



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

Name: Anthony Joseph Corrigan

SCR No: 6005039

NOTICE IS HEREBY GIVEN THAT the Conduct Committee of the Northern Ireland Social Care Council, at its meeting on **25 September 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 Support Worker within the Praxis facility Hugomont House in Ballymena:

1. On or about 09 March 2013 you attended work under the influence of alcohol.
2. On or about 09 March 2013 you attended work unfit to fulfil your duties.

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 26 August 2014, sent by Special Delivery and addressed to the Registrant at his address as it appears on the Register, the NISCC notified him of the day, time and venue for this hearing. The Notice was not signed for. The Committee reminded itself of the provisions of Rule 3 and is satisfied that the Notice of Hearing has been served at the

Registrant's address as it appears on the Register. The Council is not required to prove that the Registrant took physical possession of the Notice of Hearing and the onus remains on the Registrant to inform the Council of any change of address so that the Register can be amended accordingly. The Committee is therefore 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 and accepted the 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 by the Court of Appeal in the case of *R v Jones* [2003] 1 AC 1. 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, to the NISCC and the wider public interest.

The Committee notes that the Registrant has not engaged with the Council since service of the Notice of Hearing. Mr Wilson submitted that the Registrant, with knowledge of the hearing, has voluntarily absented himself. He indicated there has been no request by the Registrant for an adjournment of this matter and it is in the public interest for the issues to be dealt with as expeditiously as possible. Mr Wilson submitted that no useful purpose would be served, nor would it be in the public interest, to adjourn the proceedings.

The Committee has decided that the Registrant, with knowledge or means of knowledge of these proceedings, has voluntarily waived his right to be present, and notes that there is nothing to indicate that he 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.

Application to Revert to the Conduct Procedure

The Committee heard a submission from Mr Wilson that it should revert to the Conduct Procedure in this case under Schedule 2, Paragraph 28 (6). The Committee was informed that the Preliminary Proceedings Committee, having considered the case papers, had decided to transfer the case to the Conduct Committee using the Health Procedure. This occurred in February 2014. Following the transfer, the Registrant was invited to undergo a medical assessment in relation to establishing the extent, if any, to which his health condition could be said to have caused, or substantially contributed to, his alleged misconduct. The Committee was advised that the Registrant had failed to engage in that process and had not presented any medical evidence to establish his health condition.

The Committee accepted the advice of the Legal Adviser, who reminded the Committee that it had the power to switch from the Conduct Procedure to the Health Procedure if a health condition was raised which could be said to have caused, or substantially contributed to, the Registrant's alleged misconduct. The Committee was reminded that the Conduct Procedure could be re-instated if the Committee was satisfied that there was no evidence before it to suggest that the Registrant's ill health caused, or substantially contributed to, his alleged misconduct. The Committee was specifically referred in this regard to Paragraph 8 (2) and Paragraph 28 (6) of the second Schedule of the Rules. The Committee paid careful attention to the submission of Mr Wilson and considered a bundle of documents (Exhibit 1), which contained statements made by former colleagues of the Registrant and contemporaneous notes of meetings between the Registrant and his employer in the course of an investigation into his conduct on 09 March 2013.

The Committee is satisfied that, since the date of transfer, the Registrant has failed to respond to requests made of him by the Council to undergo a medical examination to establish whether a health issue is relevant in determining this case, and to establish whether any health condition caused the alleged misconduct or substantially contributed to it. In addition, the Registrant has not taken the opportunity to present any medical evidence that would seek to persuade the Committee that his physical or mental ill health played any part in the misconduct alleged against him. For these reasons, the Committee is satisfied that no evidence has been presented, since the date of transfer, that would justify the proceedings remaining within the Health Procedure. The Committee has accordingly decided to revert to the Conduct Procedure under Paragraph 28 (6).

Background

The Charge against the Registrant arose from his employment as a support worker at Hugomont House (the Home) which is a facility run by Praxis Care. The Committee heard that the Home was a residential facility for residents with learning disabilities, challenging behaviour and low functioning autism. The Charge concerned an allegation that the Registrant attended for his waking night duty shift on 09 March 2013 at approximately 9.00 pm when under the influence of alcohol. The Committee heard that Joanna Hamill, Team Leader and Lynzi Garrett, Support Worker, were on duty when the Registrant attended the Home. Lynzi Garrett was required to give the Registrant a handover before he started shift. Joanna Hamill was on duty during the evening but would be asleep overnight. As a result of concerns raised about the Registrant's demeanour and the suggestion that he presented for work whilst intoxicated, he was required to leave the Home by his Team Leader and not start his shift that evening. An investigation took place into the Registrant's actions on the evening in question by his employer. The Registrant attended an investigatory meeting in April 2013 and a disciplinary meeting in May 2013. He was dismissed by his employer from his post on 11 June 2013. A subsequent referral in relation to this incident was received by the NISCC, which has resulted in these proceedings against him.

Evidence

The Committee heard evidence from Joanna Hamill. It also received in evidence her witness statement in relation to this incident, which was contained in Exhibit 1. The Committee also heard evidence from Lynzi

Garrett. It also received in evidence her witness statement in relation to this incident which was contained in Exhibit 1. The Committee finally heard oral evidence from Stephen Trueick, who was employed at the time as a Senior Human Resources Officer at Praxis Care. He confirmed to the Committee that he was involved in the investigation into the Registrant's conduct on 09 March 2013. This witness was not present on the evening in question.

The Committee found the evidence of both eye witnesses, Joanna Hamill and Lynzi Garrett, who were experienced practitioners, to be honest and reliable. Both witnesses gave evidence as to the Registrant's demeanour when he presented for duty on 09 March 2013. Both described the Registrant smelling of alcohol, that his face was blotchy and that his words were slurred. The Registrant was described as not being coherent in what he was saying and that at one stage he became tearful and emotional when he was questioned about whether he had been drinking before presenting himself for work. Both witnesses described seeing a bottle of alcohol, which they described in detail, protruding from the top of a pocket in the Registrant's coat which was lifted for him before the arrival of a taxi that had been called to take the Registrant home. In addition, Joanna Hamill described seeing the Registrant "swaying" and being unsteady on his feet as he made his way to the taxi.

Finding of Facts

Based upon the oral evidence which it heard from Joanna Hamill and Lynzi Garrett, and from considering the observations which they made at the time when in close proximity to the Registrant, the Committee is satisfied that the Registrant attended work under the influence of alcohol on 09 March 2013.

The Committee considered the witness statements of both witnesses and their oral evidence, which confirmed that the Registrant would have been the only support worker at the Home who was required to be awake during the night shift. Although the residents were described as generally sleeping well, one resident suffered from epilepsy. The waking member of staff, who would have been the Registrant on the evening in question, would have been required to have regard to a monitor to listen for seizure activity. Both witnesses were clear in their evidence that, due to his intoxicated state, the Registrant would have been unable to fulfil this duty and because of his consumption of alcohol on the evening in question, he would have been unfit to discharge his duties generally. Having regard to the evidence of the witnesses, in oral and written form, the Committee is satisfied that the Registrant attended work on 09 March 2013 in an unfit state to fulfil his duties as a support worker at the Home.

For these reasons, the Committee is satisfied that the Charge is proved in its entirety on the balance of probabilities.

Misconduct

The Committee heard a submission from Mr Wilson on the question of misconduct. He highlighted to the Committee that the Registrant was required to fulfil an important role on the evening in question and act responsibly towards the vulnerable service users in his care. Mr Wilson submitted that the Registrant had failed

to discharge his responsibilities and his actions created a potential risk of harm to others which was averted only by the vigilance of his work colleagues, who took immediate steps to remove him from his workplace when he presented to work whilst intoxicated. Mr Wilson concluded by arguing that the Registrant's actions fell short of the standard to be expected from a registered social care worker, such as to amount to misconduct. He referred the Committee to the NISCC Codes of Practice for Social Care Workers, and particularly Paragraphs 2.4, 2.5, 5.7 and 5.8, which he submitted were engaged and breached by reason of the Registrant's misconduct.

The Committee heard and accepted the advice of the Legal Adviser on the definition of misconduct as provided for in the Rules, and the guidance on misconduct as a separate concept in the regulatory process as referred to in the case of *Roylance v GMC (No.2)* [2000] 1 AC 311 at 330. In that case, Lord Clyde 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 has found as a fact that the Registrant presented for work on 09 March 2013 in an incapable state whilst under the influence of alcohol. The Committee was satisfied that the Registrant was required to perform an important duty by being awake and responsive, whilst on waking night duty, to the needs of four vulnerable service users in his care, one of whom required close monitoring owing to his epilepsy. The Registrant was unable to discharge this role owing to his intoxication through alcohol. The Committee was particularly concerned at the evidence which it heard at the fact finding stage from Joanna Hamill, that one of the vulnerable service users had a previous history of alcohol misuse and that the Registrant, by his actions, could have exposed that service user, albeit unintentionally, to the risk of harm. The Committee was also concerned to note the evidence which confirmed that the Registrant brought alcohol with him to his place of work, which was discovered by his colleagues who went to lift his coat while awaiting the arrival of a taxi to take him home. The Committee was satisfied that the Registrant's action had the potential to cause a risk of harm, not only to the vulnerable service users who would have been in his care, but also to his colleagues at his place of employment and to himself. The Committee was satisfied that the Registrant's actions were serious and fell short of the standard to be expected of a registered social care worker, such as to call into question his suitability to remain on the Register.

The Committee found that the Registrant's actions were in breach of the following provisions of the NISCC Codes of Practice:

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:

2.4 Being reliable and dependable; and

2.5 Honouring work commitments, agreements and arrangements and, when it is not possible to do so, explaining why to service users and carers.

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

3.6 Complying with employers' health and safety policies, including those relating to substance abuse.

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; or

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

On the basis of the oral and documentary evidence which it has considered and the submission which it has heard, the Committee has determined that misconduct is proved in this case against the Registrant on the balance of probabilities.

Sanction

The Committee heard a submission from Mr Wilson, on behalf of the NISCC, on the issue of the appropriate sanction to apply in this case. The Committee was advised that the Registrant had no previous disciplinary findings against him. Mr Wilson acknowledged, on behalf of the absent Registrant, that he adopted a mature and responsible approach in response to an investigation into his conduct on 09 March 2013 by his employer. Mr Wilson accepted that the Registrant, prior to his dismissal as a support worker in the Home, was held in high regard by his work colleagues and had a good rapport with service users in his care. Mr Wilson, however, reminded the Committee that the primary function of a sanction was to protect the public and service users, and to uphold the public interest which included the maintenance of confidence in the NISCC as the regulator of social workers and social care workers. Mr Wilson reminded the Committee that the Registrant, in the course of his employer's investigation, acknowledged that there remained a risk of repeating the behaviour which has led to this referral. In these circumstances, and having regard to the need to protect the public, Mr Wilson submitted that only a sanction which restricted the Registrant from practise or removed him from the Register would be appropriate in this case.

The Committee heard and accepted the advice of the Legal Adviser, who reminded it that it should approach its task in relation to the application of a sanction in a proportionate fashion. The Committee recognised, in this regard, that it should strike a careful and proper balance between the interests of the Registrant on the one hand and the interests of the public and service users on the other. The Committee recognised that the purpose of a sanction is not designed to be punitive, although case law makes clear that it may have a punitive effect on a Registrant, both in terms of his reputation and financially.

The Committee first looked at mitigating factors which were present in this case. From its consideration of Exhibit 1, and particularly the contemporaneous record of meetings held between the Registrant and his

employer, it was clear that the Registrant had immediately accepted his failings and accepted that, in acting in the way that he did, he had let his colleagues down, himself down and especially had let down the service users who were entrusted to his care. The Committee, from its consideration of the transcript of these meetings, was also satisfied that the Registrant expressed genuine regret for his actions on the evening of 09 March 2013. The Committee had no evidence of any previous regulatory findings of any kind against the Registrant, and was cognisant of the fact that his work colleagues, namely Joanna Hamill and Lynzi Garrett, in their written statements to the NISCC and in their oral evidence before the Committee, spoke very highly of the Registrant. They confirmed that this was an isolated, and very unfortunate incident, in an otherwise unblemished working career in respect of a Registrant who had a good working rapport with vulnerable service users in a sometimes challenging working environment.

The Committee would have been greatly assisted by the active participation of the Registrant, and it was a matter of regret to the Committee that he did not attend or be represented at the Conduct Hearing in order to demonstrate what rehabilitative steps he had taken, if any, since the incident which has resulted in these proceedings.

The Committee next turned to the aggravating features which were present in the case. As cited above, there was no real evidence that the Registrant had undertaken remedial or rehabilitative action to address any alcohol problem which may have given rise to his actions on 09 March 2013. The Committee had no evidence before it to demonstrate what level of insight the Registrant had on the date of the regulatory hearing into his actions, which occurred some 18 months previously. Whilst no actual harm had come to any vulnerable service user or work colleague, the Committee has found that the Registrant's actions had the potential to cause harm and a more serious outcome was averted by the timely and professional intervention on the evening in question by his work colleagues. The Committee has concluded that the Registrant's actions were aggravated on account of the fact that they occurred whilst at his place of employment, and in circumstances where he had brought alcohol with him before attempting to commence his night shift. His actions involved an abuse of trust towards service users in his care and his work colleagues, and demonstrated a serious disregard across a number of principles in relation to the applicable NISCC Codes of Practice.

Admonishment – having weighed the aggravating and mitigating features, the Committee first turned to the question of whether it would be appropriate to apply a sanction of admonishment for a period of five years in relation to this case. The Committee had no evidence that the Registrant had undertaken any rehabilitative or corrective steps to meaningfully address his alcohol problem since the date of the incident in question. The Committee was also satisfied that, in the absence of evidence that his alcohol difficulty had been addressed and, given his own admission at the time that he was interviewed by his employer that he could not guarantee that the behaviour complained of would not happen again, the risk that the Registrant would repeat the behaviour which resulted in his referral remained high. The Committee was also of the view that, given the serious nature of the misconduct proved against the Registrant, the public would not be protected and it would be inappropriate to permit the Registrant to return to unrestricted practice.

Suspension – the Committee next turned to the question of whether it would be appropriate to impose a Suspension Order in this case against the Registrant for a period of up to two years. The Committee was satisfied in the Registrant's favour that there was no evidence before it of a repetition of the behaviour complained of since the incident in question. However, for the reasons given above, the Committee had no evidence as to the Registrant's insight at the date of the Conduct Hearing, and reminded itself that it had identified that the Registrant was at a high risk of repeating the behaviour which resulted in his referral. Of critical importance to the Committee was the absence of any information from the Registrant that he would be willing and prepared to undergo assessment, or undertake other suitable remedial action during the period of suspension, which would demonstrate at the end of the suspension period that the Registrant had successfully and meaningfully addressed his alcohol problem and that the public and service users would not be placed at risk in future as a result of his actions.

Removal – whilst acknowledging that the misconduct found proved against the Registrant related to one incident, the Committee was satisfied that the Registrant's actions on the night in question were a serious departure from the standards to be expected of a social care worker. He failed to provide any level of care to vulnerable service users and also posed a potential risk to those service users, his work colleagues and himself as a result of his actions. The lack of engagement by the Registrant at all stages of the regulatory process has deprived the Committee of learning anything about the Registrant's current level of insight and what should be expected of a professional and competent social care worker. The Committee has no evidence of what remedial steps, if any, have been taken by the Registrant to address his alcohol difficulty. He has acted in a manner which has involved a serious departure from the relevant professional standards set out in the applicable Codes of Practice for Social Care Workers. For these reasons, the Committee has concluded that the Registrant's actions on the evening in question, and since the incident, are such as to amount to being fundamentally incompatible with remaining on the Social Care Register. The absence of any evidence as to his insight, combined with the high risk of repetition of the behaviour complained of, has driven the Committee to conclude that there is no other way to adequately protect the public other than by imposing a Removal Order in this case.

Legal Advice Given

Service

I can now confirm that I have had an opportunity to look at the Notice of Hearing sent in this case on the 26th of August and, as Mr Wilson has rightly said, the issue of service of documents is dealt with by virtue of Rule 3 of the 2013 Conduct Rules and for ease of yourself and your colleagues, Rule 3 states that: 'In the Rules any reference to the sending a notice to a Registrant is a reference to the sending of a notice by registered post or by a postal service in which delivery or receipt is recorded to the Registrant's address on the Register. Or, if the last known address differs from the address on the Register, the Registrant's last known address'. By virtue of 3 (b) it

states that: 'Where any notice is to be sent to a Registrant, it shall be treated as having been served on the day after it was posted'.

In this case you have heard from Mr Wilson that the Registrant was advised by way of a Notice of Hearing dated the 26th of August that these proceedings would be held in respect of him on today's date and on following dates in this building. It was sent to him therefore in accordance with Rule 3 and, more particularly, you should also bear in mind the provisions of Paragraph 4 of the Second Schedule which states that the Hearing 'shall not be fixed for any date earlier than 28 days after the posting of the Notice of Hearing, except with the agreement of the Registrant'. I do not have a calendar to hand but I am assuming that that period has been complied with and that at least 28 days has been given and afforded to the Registrant. There is of course no obligation on the Council to demonstrate that the Registrant has actually received the Notice of Hearing. The Rules simply provide for service of the documents to the Registrant's address as it appears on the Register or his last known address. The reason for that is clear and that is the onus should always be on the Registrant and not the Regulator to confirm the best address for the service of any notice upon a Registrant and that onus remains with the Registrant in each case. So having regard then to Rule 3 and also with regard to Paragraph 4 of the Second Schedule of the 2013 Rules, it is my advice to you and to your colleagues at this stage that service of the Notice of Hearing has been effected in accordance with the Rules.

Proceeding in the Absence of the Registrant

You should remember where a Registrant is facing a charge of misconduct under the 2013 Rules the general principle is that a Registrant who is facing such an allegation has the right to be present and represented at a Hearing. However, the Rules provide for such Hearings that if a Registrant is neither present nor represented you and your colleagues may nevertheless proceed if you are satisfied that all reasonable steps have been taken to serve the Notice of the Hearing on the Registrant. You should remember also as a general principle that the decision as to whether to proceed with the Hearing in the absence of a Registrant is a matter in which you must exercise discretion and that discretion must be exercised in a judicial fashion. The discretion has also been described by the case of *R v Jones* as a severely constrained discretion, and as the House of Lords also made clear in the case of *Jones*, the discretion to proceed in the absence of a Registrant should be exercised with the utmost care and caution. When you retire to consider the matter in which you seek to exercise your discretion you must strike a careful balance between fairness to the Registrant and the wider public interest. You must also consider whether, in all the circumstances of this case, whether the Registrant's actions amount to a waiver of the right to be present or represented. You should also bear in mind the helpful guidance provided to the courts in the case of *Jones* in relation to those factors which may be in play in determining the balance which you must strike between the Registrant's interests and the wider public interest and although the case of *Jones* dealt with the absence of the defendant in a criminal trial, the cases of *Tate* and *Hayward* make it clear that *Jones* has application also in the regulatory context. The factors identified by the Court in *Jones* in relation to what matters you must consider at this stage are the following:

1. The nature and circumstances of the Registrant's absence and, in particular, whether the behaviour may be deliberate and voluntary and thus a waiver of the right to appear.
2. Whether an adjournment might result in the Registrant attending the proceedings at later date.
3. The likely length of any such adjournment.
4. Whether the Registrant, despite being absent, wished to be represented at the Hearing or has waived that right.
5. The extent to which any representative would be able to receive instructions from and present the case on behalf of the absent Registrant.
6. The extent of the disadvantage to the Registrant in not being able to give evidence having regard to the nature of the case.
7. The seriousness of the allegation.
8. The general public interest and, in particular, the interest of any victims or witnesses that a Hearing should take place within a reasonable time of the events to which it relates.

Finally, the effect of delay on the memories of witnesses.

Those are the factors identified by the Court which are of relevance to Panels like yours in deciding and striking a fair balance between the Registrant and the wider public interest as to what should be taken into account.

You have heard a submission from Mr Wilson in that regard, you also must pay careful attention to what you have heard from Mr Wilson, especially in relation to the submission that the Registrant has not participated effectively, or at all, in these proceedings up to this point. That is of course a matter which may weigh heavily in your mind in relation to whether to proceed in the absence of the Registrant and of course that is a matter for you and your colleagues in the exercise of your judgment.

Admission of Evidence

I think it is a very uncontroversial application. You will not require to be, well I suggest you would not need to retire to consider this issue. It is dealt with, as Mr Wilson has said, under Rule 11, Paragraph 1 which states that: 'Subject to the advice of the Legal Adviser, the requirements of a fair Hearing and of relevance, the Committee may admit evidence whether or not it would be admissible in a court of law or exclude evidence in order to ensure fairness to the Registrant and between the parties'. The position is you have heard a submission from Mr Wilson and I certainly would be entirely satisfied that having this bundle adduced before you at this stage would be entirely appropriate. It is obviously highly relevant material and no injustice will accrue to the Registrant as a result of it being admitted to you and your colleagues at this stage. Therefore my advice to you is that it is entirely safe and entirely appropriate to receive it at this point in time.

Application to revert to the Conduct Procedure

I think after my advice I would respectfully request that you and your colleagues might retire to consider this issue because it is a matter of some importance for the remainder of the proceedings concerning the Registrant. I think I would start off by indicating to you that the 2013 Conduct Rules afford a discretion to the Conduct Committee to determine a case in accordance with either the Conduct Procedure or the Health Procedure. The decision as to which procedure to invoke involves the exercise of the discretion on the part of the Committee as to which procedure to adopt. Unlike most other regulators in the healthcare sector a Committee operating under both the Conduct and Health Procedures retain the power, where appropriate, to direct the removal of a Registrant from the Register. In contrast, other regulators maintain a distinction between the Conduct and Health processes to the effect that a Registrant who is referred to the Health Procedure will not face the possibility of a Removal Order. Because of that distinction between this model and other models used commonly in the healthcare sector, the established case law in this area as to whether or not to refer a case to the Health Procedure, most notably contained in the cases of *Crabbie v the GMC* and *Toth v the GMC* are of little relevance to you and your colleagues.

So what should you look to in those circumstances. Well, my advice to you is that in order to seek guidance you must look very carefully at the provisions of the 2013 Rules as to the proper approach to be adopted. The trigger point as to whether the Health Procedure should be invoked can be found at Schedule 2 at Paragraph 8 (2) and which is provided for at page 37 of the Rules. It states that:

'If at any time during the Hearing it appears to the Committee that the alleged misconduct may have been caused, or substantially contributed to, by the Registrant's physical or mental ill health, the Committee may cease to consider the allegation following the Conduct Procedure, and instead follow the Health Procedure'. If necessary, Mr Wilson has also indicated to you in this regard the Committee may adjourn in order to enable initial or further expert reports to be obtained. The Committee is therefore required to address the question of what constitutes an allegation of physical or mental ill health. In some instances the decision that an allegation is a health allegation will be straightforward. This is likely to occur in cases where concerns about the conduct of a Registrant arise as a direct result of the Registrant's physical or mental condition and where there is no other evidence to suggest that other factors are involved. However, the decision is not so simple in cases where health might be only one facet of a broader or more serious concern about the Registrant's conduct. Equally there may also be some cases where at the outset the evidence may not disclose an underlying health issue, but where such evidence comes to light as the case progresses. Conversely other cases may raise health issues, only for those issues to fall away as the case progresses. This reality is reflected in the Rules and can be found not only in the provision which I have just opened to you, but might also be found in the Second Schedule at Paragraph 28, sub paragraph 6 at page 52 of the 2013 Rules. It indicates that: 'If, at any time during the Hearing it appears to the Committee that the alleged misconduct has not been caused, or substantially contributed to, by the Registrant's physical or mental ill health, the Committee may cease to consider the allegation following the Health Procedure, and instead follow the Conduct Procedure'. In approaching the question of how to properly

exercise the discretion under these provisions you and your colleagues must look carefully at the nature of the evidence produced which is said to raise the health allegation. It may be useful for you to look carefully at what expert evidence, if any, has been presented to suggest that the Registrant's conduct may have been caused or substantially contributed to by his physical or mental ill health. Has the Northern Ireland Social Care Council requested the Registrant to be examined by a medical expert in relation to his alleged ill health? Is there evidence before you to suggest that the Registrant has refused to comply with such a request? Has the Registrant himself adduced any medical evidence to substantiate the suggestion that a health condition is in play in this case? The Committee will be required to look carefully at these issues to determine whether it remains appropriate to convene the proceedings under the Health Procedure. It is also important to stress to you that the exercise of the discretion to which I have referred in this case requires you to exercise your own judgment based upon the available evidence and the oral submissions which you have heard. You can draw appropriate inferences and conclusions from such evidence and submissions about the Registrant's health without the need for any input from any medical or any other expert. As the Court noted in the criminal case of R v Turner, with appropriate modification for your purposes:

"An expert's opinion is admissible to furnish information which is likely to be outside the [Panel's] ..." expertise "... and knowledge.

"If on the proven facts [the Panel] can form their own conclusions without help, then the opinion of an expert is unnecessary."

In this case the Registrant's actions are alleged to have been contributed to by alcohol. In viewing the available documentary material and the oral submissions which you have heard on the issue, and bearing in mind the powers available to you, which I have sought to outline for you, you should be cognisant of the fact that it would be wrong automatically to assume in every situation in which an allegation of alcohol misuse has played a part that the Registrant, in the absence of some form of expert evidence, has some form of alcohol dependency problem.

In summary therefore in deciding upon whether it is appropriate to continue to adopt the Health Procedure, you should look carefully at the available medical material, if any, adduced in support of the proposition that the Registrant's misconduct as alleged may have been caused, or substantially contributed to, by his health condition. You should use your own judgment and that of your Committee on this question bearing in mind those factors which I have sought to identify for you.

Finding of Facts

Before you retire with your colleagues to consider the fact finding stage of this case in respect of Anthony Joseph Corrigan, I am required to give you some very brief advice in relation to those matters which you might now properly consider. In that regard I would address your attention to Paragraph 12 of the Second Schedule of the Rules which make it clear that the burden of proving the facts at this stage rests upon the Council. The

Registrant has not attended these proceedings, the absence of the Registrant adds nothing to the Council's case, the Registrant is not required to prove his innocence.

The burden is, and remains, upon the Council to prove the facts in relation to this stage of the proceedings. You must look at the Charge in this case, which I remind you is misconduct against the Registrant and which is set out in two heads of charge in relation to attending work while under the influence of alcohol and, on the same date, attending work while unfit to fulfil his duties. You must consider all the available documentary evidence and all of the oral evidence which you have heard to help you establish whether or not the facts underlying the Charge of misconduct are proved or not.

In relation to the standard of proof, as it makes clear in Paragraph 12, the standard of proof is the balance of probabilities and you are to decide the Charge on that basis. The Registrant has not made any admissions in relation to the Charge and therefore you must seek to establish whether the Charge is proved to that standard. Case law has made it clear that the balance of probabilities is a clear and unvarying standard. It means that a fact will be found proved if you consider it is more likely than not to have happened. If you are so satisfied that the fact is found proved, if you are not satisfied to that standard you must find the fact not proved.

Misconduct

Before you retire with your colleagues to consider the misconduct stage of the proceedings, having found the charge proved at the fact finding stage, I am required to give you some brief advice now in relation to what you and your colleagues should properly consider at this stage. As Mr Wilson again has rightly pointed out to you the concept of misconduct is defined by the 2013 Rules as 'conduct which calls into question the suitability of the Registrant to remain on the Register'. You also have some useful guidance given to you in the leading authority in this area and that is the case of *Roylance v the GMC* in which Lord Clyde in delivering the leading speech in that case, although dealing with a doctor who was accused of serious professional misconduct, nonetheless gave a definition of misconduct as a separate concept which has been used universally throughout other healthcare regulators. He stated in his speech as follows:

"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." You should also have regard to the provisions of the Second Schedule and, in particular, you should have regard to the paragraph which deals with misconduct, which is Paragraph 23, and what it states in sub paragraph 4 is this: 'In deciding upon the issue of misconduct, the Committee shall have regard to the Code of Practice issued by the Council under section 9 of the 2001 Act'.

You should also have regard to the position with regard to the burden and in relation to the 2013 Rules, it states 'that the burden of proving misconduct alleged in the charge shall rest upon the Council and the standard of proof again shall be the balance of probabilities'. Unless you wish me to do so I do not intend to rehearse the concept of the balance of probabilities, but that is the standard and the burden to which you should have regard.

Sanction

Now, at the third stage of the proceedings in relation to the Registrant, Anthony Corrigan, I am required to give you some brief advice in relation to those matters which at the sanction stage you can properly consider. The first remark which I would make to you is that my advice is based upon the Indicative Sanctions Guidance document issued by the Council in November 2011 and it makes clear that a number of factors are in play when a Committee is required to approach the task of applying a sanction. The primary function of a sanction is to be in the public interest. A sanction is not a punitive measure, although undoubtedly case law recognises that the application of a sanction may have a punitive effect upon a Registrant. But as paragraph 2.2 of the ISG document makes clear, the public should have confidence that the Social Care Council as the Regulator of social care workers will uphold proper standards of behaviour and conduct.

The public interest requires that the public and social care users are protected from unsafe practice and that confidence in the profession of social work and the social care workforce in general is maintained. It is part of the Social Care Council's role to maintain standards and to protect the public from social care workers who, for any reason, whether competence character, or conduct, are not fit to practise. Any social care worker registered with the Social Care Council agrees to abide by the Code of Practice for social care workers.

There is also the requirement to act fairly and what constitutes the standards of fairness, as paragraph 2.4 makes clear, is not fixed and may change over time and depends on the circumstances of each case.

You should adopt a proportionate approach to this case you should properly weigh the interests of the Registrant, together with those of the public and social service users, in order to arrive at a sanction which properly and fairly balances those sometimes competing interests. In order for you to arrive at an appropriate sanction I would commend to you paragraphs 3.2 and 3.3 of the ISG which sets out the factors which must be looked at by a Committee, although not an exhaustive list, nonetheless a helpful list in trying to identify where on the scale the misconduct can be placed before a sanction can be applied. Then you will no doubt move on to the sanctions themselves. You must apply a sanction, you have no discretion not to apply a sanction, but you must approach the question of sanction in a bottom upwards fashion, if I may put it that way. If you take the view that the least restrictive sanction, namely admonishment, would not be appropriate then and only then must you move to a more, a restrictive sanction following up to and including, if you so consider, the issue of a Removal Order.

You should, however, bear in mind that where you believe that the sanction selected by you and your colleagues is appropriate and adequately protects the public and vulnerable service users, you must not proceed to consider any more restrictive sanction. Finally I would also ask you and your colleagues to remember that at this stage of the adjudicative process you are not required to apply any standard of proof, the sanction stage under the 2013 Rules requires you and your colleagues, as an experienced Committee, to exercise your judgment to arrive at the most appropriate sanction having regard to the principles of proportionality and the public interest.

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 you should not work as a social care worker.

C Cumbell

Committee Manager

30 September 2014

Date