



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

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**Name:** Grace Nugent

**SCR No:** 2078884

**Date:** 28 July 2014

**NOTICE IS HEREBY GIVEN THAT** the Conduct Committee of the Northern Ireland Social Care Council, at its meeting on **23, 24, 25 June and 23 July 2014**, made the following decision about your registration with the Northern Ireland Social Care Council:

**The Committee found the facts in Charges 1, 2 (iii) and 3 proved;**

**The Committee found the facts in Charges 2 (i) and 2 (ii) not 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) and whilst working as a Domiciliary Care Worker within the Southern Health and Social Care Trust:-

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|----|---|
| 1. | On 10 June 2012 you administered medication to Service User A by hiding it in her food without the consent of Service User A. |
| 2. | You falsified times on Domiciliary Care Worker Daily Report Sheets on the following dates:-                                   |
|    | (i) 8 June 2012   |
|    | (ii) 9 June 2012  |
|    | (iii) 10 June 2012  |
| 3. | Your actions as set out in paragraph 2 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**

The Registrant was neither present nor represented at this hearing. In a Notice of Hearing dated 15 May 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 Notice was signed for on 16 May 2014. The Disclosure and Hearing Bundles were sent to the Registrant on 06 June 2014 and signed for on 07 June 2014. 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**

An application was made to proceed in the absence of the Registrant under Paragraph 14 of Schedule 2 of the 2013 Rules. The Committee received legal advice from the Legal Adviser on the question on whether to proceed in the Registrant's absence. The Committee has considered the factors identified by the Courts in the case of *R v Jones* [2003] 1 AC 1 and has accepted 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, to the NISCC and the wider public interest.

The Committee notes that the Registrant has not engaged with the Council in relation to the conduct process, and notes Mr Dixon's attempts to ascertain whether the Registrant intended to participate in the investigation. Mr Dixon advised the Committee that he received no response from the Registrant.

The Committee has decided that the Registrant, with full knowledge of these proceedings, has voluntarily waived her right to be present, and notes that there is nothing to indicate that she would be more likely to attend at a future hearing if the matter was adjourned today. The Committee must strike a careful balance between fairness to the Registrant, the NISCC 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.

### **Background**

The Registrant is a domiciliary care worker who was employed with the Southern Health and Social Care Trust 'the Trust' from 26 February 2007 until her dismissal in December 2012. Part of the Registrant's duties, as a domiciliary care worker, involved attending, at specific times, at the homes of various vulnerable service users and providing them with assistance in their daily lives.

### **Evidence**

The Committee heard oral evidence from three witnesses employed by the Southern Health and Social Care Trust as follows:

1. Geraldine Rushe, Locality Manager
2. Paddy McNally, Domiciliary Care Supervisor (Registrant's Line Manager)
3. Sarah Moore, Senior Human Resources Advisor

The Committee considers the evidence received from these witnesses as credible.

The Committee was also provided with documentation arising from the investigation by the Trust, concerning the charges, along with Domiciliary Care Worker Daily Report Sheets, covering the period 08 June 2012 to 10 June 2012, for Service Users A, B and C.

Within the Trust investigatory documentation, is a document which was compiled by the Trust after a meeting at which Geraldine Rushe, Sarah Moore and the Registrant were present. This document has been signed by the Registrant and dated 18 July 2012. However, the Committee had concerns as to whether this document, which is variously referred to by the witnesses as "minutes", "a statement" and "a record", represented a full account of the discussions between the parties present, and whether in signing this document the Registrant fully understood its purpose. Accordingly, the Committee place limited weight on this document. The Committee reminded itself that when considering hearsay evidence, such as contained in this document, they do not have the opportunity to assess the credibility of the evidence, and will place appropriate weight as required.

### **Finding of Facts**

The Committee listened carefully to the evidence which it received from each of the witnesses. Each Member of the Committee, and the Legal Adviser, also took the opportunity to ask questions of the witnesses after they had completed their testimony in answer to Mr Dixon's questions. This was done for the purposes of extracting further relevant evidence, and to obtain clarification in relation to evidence which had been given. The Committee also considered the witness statements prepared for the hearing, and the documents exhibited to the statements. The Committee was particularly conscious of the fact that the Registrant was not in attendance, nor was she represented at the hearing. The Committee recognised that, in those circumstances, there was a particular responsibility which rested with the Committee to test and probe the evidence so as to be satisfied as to its veracity. It has also taken cognisance of Paragraph 12 (2) of Schedule 2 of the NISCC (Conduct) Rules, which provides that *'the more serious the allegation, the more cogent is the evidence required to prove it.'* In approaching the task of determining the facts, the Committee was cognisant of the advice provided by the Legal Adviser and that the burden of proof rests with the NISCC and that the standard of proof is on the balance of probabilities.

**Charge 1: On 10 June 2012 you administered medication to Service User A by hiding it in her food without the consent of Service User A.**

The Committee finds the facts proved.

In considering this charge, the Committee directed itself to the context of this allegation, as to the Registrant hiding Service User A's medication in her food, and in particular the allegation that this was done without first

obtaining consent from Service User A to do so. The Committee heard evidence from Geraldine Rushe who indicated, that as a result of concerns raised by Service User A's family, she met with Service User A and Service User A's husband as regards the events which took place on 10 June 2012. Ms Rushe confirmed to the Committee, that Service User A told her, the Registrant had put her medication in her food without her permission and at no stage had she obtained her consent or told her what she was doing. Ms Rushe gave evidence that when she met with the Registrant on 25 June 2012, the Registrant accepted that she had hidden Service User A's medication in her porridge. On further questioning, the Registrant indicated to Ms Rushe that she had not sought Service User A's permission to do so, nor told her afterwards, what she had done.

The Committee heard evidence from Paddy McNally, that she had also spoken with Service User A who told her, that the Registrant had put medication into her food and had fed this to her without telling her what she was doing, or asking her permission to do so.

The Committee heard no direct evidence from Service User A (who is now deceased), Service User A's husband, or the other domiciliary care worker who was also present with the Registrant at Service User A's home on 10 June 2012. The Committee further note, that in the initial stages of the investigation of this matter, no concerns were raised by the family as to the administration of medication by the Registrant. The Committee note the evidence of Ms Rushe that domiciliary care workers had in the past administered medication to Service User A, but this was no longer provided for her in her Care Plan.

In considering this Charge, the Committee has paid careful attention to the oral evidence of Ms Rushe and Ms McNally. Both these witnesses confirm that Service User A told them she had been administered medication by the Registrant, which was placed in her food without her consent. The Committee heard evidence referring to this action as being 'put', 'hidden' or 'covertly placed'. There is no evidence before the Committee that the Registrant disputes these facts. The Committee accept this evidence and find the facts as alleged in Charge 1 to be proved on the balance of probabilities.

**Charge 2: You falsified times on Domiciliary Care Worker Daily Report Sheets on the following dates:-**

**(i) 08 June 2012**

In considering this charge, the Committee heard detailed evidence from Geraldine Rushe in relation to the Domiciliary Care Worker's Daily Report Sheets (Daily Report Sheets) completed by domiciliary care workers when they had attended a service user. She referred the Committee to the Daily Report Sheets for Service Users A, B and C, covering the period from 08 June 2012 to 10 June 2012. She confirmed that these sheets provided details of the care provided and tasks undertaken in relation to each specific service user at various times during the daily visits. The Committee had the opportunity to examine each Daily Report Sheet and note the entries for the morning of 08 June 2012. It is apparent from the documentation, that the Registrant noted on Service User C's Daily Report Sheet, that she attended from 09.00 am – 10.00 am. This entry appears to have

been completed by the Registrant herself. The next entry completed by the Registrant appears to be for a visit with Service User B, noted to be from 10.15 am – 10.50 am.

The Committee note that there is an entry in Service User A's Daily Report Sheet covering the period 09.35 am – 10.40 am which does not appear to have been completed by the Registrant, but refers to her by name.

The Committee further note the references to these entries in the document prepared subsequent to the meeting with the Registrant on 25 June 2012, which was signed by the Registrant on 18 July 2012. The Committee note, that in this document, the Registrant suggests there was confusion as to the timing of the various calls on the morning of 08 June 2012 and that the Registrant did not complete the entry for the visit to Service User A which commenced at 09.35 am. The witnesses all accepted that this particular entry was not completed by the Registrant.

The Committee has carefully considered the Daily Report Sheets for the morning of 08 June 2012 and note that the Registrant completed two entries for Service User C and B, and find no evidence that she falsified the information in either of these entries. Accordingly, the Committee do not find this Charge proved.

**(ii) 09 June 2012**

In considering this Charge, the Committee heard evidence from Geraldine Rushe in relation to the Domiciliary Care Worker's Daily Report Sheets (Daily Report Sheets). She referred the Committee to the Daily Report Sheets for Service Users A, B and C, covering the period from 08 June 2012 to 10 June 2012. She confirmed that these sheets provided details of the care provided and tasks undertaken in relation to each specific service user. The Committee had the opportunity to examine each Daily Report Sheet and note the entries for the morning of 09 June 2012. It is apparent from the documentation that the Registrant made an entry on Service User C's Daily Report Sheet to show that she attended with him from 08.30 am – 09.30 am. Service User B's Daily Report Sheet shows an entry by the Registrant that she attended with him from 10.15 am – 11.00 am. Service User A's Daily Report Sheet contains an entry which was not made by the Registrant showing attendance by domiciliary care workers from 09.00 am – 10.00 am. This entry appears to have been completed by another domiciliary care worker, with the Registrant's name written by this co-worker. The witnesses all accepted that this particular entry was not completed by the Registrant. The Committee note that at the investigatory meeting on 25 June 2012, the Registrant indicated that it was her view her co-worker had made a mistake when recording the times of the visit to Service User A.

The Committee very carefully considered the contents of the Daily Report Sheets for the three service users on this date and do not accept that there is any evidence to show the Registrant falsified times within these documents. Therefore, the Committee do not find the facts in this Charge proved.

**(iii) 10 June 2012**

In considering this Charge, the Committee heard evidence from Geraldine Rushe in relation to the Domiciliary Care Worker's Daily Report Sheets (Daily Report Sheets). She referred the Committee to the Daily Report

Sheets for Service Users A, B and C, covering the period from 08 June 2012 to 10 June 2012. She confirmed that these sheets provided details of the care provided and tasks undertaken in relation to each specific service user. The Committee had the opportunity to examine each Daily Report Sheet and note the entries for the morning of 10 June 2012. The Committee examined the Daily Report Sheets for this date in relation to Service Users A, B and C, and in particular the entries made by the Registrant for Service User B and C. The Daily Report Sheet for Service User C has an entry showing that the Registrant attended with him from 08.30 am – 09.30 am. In considering this entry, the Committee heard evidence from Ms Rushe as to the admissions made to her, by the Registrant on 25 June 2012, during the investigatory meeting. Ms Rushe gave evidence that the Registrant told her she had not attended Service User C at this time as she had slept in on this morning. Ms Rushe said that the Registrant told her that she had instead attended Service User C later on in the morning, sometime after 10.30 am. The Committee note that the entry in Service User A's Daily Report Sheet for the time 09.00 am – 10.30 am, was not recorded by the Registrant and appears to have been completed by her co-worker. The witnesses all accepted that this particular entry was not completed by the Registrant. As regards Service User B, the Daily Report Sheet shows an entry by the Registrant confirming her attendance with him from 10.00 am – 10.30 am.

The Committee carefully considered both the oral evidence of Ms Rushe and the documentary evidence as regards the admissions made by the Registrant concerning her late visit to Service User C on 10 June 2012. The Committee find on the balance of probabilities, the Registrant falsified the entry in Service User C's Daily Report Sheet, in that she falsely stated she had attended him from 08.30 am – 09.30 am, when in fact, her visit took place after 10.30 am. Therefore on the balance of probabilities, the Committee find this Charge proved.

**Charge 3: Your actions as set out in paragraph 2 above were dishonest.**

Having found the facts proved in Charge 2 (iii), the Committee then went on to consider whether the actions as set out in this Charge were dishonest. In considering this Charge the Committee paid careful attention to all of the evidence, both oral and documentary, as set out above. The Committee note the evidence of Ms Rushe and Ms Moore that during their meeting with the Registrant on 25 June 2012, she confirmed to them that she had not attended Service User C at the time she recorded on his Daily Report Sheet. The Committee considers that the Registrant's actions in indicating she had called with Service User C at a time when she had in fact not done so were purposeful and deliberate. The Committee consider that a reasonable and honest person would consider the falsifying of a Domiciliary Care Worker Daily Report Sheet in this manner to be a dishonest act. The Committee considers the Registrant would have known that the completion of the entry in this manner was a dishonest act.

Accordingly, the Committee finds this Charge, in respect of Charge 2 (iii), proved on the balance of probabilities.

**Misconduct**

Having found the facts proved, the Committee proceeded to consider the issue of misconduct. The Committee considered a submission from Mr Dixon, during which he referred to the NISCC Code of Practice for Social Care

Workers. Mr Dixon referred the Committee to the Code of Practice at 1 – 1.1, 1.2, 1.4; 2 – 2.1, 2.2; 3 – 3.1; 5 – 5.7 and 6 – 6.1, 6.2. He submitted that the Registrant's actions constituted a substantial departure from the standards as set out in the Code. He submitted that the Registrant's actions were serious breaches of the Code as her conduct occurred in the course of her duties as a domiciliary care worker. In relation to Charge 1, he referred the Committee to Service User A's difficulty in swallowing as set out in her Care Plan and the evidence of Ms McNally that the Care Plan advised Service User A's medication should not be administered by the care workers. He reminded the Committee that the Registrant was an experienced social care worker, with an NVQ Level 2 qualification, and that she had been given core training by the Trust along with specific training as regards supranuclear palsy. He submitted, that as Service User A suffered from this condition, the Registrant would have been aware of the associated risks. He submitted that the Registrant had not treated Service User A as an individual, as set out in the Code at 1, 2 and 3, and that Service User A had not been given an opportunity to comment on the administration of her medication.

In relation to Charge 2 (ii) and (iii), Mr Dixon specifically referred the Committee to the Code of Practice at 2.1, 6.1 and 6.2. He submitted that the Registrant was more concerned with covering up her bad time keeping than with the potential risk to Service User C, in not attending at the correct time. He considered that the Registrant's actions constituted dishonest practice, breaching the trust a service user should have in social care workers.

The Committee 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 the 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 of Schedule 2 of the Rules. The Council has brought these proceedings against the Registrant. The burden rests upon the Council to prove that the Registrant has acted in a manner which amounts to misconduct.

The Committee first considered the facts as proved in Charge 1 and whether these facts amounted to misconduct. In reaching their decision, the Committee paid careful consideration to Mr Dixon's submissions, the documents as exhibited to the witness statements, the oral evidence and the legal advice it received. The Committee noted that the Care Plan produced in evidence was incomplete and that pages 4 and 5 of this document, which might have dealt with the administration of medicines for Service User A, were not produced. Ms Rushe gave evidence that at the time of this incident, that administration of medication was not part of the care provision, but it had previously been a commissioned task. The Committee was therefore unable to ascertain the directions in place on the 10 June 2012 for the correct administration of medication to Service User A. The Committee note the evidence of Ms McNally, that she recalled Service User A's medication being left on

a small saucer beside her food, and that on occasions in the past, care workers would have administered this medication. Ms McNally gave evidence that at the time of this incident, this was not part of the care provision and she was uncertain as to whether it ever had been. However, the Committee have no evidence to show that the Registrant was aware of this direction or that it was accepted practice not to give the medication. In addition the Committee note the evidence of Ms McNally that consent from a service user was not necessarily obtained for each and every interaction. In view of this evidence, the Committee do not consider that the Registrant's actions amounted to serious misconduct in contravention of the Code of Practice.

The Committee next considered whether the facts as found proved in Charge 2 (iii) and Charge 3 amounted to misconduct. The Committee gave careful consideration to the oral and documentary evidence, Mr Dixon's submissions and the legal advice it has received. The Committee found that the Registrant's actions in these Charges were in breach of the following provisions of the NISCC Code of Practice and they amounted to misconduct.

**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;

**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:**

6.2 Maintaining clear and accurate records as required by procedures established for your work;

The Committee considered that the Registrant's actions, in writing on Service User C's Daily Report Sheet that she had attended at a time when she had not done so, was a deliberate attempt to mislead and hide her bad time keeping. The Registrant's actions had the potential to place Service User C at risk in that his needs at this time were not attended to as required. The Committee consider that this dishonest behaviour amounted to serious misconduct and calls into question the Registrant's suitability to remain on the Register without restriction. The Committee consider the Registrant's actions in falsifying when she attended Service User C, fall well short of what would be expected of an honest and trustworthy social care worker. Therefore the Committee find 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 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 Dixon, 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 Dixon referred the Committee to Paragraph 4.9 of the Guidance in relation to the appropriate considerations as regards Admonishment of the Registrant. He submitted that the sanction of Admonishment would not be appropriate, in that the Registrant's actions as set out at Charge 2 (iii) were deliberate, with the intention to mislead. He indicated that the Registrant's actions in hiding her bad time keeping had the potential to put Service User C at risk of harm. He drew the Committee's attention to the failure by the Registrant to attend the hearing and the lack of engagement with the Council's investigatory process. He submitted to the Committee that in view of the finding of dishonesty, as in Charge 3, the appropriate sanction in this matter should be removal. He directed the Committee to Paragraph 5 of the Indicative Sanctions Guidance and drew their attention to the Registrant's actions having taken place during her professional practice. Mr Dixon referred the Committee to the case of *Parkinson v Nursing and Midwifery Council* [2010], which stated that in matters of dishonesty, where a registrant fails to attend a hearing or demonstrate insight and remorse, then he or she forfeits the small chance of persuading a panel to adopt a more lenient sanction.

The Committee is mindful that the purpose of 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 appropriate in all the circumstances of the case, to impose a period of Admonishment for five years, which will remain on 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.

In considering sanction, the Committee note there was no evidence of harm caused to Service User C. In addition, there was no compelling evidence as to whether this behaviour would, or would not, have caused direct or indirect harm to Service User C. The Registrant did not provide any evidence to the Committee of insight into the effect of her falsifying the times on Service User C's Daily Report Sheet. However, the Committee note the

evidence that this was an isolated incident with no subsequent repetition of this behaviour. The Committee note the Registrant's previous good work history and the absence of any previous disciplinary difficulties. In considering the misconduct and the Registrant's falsifying of Service User C's Daily Report Sheet, the Committee consider the Registrant's behaviour to be at the lower end of the spectrum of misconduct. The Registrant's actions in recording an incorrect time on Service User C's Daily Report Sheet related to her bad time keeping and appeared to be an attempt to cover up the late start to her working day. The Committee note that the Registrant called with Service User C at a later time than the record appeared to show, and provided for his needs at this time. The Committee note this incident was not the subject of any complaint or investigation at the time and was only considered in retrospect by her employer when other matters were being investigated. The Committee further note that there was no monetary advantage to the Registrant in completing the record incorrectly. The Committee therefore considers that the circumstances of the Registrant's dishonesty constituted an isolated incident, which was not repeated and which was at the lower end of seriousness.

The Committee took into account the case of *Parkinson v Nursing and Midwifery Council* [2010] along with the case of *Solicitors Regulation Authority v Sharma* [2010]. The Committee consider that this matter falls within the exceptional circumstances as highlighted in the case of *Solicitors Regulation Authority v Sharma* [2010]. Accordingly, although the misconduct involves dishonesty, taking into account all of the above, the Committee consider Admonishment to be a fair and proportionate sanction in this matter. The Committee considers this sanction provides adequate public protection as far as the Registrant's suitability to remain on the Register is concerned and marks that the behaviour is unacceptable and must not happen again.

**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 do not consider the Registrant's actions as set out at Charge 2 (iii) and 3 to be behaviour that is fundamentally incompatible with continuing to be a registered social care worker in the long term. The Committee had no evidence of harmful, deep-seated personality or attitudinal problems at work, nor was there evidence that the Registrant repeated 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

You have to consider is whether the documentation has been properly served on the Registrant in relation to the Notice of today's Hearing. I would refer you to Paragraph 4, Schedule 2 of the Social Care Council Conduct Rules and they govern the requirement that a Hearing should not be fixed earlier than 28 days after the posting of the Notice except if they have been to the Registrant, that wouldn't apply in this case. In this particular

instance the Notice was sent to the Registrant at her last known registered address on the 15th of May 2014 and service was effected by way of signature on the 16th of May 2014 and that's the day after the documentation was sent. I have also been provided with details to show that a bundle of documents was sent to the Registrant at the same address and these were posted on the 6th of June and service was effected by way of signature through registered on the post on the 7th of June. This service is in accordance with Rule 3 of Part 1 of the Rules which provides that the Notice should be sent by registered post, and that has now taken place. It is sent to the last known address of the Registrant and service is really treated as being effected on the day after it was posted and in effect in this particular instance that has happened.

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

As you have heard Mr Dixon has now made an application under paragraph 14 of Schedule 2 of the Rules for the matter to proceed in the Registrant's absence. You have heard from him that the Council have had no engagement from the Registrant although Mr Dixon, some time prior to the 15th of May 2014, spoke to the Registrant by telephone and since then has had nothing further although he indicated that he has tried on two occasions; one to telephone the Registrant again and also that he wrote to her querying whether she wished to engage in the proceedings and he has heard nothing further. Where you, as a Committee, are satisfied that the Notice has been duly served on the Registrant you have a number of options; you may either hear and determine the case in the absence of the Registrant, or you may adjourn the Hearing and give directions and this is a matter for your discretion. I would refer you to the case of R v Jones and you will be familiar with this case, it is a 2003 case. It is a criminal case but it is applicable in regulatory matters. In this 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."

Therefore, you should now consider whether an adjournment may result in the Registrant attending the proceedings at a later date, you should look at the time involved in an adjournment and the extent of the disadvantage to the Registrant in not being able to present her account of events. You should also look at the seriousness of the allegations, the general public interest in the matter being dealt with and also the interests of any victims. I would remind you that the Registrant is entitled to a fair Hearing, to attend or to be represented, to test the Council's case and present her evidence in relation to the matters before you today. If you find that the Registrant has knowledge or had knowledge of today's Hearing and has voluntarily absented herself you may consider proceeding in her absence. In considering this you should look at whether the information provided to the Registrant was sufficient to advise her of the importance of attending here today and you have heard that Mr Dixon has had previous contact with the Registrant and she would have been served with the Notice of Hearing and documentation in relation to the evidence that would be presented today.

You should consider the allegations made against the Registrant have been particularised so that she understands the case against her and also the importance of attending an oral Hearing.

The Notice of Hearing provides specific, clear information to the Registrant as regards the charges, the Hearing

dates and the powers you have as a Committee to proceed in her absence. This principle of fairness applies equally to the presentation of the Council's case, therefore in exercising your discretion you must balance the rights of the Registrant on the one hand against the wider public interest in the expeditious disposal of the matter. If you consider this Hearing should continue in the absence of the Registrant you must avoid reaching any improper conclusions about her absence and must not treat her absence as an admission of guilt in any way.

### **Finding of Facts**

At this stage you, as a Committee, are deciding whether the facts of the allegations, as set out at charges 1, 2 and 3, are proved. You must apply the standard of proof applicable in civil proceedings, which is on the balance of probabilities, and case law has made this a single and unvarying standard. Now, this means that a fact will be found proved if you consider it more likely than not to have happened. Therefore, you must look with the greatest of care at the accusations before you today which potentially give rise to serious consequences. However, in determining whether or not these allegations have occurred the standard is always the balance of probabilities. I would remind you, as a Committee, that you should draw no adverse inference as a consequence of the Registrant not giving evidence to you today. In relation to the charges you should consider each particular charge in turn, weighing and balancing the evidence that has been presented. If you are satisfied on the balance of probabilities that the Registrant acted, as the Northern Ireland Social Care Council allege at charge 2, then you must consider whether she acted dishonestly as set out at charge 3. I would refer the Committee to the case of R v Ghosh and that is a 1982 case which is a criminal matter, but it is applicable in regulatory matters, and also a further case of Twinsector Ltd v Yardley, which is a 2002 case, and that case gives you particular guidance in this area. Lord Hutton, in the case of Yardley, indicated that:

"Dishonesty requires knowledge by the defendant that what she was doing would be regarded as dishonest by honest people. Although a finding of dishonesty can not 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 the GMC v Fish, and that is a 2012 case, emphasised that the starting point with regards to dishonesty is that a Registrant of good character is most unlikely to act dishonestly. 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 as regards this. Therefore, the key question for you is whether the conduct took place and whether it was known to be false, innocent or negligent.

You have heard evidence from three witnesses on behalf of the Council and you have been provided with a number of documents, in particular the daily report sheets for Service Users A, B and C. In addition, you have the documents prepared by the Trust after meetings with the Registrant on the 25th of June 2012 and the 1st of October 2012. You have had the opportunity to question the witnesses as to the manner these documents were compiled and decide what weight you give this evidence. As I have previously advised these are

specific charges and you should spend time in particular considering the daily report sheets as regards charge 2.

In relation to charge 1, you have heard and received hearsay evidence, you have not heard evidence from Service User A. In considering this you must take account of the fact that Service User A, who is the source of the evidence in relation to charge 1, is not before you and you have not had an opportunity to question her or to raise any queries and her evidence has not been tested or challenged in any way.

Taking this into account it is for you to decide what weight, if any, you give that evidence, looking at the nature of the evidence, the reason why the witness is not here to give oral evidence, and also the second-hand evidence that has been given to you as regards this.

### **Misconduct**

At this stage you, as a Committee, have found that facts as indicated in charges 1, 2 and (iii) and 3 have been found proved and you must now proceed to consider whether those proven facts amounted to misconduct. Misconduct has been defined by the Northern Ireland Social Care Conduct Rules as 'conduct which calls into question the suitability of the Registrant to remain on the Register'. In considering this question of misconduct I would remind you that there is no admission of misconduct in this case. You have been specifically referred to the Northern Ireland Social Care Conduct Code of Practice and you have been referred to Codes 1, 2, 3, 5 and 6. You now have to consider whether those breaches of the Code have occurred or if there are any other breaches of the Code in your considered opinion. You must be satisfied that it is more likely than not that the conduct which you have found occurred in your findings of fact amounted to misconduct in contravention of the Code.

You should take into account the sworn, oral evidence given to you, the documentary evidence produced, and also Mr Dixon's submissions. Guidance is found for you in the case of Roylance v the GMC, it is a 1999 case, and 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 standard 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. Importantly, when considering the issue of misconduct, you will bring your own professional expertise to bear. You will also be aware that it is the Council's responsibility to discharge the burden of proving misconduct and, in addition, you as a Committee must bear in mind that the more serious the allegation, the more cogent the evidence required to prove it. In the case of Meadows v the GMC, which is 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 being branded as misconduct in a professional context.

### **Proof of Service – Day 4**

I have had an opportunity to consider the papers and, as indicated, there was a letter sent to the Registrant, Ms Grace Nugent, at the address as shown on the Register and it is a letter dated the 7th of July. It indicates to her that the case will be reconvening today and the Council has provided confirmation that that correspondence was signed for by the Registrant, it would appear to be a signature that corresponds with her name, on the 8th of July. In those circumstances, I think there is evidence before you to show that the Registrant is on notice of this case resuming today.

### **Sanction**

As you indicated at the outset of the proceedings under the Rules you have a number of options at this stage and you have heard the submissions of Mr Dixon. Just to repeat again, where there is a finding of misconduct, and in this case you have found misconduct in relation to a number of specific charges, and I would direct you to pay particular and specific attention to those charges alone, the first option for you, and Mr Dixon has referred to this, is you may consider admonishing the Registrant and directing that a record of this admonishment be placed on their entry in the Register for a period of 5 years. You may make an order suspending the Registrant's registration for a period not exceeding 2 years, or, thirdly, make an order for the removal of the Registrant's registration from the Register.

In determining the appropriate sanction you are obliged to take into account the following factors:

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

Overarching that, you have the issue of proportionality where you must weigh 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 deals with the consideration of fairness and proportionality. You have heard from Mr Dixon as regards the case of Parkinson v the NMC and you will be aware of the guidelines in relation to considerations of whether a Registrant attends and gives evidence to you as regards any mitigating factors, or in relation to the financial impact of any order upon her. You should also look at the issues of sanction in order of severity beginning with your deliberations as regards admonishment first. In addition, I would direct you to paragraphs 2.2 and 2.3 of the Guidance and 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 the social care users are protected from unsafe practice, and that confidence in the social care workforce is maintained. In serving that public interest the purpose of sanctions is to ensure that a social care worker does not have an opportunity to repeat the misconduct and also to maintain the reputation of the profession.

I would refer you to paragraphs 2.4 and 2.6 of the Guidance 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. You have to give consideration to any aggravating or mitigating factors.

You have heard that there has been no contact from the Registrant either during the investigatory procedure or during the Panel's Hearing and deliberations. Therefore, there are no mitigation factors for you to consider today.

You also have no information before you as to the financial impact of any order and you have also heard, which is to the Registrant's favour, that there is no record of any previous difficulties in terms of disciplinary matters and that she has an unblemished record.

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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.**

Melissa On

Clerk to the Conduct Committee

28 July 2014

Date