



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

Name: Neil Francis McCartan

SCR No: 6004422

Date: 25 July 2014

NOTICE IS HEREBY GIVEN THAT the Conduct Committee of the Northern Ireland Social Care Council, at its meeting on **21 and 22 July 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 whilst working as a Care Assistant at Kingsway Private Nursing Home:

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| 1. | On 9 November 2012 you pleaded guilty and were convicted on 5 December 2012 of the following offences:- |
| (i) | You, on 14/10/2012, in the County Court Division of Belfast, when driving a mechanically propelled vehicle on a road, namely M1 MOTORWAY, BELFAST, were unfit to drive through drink or drugs, contrary to Article 15(1) of the Road Traffic (Northern Ireland) Order 1995. |
| (ii) | You, on 14/10/2012, in the County Court Division of Belfast, drove a mechanically propelled vehicle dangerously on a road, namely M1 MOTORWAY, BELFAST, contrary to Article 10 of the Road Traffic (Northern Ireland) Order 1995. |
| (iii) | You, on the 14th day of October 2012 in the County Court Division of BELFAST, being the holder of a provisional licence failed to comply with a condition prescribed by Regulation 12(1)(b) of the Motor Vehicles (Driving Licences) Regulations (Northern Ireland) 1996 which was applicable to you in that you drove a motor vehicle without having a distinguishing mark namely an 'L' plate in the form set out in Schedule 3 of the said Regulations displayed on the vehicle in such a manner as to be clearly visible |

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| | from within a reasonable distance from the front and from the back of the vehicle to other persons using the road, contrary to Article 13 of the Road Traffic (Northern Ireland) Order 1981. |
| (iv) | You, on the 14th day of October 2012 in the County Court Division of BELFAST, being the holder of provisional licence, drove on a road a motor vehicle otherwise than in accordance with a condition of the licence authorising you to drive a motor vehicle of that class prescribed by Regulation 12(1) of the Motor Vehicles (Driving Licences) Regulations (Northern Ireland) 1996, namely that you drove the said vehicle otherwise than under the supervision of a qualified driver present with you in or on the vehicle, contrary to Article 3 of the Road Traffic (Northern Ireland) Order 1981. |
| (v) | You, on the 14th day of October 2012, in the County Court Division of BELFAST, used a motor vehicle, namely, a Vauxhall Vectra, on a road or other public place, namely, the M1 Motorway, without there being in force in relation to the user of the said motor vehicle by you such a Policy of Insurance or such a Security in respect of third-party risks as complied with the requirements of Part V111 of the Road Traffic (Northern Ireland) Order 1981, contrary to Article 90(4) of the Road Traffic (Northern Ireland) Order 1981. |
| 2. | On the 15th October 2012 you were charged for the offences of driving when unfit through drink or drugs contrary to Article 15(1) of the Road Traffic (Northern Ireland) Order 1995 and dangerous driving contrary to Article 10 of the Road Traffic (Northern Ireland) Order 1995. |
| 3. | On your Application Form for Registration dated 30 October 2012 you gave a dishonest answer in that you: |
| (i) | Answered "No" to the question "Do you have a formal charge pending in the UK, or any other country?" |
| 4. | On 22nd April 2013 you pleaded guilty and were convicted on 20th May 2013 of the following offences: |
| (i) | You, on 9th day of January 2013 in the County Court Division of CRAIGAVON, while disqualified for holding or obtaining a driving licence, drove a motor vehicle on a road, namely, OLD GOLF COURSE ROAD, DUNMURRY, contrary to Article 168A(1)(c) of the Road Traffic (Northern Ireland) Order 1981. |
| (ii) | You, on 9th day of January 2013, in the County Court Division of CRAIGAVON, used a motor vehicle, namely, a Vauxhall Astra registration RKZ 4188, on a road or other public place, namely, OLD GOLF COURSE ROAD, DUNMURRY, without there being in force in relation to the user of the said motor vehicle by you such a Policy of Insurance or such a Security in respect of third-party risks as complied with the requirements of Part V111 of the Road Traffic (Northern Ireland) Order 1981, contrary to Article 90(4) of the Road Traffic (Northern Ireland) Order 1981. |
| 5. | On 30th October 2012 you signed a declaration to "Undertake to tell the Northern Ireland Social Care Council as soon as reasonably practical about any events that call into question my good character such as criminal convictions, criminal proceedings or formal cautions that I receive". |
| 6. | You did not inform the Northern Ireland Social Care Council of the convictions set out in paragraph 4 above. |
| 7. | And your actions as set out in paragraph 6 were dishonest. |
| And your actions as set out above amount to misconduct, such as to call into question your suitability to remain on | |

Preliminary Matters

Service

The Registrant was neither present nor represented at the hearing. The Committee was satisfied that a Notice of Hearing was sent to the Registrant by special delivery on 20 June 2014 in accordance with the NISCC (Conduct) Rules 2013, and was received by him. Indeed, the Committee accepted that the Registrant signed for the Notice when it was delivered to his registered address on the 21 June 2014.

Proceeding in the Absence of the Registrant

Mr Conrad Dixon (Council Solicitor) made an application to proceed in the absence of the Registrant, pursuant to Rule 14 of Schedule 2 of the 2013 Rules. The Committee was advised that they had a discretion of whether to proceed in the Registrant's absence. The Legal Adviser emphasised that this was a discretion which they had to exercise cautiously. He referred them to a number of factors which they should consider, in particular, the fact that the Registrant had not engaged with the Council at any stage of the proceedings, and the fact that he had not made any application to postpone the proceedings. Having considered the issue, the Committee reached the unanimous view that it was appropriate to proceed in the Registrant's absence. The Committee was satisfied that the Registrant had voluntarily waived his right to attend the hearing, and took the view that there was a public interest in proceeding without further delay. The Committee observed that if it was to postpone the hearing there was no reason to believe that the Registrant would be any more likely to attend on a future date.

Background

The Registrant is registered on Part 2 of the Social Care Register. He was employed at Kingsway Private Nursing Home as a care assistant and it appears that he worked with Kingsway from 29 July 2011. The Charges against the Registrant relate to various motoring offences and his alleged failure to disclose his offending to the Northern Ireland Social Care Council.

Evidence

Mr Dixon applied pursuant to Rule 11 of Schedule 2 to the 2013 Rules to admit into evidence a bundle of documentation prepared by the Council. Those documents had been posted to the Registrant by special delivery on 03 July 2014 but were not collected by him. The Committee received the bundle of documentation into evidence.

The bundle included various Certificates of Conviction following court hearings on 05 December 2012 and 20 May 2013. Those certificates are to be regarded as conclusive proof of the facts or conviction so found pursuant to Rule 11 (5) of Schedule 2 to the 2013 Rules.

The position in relation to the offences on 14 October 2012, is that on that date, at approximately 23.05, police were travelling along the M1 country bound. As they approached the Blacks Road off slip, they noticed a large puff of smoke coming from the back of a dark coloured Vauxhall motor vehicle approximately 100 metres in front of them. The vehicle swerved from left to right a few times before stopping across the motorway with the vehicle approximately 1 metre from the central reservation. The Registrant was subsequently identified as the driver of the vehicle. He reversed the vehicle across the motorway and on to the hard shoulder. When the police opened the door of the vehicle, they could smell intoxicating liquor in the car. The Registrant's eyes were found to be glazed and his speech was slurred. He was arrested and subsequently charged with the criminal offences referred to in Charge 1 before this Committee.

The convictions dated 20 May 2013 are in respect of an incident on 09 January 2013. On that date, police were conducting a vehicle check point on the Old Golf Course Road in Dunmurry. They stopped a Vauxhall Astra vehicle being driven by the Registrant. At that stage the Registrant was a disqualified driver following his earlier convictions on 05 December 2012 as above. In other words he was acting unlawfully by driving a motor vehicle on 09 January 2013. He was convicted of driving whilst disqualified and of using a motor vehicle without insurance.

The Registrant pleaded guilty and was convicted when he appeared at court on 05 December 2012 and 20 May 2013.

On 30 October 2012, the Registrant signed his application for registration with the Council. He answered 'No' to the question 'Do you have a formal charge pending in the UK, or any other country?' He also signed an undertaking to tell the Council as soon as reasonably practical about 'any events which call into question my good character such as criminal offences, criminal proceedings or formal cautions that I receive'. This imposed an obligation on the Registrant to inform the Council about the convictions on 05 December 2012 and 20 May 2013. He failed to do so.

Finding of Facts

Based on the matters referred to above, the Committee is satisfied that the facts stated in the Charges have been proven on the balance of probabilities. The Committee notes that the Registrant pleaded guilty to the various criminal charges. Furthermore, the Certificates of Conviction are conclusive for the purposes of Rule 11 (5) and the Registrant was under a clear obligation to disclose those convictions to the Council. His failure to do so amounts to dishonesty for the purposes of Charges 3 and 7.

Misconduct

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

“misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances”. The same principle applies to a social care worker.

The Committee is satisfied on the balance of probabilities that the Registrant is guilty of misconduct in relation to all the Charges.

The Registrant’s actions were a clear breach of the NISCC Code of Practice for Social Care Workers (September 2002) and in particular:

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:

5.7 Put yourself or other people at unnecessary risk; and

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 reasons for the finding of misconduct are as follows:

- The incident on 14 October 2012 was particularly serious. The Registrant consumed alcohol to the extent that he was unfit to drive. He swerved, stopped his vehicle and reversed on or about the motorway. The police were satisfied that his erratic driving was such that it warranted a charge of dangerous driving. He was clearly intoxicated when he was confronted by the police at the scene.
- The court clearly took a dim view in relation to the incident on 14 October 2012 because he was disqualified from driving for a period, various monetary fines were imposed and he was also placed on probation.
- Despite the imposition of these penalties on 05 December 2012, the Registrant committed further driving offences within a matter of weeks. He was charged with driving whilst disqualified and with having no insurance following detection by police on 09 January 2013. On 20 May 2013 he was disqualified from driving for a period of three years, was sentenced to a four month period of imprisonment (suspended for two years) and was fined £500. It is therefore clear to the Committee that he had limited regard or respect for the sanctions imposed by the court on 05 December 2012.
- The Committee is particularly concerned that the Registrant failed to make proper disclosure to the Council in relation to his criminal offences. He misrepresented the position regarding pending charges when he signed his application for registration on 30 October 2012. At that time he had been charged approximately two weeks beforehand in relation to the matters referred to at Charge 1 before this

Committee. His failure to inform the Council about both sets of charges, in relation to which he pleaded guilty and was subsequently convicted, was a clear breach of the undertaking at Section 12.1 of his NISCC application form. He had further opportunities to make full disclosure but misrepresented the position. In particular, he informed the Council, when completing a form of 'Further Information on Self-Disclosure' dated 27 November 2012, that "I have various motoring offences dating back to my late teens..." He made no reference whatsoever to the incident on 14 October 2012. He also failed to make full disclosure when written to by a NISCC Conduct Officer, on 11 July 2013, making no mention whatsoever of the convictions on 20 May 2013, in any correspondence.

- The Committee finds his failure to disclose the full circumstances of his offending to have lacked transparency and to have been dishonest.
- The serious and repeated nature of the driving offences and the Registrant's subsequent failure to disclose their full extent falls far short of the type of behaviour which should reasonably be expected from a member of the profession. Such behaviour calls into question the Registrant's suitability to remain on the Register and amounts to misconduct for the purposes of the Rules.

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 considered all sanctions available to it and has decided to make an Order for removal of the Registrant's registration from the Register.

Having considered all of the evidence in this case, the Committee is deeply concerned about the nature of the Registrant's misconduct and repeats its reasons for the finding of misconduct as above. The driving offences were particularly serious and there was considerable evidence of dishonesty on the part of the Registrant.

The Committee is aware that punishment is not the primary purpose when considering the various sanctions available to it. Rather, the primary function of a sanction is to address public safety from the perspective of the risk which a registrant may pose to those who require his or her services. The Committee has given appropriate weight to the wider public interest when reaching its decision on sanction, and is aware that the wider public interest includes:

1. The deterrent effect to other registrants;
2. The reputation of the profession;
3. Public confidence in the regulatory process.

In view of the foregoing, and in accordance with best practice, the Committee has considered all sanctions in ascending order as follows:

Admonishment – this sanction may be more appropriate where the behaviour is at the lower end of the spectrum of misconduct. It may also be appropriate where there is a low risk of recurrence, and where the behaviour complained of is of itself minor in nature and does not involve serious wrongdoing. The Committee is not at all satisfied that the behaviour in this case was in any way minor, or at the lower end of the spectrum, and we have already commented that the Registrant's behaviour fell short of that which can be reasonably expected of a social care professional.

Suspension – such an Order would prevent the Registrant from working as a social care professional for a period of up to two years. It would not address the serious nature of his misconduct, nor would it take into account what the Committee regards as a lack of insight into what he has done. The Committee cannot be satisfied that misconduct of this type would not be repeated in the future.

Removal – the Committee regards this sanction as being necessary because of the serious nature of the Registrant's misconduct.

He drove a motor vehicle on the motorway whilst in an intoxicated and unfit state. His actions had the potential to place police and members of the public at serious risk. He was convicted of dangerous driving. The Committee is very concerned to note, that despite the nature of the sanction imposed by the court on 05 December 2012, he reoffended within a matter of weeks. This shows a considerable lack of respect for the authority of the court and a worrying lack of insight into the nature of his wrongdoing.

The Registrant withheld information and misrepresented the true position about his charges and convictions, both at the time of his application for registration, and in subsequent dealings with the NISCC. This demonstrates a lack of honesty and a total disregard for his regulatory body.

The Committee cannot ignore the fact that the Registrant has not engaged with the Committee, nor has he fully engaged with the NISCC since the commencement of its investigation. Whilst carefully considering the matters raised by the Registrant in his email, dated 25 July 2013, he has provided no testimonials or a satisfactory explanation for his actions. While his email shows some evidence of remorse, there has been no indication of any rehabilitation.

The Committee have taken into account the comments of Mitting J in the case of *Neil Parkinson v Nursing and Midwifery Council* [2010] EWHC 1898 (Admin) as follows:

'a nurse found to have acted dishonestly is always going to be at severe risk of having his or her name erased from the Register. A nurse who has acted dishonestly, who does not appear before the Panel either personally or by solicitors or Counsel to demonstrate remorse, a realisation that the conduct criticised was dishonest, and an undertaking that there will be no repetition, effectively forfeits the small chance of persuading the Panel to adopt a

lenient or merciful outcome and to suspend for a period rather than direct erasure.' The same legal principles apply to a social care professional.

The Committee is satisfied that confidence in the social care profession generally would be undermined by allowing the Registrant to remain on the Register.

The Committee took into account the real prejudice to the Registrant in imposing a Removal Order, and thereby depriving him of a means of livelihood. However, any prejudice to him in imposing a Removal Order is easily outweighed by the interests of the public, service users, potential social care employers and the social care profession generally, in maintaining confidence in the social care profession, and in the NISCC as a professional regulator.

The Committee is satisfied that in the circumstances of this particular case, a Removal Order is wholly proportionate.

Legal Advice Given

Service and Proceeding in the Absence of the Registrant

The Committee may proceed in the absence of a Registrant in circumstances such as this. I am satisfied for the purpose of the Rules that service has been effected, that the Registrant is aware of the proceedings and that the important thing is that the Notice of Hearing has been received by him and acknowledged by him. So, for those purposes, I am satisfied that he is aware of the proceedings and that it is safe to proceed in his absence.

Misconduct

For the purposes of the Rules misconduct is defined in the Northern Ireland Social Care Council Conduct Rules 2013 as 'conduct which calls into question the suitability of a Registrant to remain on the Register'.

Amendment to Decision

Some slight confusion has arisen in relation to the proper description of the motor vehicle involved in the offences committed on the 14th of October. I have discussed that matter with the Legal Adviser for the Council, and following the discussion, it has been agreed that the face of the decision, that is to be amended in various respects. So that the reference to 'Vauxhall Astra' will be substituted at various places with the word 'Vauxhall motor vehicle' or 'vehicle' at various stages of the decision. That has been raised with the stenographer and she has kindly amended the face of the record to reflect that slight confusion.

Sanction

You have quite rightly stated the options available to the Committee for the purpose of Rule 25.

Legal Advice Given in Camera

The Committee was at all times aware that the burden of proof in this case rested with the Council and that the standard of proof required was proof on the balance of probabilities. I reminded the Committee of the definition of misconduct which had to permeate its entire deliberations, and that definition being 'conduct which calls into question the suitability of a Registrant to remain on the Register'.

When the Committee came to considering various sanctions available to it, I explained to the Committee what those various sanctions might consist of.

I reminded the Committee of the Indicative Sanctions Guidance and I also referred the Committee to various sections of the Committee Members' handbook.

I told the Committee that when considering what sanction to impose they had to take into account:

1. The seriousness of the Registrant's misconduct.
2. The protection of the public.
3. The public interest in maintaining confidence in social care services generally, and the issue of proportionality.

Finally, I assisted the Committee with the drafting of its decision at all stages.

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.

Nelissa On

Committee Clerk

25 July 2014

Date