



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

Name: Michelle Elizabeth Rush

SCR No: 6001023

Date: 09 April 2014

NOTICE IS HEREBY GIVEN THAT the Conduct Committee of the Northern Ireland Social Care Council, at its meeting on **07 and 08 April 2014**, made the following decision about your registration with the Northern Ireland Social Care Council:

The Committee found the facts in Charge 1 not proved;

The Committee found the facts in Charges 2, 3, 4 and 5 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), and whilst employed as a Care Assistant at Rosemount Care Home you:

1. On an unknown date you swore at Service User A when helping to dress her.
2. On an unknown date you used inappropriate force when assisting Service User A to move position.
3. On an unknown date you swore at Service User B when she asked you to take her to the toilet.
4. On an unknown date you refused to take Service User C to the toilet.
5. On 5 March 2013 you swore at Service User A when dressing her.

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 Committee was satisfied that the Notice of Hearing, dated 06 March 2014, was served on the Registrant in accordance with Rule 3 of Part 1 and Rule 4 of Schedule 2 of the NISCC (Conduct) Rules 2013, and confirmation of service was provided to the Committee, dated 07 March 2014. The Committee was also satisfied that, by letter dated 21 March 2014, a hearing bundle was sent by Special Delivery to the Registrant's address and was signed for on 22 March 2014. Therefore, the Committee is satisfied that the Notice has been served in accordance with Rule 3 of Part 1 and Rule 4 of Schedule 2 of the NISCC (Conduct) Rules 2013.

The Committee considered an application from Mr Alistair Wilson, Council Solicitor, under Rule 14 of Schedule 2 of the NISCC (Conduct) Rules 2013, to proceed with the hearing in the Registrant's absence. The Registrant has not engaged with the Council since being advised of the date for hearing or on receipt of the bundle of documents. Mr Wilson submitted to the Committee that it was in the public interest for the matter to proceed and that the Registrant had deliberately and voluntarily waived her right to be present or represented.

The Committee received legal advice from the Legal Adviser on the question of whether to proceed in the Registrant's absence. The Committee has considered the factors identified in the case of *R v Jones* [2003] 1 AC 1 and has had regard to the advice given by the Legal Adviser. The Committee is aware that the discretion to proceed in the absence of a Registrant is one which should be exercised with the utmost care and caution, that the crucial question is whether the Registrant has voluntarily waived her right to be present or represented at these proceedings, and that it must strike a careful balance between fairness to the Registrant and the wider public interest.

The Committee considers that the Registrant was on notice of today's hearing, and has decided to voluntarily waive her right to be present and did not request an adjournment. The Committee has considered the seriousness of the allegations and the general public interest in this matter being proceeded with on today's date. The Committee is minded that it must strike a careful balance between fairness to the Registrant and the wider public interest. In the circumstances of this case, the Committee has decided that the balance of fairness is in favour of proceeding in the Registrant's absence. The Committee reminds itself that it must avoid reaching any improper conclusions about the absence of the Registrant, and does not treat the Registrant's absence as an admission of guilt in any way.

Background

The Registrant is a care worker who is registered on Part 2 of the Northern Ireland Social Care Register. The Registrant was employed as a care assistant at Rosemount Care Home in Portadown, where she worked in the Jasmine Unit. Rosemount Care Home ('the Home') is a residential / nursing care centre for elderly residents who suffer primarily from Alzheimer's disease or dementia, or who have suffered a stroke. The Registrant was employed here from 05 December 2011.

Approach of the Committee

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

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

In approaching the task of determining the facts, the Committee was mindful that the burden of proof rests with the NISCC. The Registrant herself is not required to prove anything. The standard of proof to which the NISCC is required to prove matters is the civil standard, on the balance of probabilities.

During the hearing, the Committee received hearsay evidence. The Committee paid due regard to the weight that it could attach to such evidence, bearing in mind that it has not been possible for that evidence to be challenged through cross-examination.

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

Evidence

The Committee heard oral evidence from two employees at the Home, both care assistants, Witness 1 and Witness 2, who worked alongside the Registrant. In addition, the Committee was provided with a document that had been forwarded by the Registrant to the Council during the investigation of the allegations. This document comprised a letter, dated 04 December 2013, written by the Registrant, in which she acknowledged her understanding of the allegations being made against her, and set out a general response to them.

The Committee also received, under Paragraph 11, Schedule 2 of the 2013 Conduct Rules, a statement from Witness 3, a care assistant who worked alongside the Registrant at the Home. This statement was submitted to the Committee without formal proof as this witness was unable to attend the hearing due to recent illness. In considering this statement, the Committee took advice from the Legal Adviser, and is aware of the need to give appropriate weight to its contents. In particular, the Committee has not had the opportunity to assess the credibility of this witness or to raise any questions. The Committee notes that a copy of this statement was provided to the Registrant on two occasions prior to this hearing today, and that she raised no specific objection to its contents.

Finding of Facts

Charge 1: On an unknown date you swore at Service User A when helping to dress her. The Committee finds the facts in this Charge not proved.

The Committee notes the Council's submission that the evidence supporting the alleged facts in this Charge is contained in the written statement of Witness 3, dated 19 October 2013. This witness did not attend the hearing to give oral evidence due to illness.

The Committee has carefully considered the contents of Witness 3's statement. The Committee notes that Witness 3 was unable to remember the date when this incident was alleged to have occurred. She refers to Service User A as having suffered a stroke, resulting in paralysis of her left arm. Her statement indicates that Service User A, on occasions, will help care assistants dress her, but on other occasions is less happy to do so.

At Paragraph 6 of Witness 3's statement, she recalls that she and the Registrant were dressing Service User A, and that the Registrant became agitated when Service User A did not try to assist her in getting dressed. Witness 3's statement indicates that the Registrant used the words 'bloody help us' in an angry tone, before pulling Service User A's arm into a t-shirt.

The Committee was not able to assess the credibility or otherwise of Witness 3, or to raise questions arising out of her statement, particularly in relation to the circumstances surrounding the alleged language used. The Committee is therefore not convinced, on the basis of Witness 3's statement that, on the balance of probabilities, the Registrant directly swore at Service User A as alleged in the Charge. The Committee therefore does not find this Charge proved.

Charge 2: On an unknown date you used inappropriate force when assisting Service User A to move position. The Committee finds the facts in this Charge proved.

The Committee heard evidence as regards this Charge from Witness 2. Witness 2 is a full time care assistant at the Home and worked alongside the Registrant, with whom she described as having a good working relationship. Witness 2 gave evidence of an incident, on a date unknown, when she and the Registrant attended Service User A's room to provide assistance. She advised the Committee that Service User A's left arm and leg are paralysed from a stroke, and that Service User A requires the assistance of two care assistants for her daily needs. Witness 2 gave evidence that Service User A had asked the Registrant to re-position her left arm and, in response, the Registrant had told Service User A to 'move it herself'. Witness 2 told the Committee that Service User A is unable to move her arm by herself, and that she became distressed and told the Registrant that she was unable to move her arm herself. Witness 2 gave evidence that the Registrant then approached Service User A and 'grabbed' her arm 'roughly'. She further stated that the Registrant 'lifted it up [arm] and swung it backwards'. She gave evidence that Service User A was very upset after this incident. The Committee notes the very specific evidence given by Witness 2 as to her recall of this incident, and her consistent recounting of this incident on questioning by the Committee.

The Committee notes that the written letter from the Registrant, dated 04 December 2013, contains no response or reference to the specific allegation in this Charge.

The Committee considers Witness 2 to be credible and genuine, and therefore considers this Charge proved on the balance of probabilities.

Charge 3: On an unknown date you swore at Service User B when she asked you to take her to the toilet.

The Committee finds the facts in this Charge proved.

The Committee heard evidence in relation to this Charge from Witness 2. The Committee found Witness 2 to be a credible witness, who appeared genuine in her concern for the well-being of the residents at the Home. Witness 2 gave evidence that, on a date unknown, but shortly before 05 March 2013, she was present in the Home's day room, along with the Registrant and a number of residents. Witness 2 told the Committee that Service User B asked the Registrant to take her to the bathroom and the Registrant responded with the words 'fuck's sake' and refused to take her. Witness 2 told the Committee that Service User B became upset and that she (Witness 2) told the Registrant that she (the Registrant) needed to take Service User B to the bathroom. Witness 2 gave evidence that the Registrant responded with the words 'for fuck's sake, I'll take you now'. Witness 2 gave evidence that the resident was very upset at this. Witness 2 advised the Committee that it is a serious matter not to bring a resident to the toilet when they ask to do so, and that she considered this to be a form of abuse. The Committee considers this Charge to be proved on the balance of probabilities. Whilst the Committee notes that Witness 2's written statement differs in a number of minor ways from her oral evidence, the Committee accepts Witness 2's evidence that she has a clear recollection of the Registrant swearing at Service User B.

Charge 4: On an unknown date you refused to take Service User C to the toilet. The Committee finds the facts in this Charge proved.

In relation to the Charge, the Committee heard evidence from Witness 2. Witness 2 gave evidence to the Committee that Service User C suffers from Alzheimer's disease and requires assistance from two care assistants to get dressed and for her toileting needs. Witness 2 gave evidence that she and the Registrant were in Service User C's bedroom for the purpose of washing and dressing Service User C before her breakfast. Witness 2 gave evidence that Service User C asked the Registrant to take her to the bathroom. Witness 2 indicated to the Committee that, although she could not remember the exact words the Registrant used in response to this request, Witness 2 recalled the Registrant swearing at Service User C and telling her to go in her incontinence pad. Witness 2 gave evidence that Service User C was very upset when this happened and that she then took Service User C to the bathroom. Witness 2 told the Committee that she had never before seen anyone speak to a resident in this manner and that she discussed what had happened with her colleagues, and agreed that the matter should be reported to her manager. The Committee considers Witness 2's account of the events as set out in this Charge to be clear and credible. The Committee notes that, in the Registrant's letter of 04 December 2013, she maintains that she would never harm or swear at a resident but may have sworn 'in passing' in the presence of residents. Having considered all of the evidence, the Committee accepts the evidence of Witness 2 and finds this Charge proved on the balance of probabilities.

Charge 5: On 5 March 2013 you swore at Service User A when dressing her. The Committee finds the facts in this Charge proved.

In relation to this Charge, the Committee heard evidence from Witness 1, who is a part time care assistant at the Home and worked alongside the Registrant in the Jasmine Unit. Witness 1 gave evidence to the Committee that on 05 March 2013 she was assisting the Registrant in dressing Service User A. Witness 1 described Service User A as requiring the assistance of two care assistants to get dressed in the mornings and that at this time, due to an injury, Service User A required to get up for a few hours in the morning and return to bed in the afternoon. Witness 1 gave evidence that the Registrant was standing on the left side of Service User A's bed and was attempting to move Service User A's arm through the sleeve of a jumper. Witness 1 described the Registrant as shouting at Service User A and cursing at her, using the words 'fucking help us'. Witness 1 gave evidence that she was of the view that the Registrant was 'really rough' with Service User A, and that Witness 1 had to remind the Registrant that Service User A was unable to use her left arm due to her stroke. She gave further evidence that the Registrant responded by saying 'Just leave her there. I am not fucking listening to her'. Witness 1 described Service User A as looking scared and very sad as a result of this incident, and that Witness 1 subsequently reported the matter to the nurse in charge. She told the Committee that Service User A is aware of what is going on around her and that, on this occasion, she did not say anything in response to the Registrant's behaviour.

Witness 1 confirmed that, within a short time of this incident occurring, she had made a note of what had happened and that this was provided to the Home Manager.

The Committee finds this Charge proved on the balance of probabilities. It notes the consistent oral evidence of Witness 1 and the supporting contemporaneous note which she made immediately after the incident, which provides confirmation of the facts as set out in the Charge.

Misconduct

Having found the facts proved, the Committee proceeded to consider the issue of misconduct. The Committee heard the submission from Mr Wilson and his references to the NISCC Code of Practice for Social Care Workers. He referred the Committee to Code 5 and 5.1 of the Code. He submitted that the actions of the Registrant, as found proved in the Charges, fell well short of what should be proper in the circumstances and as set out in the Code of Practice. In particular, he noted that Service Users A and B were vulnerable residents at the Home who had physical disabilities which required assistance from the care workers. He submitted that the Registrant had sworn at Service User A and used inappropriate force, which left her scared and sad. In relation to Service User B, the Registrant's swearing left this resident visibly upset. Mr Wilson submitted that Rosemount Care Home was Service User B's home, and that the Registrant should have been striving to improve her independence and confidence instead of leaving her upset and unable to leave her bedroom.

As regards Service User C, who suffered from Alzheimer's disease, Mr Wilson submitted that the Registrant's behaviour was manifestly inappropriate, and the refusal to bring Service User C to the bathroom was a denial of a basic human right. He considered the Registrant's behaviour to be callous and neglectful.

Paragraph 2 (1) of the NISCC (Conduct) Rules 2013 defines misconduct as 'conduct which calls into question the suitability of a Registrant to remain on the Register'. A useful definition of the term 'misconduct' was given by Lord Clyde in *Roylance v the General Medical Council* [1999] UKPC16 and commented on in *Disciplinary and Regulatory Proceedings* (5th Ed.) (Harris):

'Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances'.

The same applies to a Social Care Worker.

The Committee was advised by the Legal Adviser that the burden of proving that the Registrant's behaviour amounted to misconduct rested with the Council, which must prove its case on the balance of probabilities.

Having given careful consideration to Mr Wilson's submissions, and to the legal advice which it had received, the Committee found unanimously that the Registrant's actions were in breach of the following provisions of the NISCC Code of Practice:

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

- 1.1 Treating each person as an individual;
- 1.2 Respecting and, where appropriate, promoting the individual views and wishes of both service users and carers;
- 1.3 Supporting service users' rights to control their lives and make informed choices about the services they receive; and
- 1.4 Respecting and maintaining the dignity and privacy of service users.

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

- 2.2 Communicating in an appropriate, open, accurate and straightforward way.

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

- 3.1 Promoting the independence of service users and assisting them to understand and exercise their rights;
- 3.3 Following practice and procedures designed to keep you and other people safe from violent and abusive behaviour at work;

- 3.6 Complying with employers' health and safety policies, including those relating to substance abuse; and
- 3.8 Recognising and using responsibly the power that comes from your work with service users and carers.

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

- 5.1 Abuse, neglect or harm service users, carers or colleagues;
- 5.7 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.

Code 6: As a social care worker, you must be accountable for the quality of your work and take responsibility for maintaining and improving your knowledge and skills. This includes:

- 6.1 Meeting relevant standards of practice and working in a lawful, safe and effective way; and
- 6.5 Working openly and co-operatively with colleagues and treating them with respect.

The Committee took the view that a care worker, in the circumstances in which the Registrant was working, would have been aware of the need to treat the residents of the Home with care and respect. In addition, in view of the vulnerability of the residents, and in particular the vulnerabilities as identified with Service Users A, B and C, a care worker would be expected to maintain the dignity of the residents and treat each of them with respect whilst promoting their independence as far as possible. The Code of Practice is clear in setting out the expectation for social care workers to communicate with service users in a respectful and appropriate manner, explaining to any vulnerable service user what is happening to them and eliciting, as far as possible, their wishes and needs. The Committee considered that the Registrant's actions, in swearing at vulnerable service users, using inappropriate force with them, and refusing to take them to the toilet, constituted verbal, physical and emotional abuse. Therefore, the Committee finds the Charges proved to be of a very serious nature and that the Registrant's actions amounted to serious misconduct.

Sanction

In deciding what sanction to impose, the Committee has taken into account:

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

The Committee has had regard to the principle of proportionality, and the need to strike a careful balance between the interests of the Registrant, protection of the public and the public interest in maintaining confidence

in social care services. The Committee has given due consideration to the NISCC Indicative Sanctions Guidance and has accepted the advice of the Legal Adviser.

The Committee was advised that the Registrant has no previous disciplinary record with the Council. In addition, the Committee has not been provided with any references or testimonials as regards the Registrant. The Committee had no evidence of the potential financial effect of any sanction on the Registrant. The Committee heard a submission from Mr Wilson, who referred it to the NISCC Indicative Sanctions Guidance, and, in particular, to the absence of any evidence of apology provided or remorse shown by the Registrant. Mr Wilson further directed the Committee to the direct detriment and harm caused to the three Service Users A, B and C by the Registrant's behaviour. He referred the Committee to the evidence given by the witnesses as to the embarrassment and upset of the service users. He submitted that the Registrant's actions robbed the service users of dignity and failed to treat them with the respect they deserved. He further submitted that, in light of the evidence, there was a real risk of repetition of these actions, and that the public interest in protecting the public in these circumstances would only be served if the Registrant's registration was either restricted or removed from the Register. He advised the Committee that there was no information as to the Registrant's current financial position or whether she was still in employment. He confirmed to the Committee that the Registrant was dismissed from her post in the Home on 09 May 2013.

The Committee is mindful that the purpose of the sanction is not punitive. Sanctions are imposed to the extent that it is necessary to protect the public. Other relevant factors include maintaining public confidence in the profession, maintaining confidence in the NISCC regulatory process and the deterrent effect on other Registrants. In order to ensure that no more severe sanction is imposed than is required by these demands, the available sanctions in Rule 25 of Schedule 2 were considered in ascending order of gravity as follows:

Admonishment – the Committee first considered whether it was appropriate to admonish the Registrant. The Committee decided that it was inappropriate in all of the circumstances of the case to impose an admonishment. In considering this, the Committee bore in mind that it must look at whether this particular sanction provides adequate protection as far as the Registrant's suitability to remain on the Register is concerned. The Committee considered that the events as set out in Charges 2 to 5 caused harm to the service users involved. The events were not of an isolated nature and the Committee has no evidence as to whether the Registrant's actions were premeditated. The Committee notes that the Registrant was not subject to any previous referrals to the Northern Ireland Social Care Council. However, the Committee has not been provided with references or testimonials on behalf of the Registrant. The Committee has no evidence as to repetition of the Registrant's behaviour since 05 March 2013, and has no evidence as to any rehabilitative or corrective steps that may have been taken. However, the Committee considers the misconduct to be of a serious nature and notes the absence of any expression of regret or apology from the Registrant. The Committee took into account the contents of the Registrant's letter to the Council, dated 04 December 2013. However, this correspondence does not provide any evidence that the Registrant has insight into her failings or shows willingness to change her behaviour in the future.

Suspension – the Committee next considered whether it was appropriate to make an Order suspending the Registrant's registration. The Committee notes the NISCC Indicative Sanctions Guidance, which sets out that suspension from the Register is intended to give a clear message to the public and the profession about what is, or is not, appropriate conduct for a social care worker. The Committee finds the Registrant's actions, as set out in the proven Charges, to comprise of serious incidents of misconduct and to be behaviour that is fundamentally incompatible with being a registered social care worker. The Registrant's actions, in swearing at Service Users A and B, refusing to take Service User C to the toilet, and using inappropriate force when assisting Service User A, demonstrate an unacceptable level of care. The Committee considers that there is no evidence that this type of behaviour will not be repeated by the Registrant in the future, and notes that it has no evidence as to the Registrant's current role. In particular, the Committee notes that the Registrant has not demonstrated any insight into the inappropriate nature of her behaviour and the impact which her behaviour had on vulnerable service users. Therefore, the Committee does not consider this sanction to be sufficient to protect the public and to maintain the reputation of the profession.

Removal – the Committee considers that removal is the most appropriate sanction in this case. The Committee recognises that removal is the most serious sanction which it can impose, and is appropriate when a Registrant's behaviour is fundamentally incompatible with being a social care worker. The Committee's finding of misconduct relates to the Registrant's serious failings in providing an acceptable level of care for vulnerable service users. In considering this sanction, the Committee noted that it has no evidence of insight by the Registrant into her behaviour and the effects of this behaviour, or of satisfactory remediation. The Committee notes that the Registrant had been employed in the Home from 2011 and that the events as found proved in Charges 2 to 5 provide evidence of a pattern of unacceptable behaviour. The Committee considers that the Registrant's actions robbed Service Users A, B and C of dignity, and the actions indicated a serious lack of respect.

The Committee considers that the Registrant abused her position of trust with these vulnerable service users, and that her actions constituted a serious departure from the relevant professional standards set out in the Code of Practice for Social Care Workers. In imposing this sanction, the Committee has reminded itself of the need to adhere to the principle of proportionality and that the primary purpose of sanctions is not to penalise or punish. Therefore, having regard to the findings of fact and its decision on misconduct, the Committee is satisfied that the public interest and the need to protect the public requires the imposition of a Removal Order.

Legal Advice Given

Service

The Legal Adviser advised the Committee that she had had an opportunity to examine proof of delivery of the Notice of Hearing. She reminded the Committee that, under Paragraph 4 Schedule 2 of the Northern Ireland Social Care Council Rules, a hearing should not be fixed for hearing earlier than 28 days after posting of the

Notice. In this particular instance, the Committee had been given evidence that the documentation was sent out to the Registrant on 06 March 2014 and was received and signed for on 07 March 2014. Rule 3 of Part 1 of the Rules provides that this Notice should be sent by registered post, which has taken place, and sent to the Registrant's last known address, with the Notice being treated as being served on the day after it is posted. In this instance, the documentation confirmed that that had been complied with. Therefore, the Committee must now consider whether it wished to proceed in the Registrant's absence.

Proceeding in Absence of Registrant

The Committee was referred to the case of *R-v-Jones* 2003, which is a criminal case but has been approved as applicable in regulatory matters. The Committee had a discretion to proceed in these circumstances. The Committee should consider exercising this discretion with the utmost care and caution. It should consider whether an adjournment may result in the Registrant attending the proceedings at a later date. It should look at the time involved in such an adjournment and the extent of the disadvantage to the Registrant in not being able to present her account of events to the Committee.

The Committee should look at the seriousness of the allegations, the general public interest in this matter being dealt with and also the interest of any victims.

The Legal Adviser reminded the Committee that the Registrant was entitled to a fair hearing, to attend, to be represented, to test the Council's case and to present evidence on her own behalf. If the Registrant had knowledge or the means of knowledge of the proceedings, the Committee may conclude that she had voluntarily absented herself and proceed in her absence. The Committee had heard evidence as regards the service of the documentation and the Notice of Hearing.

In considering this, the Committee should look at whether the information provided to the Registrant was sufficient to advise her of the importance of attending. This principle of fairness also equally applied to the presentation of the Council's case. Therefore, in exercising this discretion, the Committee must balance the rights of the Registrant on the one hand against the wider public interest in the expeditious disposal of the matter. If the Committee considered that the hearing should continue in the absence of the Registrant, it must avoid reaching any improper conclusion about her absence, and it must not treat her absence as an admission of guilt in any way.

Application to Admit a Letter Received from the Registrant

The Legal Adviser advised that it would be fair to the Registrant that the Committee have sight of the two-page handwritten document. In view of the Registrant's absence, the Committee was advised that it would be appropriate and that it was quite relevant to the Charges.

Application to Admit a Statement from a Non-Attending Witness

An application was made under Paragraph 11 of Schedule 2 of the Conduct Rules, which allows the Committee

to admit evidence whether oral, documentary or otherwise and whether this type of evidence would be admissible or not in a Court of Law, subject to the requirements of relevance and a fair hearing.

The Committee was advised that 'relevance' means having some reasonable connection with the evidence in the case, having value or a tendency to prove a matter of fact significant to the case.

When considering fairness, the Committee must look at the issues of equality, reasonableness, the public interest and also the interest of justice. The Committee must also take account of the fact that the person who was the source of that evidence was not before it, and it had heard from Mr Wilson that this particular witness was ill. Therefore, the Committee and Mr Wilson would not have the opportunity to assess that person's credibility. Equally, the evidence had not been tested by cross-examination or been challenged in any way.

Taking all of these issues into account, the Committee should decide what weight, if any, to give this evidence. It should look at the nature of the evidence, and the Committee had been advised that the statement made by this witness was in relation to Charge 1. The Committee should consider the reason why the witness was not present to give oral evidence, and also whether the statement contains any second-hand hearsay evidence.

Finding of Facts

The Committee was directed to consider all the evidence that it had received, bearing in mind that the burden of proof lay with the Council and that the standard of proof was on the balance of probabilities.

The Legal Adviser reminded the Committee that the Council had brought these proceedings and that it was up to the Council to prove its case. She reminded the Committee that the Registrant did not have to prove that she was innocent of the Charges.

The Committee was directed to Schedule 2 of the Conduct Rules and, in particular, to Paragraphs 12 and 22, and that a fact would be found proved if the Committee considered it more likely than not to have happened.

The Committee's decision must be based on the evidence presented to it, and this would be by way of written documentary evidence or oral testimony. The Committee had heard live oral sworn evidence from two witnesses on behalf of the Council, and it had had an opportunity to question them and to assess their credibility. The Committee also had the written statement of another witness, Witness 3. The Committee had been presented with a handwritten letter from the Registrant, which was not intended to be submitted at this stage of the proceedings but was submitted at the investigation stage, but contained relevant responses that the Committee should consider at this stage.

The Legal Adviser advised the Committee to determine, on the balance of probabilities, whether the facts in each Charge had been proved. It must consider each particular Charge in turn, weighing and balancing the evidence presented. It must use its own judgment as to the credibility of the witnesses, and determine which evidence was truthful and reliable.

Subject to the conditions of fairness and relevance, the Committee must give the documentary evidence such weight as it considered necessary and appropriate to determine what facts were found proved on the balance of probabilities.

The Committee had not had the opportunity to question Witness 3 regarding her statement, and had not had the opportunity to assess the credibility or to raise any issues that might be of concern. Equally, the Registrant had not availed of the opportunity to attend and to present her position in relation to the Charges. The Legal Adviser asked the Committee to look at the Registrant's handwritten letter carefully. It would note in that letter general denials, mainly in paragraph 3 and then the paragraph subsequent to that. At the end of the page, there was a specific denial which related to, first of all, a passing reference to swearing and then a general denial to either harming and swearing.

However, as in the case of Witness 3, the Committee had not had the opportunity to assess in a live way the evidence from the Registrant, nor have it had an opportunity to cross-examine her in relation to that. However, she did not have to prove innocence in the matter as it was up to the Council to prove its case.

The Committee was also reminded again not to draw any adverse inference from the Registrant not attending and not giving oral evidence.

Misconduct

Misconduct is defined as conduct which calls into question the suitability of the Registrant to remain on the Register. The Legal Adviser reminded the Committee that there had been no admission of misconduct in this case. The Committee had been referred to, on previous occasions, and had before it, the letter from the Registrant which did contain general responses to the allegations that were the subject matter of the hearing.

In considering the question of misconduct, the Committee must also pay particular reference to the Northern Ireland Social Care Council Code of Practice, and Mr Wilson had specifically referred the Committee to Paragraphs 5 and 5.1. The Committee must consider whether any breaches of the Code had occurred, and must be satisfied that it was more likely than not that the conduct which it had found occurred in its findings of fact amounted to misconduct in contravention of the Code.

The Committee should take into account all of the oral evidence that it had heard, the documentary evidence produced and also the submissions of Mr Wilson. Guidance in this matter could be found in the case of *Roylance-v-GMC* 1999. In this case, the Judicial Committee of the Privy Council indicated that 'Misconduct is a word of general effect. It involves some act or omission which falls short of what would be proper in the circumstances. The standards of propriety may be found in the rules practitioners are required to follow. In addition, the professional conduct in question', which in this particular case was that of a social care worker, 'must be of a serious nature'.

When considering the issue of misconduct, the Committee should bring its own professional expertise to bear. The Legal Adviser reminded the Committee that it was the Council's responsibility to discharge the burden of

proving misconduct. In addition, the Committee must bear in mind that the more serious the allegations, the more cogent the evidence required to prove it.

Finally, the Legal Adviser cited the case of *Meadows-v-GMC*, in which the Court indicated that misconduct should not be viewed as anything less than serious professional misconduct, and that the conduct in any given case must be serious before being branded as misconduct in a professional context.

Sanction

The Legal Adviser referred the Committee to Paragraph 25 of Schedule 2 of the Conduct Rules, which set out the available sanctions open to the Committee. Where there is a finding of misconduct, the Committee may: Admonish the Registrant and direct that a record of admonishment should be placed upon her entry in the Register for a period of five years; make an Order suspending the Registrant's registration for a period not exceeding two years; or make an Order for the removal of the Registrant's registration from the Register.

In determining the appropriate sanction, the Committee was advised that it was obliged to take into account the following factors: firstly, the seriousness of the Registrant's misconduct; secondly, the protection of the public; and thirdly, public interest in maintaining confidence in social care services as well as the issue of proportionality, which means weighing on the one part the Registrant's interest against, on the other part, the interest of the public.

The Legal Adviser referred the Committee to the NISCC Indicative Sanctions Guidance, and reminded it that the purpose of sanctions is not punitive. Paragraphs 2.4, 2.5 and 2.6 of the Guidance deal with the considerations of fairness and proportionality and would be very helpful assistance in this matter.

The Committee should consider the question of sanction in ascending order of severity. It should begin its deliberations by considering admonishment first. The primary purpose of sanctions is the protection of the public and also the maintaining of the reputation of the profession. The Committee was referred in particular to Paragraphs 2.2 and 2.3 of the Guidance. These direct that the public should have confidence that the Northern Ireland Social Care Council will uphold proper standards of behaviour and conduct in regulating social care workers. Public interest requires that both the public and social care users are protected from unsafe practice, and confidence in the work force is maintained. In serving that public interest, the purpose of sanctions is to ensure that social care workers do not have an opportunity to repeat the misconduct and also maintain the reputation of the profession.

The Committee was referred to Paragraphs 2.4 and 2.6, which remind that any limitation of the right to practise one's profession should be no more than is necessary in the circumstances, and that the Committee had a duty to act fairly.

The Committee also had to give consideration to any aggravating or mitigating factors. The Legal Adviser reminded the Committee to consider the letter from the Registrant dated 04 December 2013. The Committee should take note of its contents and also the Registrant's assertions within that correspondence. The Committee

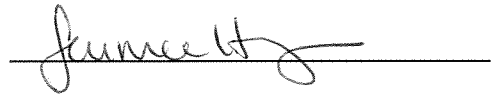
had also been advised that the Registrant had no previous disciplinary record with the Northern Ireland Social Care Council. There was unfortunately no information before the Committee in relation to any financial impact of an Order that it may consider making.

Right of Appeal

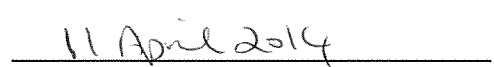
You have the right to appeal this decision to the Care Tribunal. Any appeal must be lodged in writing within 28 days from the date of this Notice of Decision.

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

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



Clerk to the Conduct Committee



Date