

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

Name: Charley Mitchell

SCR No: 7005268

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **13 January 2022**, 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 convictions

The Committee decided to make an Order suspending your registration for a specified period of two years ('a Suspension Order').

Particulars of the Allegation:

That, on 23 August 2021, as set out below, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted of the following offences at the Magistrates' Court;

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| 1. | Defendant on 12 December 2020, when driving a mechanically propelled vehicle on a road, namely, A8 M, Newtownabbey, were unfit to drive through drink or drugs, contrary to Article 15 (1) of the Road Traffic (Northern Ireland) Order 1995. |
| 2. | Defendant on 12 th day of December 2020 drove a mechanically propelled vehicle dangerously on a road, namely, the M2 Motorway, Templepatrick, contrary to Article 10 of the Road Traffic (Northern Ireland) Order 1995. |

And your actions as set out above show that your fitness to practise is impaired by reason of your conviction.

Procedure

The hearing was held under the fitness to practise procedure.

Preliminary Matters

Declaration of Conflicts of Interest

The Chair of the Committee advised that all Committee Members had confirmed that they did not have any conflicts of interest with the case.

Service

Mr Carson told the Committee that the Notice of Hearing and hearing bundle were emailed to the Registrant's registered email address on 07 December 2021, and that an electronic delivery receipt was received on the same date. The Registrant confirmed in a telephone call with the Committee Clerk, on 05 January 2022, that she did not want to attend the hearing and understood that the hearing could proceed in her absence. The Registrant stated that she would consider providing a written submission to the Committee.

The Committee received legal advice from the Legal Adviser, and she referred the Committee to the requirements as set out in the Northern Ireland Social Care Council's ('the Council') Fitness to Practise (Amendment) Rules 2019 ('the Rules') and, in particular, Rule 3 which states that proof of service shall be treated as being effected on the day after it was properly sent.

The Committee, in all of the circumstances of the case, was satisfied that the Notice of Hearing had been served in accordance with Rule 3 of the Rules, and the requirements of Paragraph 5 of Schedule 2 of the Rules.

Proceeding in the Absence of the Registrant

Mr Carson made an application to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules, and submitted that the Committee should hear and determine the case in her absence. He invited the Committee to conclude that the Registrant's absence was a voluntary waiver of her right to attend. Mr Carson told the Committee that the Registrant confirmed in a telephone call with the Council on 05 January 2022 that she would not be in attendance at the hearing, and understood that the hearing could proceed in her absence. Mr Carson further suggested that it was in the public interest for there to be an expeditious disposal of the hearing, and noted that the events in question took place in December 2020.

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. She referred the Committee to the cases of R v Jones 2003 1 AC, Adeogba and Visvardis v GMC 2016. She reminded the Committee that in exercising its discretion to proceed in the Registrant's absence, it must have regard to all of the circumstances with fairness to the Registrant being of prime consideration, although fairness to the Council and the public interest must also be taken into account. She reminded the Committee to avoid reaching any improper conclusion about the Registrant's absence, and not to accept it as an admission in any way.

The Committee reminded itself that fairness to the Registrant should be a prime consideration. The Committee bore in mind the public interest in the expeditious disposal of the hearing. The Committee noted the telephone call between the Registrant and the Council on 05 January 2022, in which the Registrant confirmed that she would not be in attendance and understood that the hearing could proceed in her absence. The Committee noted that the Registrant had not asked for an adjournment in any communication with the Council. Therefore, after careful consideration of all of the issues, the Committee decided to exercise its discretion to proceed in the absence of the Registrant, taking into account the serious nature of the Particulars of the Allegation, and striking a careful balance between fairness to the Registrant and the wider public interest. The Committee, in all of the circumstances, considered that the Registrant had voluntarily absented herself from today's hearing. However, the Committee reminded itself that it must avoid reaching any improper conclusion about the Registrant's absence, nor treat the absence as an admission.

Application to Admit Hearing Bundle

Mr Carson requested that the hearing bundle be admitted into evidence. The Committee accepted the bundle into evidence and marked it as Exhibit 1. Mr Carson made an application under Paragraph 12 of Schedule 2 of the Rules to admit a disclosure bundle of papers into evidence. He told the Committee that all of this documentation had been served on the Registrant on 07 December 2021, and that the Registrant had been advised that the Council intended to rely on the documentation in both bundles for the purposes of today's hearing. In relation to the disclosure bundle, Mr Carson told the Committee that this comprised of five pages of minutes of meetings that took place with the Registrant and her employer. He confirmed that the minutes were not signed or verified by the Registrant. He submitted that, in accordance with the Rules, the documentation was relevant and the submission would be fair in all of the circumstances. He said that the Registrant was aware of the content of the bundle, and had made no objection to the documentation or to the Council's intention to present it to the Committee.

The Committee received and accepted advice from the Legal Adviser. She referred it to Paragraph 12 of Schedule 2 of the Rules as regards admission of documentary evidence and issues of fairness and relevance.

The Committee noted that the disclosure bundle of documents comprised minutes of three meetings that took place between the Registrant and her employer on 17 December 2020, 22 December 2020 and 29 December 2020. The minutes were not signed or verified by the Registrant as being an accurate record. In considering this documentation, the Committee found the minutes to be incomplete and in places difficult to follow and understand. Accordingly, the Committee found the documentation not to have any great relevance to the Particulars of the Allegation and, therefore, unfair to receive as evidence. In addition, the Committee found these documents to contain hearsay evidence.

Background

Mr Carson told the Committee that the Council had received a letter from the Common Law Protected Disclosure ('CLPD') unit of the PSNI, dated 17 December 2020. The letter was issued under a 'pressing social need' and stated as follows:

'...the above subject was arrested on the 12th December 2020 in respect of Driving Whilst Unfit Through Drink or Drugs....The subject was arrested for driving whilst unfit through drink or drugs and such was her level of intoxication that police conveyed her to hospital for treatment. The subject was later interviewed during which she admitted taking alcohol, cocaine, diazepam and cannabis prior to driving her vehicle. The subject has admitted to taking alcohol and various drugs and was still prepared to drive her car causing danger to herself and other road users.'

Mr Carson told the Committee that investigating police had confirmed that there was also dash-cam footage showing what appears to be the Registrant's car being driven extremely erratically on the M2 Motorway prior to her arrest.

Mr Carson outlined a further passage in the letter from the CLPD, dated 17 December 2020, which stated:

'Police believe there is a significant risk due to the extremely poor judgement shown by the subject through her actions. It cannot be ruled out that the subject has made similar poor decisions in the past and may do so again leading to the possibility of her attending work while under the influence and the risk this may pose to those in her care.'

On 29 December 2020, the Council received an Employer Referral Form ('ERF') and supporting documentation from the Registrant's employer, Chester Private Nursing Home, Wilson Group.

Mr Carson said that the ERF confirmed that the Registrant had been suspended on 17 December 2020 as a result of information supplied by the PSNI.

Evidence

Mr Carson referred the Committee to the two certificates of conviction in Exhibit 1. He advised that the convictions against the Registrant related to driving whilst unfit through drink or drugs and driving dangerously on a road. He told the Committee that the Registrant pleaded guilty to the charge relating to driving unfit through drink or drugs on 07 April 2021, and pleaded not guilty to the second charge of driving dangerously on 07 April 2021.

Mr Carson directed the Committee to the two certificates of conviction within the bundle, which show that the Registrant was convicted of each offence, and a Probation Order imposed for one year and six months, along with the Registrant ordered to participate in a drug / alcohol programme. The Registrant was also disqualified from driving for 12 months.

Mr Carson submitted that the documentation in the hearing bundle confirmed that the Registrant was convicted of each of the offences as set out within the Particulars of the Allegation. He submitted that the certificates of conviction, when taken alongside the background information obtained from her employer and from the PSNI, allows the Council to prove the facts on the balance of probabilities. Mr Carson submitted that in accordance with Paragraph 12 (5) of Schedule 2 of the Rules, the certificates of conviction were conclusive proof of the facts.

Findings of Fact

The Committee took into account the submissions made on behalf of the Council, the certificates of conviction and the legal advice from the Legal Adviser. The Legal Adviser reminded the Committee that under Paragraph 12 (5) of Schedule 2 of the Rules, a certificate of conviction issued in any UK Criminal Court '*shall be conclusive proof of the facts or conviction so found*'. She advised the Committee that a registrant could challenge a certificate of conviction if it did not refer to the Registrant, or where the conviction had been challenged successfully on appeal. She informed the Committee that the certificates of conviction in this case were issued before a competent Court of jurisdiction and, in the absence of any other evidence, the Committee was entitled to rely on the certificates of conviction to establish conclusively that the Registrant was convicted of the offences as set out. She also advised the Committee that the certificates could also be relied upon to establish the facts underlying the convictions.

The Committee reminded itself that the burden is on the Council to prove the facts as set out in the Particulars of 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 had careful regard to all of the documentary evidence. The Committee noted the facts contained in the two certificates of conviction. The Committee accepted that the certificates of conviction referred to this Registrant and were not subject to an appeal. The Committee, therefore, concluded that the certificates of conviction were conclusive proof of the convictions and the underlying facts. The Committee found the facts proved.

Fitness to Practise

The Committee proceeded to consider whether the Registrant's fitness to practise was currently impaired by reason of her convictions.

The Committee heard submissions from Mr Carson. He said that there was no admission from the Registrant as regards impairment of her fitness to practise. He said that the Registrant's convictions called into question her ability to work in social care services and to remain on the Register without restriction, or to be registered at all.

He referred the Committee to the Standards of Conduct and Practice for Social Care Workers which, in his submission, the Registrant had breached by reason of her convictions, namely, Standards of Conduct 5.8. Mr Carson submitted that the Registrant's actions fell far below the standards to be expected of a registered social

care worker. Mr Carson submitted that the Registrant has not produced evidence of remediation to date. He said that there is no evidence to show that the Registrant has engaged with the alcohol / drug counselling / treatment programme ordered by the Court, and that there has been no meaningful engagement with the Council. He said that in these circumstances, there remains a risk of repetition. He submitted that there was no evidence of insight on the part of the Registrant into her criminal convictions, or information to suggest that she understood the impact of her behaviour.

He said that the Registrant's behaviour was both dangerous and unacceptable. He submitted that a failure to make a finding of current impairment of the Registrant's fitness to practise would undermine public trust and confidence, and would fail to uphold proper standards of conduct and behaviour. Mr Carson invited the Committee to make a finding of current impairment by reason of the Registrant's convictions.

The Committee considered the submission from Mr Carson, and had regard to all of the evidence in the case. The Committee heard and accepted the advice of the Legal Adviser. She referred the Committee to Paragraph 24 (3) of Schedule 2 of the Rules, and the requirements as set out in the case of the GMC v Cohen, looking at the current competence and behaviour of the Registrant, along with the need to protect service users, members of the public, the upholding of proper standards of behaviour and maintaining of public confidence in the social care profession. She further referred the Committee to the findings of Dame Janet Smith in the 5th Shipman Report as regards the potential causes of impairment. She also referred the Committee to the cases of GMC v Meadows 2006 and CHRE v NMC & Grant 2011.

The Committee considered whether the Registrant's fitness to practise was impaired by reason of her convictions as set out in the Particulars of the Allegation.

The Committee, in considering the issue of impairment of fitness to practise, took account of Paragraph 24 (3) of Schedule 2 of the Rules, which states that it should have regard to:

- (a) whether it is satisfied as to the reason for the alleged impairment of fitness to practise;
- (b) the Standards of Conduct and Practice issued by the Council under Section 9 of the Act;
- (c) whether the impairment is capable of remediation;
- (d) whether the impairment has been remediated;
- (e) the risk of repetition; and
- (f) the public interest.

The Committee had regard to Rule 4 (d) of the Rules, which states that fitness to practise may be impaired by a conviction for a criminal offence. The Committee was satisfied that the Registrant's convictions for driving whilst unfit through drink or drugs and dangerous driving were reasons for the alleged impairment of fitness to practise.

The Committee had regard to the Standards of Conduct and Practice for Social Care Workers. The Committee was 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:

- 5.7 Put yourself or other people at unnecessary risk; or
- 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 was of the view that the Registrant's criminal behaviour fell significantly below the standards of conduct expected of a registered social care worker.

The Committee addressed itself to the Registrant's insight and remediation. The Committee concluded that the events which led to the convictions were capable of remediation. However, there was no information or evidence from the Registrant to demonstrate that she had developed insight and had attempted to remediate her behaviour. The Committee noted that the Registrant had pleaded guilty to the offence of driving whilst unfit through drink or drugs. However, the Committee has no information about the Registrant completing a treatment / counselling course as ordered by the Court. Accordingly, the Committee has no evidence to show that the Registrant has demonstrated insight or acceptance of her wrongdoing. The Committee considered, in light of the absence of insight and remediation by the Registrant, that there was a likelihood of repetition.

Although these events occurred outside of the workplace, because of the serious nature of the offences, along with the risk of harm to herself and others as a result of the Registrant driving under the influence of drink or drugs and dangerous driving, the Committee concluded that a finding of current impairment was necessary to protect the public.

The Committee also concluded that a finding of current impairment of fitness to practise was necessary in the public interest. It was considered by the Committee that public confidence in the social care profession, and the Council as its regulator, would be undermined if a finding of impaired fitness to practise in these circumstances was not made.

Therefore, the Committee concluded that the Registrant's fitness to practise is currently impaired by reason of her criminal convictions.

Sanction

In reaching its decision on sanction, the Committee considered the submission of Mr Carson on behalf of the Council, and had regard to all of the evidence in this case. Mr Carson referred the Committee to mitigating factors, and advised that the Registrant had no previous referrals to the Council. He also noted that the Registrant had pleaded guilty to the charge of driving whilst unfit through drink or drugs, and that no service users were harmed. In considering aggravating factors, Mr Carson submitted that the convictions were extremely serious and resulted in the Registrant attending hospital due to her consumption of drugs. He said that the Registrant had failed to engage in a meaningful way with the Council, and noted that she had not disclosed this incident to her employer.

Mr Carson submitted that whilst sanction was entirely a matter for the Committee, it was the view of the Council that it would not be appropriate to take no action or to impose a Warning in this case, due to the serious nature of the criminal offences. He submitted that a Warning would not provide adequate protection for service users, nor address the risk of repetition.

Mr Carson referred the Committee to the NISCC Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance'), and submitted that conditions of practice would be difficult to formulate as the Registrant was not in attendance and is not currently working in social care. Therefore, the Registrant was not able to respond to any suggestion of conditions of practice. In considering the sanction of a Suspension Order, he noted that the Registrant, in failing to engage with proceedings, had not acknowledged her failings or addressed the likelihood of repetition. As regards the sanction of a Removal Order, he reminded the Committee that this should be a proportionate response and would be appropriate where the Registrant's actions were fundamentally incompatible with remaining on the Register.

The Committee accepted advice from the Legal Adviser. She referred the Committee to the Guidance, and reminded the Committee to consider the question of sanction in ascending order of severity, paying particular attention to the issue of proportionality.

She referred the Committee to Paragraph 26 of Schedule 2 of the Rules which provides that, upon a finding of impairment of fitness to practise, the Committee may:

- (a) impose no sanction; or
- (b) warn the Registrant and direct that a record of the warning should be placed on the Registrant's entry in the Register for a specified period of up to 5 years; or
- (c) make a Conditions of Practice Order for a specified period not exceeding 3 years; or
- (d) make an Order suspending the Registrant's registration for a specified period not exceeding 2 years (a 'Suspension Order'); or
- (e) make an Order for removal of the Registrant's registration from the Register ('a Removal Order').

She further reminded the Committee that in deciding which sanction to impose, the Committee should take into account:

- (a) the seriousness of the Particulars of the Allegation;
- (b) the degree to which the Registrant has fallen short of any expected standards;
- (c) the protection of the public;
- (d) the public interest in maintaining confidence in social care services; and
- (e) the issue of proportionality.

The Committee applied the principles of fairness, reasonableness and proportionality, weighing the public interest with the Registrant's interests. The public interest included 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 took into account its powers under Paragraph 26 of Schedule 2 of the Rules in relation to the sanctions available to it, and also had regard to the Council's Guidance, bearing in mind that the decision on sanction was one for its own independent judgement.

The Committee recognised that the purpose of sanction was 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 considered the mitigating factors to be:

- The Registrant had no previous referrals to the Council;
- The Registrant made a partial admission in pleading guilty to the offence of driving unfit through drink or drugs;
- The incident on 12 December 2020 was a one-off isolated matter; and
- The incident occurred outside the workplace and service users were not harmed or put at risk.

The Committee considered the aggravating factors to be:

- The Registrant had very limited engagement with the Council;
- The Registrant was convicted of two very serious criminal offences, for which she received a Probation Order for 18 months, a requirement to actively participate in an alcohol / drug counselling and / or treatment programme during the probation period, and disqualified from driving for one year;
- The Registrant did not disclose this incident to her employer;
- The Registrant has demonstrated limited insight, with no evidence of regret or remorse;
- The Committee has not been provided with any evidence of rehabilitative steps;
- Although there was no risk to service users, by driving a car whilst under the influence of drugs, the Registrant posed a risk to herself and to the general public; and
- The Registrant has shown a serious disregard for the Council's Standards of Conduct and Practice for Social Care Workers.

Having balanced the aggravating and mitigating factors, and taking into account the interests of public protection and the public interest, the Committee was satisfied that a sanction was necessary, and proceeded to consider which sanction to apply in this case.

No sanction - the Committee was in no doubt that it would be entirely inappropriate to impose no sanction in view of the seriousness of the case and the nature of the criminal convictions. To impose no sanction would be inappropriate in view of the seriousness of the findings and would not address the concerns identified.

Warning – the Committee considered whether to impose a Warning in this case. Having regard to its previous findings, the Committee considered that such a step would be inadequate to protect the public and would fail to uphold the public interest. The Committee considered that the Registrant’s criminal convictions demonstrated a serious disregard for the Standards of Conduct and Practice for Social Care Workers. The Committee had no evidence before it of the Registrant’s insight, and whether she has commenced rehabilitation. Therefore, a Warning would not be appropriate or proportionate in all of the circumstances.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Committee noted the Guidance at Paragraph 4.13, which states that conditions may be appropriate in cases involving particular areas of a Registrant’s performance, and where a Committee is satisfied that it is appropriate for an individual to remain on the Register. The Registrant’s convictions were serious. As the Registrant did not attend the hearing, the Committee had no evidence as to her current employment circumstances, or whether she would agree to any conditions, if imposed. However, notwithstanding a lack of knowledge concerning the Registrant’s employment status, the Committee concluded that a Conditions of Practice Order would be insufficient to protect the public and uphold the public interest, given the seriousness of the Registrant’s departure from the standards expected of a registered social care worker. The Committee could not formulate workable, enforceable or verifiable conditions which would address the Registrant’s criminal behaviour, adequately protect the public and address the wider public interest.

Suspension – the Committee next considered a Suspension Order. The Committee noted that it had made findings at the facts and impairment stages of the proceedings which were of a very serious nature, and that the Registrant’s actions fell far below the standards to be expected of a registered social care worker.

The Committee carefully considered the issue of proportionality, and whether suspension would address the concerns which it had identified. The Committee noted Paragraph 4.19 of the Indicative Sanctions Guidance, which states:

‘4.19 Suspension from the Register may be an appropriate sanction for impairment which while very serious, is not so serious as to justify removal from the Register; for example, where there has been an acknowledgment of failings and where a Committee is satisfied that the behaviour is unlikely to be repeated, and the Registrant has no psychological or other difficulties preventing them from understanding and seeking to remedy the failings and the failings are realistically capable of being remedied, then suspension may be appropriate.’

Although the Committee considered that the Registrant’s criminal convictions were serious, it did not consider them so serious as to justify removal from the Register. In particular, the Committee noted that this was a one-off incident, and that it took place outside the workplace with no risk of harm to service users. The Committee determined that the Registrant’s behaviour was not fundamentally incompatible with continuing to be a registered social care worker in the long term. Suspension will give a clear message to the Registrant, the public and the profession that the Registrant’s conduct was inappropriate for a social care worker. There were no other complaints raised with the Council in respect of the Registrant. The Committee noted that the Registrant is

subject to a Probation Order, with a requirement that she participates in an alcohol / drug counselling treatment programme and that she has a further period of time to comply with this requirement. The Committee noted that a Suspension Order would be reviewed at the conclusion of the period of suspension, and that the Registrant would have the opportunity to present evidence of the steps which she had taken to remediate her criminal behaviour, and provide evidence of insight and remorse. This would address the risk of repetition identified. A review Committee will be assisted by the Registrant's engagement with the Council and the provision of evidence as to compliance with the Probation Order. The public would be sufficiently protected in the meantime by a period of suspension.

The Committee carefully considered the potential impact which a Suspension Order could have on the Registrant. However, it concluded that any consequences for the Registrant are outweighed by the need to protect the public and maintain public confidence in the social care profession.

The Committee determined that suspension for a period of two years would be proportionate to the seriousness of the facts found proved, and would provide an adequate opportunity for the Registrant to demonstrate remediation and that her fitness to practise is no longer impaired.

Removal - the Committee did consider the sanction of removal. Whilst acknowledging that some of the factors listed in the Guidance were engaged, the Committee concluded that a Removal Order would be disproportionate, in particular as the Registrant had not caused harm to service users and as this was a one-off isolated incident with the Registrant having no previous referrals. On balance, the Committee was persuaded that a Removal Order at this stage would not be appropriate.

The Committee concluded that a Suspension Order for a period of two years was the most suitable, appropriate and proportionate sanction, to be imposed on the Registrant's registration with immediate effect.

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 suspended for a specified period of **two years** and you may not practise as a social care worker during the period **13 January 2022 to 12 January 2024 inclusive**.

Early Review

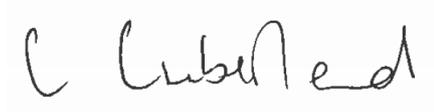
The Fitness to Practise Committee may, at your request, review the Order before the end of the period for which the suspension has been imposed if there has been a material change of circumstances since the Order was imposed. The Committee may, after reviewing a Suspension Order, revoke that Order or replace that Order with a Conditions of Practice Order.

Review at Conclusion of Sanction

A review of your fitness to practise will be undertaken towards the end of the period for which the Suspension Order has been imposed. The Council will write to you no later than 12 weeks before the expiry of the Order to

invite you to submit any information or documentation which you would like to have considered as part of the review process. The review will consider the particular concerns which have been outlined above by the Fitness to Practise Committee, and will seek to ascertain what remedial steps you have taken during the period of your suspension.

Following the Council's review, the matter may be referred for review by the Fitness to Practise Committee. If the Committee reviews the Order and it is satisfied that your fitness to practise remains impaired, it may impose a further Order to commence upon expiry of the existing Order, or it may impose a Conditions of Practice Order to commence upon expiry of the existing Order, or it may vary the terms of the existing Order, or it may revoke the existing Order and impose a Removal Order.



Committee Manager

19 January 2022

Date