



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

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**Name:** Susan Lila Taggart

**SCR No:** 2035882

**Date:** 05 June 2014

**NOTICE IS HEREBY GIVEN THAT** the Conduct Committee of the Northern Ireland Social Care Council, at its meeting on **02 June 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 admonish you and directed that a record of the admonishment should be placed on your entry in the Register for a period of five years.**

**Charge:**

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

1.	On 26 June 2013 you were convicted of the following charges:
(i)	Defendant on 26 <sup>th</sup> day of August 2012, in the County Court division of Antrim, used disorderly behaviour in a public place namely, outside Kelly's Night Club, Bushmills Road, Portrush, County Antrim, contrary to Article 18(1)(A) of the Public Order (Northern Ireland) Order 1987.
(ii)	Defendant on the 26 <sup>th</sup> day of August 2012, in the County Court division of Antrim, assaulted Danny Doncom, a Constable in the execution of his duty, contrary to Section 66(1) of the Police (Northern Ireland) Act 1998.

And your actions as set out above amount to misconduct, such as to call into question your suitability to remain on the Social Care Register.

## **Preliminary Matters**

### **Service**

The Registrant was neither present nor represented at this hearing. In a Notice of Hearing dated 23 April 2014, sent by Special Delivery and addressed to the Registrant at her address as it appears on the Register, the NISCC notified her of the day, time and venue for this hearing. The Committee is satisfied that the Notice has been served in accordance with Rule 3 of Part 1 and Paragraph 4 of Schedule 2 of the NISCC (Conduct) Rules 2013.

### **Proceeding in the Absence of the Registrant**

The Committee considered an application from Mr Alistair Wilson (Council Solicitor) to proceed in the absence of the Registrant. Mr Wilson submitted that the Registrant had voluntarily absented herself from the hearing and that, in all the circumstances, there was a public interest in proceeding to hear the case expeditiously.

The Committee received legal advice from the Legal Adviser on the question of whether to proceed in the Registrant's absence. The Committee was advised that they had exercised their discretion to proceed in the Registrant's absence but it was a discretion which had to be exercised with the utmost care and caution.

Having received that legal advice and considered the submissions of Mr Wilson, the Committee decided to proceed in the absence of the Registrant. The Committee has decided that the Registrant, with full knowledge of these proceedings, has voluntarily waived her right to be present. In reaching the decision to proceed, the Committee paid particular attention to the fact that there was nothing to indicate that the Registrant would be more likely to attend if the proceedings were adjourned to another day. Accordingly, the Committee exercised its discretion in favour of the public interest in dealing with the case in an expeditious manner in order to ensure that the confidence of the public in the regulatory process was maintained.

### **Background**

The Registrant is a care worker, registered on Part 2 of the Northern Ireland Social Care Council Register. At the material time, she was employed at Ratheane Nursing Home. The Registrant was charged with misconduct; in particular, that, on 26 June 2013, she was convicted of using disorderly behaviour in a public place contrary to Article 18(1)(A) of the Public Order (Northern Ireland) Order 1987, and assaulting a police constable contrary to Section 66(1) of the Police (Northern Ireland) Act 1998.

### **Evidence**

Mr Wilson submitted a bundle of documents to the Committee which contained two certificates of conviction, a letter from the PSNI notifying the NISCC of the convictions, police witness statements, correspondence with the Courts Service and a letter from the Registrant received by NISCC on 22 October 2013. The bundle of documentation had been served on the Registrant in advance of the hearing. She did not comment on the documentation or seek to object to its use during these proceedings. The Legal Adviser provided the Committee with advice regarding the admissibility of this documentation in accordance with Paragraph 11 (1) of Schedule 2

of the NISCC (Conduct) Rules. Having received that advice, the Committee decided that it would be appropriate in all the circumstances of the case to receive the bundle of documentation.

### **Finding of Facts**

The Committee found that, on the balance of probabilities, the Registrant had been convicted of using disorderly behaviour in a public place contrary to Article 18(1)(A) of the Public Order (Northern Ireland) Order 1987, and assaulting a police constable contrary to Section 66(1) of the Police (Northern Ireland) Act 1998. In reaching this view, the Committee received and accepted the submission of Mr Wilson, that having regard to Paragraph 11 (5) of Schedule 2 of the Rules, the certificates of conviction were conclusive proof of that conviction.

### **Misconduct**

Having found the facts proved, the Committee proceeded to consider the issue of misconduct. The Committee heard the submission from Mr Wilson, in which he drew the Committee's attention to the NISCC Code of Practice for Social Care Workers. Mr Wilson contended that, although this incident occurred outside of work, the Registrant's behaviour constituted a breach of Section 5.8.

The Committee was advised that the burden of proving that the Registrant's behaviour amounted to misconduct rested with the NISCC, which must prove its case on the balance of probabilities. The Legal Adviser referred the Committee to the principles set out by the Privy Council in the case of *Roylance v GMC*, in which it was established 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 Legal Adviser referred the Committee to the standards set out in the Code.

Having given careful consideration to Mr Wilson's submissions and to the legal advice which it received, the Committee found that the Registrant's behaviour constituted misconduct. The Committee was satisfied that the following provisions of the Code had been breached:

**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 took the view that the offences which the Registrant was convicted of were serious. There was violence involved in these charges, which the Committee found to be incompatible with the behaviour to be expected of a registered social care worker. The disorderly behaviour was of a serious nature and there was a prolonged period of aggression and violence. Significantly, the Committee noted that the Registrant had assaulted a police officer, causing an injury which meant that the police officer was required to attend hospital. Although these events occurred outside of the work environment, the Committee concluded that the Registrant has a duty to maintain the standards as clearly set out within the Code of Practice. In breaching the Code, the

Registrant undermined public confidence in social care work. Accordingly, the Committee is satisfied that the behaviour which led to the convictions on 26 June 2013 did amount to 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.

Having considered all the evidence available in this case, the Committee is concerned about the nature of the Registrant's misconduct. The Committee is in no doubt about the seriousness of the misconduct. The Committee has carefully considered the letter from the Registrant received by NISCC on 22 October 2013. The Committee is disappointed that the Registrant did not attend today and that she did not submit any references or testimonials for consideration by the Committee.

The Committee has had regard to the principle of proportionality and the need to strike a careful balance between the interests of the Registrant and 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 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 the 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 did consider that admonishment was the appropriate sanction in all the circumstances. Admonishment remains on the Registrant's entry on the Register for five years. It will be disclosed if an employer enquires about the Registrant's entry on the Register during that five year period. The admonishment will be disclosed to any Preliminary Proceedings Committee or Conduct Committee in the future, if any further complaints are received about the Registrant. The Committee considers that this sanction will protect the public and will address the public interest in maintaining confidence in social care services. The Committee wishes to mark that the behaviour was unacceptable and must not happen again.

The Committee was very concerned that the Registrant had assaulted a police officer causing injury. The Committee has not been provided with any information about rehabilitative or corrective steps taken. However, the Committee notes that the behaviour of the Registrant would not have caused direct or indirect harm to service users. There is no evidence before the Committee of any previous disciplinary proceedings or convictions. There is no evidence of any repetition of behaviour since the incident occurred approximately two years ago. The

Committee is satisfied that the behaviour was an isolated incident which occurred at a time when the Registrant may have been under the influence of alcohol. It would appear to the Committee that this incident was initiated due to the Registrant's concerns about the possible vulnerability of her brother, which in no way excuses the conduct, but was considered by the Committee as a mitigating factor. The letter from the Registrant does contain some evidence of some insight and remorse. The Committee did not receive any references or testimonials but was influenced by the fact that this Registrant had worked in social care for a number of years. The Registrant started working at Ratheane Nursing Home in May 2008 and the Committee is not aware of any difficulties or issues with that employer.

The Committee therefore concluded that admonishment is the fair and proportionate sanction in all the circumstances of this case.

**Suspension** – the Committee did not think that Suspension was a fair or proportionate sanction to impose in all the circumstances of this case. The Committee had no evidence of deep seated personality or attitudinal problems at work and there was no evidence of a repetition of her behaviour.

**Removal** – the Committee did not think that Removal was a fair or proportionate sanction to impose in all the circumstances of this case.

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## **Legal Advice Given**

### **Service of Documents**

Under Rule 3 of the Conduct Rules, the Notice is duly served if it is sent by postal service in which delivery or receipt is recorded to the Registrant's address, or former address, as it appears on the Register. It should be treated as having been served the day after it was posted. I have seen evidence that the Notice of Hearing was sent on the 24th of April 2014 to the Registrant at her last known address, that is her registered address, and I have also been shown an electronic proof of delivery, dated 25th of April 2014, to show that it was received and signed for. I can confirm, therefore, that the documents have been served in accordance with the Rules.

### **Proceeding in the Absence of the Registrant**

The position, is that where the Committee is satisfied that the Notice of Hearing has been duly served on the Registrant, you may either hear and determine the case in the absence of the Registrant or adjourn the Hearing and give directions. You, as a Committee, must now decide whether to proceed in the absence of the Registrant. You have heard from Mr Wilson that an application has been made under paragraph 14 of Schedule 2 to proceed in her absence. When considering whether to proceed in the absence of the Registrant the Committee should be aware that this is a matter of discretion for this Committee. I would refer the Committee to the case of R v Jones, which is a 2003 case which you are familiar with, and to the principles established in that case. Although it is a criminal case, it is applicable in a regulatory case. In that case, Lord Bingham stated that 'the discretion to

commence a trial in the absence of a defendant should be exercised with the utmost care and caution'. This means that you should only proceed and exercise your discretion with the utmost care and caution. The question which you must determine is whether the Registrant has voluntarily waived her right to attend or to be represented at these proceedings today, and this Committee must strike a careful balance between fairness to the Registrant and the wider public interest that cases of this kind should be progressed expeditiously. If the Committee does determine that the Registrant has voluntarily waived her right to be present, is there anything before you that would indicate she would be more likely to attend a future meeting if the matter was adjourned, and we have heard from Mr Wilson that there has been no correspondence from her since 2013, and she is aware of today's proceedings but has not sought an adjournment. This must be balanced against the need for public meetings to be conducted as expeditiously as possible, both in the interests of the public protection, and to maintain public confidence in the regulatory process.

Having considered all these factors, the Committee must determine if it is appropriate to proceed this meeting today in the absence of the Registrant.

### **Application to Admit Hearing Bundle**

As Mr Wilson has submitted under Rule 11, subject to the advice given to you by the Legal Adviser, and the requirements of a fair Hearing and of relevance, the Committee can admit documents whether or not it would be admissible in a Court of Law. The documents within the bundle are relevant to the charges before you, and Mr Wilson has advised you that the bundle has been served on the Registrant and that she has not objected to anything within the bundle, therefore I do not believe there is any unfairness to the Registrant in those documents going before you this morning.

### **Misconduct**

I must advise you that we are now at the second stage of these proceedings, and it is for you as a Committee to determine whether misconduct has been proven in this case. Misconduct is defined in the NISCC Rules as 'conduct which calls into question the suitability of a Registrant to remain on the Register'. In considering the question of misconduct, reference should be made by you to the Code of Practice. You have heard submissions from Mr Wilson that Code 5 is in question in this case, namely that a social care worker must uphold public trust and confidence in social care services and, in particular, must not behave in a way in work or outside of work which would call into question their suitability to work in social care services. You will be familiar with the case of Roylance v the GMC, and it is worth highlighting the definition of misconduct in that case, namely 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 that a practitioner is required to follow', and, in this case, the Code of Practice. 'In addition, the conduct in question, which relates in this case to a social care worker, must be of a serious nature'. Importantly, when considering the issue of misconduct, the Committee should bring its own professional experience to bear.

In the case of Meadows v the GMC, and that is a 2007 case, the Court of Appeal indicated that misconduct should not be viewed as anything less serious than serious professional misconduct. That is to say, it must be serious when considered in a professional context and you have heard submissions from Mr Wilson today that, although this incident occurred outside of work, when considered in a professional conduct, it causes concern in light of the care provided to vulnerable adults. It is clear that misconduct may be quite removed from the professional practice of a Registrant. For example, in the case of County Council v W, a question arose as to whether the alleged sexual abuse by a father of his daughter, the father being a medical practitioner, could be considered professional misconduct and it was held that it could.

We have received in the bundle a letter from the Registrant, which provides information in relation to the background to the events that evening. However, I must remind the Committee when you are considering the question of misconduct, whilst that letter may be relevant at other stages in these proceedings, the issue of personal mitigating circumstances do not come into the question of misconduct, and that is established by the Court of Appeal in the case of Campbell v the NMC. The Committee is reminded that it is for the Council to discharge the burden of proving misconduct and the more serious the allegation, the more cogent the evidence required to prove it.

### **Sanction**

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

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 obliged to take into account the issue of proportionality, that is weighing, on the one part, the Registrant's interests against, on the other part, the interests of the public. I would refer you to the NISCC Indicative Sanctions Guidance, and you have already heard from Mr Wilson and his submissions in relation to the Guidance, but I would remind you that the purpose of any sanction is not to be 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 in your considerations. 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 the sanctions is the protection of the public, and also maintaining the reputation of the profession. I would refer you, in particular, to paragraphs 2.2 and 2.3 of the Guidance, which direct that the public should have confidence in NISCC as a Regulator to uphold proper standards of behaviour and conduct in regulating social care workers. I would also refer you to paragraphs 2.5 and 2.6, which remind you that any limitation of the right to practise in one's chosen profession should be no more than is necessary in the circumstances, and as a Committee you must act fairly.

I would also refer you to paragraphs 2.16 and 2.22 which provide the guidance when considering cases where a conviction is involved and, in particular, the requirements that the role of the Committee is to balance the nature and gravity of the offence against any mitigating factors such as remorse and length of time since the offence, which was 2012 in this case, and their bearing on the Registrant's suitability to practise as a social care worker against the need for the imposition of a sanction and its consequences upon the ability of the Registrant to practise in her profession.

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**The effect of this decision is that your registration on the Social Care Register has not been affected and you may continue to work in social care.**

C Chamberlain

Clerk to the Conduct Committee

05 June 2014

Date