a matter of discretion for you. I would refer the Committee to the case of *R v Jones [2003]*, which you are familiar with, this is a criminal case that has been approved as applicable in regulatory matters. In this case, Lord Bingham stated as follows:

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

Therefore, today I would advise you to consider whether an adjournment may result in this Registrant attending the proceedings at a later date. You should look at the time involved in such an adjournment and the extent of the disadvantage to this Registrant not being able to present her account of events before you today.

On the other side and as opposed to this, you must consider the seriousness of the allegations, the general public interest in this matter being dealt with and also the interests of any victims. I would remind you that this Registrant is entitled to a fair Hearing, to attend, to be represented, to test the Council's case, present evidence on her own behalf. However, if she has 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 must look at the information provided to the Registrant and consider whether it was sufficient to advise her of the importance of attending here today. You have before you the Notice that was sent to the Registrant and it complies with the Regulations in providing her with specific and clear information as regards the allegation, the Hearing date and the powers of the Committee. This principle of fairness applies also to the presentation of the Council's case. Therefore, in exercising your discretion you must balance on the one

hand the rights of the Registrant, against, on the other, the wider public interest in the expeditious disposal of the matter.

If you consider this Hearing should continue in her absence, I would advise you to avoid reaching any improper conclusions about her absence and must not treat her absence as an admission in any way.

Application to Admit Hearing Bundle

You have heard from Mr Gilmore in relation to an application he has brought on behalf of the Council, to admit a bundle of documents, and you have previously heard from him that this bundle was served by way of recorded delivery post on 14th of June 2016 with receipt of that bundle being confirmed on 15th of June 2016. So, the first issue in relation to the Registrant being aware of the bundle has been dealt with and that is something that you may take into consideration when deciding upon this application. Paragraph 12 of Schedule 2 of the 2016 Fitness to Practise Rules allows you 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 with the evidence in the case, having a value or a tendency to prove a matter of fact significant to the case. When considering fairness, you should direct yourselves to the issues of equality, reasonableness, public interest and the interests of justice. You have heard from Mr Gilmore that the documents in the bundle are relevant to the allegations before you, and you have heard evidence as regards the service of the bundle on the Registrant and you have no evidence from her today of an objection to any of the contents. Therefore, I would advise you there would appear to be no undue unfairness to the Registrant in admitting this bundle. However, within the bundle there may be hearsay evidence and in considering this, I would ask you to take into account the fact that the person who is the source of the evidence before you is not appearing before you to give you an opportunity to either question or assess her credibility, nor equally is this evidence subject to cross-examination or challenge.

So, therefore, taking that into account it will be for you to decide what weight, if any, to give to that evidence, looking at the nature of the evidence, the reason why the witness is not present today and whether there is any second-hand hearsay there for you to consider.

Finding of Facts

At this, the fact finding stage of the proceedings, you must consider all the evidence presented bearing in mind that the burden of proof lies with the Council and 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 this allegation. In this regard, I would direct you to Schedule 2 of the Northern Ireland Social Care Council Fitness to Practise Rules 2016 at Paragraphs 13 and 23. 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, and you have the bundle of documents that you have had an opportunity to read and that Mr Gilmore has referred you to and that has been served on the Registrant. You must look at the allegation and you must make a decision based on the wording of the allegation, weighing and balancing the evidence, as I have referred to, using your own judgment as to the contents of the documentation, determining whether the evidence is truthful and reliable. Again, subject

to the considerations of fairness and relevance.

In accordance with the case of *Re H (Minors) [1996]*, as observed by Lord Nicholl, I would advise you that he stated: (and it is of assistance to you)

"When assessing the probabilities, the court will have in mind as a factor ... that the more serious the allegation, the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability."

There are two other cases that are of assistance, these are the cases of *Re B [2003]* and *Re D [2008]* and these were decided by the then House of Lords, and they make clear that whilst the seriousness of an allegation or its consequences may necessitate a more careful consideration of the evidence, this does not require a different standard of proof or an especially cogent type of evidence. Mr Gilmore has referred you to the Certificate of Conviction and to Paragraph 12 subsection 5 of Schedule 2 of the 2016 Rules, and I would repeat that again to you and that refers to the submission of a Certificate of Conviction stating that, 'the findings of fact and the Certificate of Conviction shall be conclusive proof of the facts or convictions so found'. So, this Certificate of Conviction before you today is a matter of public record and it will be proper for you to accept it before you.

Impairment of Fitness to Practise

In addition to the detailed submissions from Mr Gilmore, as well as his references to the Standards of Conduct and Practice For Social Care Workers 2015 you will know that in determining whether fitness to practise is impaired, you should adopt a sequential approach and I would refer you to the case of *Cohen v GMC [2010]* in support of this.

In this matter, you have found the allegation proved and you are now considering whether this Registrant's fitness to practise is impaired because of her misconduct and a conviction which you have referred to previously in today's Hearing. In accordance with Rule 4 and Schedule 2, Paragraph 24 of the 2016 Rules:

"'Impaired fitness to practise' and 'impairment' refer to circumstances as set out in Rule 4 which call into question the suitability of a Registrant to remain on the Register without restriction or to be registered at all."

In deciding issues of impairment of fitness to practise you shall have regard to a number of issues. You must first consider whether you are satisfied as to the reasons for the alleged impairment of fitness to practise; secondly, you must give consideration to the standards of conduct and practice. Thirdly, you must consider whether the impairment is capable of remediation or whether you have evidence that it has been remediated, and I would refer you to the Northern Ireland Social Care Council guidance as regards fitness to practise, impairment and remediation when you are deliberating on this. You must consider the risk of repetition and you must also look at the public interest. Therefore, you must consider the current competence and behaviour of the Registrant against the need to protect service users, uphold proper standards of behaviour and maintain confidence in the social care profession. You should also consider any evidence you have of the degree of harm caused by the Registrant and the Registrant's culpability in that harm. I would refer you again to the bundle of documents that have been provided in support of the case today and, again, you should pay attention to those documents at this stage of proceedings.

I would emphasise as regards impairment, as set out by the Court of Appeal in *GMC v Meadows [2006]*, you are exercising your professional judgment; there is no applicable burden or standard of proof here. I would refer you to the case of *CHRE v NMC and Grant* and, particularly, the findings of Mrs Justice Cox at paragraphs 74 and 75 where she indicates:

"In determining whether a Registrant's fitness to practise is impaired by reason of misconduct ...",
and that is one of the allegations before you today,

"... the Panel should consider, firstly, whether the Registrant continues to present a risk to members of the public in her role and, secondly, whether the need to uphold proper, professional standards and public confidence in the profession will be undermined if a finding of impairment were not made in the particular circumstances."

I would also refer you to the findings of Dame Janet Smith as set out in the 5th Shipman Report, paragraph 25.67 where she refers to the potential causes of impairment as arising when: Firstly, the Registrant presents a risk to patients; secondly, it has brought the profession into disrepute; thirdly, it has breached one of the fundamental tenets of the profession and, in this matter, I would refer you to the standards, as Mr Gilmore has indicated to you; or has acted in such a way as her integrity can no longer be relied upon.

She also noted that present impairment of fitness to practise can be founded on past matters and by reference to how a Registrant is likely to behave in the future. Impaired fitness to practise is defined as, 'circumstances which call into question the suitability of a Registrant to remain on the Register without restriction or to be registered at all'. Guidance, in relation to this, can be found in the case of *Roylance v GMC*. The Panel should consider the level of conduct and competence expected of the average Registrant, the terms and content of the Northern Ireland Social Care Council Standards of Conduct and Practice and, in addition, whether there has been a serious breach of the Registrant's duty of care to patients. Case law indicates that misconduct is of two principle kinds. Firstly, serious misconduct in the exercise of professional practice and this is what is before you today, the second relates to morally culpable or disgraceful kind of behaviour outside professional practice, which is not before you today.

You should, therefore, consider any evidence you have today which shows any degree of insight the Registrant has now in relation to her failings and any steps she has taken to remedy the deficiencies in her practice. The case of *Remedy UK Limited v GMC* reviewed about several relevant cases regarding the meaning of misconduct and will be of assistance to you.

It indicates that misconduct may involve sufficiently serious misconduct in the exercise of professional practice or conduct of a morally culpable nature, and that relates to dishonourable conduct which would bring the profession into disrepute and it does not matter that the conduct is not directly related to the exercise of professional skills. The case of *Bolton v Law Society [1994]* suggests that the reputation of the profession is more important than the individual fortunes of its members and the case of *Dey v GMC [2001]* held that health authorities must be able to place complete reliance on the integrity of practitioners, and the Committee is entitled to regard conduct which undermines that confidence as calculated, to reflect on the standards of the profession as a whole.

Sanction

You have heard the submissions from Mr Gilmore and you will be aware that paragraph 26 of Schedule 2 of the Northern Ireland Social Care Council Fitness to Practise Rules 2016 set out the available sanctions open to you at this stage. Mr Chairman, you highlighted this at the outset of this stage of proceedings and I wouldn't intend to repeat them again to you. Generally, in determining the appropriate sanction, you are obliged to take into account the following factors: First of all, the seriousness of the Registrant's misconduct and the degree to which the Registrant has fallen short of any expected standard and that would be with reference to the Standards of Conduct that have been referred to previously. Thirdly, the protection of the public and, fourthly, the public interest in maintaining confidence in social care services. Most importantly, you must be aware of the issue of proportionality and that means you must weigh on the one part the Registrant's interests against, on the other part, the interests of the public.

I would also refer you to the Council Indicative Sanctions Guidance 2016 and remind you that the purposes of sanction are not punitive. Paragraphs 2.5, 2.6 and 2.7 of the Guidance deals with the considerations of fairness and proportionality. You should consider the question of sanction in ascending order of severity beginning your deliberations by considering warning 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 particular, to paragraphs 2.3 and 2.4 of the Guidance. These direct that the public should have confidence in the Council upholding 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 have confidence that the social care workforce is being maintained in a proper and appropriate manner. In serving that public interest, the purpose of sanction is to ensure that a social care worker does not have an opportunity to repeat any misconduct and also maintain the reputation of the profession. I would refer you to paragraphs 2.2 and 2.5 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. Paragraphs 2.17 to 2.23 deal with and give you guidance when considering cases where convictions are involved.

You must also give consideration to any aggravating or mitigating factors and these are set out in the Guidance at 3.2 and 3.3. Generally, you must take account of any references, testimonials or expressions of remorse and in this matter, you have nothing of that nature in front of you to consider today. But, in general, I would ask you to take account of the potentially devastating effect financially and personally a sanction can have on a Registrant.

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 Fitness to Practise 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.

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 Fitness to Practise Rules, you may not apply to be restored to the Register within five years from the date of removal. This does not affect your right to appeal the Committee's decision to the Care Tribunal.

Jane Keenan

Committee Clerk

05/07/16

Date