



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

Name: Josekutty Philip

SCR No: 1148048

Date: 15 May 2014

NOTICE IS HEREBY GIVEN THAT the Conduct Committee of the Northern Ireland Social Care Council, at its meeting on **12 May 2014**, made the following decision about your registration with the Northern Ireland Social Care Council:

The Committee found the facts proved;

The Committee found that you have committed misconduct;

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

Charge:

That, being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended) and while working as a Care Assistant at Rosevale Lodge Care Home, Lisburn:

1. On 19 April 2011 you were convicted of the following offences at Lisburn Magistrates Court:
 - (i) Defendant on 9th July 2009 in the County Court division of Craigavon dishonestly made a false representation, namely made an application for a credit card with the intention, by making the representation, to make a gain for yourself or another or to cause loss to MBNA or to expose the bank to a risk of loss, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.
 - (ii) Defendant on 20th day of August 2009 in the County Court division of Craigavon dishonestly made a false representation, namely that he was authorised by Person A to lodge a cheque for £1200 payable to Person B from MBNA credit Card account 5407581107734847 in the name of Person A, by making the representation, to make a gain for yourself or another or to cause loss to MBNA Europe Bank Ltd or to expose the bank to a risk of loss, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.

- (iii) Defendant on 17th day of July 2009 in the County Court division of Craigavon dishonestly made a false representation, namely made an application for a credit card in the name of Person A with the intention, by making the representation, to make a gain for yourself or another or to cause loss to Capital One Bank (Europe) plc or to expose the bank to a risk of loss, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.
 - (iv) Defendant on 10th day of July 2009 in the County Court division of Craigavon dishonestly made a false representation, namely made an application for a credit card in the name of Person A with the intention, by making the representation, to make a gain for yourself or another or to cause loss to Home Retail Group Financial Services or to expose them to a risk of loss, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.
 - (v) Defendant on 25th day of August 2009 in the County Court division of Craigavon dishonestly made a false representation, namely that he was authorised by Person A to lodge a cheque for £600 payable to Person B from MBNA credit Card account 5407581107734847 in the name of Person A, by making the representation, to make a gain for yourself or another or to cause loss to MBNA Europe Bank Ltd or to expose the bank to a risk of loss, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.
 - (vi) Defendant on 18th day of July 2009 in the County Court division of Craigavon dishonestly made a false representation, namely made an application for a credit card in the name of Person A with the intention, by making the representation, to make a gain for yourself or another or to cause loss to The Royal Bank of Scotland plc or to expose the bank to a risk of loss, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.
 - (vii) Defendant on 9th day of July 2009 in the County Court division of Craigavon dishonestly made a false representation, namely made an application for a credit card in the name of Person A with the intention, by making the representation, to make a gain for yourself or another or to cause loss to Barclays Bank plc or to expose the bank to a risk of loss, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.
 - (viii) Defendant on 17th day of July 2009 in the County Court division of Craigavon dishonestly made a false representation, namely made an application for a credit card in the name of Person A with the intention, by making the representation, to make a gain for yourself or another or to cause loss to Vanquis Bank or to expose the bank to a risk of loss, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.
2. You made an application for registration with the Northern Ireland Social Care Council which is dated 31 July 2012. On that Application Form you answered "No" to the question "Have you ever been convicted of a criminal offence in the UK, or any other country?"
 3. Your actions set out above were dishonest.

And your actions as set out above amount to misconduct, such as to call into question your suitability to remain

on the Social Care Register.'

Preliminary Matters

Service and Proceeding in the Absence of the Registrant

The Committee was advised that the Notice of Hearing was sent by Special Delivery to the Registrant at his address as it appears on the Register on 28 March 2014. The Notice was signed for 29 March 2014.

The hearing bundle was sent by Special Delivery on 25 April 2014 and was signed for on 26 April 2014.

The Committee considered an application from Mr Conrad Dixon, Council Solicitor, under Rule 14 of Schedule 2 of the NISCC (Conduct) Rules 2013, to proceed with the hearing in the Registrant's absence. Mr Dixon advised the Committee that the Council had received an email from solicitors, Greene & Malpas, on behalf of the Registrant indicating that their client was aware of the hearing scheduled for 12 and 13 May 2014. This email indicated that the Registrant no longer wished 'to dispute matters' and would not be attending the hearing. Mr Dixon advised the Committee that the Registrant had engaged in the Council's investigatory process, and had attended the Preliminary Proceedings Committee meeting and the review meeting.

Mr Dixon 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 his right to be present or represented. He submitted that all reasonable steps had been made to serve the requisite documentation in accordance with the Rules, and that, taking into account the protection of the public and the public interest, unnecessary delay in the hearing of this matter would not be appropriate.

The Committee accepted the advice of the Legal Adviser.

The Committee, taking into account Mr Dixon's submissions and the email from Greene & Malpas, dated 17 April 2014, is satisfied that notice has been served in accordance with Rule 3 of Part 1, and Para 4 Schedule 2 of the NISCC (Conduct) Rules 2013.

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 his 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 notes the seriousness of the allegations and the general public interest in this matter being dealt with without unnecessary delay. There is no evidence to indicate that the Registrant is more likely to attend at a future hearing if the matter was adjourned today. The Committee has decided that the Registrant, with full knowledge of these proceedings, has voluntarily waived his right to be present. 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 registered on Part 2 of the Social Care Register and was employed as a care assistant at Rosevale Lodge Care Home, which is a residential care home for patients with dementia, in Lisburn.

On 19 April 2011, the Registrant was convicted at Craigavon County Court of eight counts of fraud by way of dishonest false representation. These convictions relate to eight separate incidents of credit card fraud. The Registrant pleaded guilty to these Charges and received a sentence of imprisonment for six months, to run concurrently on each Charge, which was suspended for two years.

On 08 November 2012, the NISCC received an application from the Registrant for registration on Part 2 of the Register, and was subsequently registered on 18 February 2013.

Finding of Facts

Charge 1: Mr Dixon referred the Committee to the eight certificates of criminal conviction, which he presented as evidence, and referred the Committee to Rule 11 (5) of Schedule 2 of the NISCC (Conduct) Rules. He submitted that, in accordance with Rule 11 (5), these certificates of conviction should be accepted by the Committee as proof of the facts contained therein. He referred the Committee to a probation report, dated 08 April 2011 and prepared by probation officer Christopher McKee, in relation to the Registrant's criminal convictions, which provides background to the circumstances surrounding the Registrant's convictions. The convictions related to credit card applications made by the Registrant using a false identity, and him subsequently attempting to lodge monies acquired on foot of these credit cards.

The Committee accepted the advice of the Legal Adviser as regards the proper approach to be adopted as provided for in Rule 11 (5) of Schedule 2 of the NISCC Rules. Accordingly, the Committee was satisfied that the facts were found proved based on the certificates of conviction.

Charge 2: Mr Dixon advised the Committee that this Registrant had originally been accepted for registration with the NISCC on 03 September 2007. However, subsequent to this, the Registrant was removed from the Register on 16 November 2009 for non-payment of registration fees.

Mr Dixon advised the Committee that on 08 November 2012, the NISCC received a further application from the Registrant for registration, and that this document was dated 31 July 2012. This application at Section 7 – Criminal Offences indicated, at sub - section 7.2, that the Registrant should confirm by way of an answer 'Yes' or 'No' whether he had ever been convicted of a criminal offence in the UK or any other country. The Registrant ticked the 'No' box in relation to this question. Mr Dixon further advised the Committee that, on 13 May 2011, the NISCC had been notified by the PSNI that a person named 'Philip Josekutty' had been convicted of a number of criminal offences. Mr Dixon advised the Committee that, due to the interposing of the Registrant's first name and

surname, it was not until 20 June 2013 that the NISCC was able to link the information from the PSNI with the Registrant's application. Mr Dixon indicated that the NISCC immediately wrote to the Registrant querying the position as regards his criminal convictions. The Registrant responded by way of letter, dated 27 June 2013, where he apologised for not writing down his 'criminal history'.

Mr Dixon submitted the original application for consideration by the Committee.

The Committee carefully considered the original application for registration signed by the Registrant on 31 July 2012 and received by the NISCC on 08 November 2012. In addition, the Committee notes the Registrant's response to the NISCC of 27 June 2013, where he accepts that he did not disclose his criminal history in this application form and apologises for this. The Committee notes that the Registrant had, in the past, registered with the NISCC and would therefore be familiar with the process of registration, and would be aware of the need to properly complete all sections of the application. The Committee has carefully considered the original application, dated 31 July 2012, and finds on the balance of probabilities that the Registrant failed to disclose his criminal convictions by ticking the 'No' box when asked about these, and therefore finds this Charge proved.

Charge 3: Mr Dixon submitted that the Registrant's actions, on foot of the eight convictions for credit card fraud, were clearly dishonest. He further submitted that the Registrant's action in answering 'No' to the NISCC's question as to criminal convictions was also a dishonest act. He submitted that the Registrant's actions were clear and that the Committee would have no alternative but to find him dishonest in these circumstances.

In considering this Charge, the Committee paid careful attention to the certificates of conviction, the Registrant's application for registration signed by him and dated 31 July 2012, and the Registrant's letter to the NISCC dated 27 June 2013. The Committee also accepted the advice of the Legal Adviser. The Committee finds, on the balance of probabilities, that the Registrant's actions as set out in Charges 1 and 2 were dishonest. The Committee considers that the Registrant, when completing and signing his application for registration on 31 July 2012, would have been fully aware of his eight criminal convictions for dishonest false representation, and therefore knowingly, and with purpose, did not disclose these convictions to the NISCC. The Committee considers the questions in the NISCC application form, as regards disclosure of criminal convictions, to be clear and unambiguous. The Committee considers that a reasonable and honest person would have disclosed these convictions when asked, and that, in not doing so, the Registrant both knew his actions were dishonest and would be considered to be so by a reasonable and honest person.

Misconduct

Having found the facts proved, the Committee proceeded to consider the issue of misconduct. The Committee heard a submission from Mr Dixon, during which he referred the Committee to the NISCC Code of Practice for Social Care Workers at Code 5 – 5.8. Mr Dixon submitted that the Registrant's criminal convictions for dishonesty were serious and involved behaviour which fell short of the standard expected of an ordinary citizen. He submitted that the position of a social care worker involved responsibility for vulnerable members of society, and that there was therefore a higher expectation of good behaviour. He submitted that the Registrant, in

misleading his regulator, the NISCC, undermined public confidence in the profession and in NISCC as a regulator.

The Committee also heard and accepted the advice of the Legal Adviser.

The Committee reminded itself that misconduct is defined in the Conduct Rules 2013 as *'conduct which calls into question the Registrant's suitability to remain on the Register'*. The Committee also derived assistance from the definition of misconduct recited in *Roylance v GMC (No.2) [2000] 1 AC 311 at 330*. In that case, the Privy Council said that *'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...it is not any professional misconduct which would qualify. The professional misconduct must be serious.'*

The Committee reminded itself of the requirements of Paragraph 12 (1) of Schedule 2 of the Rules. The Council has brought these proceedings against the Registrant. The burden rests upon the NISCC to prove that the Registrant has acted in a manner which amounts to misconduct.

The Committee gave careful consideration to Mr Dixon's submissions, the bundle of documents adduced in evidence at Exhibit 1, and the legal advice which it received. The Committee found unanimously that the Registrant's actions were in breach of the following provisions of the NISCC Code of Practice, and that they amounted to misconduct:

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

2.1 Being honest and trustworthy.

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

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

The Committee considered that the Registrant's eight criminal convictions for dishonest false representation amounted to a serious departure from the Code of Practice. These convictions evidenced serious dishonesty by the Registrant for financial gain. In the Registrant's application for registration with the NISCC, his failure to disclose to his professional regulator the existence of his criminal record constituted serious dishonesty. The Registrant had previously been registered with the NISCC and should have been aware of his responsibility to be open and honest in his subsequent application for registration.

Honesty and trustworthiness are fundamental tenets of the social care profession, and the Registrant's actions fell well short of what would be expected of an honest and trustworthy social care worker. The Committee, therefore, finds the Charges proved to be of a serious nature, and that the Registrant's actions amount 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 NISCC. 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 Dixon who referred it to the NISCC Indicative Sanctions Guidance, and in particular to Paragraph 5, as regards examples of misconduct relevant to the sanction of removal. He submitted that consideration of the sanction of suspension or removal would be appropriate in this matter in that the Registrant was found guilty of eight counts of fraud by way of false representation and in addition, as set out in Charge 2, he dishonestly misled the NISCC in his application for registration. He submitted that the public must be able to rely upon the integrity of social care workers, and he referred the Committee to the principles as set out in the case of *Parkinson v NMC*. He reminded the Committee that this indicated that it was only in the rarest cases of professional misconduct that a practitioner found guilty of dishonesty could avoid removal from the Register.

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 Paragraph 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 considers that the facts as found proved in the Charges are of a serious nature and constitute deliberate and repeated dishonest actions by the Registrant. The Committee notes that there is no evidence that the Registrant's behaviour caused direct or indirect harm to service users. However, the Committee notes that the dishonest behaviour, as evidenced by the findings in Charge 1, was repeated by the Registrant when he

dishonestly failed to disclose his criminal convictions. The Committee has no evidence from the Registrant as to his previous history or good character, nor is there any evidence that the Registrant has taken rehabilitative or corrective steps since the time of these Charges. The Committee notes that the Registrant's dishonest behaviour took place over a period of time and involved a substantial sum of money.

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. In considering this sanction, the Committee noted that the Registrant co-operated with the police investigation, and also pleaded guilty to the criminal Charges. The Committee also took into account the Registrant's letter to the NISCC, dated 27 June 2013. In this correspondence, he apologised for his failure to disclose his criminal record, indicating that he had not done so as the convictions were not 'a work related issue'. He further went on to state that he was not aware of the rules in Northern Ireland and was 'really sorry' for his actions. Although the Registrant engaged with the NISCC's investigatory process, he did not attend the hearing.

When considering suspension, the Committee took account of the Indicative Sanctions Guidance at Paragraph 4.10 – 4.13. The Committee found the Registrant's misconduct to be very serious, and does not consider the Registrant to have shown any insight into his breach of the Code of Practice or to the effect of his actions on public confidence in the social care profession. The Committee does not consider that the Registrant has acknowledged his failings and has no evidence to convince them that the dishonest behaviour will not be repeated.

For these reasons, the Committee does not consider suspension to be an appropriate sanction.

Removal – the Committee, taking into account the circumstances of this case, the seriousness of the misconduct, the need to protect the public and the public interest in maintaining confidence in the social care profession, considers the most appropriate sanction to be removal of the Registrant from the Register. The Committee was of the view that a lesser sanction would not be proportionate. In reaching its decision, the Committee had regard to the Indicative Sanctions Guidance, and noted in particular Paragraphs 5.1, 5.2, 5.10 and 5.11:

5.1 *There are some examples of misconduct where the Privy Council has upheld decisions to remove individuals from other statutory registers despite strong mitigation. This is because it would not have been in the public interest to do otherwise, given the circumstances concerned. The three most serious areas of concern are:*

- *sexual misconduct;*
- *dishonesty;*

- *failing to provide an acceptable level of care.*

5.2 *Whether removal from the Register is appropriate in cases of this kind will depend on the particular facts of each case and other relevant factors.*

5.10 *The Code of Practice states that social care workers must be honest and trustworthy (Code of Practice 2.1) and must recognise and use responsibly the power that comes from their work with people who use services and their carers (Code of Practice 3.8).*

5.11 *Dishonesty is particularly serious because it may undermine trust in social services... The public must be able to place complete reliance on the integrity of Registrants.*

The Committee notes that the Registrant's dishonest actions, as found in Charge 1, were compounded by the Registrant's further dishonest act as outlined in Charge 2. The Committee considers that the Registrant was fully aware when applying for registration that he had eight criminal convictions involving dishonesty, and that his indicating that he had a clear record constituted a deliberate act of dishonesty. The Committee considers the Registrant's actions to be a serious departure from the relevant professional standards set out in the Code of Practice. In particular, in dishonestly claiming to have no criminal convictions, the Registrant evidenced a blatant disregard for the system of registration which is designed to safeguard the interests of service users, the public and the reputation of the profession.

The Committee considers that the public must be able to place confidence in the integrity of registrants, and that the Registrant's dishonest actions fall short of what would be expected of a registered social care worker. Taking into account both the public interest and the need to protect the public, the Committee considers that a Removal Order is the most appropriate and proportionate sanction in this matter.

Legal Advice Given

Service and Proceeding in the Absence of the Registrant

Paragraph 4 of Schedule 2 of the Conduct Rules governs the requirement 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 Registrant. In this case, you have been given evidence that the Notice was sent to the Registrant at his last known address, which is his registered address, on 28 March 2014 and there is documentation to show that that was signed for on the 29 March, and indeed you have the further email from his solicitors dated 17 April which appears to suggest that he is aware of today's Hearing. The bundle of documents in relation to today's Hearing were also sent to the Registrant at the same address on 25 April and signed for on 26 April. The Rules, under Rule 3, Part 1 of the Rules, provides that the Notice should be sent by registered post, and that has taken place, and sent to the last known address with the Notice being treated as having been served on the day after it was posted. In fact, you

are doubly safe in this matter as you have confirmation that the documentation was accepted and served, and you have also an indication that the Registrant is aware of the date and this has been advised accordingly.

In view of the Registrant's absence today, you must now consider proceeding in the Registrant's absence. You have heard an application which has been made under Paragraph 14 of Schedule 2 of the Rules for the matter to proceed in his absence. You have before you an email from the solicitors acting on behalf of the Registrant, which indicates that, according to his instructions, his client no longer wishes to dispute matters and will not be in attendance. The rest of the email just states: 'Please feel free to contact me with any queries.' It is signed John Slevin. I, at this stage, would refer you to the case of R v Jones, and it's a case of 2003 with which you are very familiar and, although this is a criminal case, it has been approved as applicable in regulatory matters. Therefore, you have the discretion whether to proceed in the circumstances, and I would advise you to consider exercising this discretion with the utmost care and caution. You should consider whether an adjournment may result in the Registrant attending the proceedings at a later date, you should look at the time involved in such an adjournment and also the extent of a disadvantage to the Registrant in not being able to present his account of events. As Mr Dixon has said, you should look at the seriousness of the allegations before you, the general public interest in this matter being dealt with, and also the interest of any victims. I would remind you that the Registrant is entitled to a fair Hearing, to attend and be represented, to test the Council's case and present evidence on his own behalf. If the Registrant had knowledge, or the means of knowledge, of today's proceedings you may conclude that he has voluntarily absented himself and proceed in his absence. In considering this, you must look at the information that was provided to the Registrant and consider whether it was sufficient to advise him of the importance of attending here today. This principle of fairness also applies to the Council's case. Therefore, in exercising your discretion, you must balance the rights of the Registrant against the wider public interest in the expeditious disposal of the matter.

If you do consider that this matter should proceed in the absence of the Registrant, I would advise you to avoid reaching any improper conclusions about his absence, and you must not treat his absence today as an admission of guilt in any way. However, you do have the email from his solicitors which you must also take into account.

Finding of Facts

At this, the fact finding stage of the proceedings, you must consider all the evidence received and you have to bear in mind that the burden of proof lies with the Council and that the standard of proof is on the balance of probabilities.

Now, the Council has brought these proceedings and it is up to them to prove the case. I would remind you that the Registrant does not have to prove he is innocent of these Charges, and I would direct you to Schedule 2 of the Northern Ireland Social Care Council Conduct Rules at Paragraphs 12 and 22. These show that a fact will be found proved if you consider it more likely than not to have happened, but your decision must be based on the evidence presented to you by way of documentary evidence, and there has been no oral testimony presented to

you today, and this is particularly relevant in relation to Charges 2 and 3. As regards Charge 1 and the certificates of conviction that have been presented to you, Rule 11 (5) of Schedule 2 of the Conduct Rules refers to the submission of a certificate of conviction, stating that the finding of fact and certificate of conviction of any UK Criminal Court shall be conclusive proof of the facts or convictions so found. Therefore, these certificates of conviction are a matter of public record.

You must look at Charges 2 and 3 in addition to Charge 1, and they do not deal with certificates of conviction. You must look at these with the greatest of care. These are accusations which potentially give rise to serious consequences for the Registrant and, as I have indicated, in determining whether these have occurred, the standard is the balance of probabilities.

I would repeat the submissions of Mr Dixon, and I would also remind you not to draw any adverse inferences as a consequence of the Registrant not giving evidence today. If you are satisfied on the balance of probabilities that the Registrant acted as is alleged, and this is in relation to Charge 2, you must then consider whether the Registrant acted dishonestly as alleged in Charge 3. I would refer the Committee to the cases of R v Ghosh, and that's a 1982 case which, although it was a criminal matter, has application to the Hearing today. Also the case of Twinsectra v Yardley which is a 2002 case, and they give guidance. In particular, Lord Hutton, in the case of Yardley, indicated that 'dishonesty requires knowledge by the defendant that what they were doing would be regarded as dishonest by honest people, although a finding of dishonesty cannot be avoided because a defendant sets his or her own standards of honesty, and does not regard as dishonest what he or she knows would offend normally accepted standards of honest conduct'. The recent case of Fish v GMC, and that is a 2012 case, emphasised that the starting point with regard to dishonesty is that a Registrant of good character is most unlikely to act dishonestly. Therefore, the Committee should take care when considering an allegation as serious as dishonesty, and put your minds to the Registrant's motive and what evidence you have before you as regards this.

The key question, therefore, for you is whether the conduct took place and whether it was known to be false, innocent or negligent.

Regarding Contact Between Registrant and Committee Clerk After Fact Finding Stage

Firstly, it would appear that this supports your finding that the Registrant was aware of the Hearing today, and you have in front of you the letter from his solicitor which I feel, in the circumstances, you have considered appropriate and you have acted upon and, in any event, the Registrant was advised that the matter was going on today, and he was asked whether he would wish to say or to submit anything to yourselves and elected not to do so.

In those circumstances, then I would advise you it would be appropriate to presume that his absenting himself is still made on a voluntary basis, and that it would be appropriate for you to consider proceeding without considering further adjournment.

Misconduct

You will have heard the submissions from Mr Dixon generally in relation to misconduct. You are an experienced Committee. Misconduct has been defined in the Northern Ireland Social Care Council Conduct Rules as 'conduct which calls into question the suitability of a Registrant to remain on the Register'.

In considering the question of misconduct, reference must be made by you to the Northern Ireland Social Care Council Code of Practice, and you have been specifically referred by Mr Dixon to Section 5, by way of subsection 5(8). You must consider whether any breaches of the Code have occurred, and you must be satisfied that it is more likely than not that the conduct that you have found occurred in your finding of facts amounts to misconduct in contravention of the Code. Guidance is found for you in the case of Roylance v GMC, it's a 1999 case. In this case, the Judicial Committee of the Privy Council indicated that 'misconduct is a word of general effect, involving 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 a practitioner is required to follow. In addition, the professional conduct in question, which in this case is that of a social care worker, must be of a serious nature. In addition, when considering the issue of misconduct, you will be bringing your own professional expertise to bear. You will also be aware that it is the Council's responsibility to discharge this burden of proving misconduct, and you will also bear in mind that the more serious the allegation, the more cogent the evidence required to prove it. In the case of Meadows v GMC, and that's a 2007 case, the Court of Appeal indicated that misconduct should not be viewed as anything less than serious professional misconduct, and that the conduct in any given case must be serious before it's been branded as misconduct in a professional context.

Sanction

Paragraph 25 of Schedule 2 of the Northern Ireland Social Care Council Conduct Rules sets out the available sanctions open to you as a Committee at this stage and you, Mr Chairman, have already outlined these sanctions. In determining the appropriate sanction, you are obliged to take into account the following factors:

1. The seriousness of the Registrant's misconduct;
2. Protection of the public;
3. The public interest in maintaining confidence in social care services.

You are also obliged to consider and look at the issue of proportionality, weighing on the one part the Registrant's interest against on the other part the interests of the public.

I would also refer you to the Northern Ireland Social Care Council Indicative Sanctions Guidance and remind you 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 you should be guided and mindful of these recommendations.

You should consider the question of sanction in ascending order of severity. You should begin your deliberations by considering admonishment first, and remember that the primary purpose of sanctions is the protection of the public and also the maintaining of the reputation of the profession. I would refer you, in particular, to Paragraphs

2.2 and 2.3 of the Guidance. This directs that the public should have confidence that the Northern Ireland Social Care Council will uphold proper standards of behaviour and conduct in regulating social care workers. Public interest requires that both the public and social care users are protected from unsafe practice and have confidence in the social care workforce. In serving that public interest, the purpose of sanctions, therefore, is to ensure that social care workers do not have an opportunity to repeat misconduct, and it is also to maintain the reputation of the profession. I would refer you to Paragraphs 2.4 and 2.6, 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. In this particular matter, you have no evidence of testimonials or references before you. You have no evidence as to the financial impact of any action you take as regards this Registrant, and Mr Dixon has referred you to the two documentations within Exhibit 1 which you should consider in terms of the Registrant's response to the Charges.

In matters where dishonesty is at issue, and you have found dishonesty in this matter, a lesser sanction is only likely to be imposed where there is compelling evidence of insight or whether you consider the dishonesty may be out of character or isolated in its duration or range. You should also consider whether permitting the Registrant to return to practice would not damage the reputation of the profession.

Mr Dixon has referred you to the case of Parkinson, and this is very relevant in this matter because this is a dishonesty case. It held that if a Registrant fails to attend a Hearing or demonstrate insight and remorse, or assure the Panel there will be no repetition, then he forfeits the small chance of persuading you, as a Panel or Committee, to adopt a more lenient sanction.

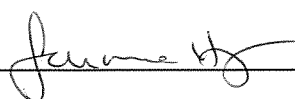
I would draw your attention to the contents of the letter from the Registrant when he wrote to the Council, and he indicated that he advised, he apologised for his actions. You have heard that there is an email from the solicitors indicating that he was aware of the Hearing today, and that he would not be taking issue with any of the matters raised.

Right of Appeal

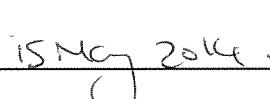
You have the right to appeal this decision to the Care Tribunal. Any appeal must be lodged in writing within 28 days from the date of this Notice of Decision.

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 and should not work as a social care worker.



Clerk to the Conduct Committee



Date