

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

Name: Robert Ryan McCallion

SCR No: 6003664

NOTICE IS HEREBY GIVEN THAT the Conduct Committee of the Northern Ireland Social Care Council, at its meeting on **19 February 2015**, 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 employed as a Support Worker at Autism Initiatives at their Supported Housing Unit, Sperrin House, you committed the following offence:

1. Charge 1: Defendant on dates between 7th day of January 2014 and 12th day of March 2014 in the County Court Division of Ards stole money to the total value of approximately £1450.83 belonging to Autism Initiatives contrary to Section 1 of the Theft Act (Northern Ireland) 1969.

On 26 August 2014 you pleaded guilty and were convicted on 23 September 2014.

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

Preliminary Matters

Service

At the outset of the proceedings, Mr Dixon, solicitor on behalf of the Council, submitted that a Notice of Hearing was sent to the Registrant at his address as it appears on the Register. The Notice was sent by the Council on 21 January 2015 and was signed for the following day.

The Committee accepted the advice of the Legal Adviser, and was satisfied that service of the Notice of Hearing had been effected in accordance with Rule 3 and Paragraph 4 (2) of Schedule 2 of the NISCC (Conduct) Rules 2014 (the Rules).

Proceeding in the Absence of the Registrant

Subsequently, the Committee heard a submission from Mr Dixon to proceed to hear the case in the absence of the Registrant. He outlined that the case against the Registrant involved allegations of theft and dishonesty. He submitted that the Registrant had not requested an adjournment, and there was no suggestion that the Registrant would attend a rescheduled hearing in the future. Mr Dixon argued that it was in the public interest to proceed to hear the case in the Registrant's absence.

The Committee accepted the advice of the Legal Adviser and paid careful attention to those factors outlined in the case of *R v Jones and Others* [2002] UKHL 5. The Legal Adviser reminded the Committee that it should approach the discretion of whether to proceed in the Registrant's absence with the utmost care and caution, and that the discretion was severely constrained. The Committee balanced the Registrant's right to attend the hearing together with the public interest and the interests of the Council to ensure that proceedings are dealt with fairly and expeditiously. The case against the Registrant involves serious allegations of theft and dishonesty. The Committee heard that the Registrant had signed an agreed Statement of Facts, which was returned to the solicitors acting on behalf of the Council, on the day before the hearing. The Registrant did not accompany the agreed Statement of Facts with any request for an adjournment of the hearing, either to attend in person or be represented before the Committee. The Committee, therefore, decided that, with knowledge or means of knowledge of the hearing, the Registrant had decided to voluntarily absent himself from attending. It also decided that the Registrant's interests were outweighed in the particular circumstances of the case, and determined that it was appropriate in the public interest and in the interests of justice that the case should proceed in the Registrant's absence. In deciding to proceed in this way, the Committee drew no adverse inference against the Registrant for his failure to attend the hearing, and reminded itself that the burden of proving the case against him rested with the Council.

Application to admit Hearing Bundle

Mr Dixon, on behalf of the Council, applied to admit a hearing bundle. This comprised a Certificate of Conviction and a letter from the PSNI, dated 09 June 2014, which gave some background to the circumstances in which the Registrant was convicted. The Committee accepted the advice of the Legal Adviser and decided to admit the hearing bundle under Paragraph 11 of the 2014 Conduct Rules.

Background

The background to this case was set out in an agreed Statement of Facts, which was signed by the Registrant on 16 February 2015. So far as material, the agreed Statement of Facts confirms the following:

1. The Registrant is registered on Part 2 of the Social Care Register as a Social Care Worker.

2. The Registrant was employed as a Support Worker with Autism Initiatives and based at their Supported Housing Unit, Sperrin House. The Registrant commenced employment at Sperrin House on 02 April 2012, and was appointed Acting Senior Support Worker in January 2014. The Registrant was dismissed on 17 April 2014 following a disciplinary investigation.
3. Sperrin House is a supported living service. The unit caters for three adults with Autism and Aspergers. The staff in the home provide 24 hour support.
4. Emma Gordon, Accounts Co-Ordinator in Autism Initiatives undertook an audit at Sperrin House on 12 March 2014 and identified a number of discrepancies.
5. Within the safe in Sperrin House, there is a tin for each of the service users. The money within the tin belongs to the service users and has been provided to them by their appointees, normally their family. The Registrant, as the Senior Support Worker within the service, would attend Autism Initiatives HQ to collect the service users' money and it was his responsibility to put the money in the appropriate safe tin and record that he had done so on the service users' financial records.
6. On 10 March 2014, the Registrant signed that he had lodged £550.00 in Service User A's safe tin. On 10 March 2014 the total in Service User A's safe tin should have been £600.83. When Ms Gordon checked Service User A's safe tin it was empty, and therefore £600.83 was missing and not accounted for. The Registrant had taken £600.83 from Service User A's safe tin.
7. On 14 March 2014, Ms Gordon was contacted by Glynn Crawford, who is a Support Worker in Sperrin House. Ms Crawford advised that she had been clearing out the Registrant's staff box within Sperrin House and found a gas bill along with a final reminder dated 04 March 2014. The final reminder was for £300.00. Ms Crawford advised that the Registrant had signed £100.00 out of each of the three service users' books in February to pay for the bill. The reminder letter dated March 2014 stated that the £300.00 was still owed. The Registrant had withdrawn £300.00 from the service users' finances to pay the gas bill, but had failed to do so. The Registrant had kept the £300.00.
8. On 08 January 2014, the Registrant lodged a cheque request for £550.00 for "personal allowance, household items, utility bills".
9. On 08 January 2014, the Registrant signed a "Cheque Received" sheet to confirm that he had received a cheque in the sum of £550.00.
10. During the audits on 13 March 2014 undertaken by Ms Gordon, she traced cheques written in the name of the Registrant, and identified that the cheque in the sum of £550.00 numbered 313317 was not lodged in the safe book at Sperrin House. The sum of £550.00 was therefore not accounted for. The Registrant had taken the £550.00.

The Registrant was interviewed by his employer at a disciplinary hearing in April 2014, and admitted taking the money belonging to service users. He explained that his father had been off work on sick leave and, as a result, their household income had fallen. The Registrant explained that he took money meant for service users at

Sperrin House to supplement his income, and that he intended to repay the money in full. The Committee was advised that Autism Initiatives reimbursed the service users, and referred the matter to the PSNI and the Northern Ireland Social Care Council. The Registrant stole a total of £1450.83 from his employer. He was subsequently prosecuted and was convicted on 23 September 2014 in respect of the following charge:

“Charge 1: Defendant on dates between 7th day of January 2014 and 12th day of March 2014 in the County Court Division of Ards stole money to the total value of approximately £1450.83 belonging to Autism Initiatives contrary to Section 1 of the Theft Act (Northern Ireland) 1969”.

The Registrant received a suspended sentence of imprisonment in respect of his conviction. The conviction formed the basis of the Charge in the NISCC proceedings. The Registrant further accepted the conviction in the agreed Statement of Facts and further agreed that his actions were dishonest.

Evidence

The evidence comprised the hearing bundle (C1) referred to above, and the agreed Statement of Facts (C2) referred to above.

Finding of Facts

The Committee considered the Certificate of Conviction and accepted the advice of the Legal Adviser. The Committee determined that the Certificate of Conviction was conclusive proof of the conviction so found in accordance with Paragraph 11 (5). The Committee also approved the Statement of Facts in accordance with Paragraph 18 (4).

Misconduct

The Committee heard a submission from Mr Dixon, on behalf of the Council, who argued that the Registrant's actions arising out of his conviction amounted to misconduct. He drew the Committee's attention to the fact that the Registrant took the money belonging to the service users in the course of his employment, and used the benefit of his employment to his advantage in accessing the money of vulnerable service users who were residing at the unit. He submitted that the theft occurred over a period of time and involved a substantial sum of money. He reminded the Committee that the Registrant's acceptance that he had acted dishonestly was evidence that his conduct fell far short of the standard to be expected of a social care worker.

The Committee accepted the advice of the Legal Adviser, who drew its attention to the definition of misconduct as provided for in the Rules, as “conduct which calls into question the suitability of a Registrant to remain on the Register”. In addition, the Committee reminded itself of the definition of misconduct provided by Lord Clyde in *Roylance v GMC*, as ‘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 further reminded itself that it must exercise its own independent judgement in deciding whether the Registrant has committed misconduct, and that it is not required to observe any burden or standard of proof.

The Committee noted the Registrant's acceptance, contained in the agreed Statement of Facts, that his actions were dishonest. The Registrant was employed in a position of responsibility and was entrusted with the safekeeping and proper management of monies belonging to vulnerable service users at the unit in question. The Registrant failed to discharge the responsibility entrusted to him, and used his position to access money, to which he was not entitled, for his own purposes. The Registrant's actions amounted to a breach of trust and were over a prolonged period. The Registrant appropriated a substantial sum of money which was reimbursed to the service users in question by Autism Initiatives. Notwithstanding this, the Registrant's actions had the potential to cause a financial loss to the vulnerable service users who were residing at Sperrin House. The Committee was satisfied that the Registrant's actions were a significant departure from the standard to be expected from a social care worker and were serious, such as to amount to misconduct.

The Committee also drew assistance from the applicable Code of Practice for Social Care Workers, and determined that the Registrant's actions breached the following provisions of the Code:

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;

2.4 Being reliable and dependable;

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:

3.8 Recognising and using responsibly the power that comes from your work with service users and carers.

Code 5: As a social care worker, you must uphold public trust and confidence in social care services. In particular you must not:

5.1 Abuse, neglect or harm service users, carers or colleagues;

5.2 Exploit service users, carers or colleagues in any way;

5.3 Abuse the trust of service users and carers or the access you have to personal information about them or to their property, home or workplace;

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

For all of the reasons given above, the Committee determined that the Registrant's actions were serious, and amounted to misconduct.

Sanction

The Committee heard a submission from Mr Dixon, on behalf of the Council, on the appropriate sanction to apply in this case. The Committee looked again at the available documentary material adduced during the hearing and paid careful attention to Mr Dixon's submission. He drew the Committee's attention to those factors which he argued were aggravating, and which suggested that the appropriate sanction should be at the more severe end of the spectrum. He argued that the Registrant, by his actions, had abused the trust placed in him by his employer, and vulnerable service users in his care. He contended that the vulnerable service users were placed at a risk of financial loss as a result of the Registrant's actions, and that this loss was only made good by the employer reimbursing the service users in question. Mr Dixon ended his submission by reminding the Committee that the Registrant had been convicted of stealing a substantial sum of money over a relatively prolonged period.

The Committee reminded itself that it was not required to adhere to any standard of proof. At the sanction stage, the Committee exercised its own independent judgement on the appropriate sanction to impose and applied a sanction which adequately protected the public. In so doing, the Committee recognised that it was not the function of these proceedings to punish the Registrant a second time for the same offence, but to protect the public and vulnerable service users, to maintain proper standards of conduct and behaviour, and to uphold the reputation of the social care workforce in general.

The Legal Adviser referred the Committee to Paragraph 25 (1) of Schedule 2 of the Conduct Rules which sets out the statutory disposals available. He reminded the Committee that, upon a finding of misconduct, it may: (a) admonish the Registrant and direct that a record of the admonishment should be placed upon his entry in the Register for a period of up to five years; or, (b) make an Order suspending the Registrant's registration for a period not exceeding two years (a Suspension Order); or, (c) make an Order for removal of the Registrant's registration from the Register (a Removal Order).

The Legal Adviser informed the Committee that, by virtue of Paragraph 25 (2), it was obliged to take into account the following factors in its determination on sanction, namely: (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 Legal Adviser referred the Committee to the NISCC Indicative Sanctions: Guidance for Conduct Committees document, and in particular to the following provisions:

Paragraph 2.5: 'the principle of proportionality requires that the consequences of the sanction which a Committee imposes must not be disproportionate to the harm from which the sanction is intended to protect the public and social service users. The interests of the public and social service users have to be weighed against those of the Registrant. There is a wider public interest to be served in the approach to sanctions. A Committee ought not to have only a particular client or client group in mind'.

Paragraph 2.6: 'A Committee must ensure that measures taken to limit the fundamental right to practise one's profession are no more than is necessary in all the circumstances'.

Paragraph 2.4: 'There is a duty on Conduct Committees to act fairly. What constitutes the standard of fairness in any proceedings is not fixed and may change over time and depends on the circumstances of each case'.

Paragraph 2.2: 'The public should have confidence that the NISCC, 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 work force in general is maintained. It is part of the NISCC's role to maintain the 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 NISCC agrees to abide by the Code of Practice for Social Care Workers'.

Paragraph 2.3: 'In serving the public interest, the primary purpose of sanctions is to ensure, firstly, that the social care worker does not have the opportunity to repeat the misconduct and secondly, to maintain the reputation of the profession'.

The Committee accepted the advice of the Legal Adviser.

Admonishment – the Committee first considered whether it was appropriate to impose an admonishment for a period of between one to five years in relation to this case. The Committee has already determined elsewhere that the Registrant's actions were serious, and represented a significant departure from the standards to be expected of a social care worker. The Registrant has admitted acting dishonestly in the context of his employment and, as such, the Committee was not of the view that the Registrant's behaviour was at the lower end of the spectrum of misconduct. For this reason, the Committee was not satisfied that an admonishment was an appropriate response to the misconduct made out against the Registrant.

Suspension – The Committee next turned to the question of whether it was appropriate to make a Suspension Order of up to two years in relation to this case. The Committee had no evidence that the Registrant had any insight into the gravity of his actions. The Committee considered that in the absence of remorse and insight, a real risk was posed of the Registrant repeating the behaviour, which resulted in the current proceedings against him. In the absence of any evidence provided by the Registrant, the Committee was unable to identify what training or remedial actions the Registrant could undertake to demonstrate that he would not act in a dishonest fashion in the future, and that he was remorseful for the behaviour which resulted in his conviction and the proceedings brought against him by the NISCC. Furthermore, having regard to the serious nature of a finding of dishonesty, and the absence of any evidence that the Registrant would be able to resolve the cause of the misconduct during the period of suspension, the Committee considered that it would be inappropriate to permit the Registrant to return to unrestricted practice once the period of suspension had been served.

Removal – the Committee has therefore decided to impose a Removal Order in this case. The Registrant has been found guilty of an offence in which he obtained monies for his own purposes from vulnerable service users in his care. The Committee was satisfied that the Registrant's actions amounted to an abuse of his position, and that his dishonest actions took place over a relatively long period of time. The Committee has already found that

the Registrant's actions were serious and amounted to a significant departure from the relevant professional standards set out in the Code of Practice for Social Care Workers. The Committee considered documentary material from the PSNI, which suggested that the Registrant's actions were caused as a result of a deteriorating situation at home, and where financial pressures became apparent once his father stopped working and went on to sick leave. It is a matter of considerable regret to the Committee that the Registrant did not give oral evidence to explain his actions and to demonstrate insight and remorse for his behaviour. In the absence of insight, and a clear and unequivocal commitment by the Registrant that the behaviour complained of would not be repeated in the future, the Committee had no basis upon which to consider a less severe sanction in order to properly protect the public and vulnerable service users, and to declare and uphold proper standards of conduct and behaviour. The Committee reminded itself of the guidance given by the courts in the case of *Parkinson v NMC* [2010] EWHC 1898 and considered that this case was of particular relevance in the context of this Registrant who had decided not to attend the hearing. There was no acknowledgement from him that his actions were unacceptable and an undertaking that such actions would not be repeated in the future. The Committee was satisfied that the Registrant's behaviour is fundamentally incompatible with continued registration as a social care worker, and that the only appropriate sanction which will adequately protect the public in this case, is a Removal Order.

An application was made by Mr Dixon at the conclusion of the proceedings to revoke the Interim Suspension Order currently in place in this case. The Committee was previously unaware that an Interim Suspension Order had been made in respect of the Registrant, and the Committee decided to revoke the Interim Suspension Order previously imposed, in accordance with Paragraph 25 (1) (d) of the Rules.

Legal Advice Given

Service

I can now provide you with advice on the question of whether service of the Notice of Hearing has been effected in accordance with the Rules and I am happy to do that now. It is governed by Rule 3 and Paragraph 4 of the second Schedule of the Conduct Rules 2014. In relation to Paragraph 4, it makes it clear that, by virtue of sub paragraph 2, 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. Absent the agreement of the Registrant in this case, therefore, the operative date is for no date earlier than 28 days after the posting of the Notice of Hearing.

You have heard from Mr Dixon, and I can also confirm for you, that the Notice of Hearing in this case was dated 21st of January and therefore applying that Rule, the hearing has not been convened for a date less than 28 days. Rule 3 of the 2014 Rules makes it clear that any reference to the sending of a Notice to any person is a reference to it being sent, in the case of a Registrant, to the Registrant's home address as it appears on the Register, or if the last known address differs from the address on the Register, then the Registrant's last known address. You have heard again from Mr Dixon that the Registrant was written to at his address as appears on the Register.

Finally, by virtue of Rule 3 (2), all communications to be sent for the purposes of the Rules, may be sent by registered post or by postal service, in which delivery is recorded, or by electronic mail to an electronic mail address notified by a Registrant to the Council, and all such communications shall be treated as having been served on the day after it was posted or mailed.

There is, of course, no onus on the Council to prove that the Registrant actually received the documentation, although you have heard from Mr Dixon that the documentation was in fact signed for, but it is fair to assume that the service of the documentation in this case was effected the day after posting, namely 22nd of January and therefore, in compliance with Rule 3 of the Rules and Paragraph 4 of the second Schedule, my advice to you is that service of the Notice of Hearing has in this case been effected in accordance with those Rules.

Proceeding in the Absence of the Registrant

Of course this is an experienced panel, no doubt you will retire with your colleagues on the discreet question of proceeding in the absence of this Registrant, which the case law makes clear you should do. But in any event, you must address now the discreet question of the exercise of your discretion, having found that service has been effected in accordance with the Rules, nonetheless, as to whether you should proceed to hear and determine this case in the absence of the Registrant.

As the case law in this area has made clear, the discretion to proceed in the absence of a Registrant is one which should always be approached with the utmost care and caution and you have also, no doubt, heard in previous cases, but it is fruitful nonetheless to remind a Committee, that the discretion to proceed in the absence of a Registrant is a severely constrained discretion.

The Notice of Hearing, which I have seen, makes it clear that the Registrant is advised of the date, time and venue of this hearing, but it is also drawn to the Registrant's attention in compliance with Paragraph 4 (1) (f), that the Committee has a power to proceed in the absence of a Registrant at the hearing.

But you must approach this question judicially, you must exercise your discretion judicially and the case law has provided some useful guidance in relation to the proper balance which must be struck in deciding whether or not to proceed in the absence of a Registrant. That guidance was given by the Court of Appeal in the case of the R v Jones & Others and although dealing with an absent defendant in a criminal trial, the cases of Tate and Hayward make it clear that the factors identified by the Court of Appeal have application in the regulatory context applicable to this Council. The factors identified in the case of Jones, which are relevant on the question of the exercise of discretion in this area, are as follows:

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 a 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 if 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 interests of any victims or witnesses that a hearing should take place within a reasonable time of the events to which it relates.

Finally,

9. The effect of delay on the memories of witnesses.

So while it is clear that the Registrant has the right to a fair and proper hearing, the right to attend, the right to question witnesses and the right indeed to call witnesses of his own, if he so desires, there is also a competing interest, the interest of the regulator to ensure the fair and expeditious disposal of cases and the broader public interest in seeking to protect vulnerable service users and the public, together with the maintenance of the reputation of the regulator and also the declaring and upholding of proper standards of conduct and behaviour. Those are three elements which you must strike a balance in relation to. Each of them attaching such weight as you consider appropriate and you must, in that regard, have regard to those factors which I have sought to identify for you in the case law.

Admission of Evidence

Paragraph 11 permits the Conduct Committee to have a wide degree of latitude in relation to what evidence might be considered by it, subject only to the requirements of relevance and fairness. The document C1 obviously contains, as you have heard, a Certificate of Conviction and applying Paragraph 11, sub-paragraph 5, that Certificate of Conviction should be treated by you as conclusive proof of the conviction and the facts underlying the conviction. So my advice to you in relation to that document, is that it should be admitted under Paragraph 11 (5).

The other piece of evidence contained in the document, C1, is a letter from the Police Service of Northern Ireland dated 9th of June 2014 to the Council. It obviously is not of the same species of documentary material, but again you may admit that letter in relation to Paragraph 11 on grounds that it is obviously relevant and it is also fair because it does contain material which casts some light in relation to the background to this case, and I would therefore advise you that it is entirely proper to admit the Certificate under Paragraph 11 (5), and the letter from the PSNI under 11 (1).

Misconduct

Before you retire now at the second stage of the proceedings in relation to this Registrant, Robert Ryan McCallion, I am required to give you some advice in relation to what you and your colleagues can properly

consider. I should have indicated that when you earlier decided to proceed in the absence of the Registrant, to remind you that you and your colleagues should draw no adverse inference against the Registrant in that regard. He has obviously decided, for reasons known to himself, not to attend and you must obviously not weigh that, as it were, in the balance against him. Notwithstanding that, you have also heard from me in relation to the provisions under the Conduct Rules which govern the admission of Certificates of Conviction as conclusive proof, not only of the conviction but also evidence of the facts underlying the conviction, and I am now only required at this stage to provide you and your colleagues with advice in relation to the question of misconduct.

Under the 2014 Conduct Rules misconduct is defined in the Rules at page 2 as 'conduct which calls into question the suitability of a Registrant to remain on the Register'. There is also some helpful guidance in the case law in relation to a definition of misconduct as most healthcare regulators avoid the requirement to define it in practical terms, but the case of *Roylance v the General Medical Council* is seen as the seminal case in this area touching the question of misconduct. In that case, Lord Clyde, who provided the leading speech in the case, described the meaning of misconduct as involving a separate concept and he stated this:

"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."

Although, *Roylance* involved the referral of a doctor in relation to serious professional misconduct, the case, nonetheless, in relation to misconduct and its attempt to define the concept, is of a use universally and has been recognised as being of assistance in relation to cases brought before Conduct Committees by this Council.

You should also remember that the Rules remind you that in relation to trying to determine whether misconduct has been made out or not, you are reminded that you should have regard to the applicable standards of conduct and, in relation to that, I would refer you to Paragraph 23, sub paragraph 3 which states that 'in deciding upon the issue of misconduct, the Committee shall have regard to the Code of Practice issued by the Council', and you have already heard a submission, in that regard, from Mr Dixon in relation to those portions of the Code which he says are engaged by reference to the Registrant's conviction, which forms the charge in this case.

I should also finally remind you that under the 2014 Rules there is no requirement for you to adhere to any standard of proof. You must exercise your judgment in collaboration with your colleagues on the question of whether misconduct has been made out in this case. It does not require to be proved to any standard.

Sanction

Before you retire now to consider the third and final stage of the proceedings in respect of this Registrant, Robert Ryan McCallion, I am required to give you some advice in relation to those matters which you may properly take account of at this point in time.

I would refer you, in that regard, to the Indicative Sanctions Guidance document, the applicable document in these proceedings is that issued by the Council in April 2014. You must remember that the Indicative Sanctions

Guidance document is exactly what it says; it is a guidance document and no more. It is of course for you to exercise your judgment in relation to what you believe is the most appropriate sanction to apply in this particular case, because obviously only you have looked at the available evidence, the documentary evidence in this case, and you must decide the case on that basis.

The Indicative Sanctions Guidance document makes it clear that the primary purpose in relation to the application of a sanction is to uphold the public interest, and as Paragraph 2.2 of the document makes clear, it states:

"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 workers 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 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'.

You must also remember that there is a duty upon you to act fairly, and what constitutes the standards of fairness in any proceedings is not fixed and may change over time and depends on the circumstances of each case. So you must look carefully at the available evidence in relation to this case.

You must also act in a proportionate fashion and Paragraph 2.5 explains that the principal of proportionality requires that the consequences of a sanction which you impose must not be disproportionate to the harm from which the sanction is intended to protect the public and social service users. The interests of the public and social service users have to be weighed against those of the Registrant. There is a wider public interest to be served in the approach to sanctions. You should not have only a particular client or client group in mind.

You have heard nothing from the Registrant in this case, and you must look with anxious scrutiny at any available documentary material submitted either by the Registrant himself, or more appropriately perhaps, any other source material which may seek to explain and to put into context the Registrant's actions in this case. In that regard you may derive some assistance from the letter from the PSNI which is contained in the C1 hearing bundle which has previously been admitted in evidence in this case.

You must approach this case looking at the least restrictive sanction, that is to say the question of admonishment. That is the first port of call that you must look at. Only if you are not satisfied that such a sanction would not adequately protect the public should you move to the next available and more restrictive sanction, and then again you should only move to the most restrictive sanction, that is to say the most severe sanction of removal if you are not satisfied that the public would be adequately protected by applying a less restrictive sanction. You must therefore approach your task by adopting what has been referred to as the bottom upwards approach in relation to the question of sanction.

Before you undertake that task, it may be relevant to look at the mitigating and aggravating factors in the case and a non-exhaustive list of those factors to be taken into account is helpfully provided for you by the Council at Paragraphs 3.2 with regard to mitigating factors, and 3.3 with regard to aggravating factors. You have already

heard a submission from Mr Dixon, on behalf of the Council, and he has taken you to Paragraphs 5.10 through to 5.13 of the Indicative Sanctions Guidance document which deals with dishonesty, and you have also heard from him a passage from the well-rehearsed case of Parkinson v NMC, which deals with questions of dishonesty and, more particularly, cases where a Registrant neither appears before the Committee in a dishonesty case and/or is represented. I don't seek to rehearse that particular passage of Mr Justice Mitting's decision in Parkinson again, unless you, of course, wish me to do so.

I would finally refer you to the case of Ziederman v the General Dental Council, an old case from 1976, which nonetheless bears repeating, in which it is said: 'In considering matters of conviction, it is proper for the Committee in determining sanction to have regard to the nature and gravity of the criminal offence in question and the extent to which the fact that the offence has been committed by a practising healthcare professional is likely to bring the profession into disrepute or undermine public confidence in the profession'.

Then you should also refer to the case of Crabby v General Medical Council which makes clear that the weight of such consideration is for you and your colleagues to judge.

Decision to Revoke Interim Suspension Order

Yes, you have power at this stage in the proceedings to do that. Now that you have imposed a Removal Order in this case, the requirement for an Interim Suspension Order falls away. Therefore my advice to you is that the Interim Suspension Order can, and should, be revoked with immediate effect and that that should be reflected in the written decision.

Right of Appeal

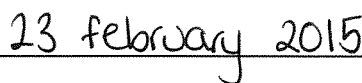
You have the right to appeal this decision to the Care Tribunal. Any appeal must be lodged in writing within 28 days from the date of this Notice of Decision.

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 it would be an offence for you to work as a social worker.



Clerk to the Conduct Committee



Date