

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

Name: Diane Khan

SCR No: 2055724

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

**The Committee found the facts proved;**

**The Committee found that you have committed misconduct;**

**The Committee decided to admonish you and directed that a record of the admonishment should be placed on your entry in the Register for a period of five years.**

**Charge:**

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

1. On 28 March 2013, you were convicted of the following offence:
  - (i) Defendant on 03/03/2013, in the County Court Division of Belfast, when driving a mechanically propelled vehicle on a road, namely Middle Road, Carrickfergus, Northern Ireland were unfit to drive through drink or drugs, contrary to Article 15(1) of the Road Traffic (Northern Ireland) Order 1995.
2. On 12 September 2013, you were convicted of the following offences:
  - (i) Defendant on 15/08/2013, in the County Court Division of Belfast and Newtownabbey while disqualified for holding or obtaining a driving licence, drove a motor vehicle on a road, contrary to Article 168A(1) of the Road Traffic (Northern Ireland) Order 1981.
  - (ii) Defendant on 15/08/2013, in the County Court Division of Belfast, used a motor vehicle, namely an Audi A\$ (A4) VRM YH03WBT on a road or other public place namely within the vicinity of Burleigh Drive, Middle Division, Carrickfergus, Antrim, Northern Ireland BT38 8HW, 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 that complied with the requirements of Part VIII of the Road Traffic (Northern Ireland) Order 1981, contrary to Article 90(4) of the Road Traffic (Northern Ireland) Order 1981.

(iii) Defendant on 15/08/2013, in the County Court Division of Belfast without having the consent of the owner or other lawful authority took a motor vehicle, namely an Audi A4 VRM YH03WBT for your own or another's use, contrary to Article 172 of the Road Traffic (Northern Ireland) Order 1981.

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**

The Registrant attended the hearing and was represented by Mr Paul McCormick (Unison). The Northern Ireland Social Care Council ('NISCC') was represented by Mr Conrad Dixon, assisted by Ms Denise Rooney.

## **Background**

The Registrant is registered on Part 2 of the Social Care Register (social care worker). At all material times, she was employed by the Northern Health and Social Care Trust as a 'support worker' at Ellis Grove, Supported Living Scheme in Carrickfergus.

The case against the Registrant relates to a number of criminal convictions which arose in 2013. In particular, the Registrant was convicted of driving whilst unfit through drink or drugs arising out of an incident which occurred on 03 March 2013. She had pleaded guilty to that offence and was disqualified from driving for a period of 12 months and fined £350.00.

Notwithstanding this conviction, on 15 August 2013 the Registrant was apprehended by police whilst driving. In September 2013, she pleaded guilty to charges of driving whilst disqualified, using a vehicle without the owner's consent and driving without insurance. The Registrant was disqualified from driving for three years and sentenced to a Probation Order for a period of 18 months.

## **Evidence**

The Committee received an Agreed Statement of Facts, set out as follows:

'At the relevant time the Registrant was employed by the Northern Health and Social Care Trust as a Support Worker at Ellis Grove, Supported Living Scheme in Carrickfergus. The Registrant was admitted to the NI Social Care Register on 6 May 2010.

The Northern Ireland Social Care Council received notification from the PSNI, by way of correspondence dated 25 September 2013, that the Registrant had been convicted on 12 September 2013, of the following offences which were committed on 15 August 2013:-

- Driving while disqualified
- Using a motor vehicle without insurance
- Taking a motor vehicle without authority

The PSNI wrote again to the Northern Ireland Social Care Council on 10 October 2013 providing further information in relation to the offences, and confirming that the Registrant had previously been disqualified from driving for one year at Belfast Laganside Court on 28 March 2013. The previous conviction was hitherto unknown to the Council.

The registrant's offending history is as follows:

**On 28 March 2013, the Registrant was convicted of the following offence at Belfast Magistrates Court:-**

- Charge 1: Defendant on 03/03/2013, in the County Court Division of Belfast, when driving a mechanically propelled vehicle on a road, namely MIDDLE ROAD, CARRICKFERGUS, Northern Ireland were unfit to drive through drink or drugs, contrary to Article 15(1) of the Road Traffic (Northern Ireland) Order 1995

The Registrant pleaded guilty and was sentenced to a monetary penalty fine of £350.00, an Offender Levy of £15.00 and she was disqualified from driving for 1 year until tested.

**On 12 September 2013, the Registrant was convicted of the following offences at Belfast Magistrates Court:-**

- Charge 1: Defendant on 15/08/2013 in the County Court Division of Belfast and Newtownabbey while disqualified for holding or obtaining a driving licence, drove a motor vehicle on a road, contrary to Article 168A(1) of the Road Traffic (Northern Ireland) Order 1981
- Charge 2: Defendant on 15/08/2013 in the County Court Division of Belfast, used a motor vehicle, namely an Audi A4 VRM YH03 WBT on a road or other public place, namely, within the vicinity of BURLEIGH DRIVE, MIDDLE DIVISION, CARRICKEFERGUS, ANTRIM Northern Ireland BT38 8HW, without there being a 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
- Charge 3: Defendant on 15/08/2013 in the County Court Division of Belfast without having the consent of the owner of other lawful authority took a motor vehicle, namely, an Audi A4 VRM YH03 WBT for your own or another's use, contrary to Article 172 of the Road Traffic (Northern Ireland) Order 1981

The Registrant pleaded guilty to all of the charges and was disqualified from driving for 3 years in respect of Charge 1 and was sentenced to a Probation Order for 1 year and 6 months in respect of each of the three charges.'

The Statement was signed and dated by the Registrant.

Mr Dixon read the Statement to the Committee, and Mr McCormick confirmed that its contents were agreed by the Registrant. As appears from the Statement set out above, the Registrant accepted that she had pleaded guilty to, and had been convicted of, the four offences.

The Committee also received from Mr Dixon a bundle of documents which was marked Exhibit 2. The Committee agreed to admit this bundle into evidence after Mr McCormick indicated that he had no objections. Mr Dixon referred the Committee to the four certificates of conviction within the bundle. He also referred the Committee to the statements made by police officers at the time when the four offences were detected: Constable McVarnock, with regard to the March 2013 offence, and Constable Spence, with regard to the August 2013 offences.

Mr Dixon also referred the Committee to a letter which the Registrant sent to NISCC (dated 14 February 2014) commenting on the offences and the circumstances in which they were committed, and a letter from the Probation Board of Northern Ireland (dated 13 February 2014) which documented the Registrant's response to the Probation Order which had been imposed by the Court.

### **Finding of Facts**

The Legal Adviser advised the Committee in relation to Paragraph 11 (5) of Schedule 2 of the NISCC (Conduct) Rules 2014 which provides, inter alia, that a certificate of conviction of a UK Criminal Court shall be regarded as "conclusive proof of the facts or conviction so found."

Accordingly, having regard to the certificates of conviction contained within Exhibit 2, as well as the content of the Agreed Statement of Facts, the Committee was entirely satisfied that the facts contained in the charge set out above were proved to the requisite standard.

### **Misconduct**

The Registrant admitted through her representative that, by reason of her commission of the four criminal offences, she was guilty of misconduct. Nevertheless, the Committee was advised by the Legal Adviser that it was a matter for the Committee to determine, taking all of the evidence into account, whether misconduct had been proved by the Council.

Mr Dixon made a submission in relation to the issue of misconduct. He commenced by making the point that a Registrant's actions outside of the workplace can be taken into account by the Committee when determining whether there has been misconduct. He asserted that the Registrant's conduct fell below the standard to be expected of "ordinary citizens." He went on to say that higher standards were to be expected of registered social care workers because of the nature of their work, and that the Registrant's conduct had also departed from those standards. He referred the Committee to the fact that the Registrant had not merely committed one criminal offence, but she had disregarded the sentence of the Court which disqualified her from driving, and committed further criminal offences within a short period of time. He referred the Committee to section 5 of the NISCC Code

of Practice for Social Care Workers (September 2002) which provides that "as a social care worker, you must uphold public trust and confidence in social care services." He went on to suggest that provisions 5.7 and 5.8 of the Code were specifically infringed by the Registrant:

[5.7] [You must not] put yourself or other people at unnecessary risk; and

[5.8] [You must not] behave in a way, in work, or outside work, which would call into question your suitability to work in social care services."

The Legal Adviser referred the Committee to the definition of 'misconduct' contained within the interpretation section of the 2014 Rules. He advised the Committee that the onus was on the Council to prove that misconduct had occurred, and that while it was entirely permissible to take the Registrant's admission into account, this was only one factor. The Legal Adviser referred the Committee to the dicta of the Privy Council in the decision of *Roylance v GMC*, and he advised the Committee that it should consider all of the documents to which Mr Dixon had referred, including the particular provisions of the Code of Practice before reaching its conclusions.

The Committee considered very carefully the documents contained within Exhibit 2. It reviewed the submissions of Mr Dixon and the legal advice provided by the Legal Adviser. It paid particular attention to the provisions of section 5 of the Code of Practice and engaged in a thorough discussion on the issue.

The Committee was of the opinion that the Registrant had made entirely appropriate admissions with regard to misconduct. Furthermore, the Committee accepted Mr Dixon's submission that a registered social care worker is expected to conduct herself in accordance with the standards set out in the Code. The Committee found that the Registrant, by consuming alcohol and by driving her vehicle on the public highway, had put herself and other road users at risk, and that this plainly amounted to misconduct in contravention of the Code.

The Committee was particularly concerned that, notwithstanding her conviction for this offence and the resultant disqualification from driving, the Registrant took it upon herself to drive a vehicle whilst disqualified, without insurance and without the owner's consent, less than six months later. The Committee was of the view that such conduct is likely to have implications for public trust and confidence in those who provide social care services, and calls into question the Registrant's suitability to work in this field. The Committee is of the view that such conduct indicates a complete disregard for the legal process and is worthy of severe criticism.

Accordingly, the Committee was of the unanimous view that misconduct had been established. It was satisfied that the Registrant's conduct contravened provisions 5.7 and 5.8 of the Code.

## **Sanction**

The Committee received submissions from Mr Dixon in respect of sanction. He highlighted the fact that it was to the Registrant's credit that the misconduct occurred outside of the workplace and that no service user was affected. He also noted that the Registrant had co-operated with this process. However, he invited the Committee to regard this as a serious matter, given that the Registrant had committed four criminal offences. He

indicated that the Committee should be mindful that misconduct of this nature may be injurious of the reputation of the social care profession.

For his part, Mr McCormick submitted a reference on behalf of the Registrant from the mother of a disabled child, which spoke to the assistance provided by the Registrant on a voluntary basis. He also submitted a statement which set out some background to the circumstances in which the offences had been committed.

The Registrant opted to give evidence under oath. She explained to the Committee that she was extremely regretful for having engaged in such behaviour. She sought to reassure the Committee that she would not behave in that way again. She explained to the Committee that she was experiencing health problems at the time of the commission of the offences, although her representative later clarified that it was not being suggested that the existence of those health issues caused or contributed to the commission of the offences. The Registrant also detailed her work history to the Committee, and how she greatly valued her job. She stated that she hoped that her offending would not cause her to lose her job because, if that happened, it might have negative implications for two clients for whom she was the key worker.

The Committee received advice from the Legal Adviser with regard to the proper approach to sanction. In particular, the Legal Adviser reminded the Committee that the purpose of sanction is not punitive. The Committee was referred to Paragraph 25 (2) of Schedule 2 of the 2014 Rules which describes the factors that must be taken into account by a Committee when determining sanction: the seriousness of the misconduct; the protection of the public; the public interest in maintaining confidence in social care services and the issue of proportionality. The Committee was also referred to the Indicative Sanctions Guidance (April 2014), and to the particular guidance around proportionality, mitigating and aggravating factors, and the non-exhaustive list of factors relevant to each of the available sanctions. The Committee was referred to the available sanctions and reminded of the need to assess the appropriate sanction in ascending order of severity.

**Admonishment** – the Committee first considered whether it was appropriate to admonish the Registrant. The Committee noted and considered the factors set out at paragraph 4.10 of the Indicative Sanctions Guidance. It reminded itself of the circumstances in which the Registrant contravened the criminal law, and acknowledged that the Registrant's behaviour did not occur in the workplace and did not cause direct or indirect harm to service users. The Committee was also satisfied that prior to her recent offending, the Registrant had a good history and a good character: she had no prior driving convictions, and she had not come to the attention of Council. The Committee noted that she had worked for her current employer for seven years and appeared to be committed to her job as a key worker for two clients. The Committee was disappointed, however, that the Registrant had not produced a reference or a testimonial from her employer. Hence, it was deprived of any clear indication of how the Registrant is viewed by her employer.

The Committee found that it was a positive factor that the Registrant had pleaded guilty to the charges at the earliest opportunity at the Magistrates' Court, and had engaged constructively with the Council's procedures. It was noted that the Registrant had attended the Conduct Hearing and had given evidence under oath, and was

prepared to answer questions from the Committee. In her evidence, she revealed to the Committee a degree of insight into her offending behaviour, and apologised for her actions. To a degree, the Committee was reassured that the Registrant has taken steps to ensure that her offending behaviour would not be repeated, and in this respect the Committee noted her positive engagement with Probation services.

However, it was the unanimous view of the Committee that the Registrant's behaviour was entirely unacceptable. The Committee has already expressed its concerns in this decision about the risk posed to other road users by the incident of "drink-driving" and the fact that she infringed the law once again within a short period of time. Such behaviour is inconsistent with the Code and must not occur again. The Committee heard evidence from the Registrant that she was suffering from ill health at the relevant time, but the Committee does not accept that this played any part in the commission of the offences. The Committee noted that the Registrant did not produce any medical evidence in respect of her health issues.

The Committee gave consideration to whether it would be appropriate to suspend the Registrant from the Register. The Committee took the view that this was a case which might well have warranted suspension, such was the seriousness of the offending, particularly the repetition of offending. However, the Committee was concerned that such an approach would have implications for the Registrant's continued employment and for her livelihood, and, on balance, has reached the conclusion that an admonishment would be appropriate in all of the circumstances. That said, the Committee wishes to emphasise that the Registrant's behaviour was so poor that this decision was finely balanced and one that was reached after thorough consideration and debate.

Accordingly, the Committee believes that it is appropriate to admonish the Registrant by directing that an admonishment be recorded against her entry in the Register for a period of five years. The Committee acknowledges that the period of five years is a departure from the three year "benchmark" referred to at paragraph 4.6 of the Indicative Sanctions Guidance, but this longer period is considered appropriate in order to mark the serious view which this Committee has taken of the misconduct.

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## **Legal Advice Given**

### **Misconduct**

You have heard from the Registrant's Representative, Mr McCormick, that she is content to admit that the facts that have been proved amounted to misconduct. Nevertheless, as our Chairman has indicated, it is a matter for you as a Committee to reach a view regardless of that admission, albeit of course that you can take that admission into account but it is a matter for you to reach a view as to whether misconduct has been established. The onus at all times is on the Council to prove that misconduct has been established.

In terms of the definition of misconduct then, the starting point is the interpretation section of the 2014 Conduct Rules at page 2 where you find that misconduct is defined as follows: It means 'conduct which calls into question the suitability of a Registrant to remain on the Register'. There has been some case law which has examined the

issue of misconduct, the often quoted case of *Roylance v the General Medical Council* is worth repeating here. The question was posed in that case: 'What is misconduct' and the guidance given by the Privy Council in that case is that: 'Misconduct is some act or omission which falls short of what is required in the circumstances'. It went on to say that: 'The standard of propriety may often be found by reference to the rules or standards ordinarily to be required to be applied or followed by someone in a particular profession'.

In this particular profession, the profession of social care working, Mr Dixon refers you to the Code of Practice and he says, and you should consider, section 5 of that Code and, in particular, sections 5.7 and 5.8. He makes it clear in his submission that actions outside of work can be taken into account when deciding whether there has been misconduct. He says that this is a criminal conviction case where the Court has found the Registrant guilty of four offences arising out of two separate incidents. He draws your attention to the fact that there is an element of repetition here, in that the Registrant committed a road traffic offence in March and committed further road traffic offences in August, a short period after the first offence, and he says that's a relevant consideration for you to take into account when deciding whether there has been misconduct.

He has drawn your attention in the course of his submission to a statement of a police constable, that is Constable McVarnock, at page 13 of the bundle and he drew your attention to the alleged conduct of the Registrant after she was arrested arising out of the March incident and he says, or he indicates that you should take into account that the Registrant was verbally abusive to police. I would caution you with regard to that. While that is certainly something which has been reported by a police constable, it is not something in respect of which the Registrant has been convicted. We don't know what her attitude to that matter would have been had it been brought to the attention of the Court and, as I say, there is no suggestion that she was obstructing a police officer or behaving in a disorderly fashion such as to incur the attention of the criminal law in that respect. So I would caution you when Mr Dixon says you should look at that, that is not part of the charging framework which is before you.

So in summary, the onus is on the Council to prove misconduct. You have an admission from the Registrant but it is a matter for you, taking into account the principles and the facts that I have outlined, whether misconduct is established to your satisfaction.

### **Remaining Under the Conduct Procedure**

When the Registrant, Ms Khan, gave evidence just before the break she explained to the Committee that she has had a number of health issues and those health issues flared up shortly after her detection for driving whilst unfit in March 2013 and she went on to give evidence that those health issues were still relevant and still affecting her when she committed the second tranche of offences in August 2013. Now, conscious of my role as the Legal Adviser, I had thought that that evidence was of some significance, particularly bearing in mind the Paragraph which you can find in Schedule 2 of the 2014 Conduct Rules. I would refer in particular to the heading: Procedure at the Hearing, Paragraph 8 (2) which provides:

"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, the Committee may adjourn in order to enable initial or further expert reports to be obtained."

Now, Ms Khan's evidence was not contradicted or challenged by the Council and it occurred to me that this may be a case that may have to be put through the Health Procedure, or at least to put it in a slightly different way, that this was a case in which the Committee would have to give consideration to putting the case through the Health Procedure. Now, I took the opportunity during the break of discussing these issues with each of the representatives and it was clear to all of us that this case had at one point been referred to the Conduct Committee via the Health Procedure and that referral was made on the 29th of April 2014. Following that part of the procedure for some months, a preliminary Hearing took place and at that Hearing the note of the record indicates that the Registrant, that is Ms Khan, made an application to bring the case out of the Health Procedure on the basis that she accepted that her health issues did not cause, or substantially contribute to, the misconduct that has been established already this morning. I brought those developments to the attention of the Committee in camera and I now understand that Mr McCormick is going to clarify how the Committee is to view the evidence given by Ms Khan with regard to her background of ill health and I would ask you, Mr McCormick, if you could, express specifically the question of whether it is your view on behalf of the Registrant, having taken her instructions, that the Health Procedure is either appropriate or inappropriate to this case.

## **Sanction**

The starting point, members of the Committee, is Schedule 2 and Paragraph 25, which you will find at page 51 of the 2014 Rules, NISCC Conduct Rules. They provide that upon a finding of misconduct the Committee may impose any one of three types of sanction: An admonishment; a Suspension Order or a Removal Order. When considering which sanction to apply you shall have regard to the factors or the principles set out in sub paragraph 2 of that Rule. You shall take into account the seriousness of the Registrant's misconduct, the protection of the public, the public interest in maintaining confidence in social care services, and the issue of proportionality.

It is quite clear, members of the Committee, that the case law in this area is telling us that a sanction should only be imposed to the extent that it is necessary, taking into account those kinds of factors, the seriousness of the misconduct, the protection of the public, etc. You should not impose a sanction to punish, that is not the point of sanction, the point of sanction is the four factors set out in sub paragraph 2 of the Rule. Therefore, it is necessary to take a proportionate approach. The principle of proportionality is described for you helpfully in the Indicative Sanctions publication, which each of you have access to, and you will find at page 4 of that document some comments in relation to proportionality. You will also want to look at page 7 and 8 of that document which deals with the question of mitigating and aggravating factors.

You have heard submissions from Mr Dixon on behalf of the Council, who has very fairly set out, if you like, what might be in the 'credit' column from the perspective of the Registrant. He draws attention to the fact that the misconduct did not occur in the workplace, he draws attention to the fact that no service user or client was

affected by the Registrant's misconduct, and he draws attention to the important fact that Ms Khan has presented herself here today and he might have added, I don't fault him for not adding this, that the Registrant has opted, unlike other Registrants, to give evidence under oath. She has expressed a degree of insight, she has expressed her embarrassment and distress at her misconduct and you will undoubtedly have regard to the nature of that evidence. She has also placed before you other mitigating factors in a statement which sets out the background to the offences and you will take into account, no doubt, the circumstances in which she found herself in March 2013 some distance from home, a taxi service not responding, and in an isolated area.

You will also take into account and give due weight to the health background, the background of ill health that she was experiencing through the spring and summer of 2013 and was causing her some difficulty at the time of the commission of both sets of offences and, in particular, the offences that occurred in August 2013.

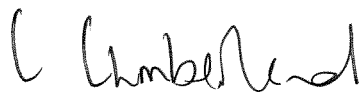
Finally, in order to ensure that you take a proportionate approach, it is necessary to examine the possible sanctions in ascending order of seriousness. So you should first of all study the applicability of an admonishment and only if you reach the view that an admonishment isn't appropriate should you move further up the scale, that is the commended approach and it is the approach that you should follow in order to respect the principle of proportionality.

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**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 you have been admonished and a record of the admonishment will be placed on your entry in the Register for a period of five years. This admonishment does not affect your ability to work in social care.**



Committee Manager



Date