

Notice of Decision of the Northern Ireland Social Care Council's Fitness to Practise Committee

Name: Martin Daniel Linton

SCR No: 6008388

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **27 July** and **29 July 2016**, made the following decision about your registration with the Northern Ireland Social Care Council:

The Committee found the facts in Particulars 1, 2, 3 and 4 proved;

The Committee found that your actions as set out in Particulars 3 and 4 were dishonest;

The Committee did not find that your actions as set out in Particulars 1 and 2 were dishonest;

The Committee found that your fitness to practise is impaired by reason of your misconduct and a caution in the United Kingdom for a criminal offence;

The Committee decided to make an Order for removal of your registration from the Register ('a Removal Order').

Particulars of the Allegation:

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

1. On 19th May 2015, you received an Adult Caution from the Police Service of Northern Ireland after admitting theft to the sum of £1,360 from an employer.
2. On or around 18th December 2014, when asked by Crossroads regarding other employment, you failed to declare that you worked at Domino's Pizza.
3. At a meeting with Crossroads on 16th February 2015, you told your employer that the bank had lost money belonging to Domino's Pizza, when in fact you had made an admission to the Police Service of Northern Ireland on 30th January 2015 that you had committed theft of said money.
4. At an investigation meeting on 17th February 2015, you told your employer that you had misplaced money belonging to Domino's Pizza, when in fact you had made an admission to the Police Service of Northern Ireland on 30th January 2015 that you had committed theft of said money.

And your actions as set out at 1, 2, 3 and 4 above were dishonest.

And that by reason of the matters set out above, your fitness to practise is impaired because of your misconduct and a caution in the United Kingdom for a criminal offence.

Preliminary Matters

Service

Mr Linton was neither present nor represented at the hearing. The Northern Ireland Social Care Council ("the NISCC") was represented by Ms Louise Harvey, Case Presenter.

The Committee noted that the Notice of the Hearing, dated 28 June 2016, and other requisite documentation was sent to Mr Linton at his address as it appears on the Register. The Committee was satisfied that service of the proceedings had been effected in accordance with Rule 3 and Paragraph 5 (2) of Schedule 2 of the NISCC Fitness to Practise Rules 2016 ('the Rules').

Proceeding in the Absence of the Registrant

In considering whether or not it was fair and appropriate to proceed with the hearing in the absence of Mr Linton, the Committee considered and accepted the advice of the Legal Adviser. It also balanced Mr Linton's interests against the interests of the public and the NISCC.

The Committee was satisfied that Mr Linton had been properly served with the Notice of the Hearing, which had been sent to his registered address. There was no onus on the NISCC to show that Mr Linton had in fact received the Notice of Hearing. The Committee noted that the NISCC had received no contact from Mr Linton in any form following the service of the Notice of Hearing on 28 June 2016.

The Committee considered that Mr Linton was aware of the hearing and that he had decided to voluntarily absent himself. He had failed to engage in the regulatory proceedings against him. The Committee could see no good reason to adjourn the proceedings, and observed that Mr Linton had not requested that there be an adjournment to allow him to attend or be represented at a hearing at a later date. The Committee also noted the serious nature of the allegations, dating back to December 2014, faced by Mr Linton and the public interest in the expeditious disposal of this case. The Committee, therefore, resolved to hear the case in Mr Linton's absence.

Application to Admit Hearing Bundle

The Committee had before it a hearing bundle comprising pages 1 - 44. The Committee noted that the evidence contained in the bundle was directly relevant to the Particulars of the Allegation, and that it was fair and reasonable to admit the hearing bundle in accordance with Paragraph 12 of the Rules.

Background

The Committee met to consider the Particulars of the Allegation against Mr Linton, in which it was alleged that his fitness to practise was impaired by reason of:

- (i) Receiving a caution for theft of monies in the course of his employment in a job unconnected to his employment as a health care worker;

- (ii) Misconduct for failing to disclose to the employer, which employed him as a health care worker, that he worked in an unconnected job; and
- (iii) Misconduct for giving misleading information at two meetings to his employer, as a health care worker, as to the whereabouts of the stolen monies, and failing to disclose that he had in fact admitted stealing the monies on a previous occasion to police during a formal interview.

It was further alleged that, by his actions, Mr Linton had acted dishonestly.

The health care employer, Crossroads Caring for Carers ('Crossroads') employed Mr Linton as a care attendant, working with vulnerable adults and children, from 08 January 2015 until his resignation on 05 March 2015.

By way of a letter dated 06 February 2015, the Police Service of Northern Ireland ("the PSNI") advised Crossroads and the NISCC, under the applicable Notifiable Occupations Scheme, that Mr Linton had made a full admission to the police in connection with the theft of monies from another employer, unconnected to care work. Mr Linton was placed on a precautionary suspension on 16 February 2015 by Crossroads. He attended two meetings with the Human Resources Manager of Crossroads on 16 and 17 February 2015. He confirmed that he had been working for a fast food chain, Domino's Pizza, in addition to his duties as a health care worker, and that he had been given money by them to deposit at a bank. He gave various explanations for his actions in respect of the money entrusted to him by the fast food chain during these two meetings.

Subsequently, Mr Linton was required to attend a disciplinary meeting with Crossroads. Prior to the meeting, Mr Linton wrote a letter to Crossroads in which he confirmed his resignation from Crossroads with effect from 05 March 2015.

Crossroads referred Mr Linton, who is registered in Part 2 of the Register, to the NISCC on 06 March 2015.

Evidence

The Committee carefully considered the documentary evidence contained in the hearing bundle and heard oral evidence from Witness 1.

Finding of Facts

The Committee heard evidence at the fact finding stage from Witness 1, and heard a submission from Ms Harvey. The Committee accepted the advice of the Legal Adviser.

Particular 1: On 19th May 2015, you received an Adult Caution from the Police Service of Northern Ireland after admitting theft to the sum of £1,360 from an employer – proved.

The Committee had regard to two letters from the PSNI to the NISCC on 05 February and 22 May 2015, in which it was confirmed that Mr Linton made a full admission to the theft of monies belonging to an employer in the sum of £1360, and had received an Adult Caution for this on 19 May 2015. The Committee was satisfied that this evidence was reliable. It confirmed that Mr Linton, in connection with his employment with Domino's Pizza, failed

on five occasions to lodge monies belonging to them in the sum of £1360 on various dates between 03 December 2014 and 11 January 2015.

Particular 2: On or around 18th December 2014, when asked by Crossroads regarding other employment, you failed to declare that you worked at Domino's Pizza – proved.

The Committee had regard to Mr Linton's application for a position as a Care Attendant with Crossroads, which was completed in May 2014. In the "Employment History" section, Mr Linton confirmed that he held a position as a Care Assistant at Larne Care Centre. The application form made clear that it was essential for the applicant to provide a full employment history and that any gaps in employment should be accounted for. On 18 December 2014, Mr Linton telephoned Crossroads in order to arrange an induction course prior to taking up his position. He was asked by the Human Resources Department of Crossroads on that date whether he had had any further employment since completing his application form in May 2014. Mr Linton stated that Larne Care Centre was his most recent employer and that he had not worked anywhere else since his application. This was a materially false statement. In a meeting with Witness 1 on 17 February 2015, Mr Linton admitted that, contrary to his previous assertion, he had been working for Domino's Pizza from September 2014 to January 2015. The Committee considered the documentary record of the telephone call on 18 December 2015 between Mr Linton and the Human Resources Department of Crossroads. The Committee also considered the statement from Witness 1, which documented Mr Linton's admission of his employment with Domino's Pizza, which was contained in the Hearing Bundle. The Committee also had regard to Witness 1's evidence before it on this issue. The Committee was satisfied that this evidence, taken together, was credible and reliable such as to find the allegation proved.

Particular 3: At a meeting with Crossroads on 16th February 2015, you told your employer that the bank had lost money belonging to Domino's Pizza, when in fact you had made an admission to the Police Service of Northern Ireland on 30th January 2015 that you had committed theft of said money - proved.

Particular 4: At an investigation meeting on 17th February 2015, you told your employer that you had misplaced money belonging to Domino's Pizza, when in fact you had made an admission to the Police Service of Northern Ireland on 30th January 2015 that you had committed theft of said money – proved.

The Committee considered Particulars 3 and 4 together. The Committee noted that an Investigation Report, prepared by Crossroads, documented Mr Linton's explanations for his actions, in respect of the money entrusted to him, in two meetings with Witness 1 on 16 and 17 February 2015. In the first meeting, he claimed the money had been lost by the bank, but that it had since been found by the bank and that no action would be taken against him. In the second meeting the following day, Mr Linton explained that the money had been misplaced by him while working in Domino's Pizza and that the incident had been reported to the police. He asserted that he had paid the money back with added compensation and that, as a result, no action would be taken against him by the police. The Committee considered the documentary record of the Investigation Report, and the documentary record of the meeting with Mr Linton on 17 February 2015 compiled by Crossroads, and found this

documentation to be reliable. The Committee also placed reliance upon a letter from the PSNI to the NISCC, dated 22 May 2015, which confirmed that on 30 January 2015, Mr Linton was interviewed and made a full admission in respect of theft of monies from Domino's Pizza. The Committee similarly found this document to be credible and reliable.

The Committee then turned to address whether by his actions as proved in Particulars 1,2 3 and 4, Mr Linton had acted dishonestly.

The Committee was not satisfied that Mr Linton had acted dishonestly in receiving an Adult Caution from the PSNI.

The Committee next considered whether Mr Linton had acted dishonestly on 18 December 2014, in his telephone call with Crossroads, by failing to declare at the time that he worked for Domino's Pizza.

The Committee was prepared to accept that Mr Linton, by the standards of reasonable and honest social care workers, was under a duty to be open and honest and to disclose relevant matters which might affect his ongoing registration. However, the Committee was not satisfied, on the balance of probabilities, that Mr Linton realised that his failure to disclose to Crossroads on 18 December 2014 that he worked for Domino's Pizza was a dishonest act on his part by those standards. In the Committee's judgement, Mr Linton was prompted to telephone Crossroads on 18 December 2014, on receipt of their letter to him dated 15 December 2014, in which he was advised that his application for employment was withdrawn. Mr Linton's motivation, in the assessment of the Committee, in making this telephone call was to arrange his induction programme with Crossroads. For these reasons, the Committee was not satisfied that Mr Linton had acted dishonestly in respect of Particulars 1 and 2.

The Committee then addressed the issue regarding whether Mr Linton had acted dishonestly in respect of Particulars 3 and 4. The Committee had no hesitation in being satisfied that dishonesty was proved in respect of these particulars, having regard to the documentary evidence referred to above. The evidence established that Mr Linton had made a full admission to the police during an interview on 30 January 2015 in respect of the theft of monies from Domino's Pizza, and had knowingly provided dishonest accounts of his actions to Crossroads in two meetings held with him on 16 and 17 February 2015. The Committee accepted the evidence of Witness 1 in this regard, who characterised Mr Linton's conduct during the two meetings as "purposely dishonest". For these reasons, the Committee found proved that Mr Linton had acted dishonestly in respect of Particulars 3 and 4.

Fitness to Practise

The Committee heard a submission from Ms Harvey on the question of current impairment. The Committee received and accepted the advice of the Legal Adviser.

The Committee was satisfied that Mr Linton had received an Adult Caution from the PSNI on 19 May 2015 from the relevant documentation contained in the hearing bundle, referred to above. The Committee noted that Mr

Linton had received a Caution for stealing money from Domino's Pizza, while in a position of trust over a prolonged period. This conduct, in the Committee's judgement, was reprehensible and serious.

The Committee was satisfied that in failing to declare other employment to his health care employer, and giving varying accounts to his employer concerning his handling of Domino's bank lodgements on two formal occasions, Mr Linton's actions fell below the proper standards to be expected of a reasonable health care worker in the circumstances. Mr Linton's actions were serious and represented a fundamental failing, on his part, to be open and honest. Employers require social care workers who have responsibility for vulnerable adults and children to bring immediately to their attention any issue which may impact upon their employment, or in respect of the safety and security of vulnerable service users in their care. The Committee determined that Mr Linton had shown complete disregard for this basic principle in the social care setting.

The Committee considered, in light of the above, that Mr Linton had breached the NISCC Codes of Practice for Social Care Workers, September 2002 (as it applied during the time of the behaviour complained of):

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;
- 2.2 Communicating in an appropriate, open, accurate and straightforward way.

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

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

The Committee considered that the facts found proved, and in particular a finding of dishonesty, were difficult to remedy. Mr Linton had stolen money entrusted to him by another on five occasions, and had dishonestly attempted to create a false impression by giving Crossroads differing and untruthful accounts of his actions. The Committee concluded that his actions in this regard were calculated to deflect and minimise his wrongdoing. The Committee was prepared to accept that, while difficult, such behaviour could be capable of remedy, but noted in this case that Mr Linton had chosen not to engage at any stage in the regulatory process. The Committee observed that Mr Linton had taken no steps to remedy his conduct, save for confirmation from the PSNI that he had paid the stolen money back in full. The Committee attached some weight to this fact. However, Mr Linton's efforts to make good his theft by repaying the money taken were counterbalanced heavily by his failure to engage in the regulatory process. He had also failed to provide any evidence to demonstrate his insight and any remedial behaviour for his conduct and dishonesty. For the same reasons, the Committee was satisfied, in the absence of insight or remedial action taken by him, that there was an ongoing risk that Mr Linton would repeat, in the future, the conduct which has resulted in these proceedings against him.

The Committee considered the guidance given by Dame Janet Smith in her Fifth Report to the Shipman Inquiry (cited with approval by Cox J in the case of *CHRE v NMC and Grant* [2011] EWHC 927 (Admin)) and determined that the following tests were engaged in this case, in that Mr Linton:

- a) [The Committee considered that this test was not engaged in this case];
- b) Has in the past brought and is liable in the future to bring the social care profession into disrepute; and
- c) Has in the past breached and is liable in the future to breach one of the fundamental tenets of the social care profession; and
- d) Has in the past acted dishonestly and is liable to act dishonestly in the future.

Finally, having regard to its findings as set out above, the Committee was in no doubt that compelling reasons existed for a finding, in this case, of current impairment on public interest grounds. While there was no evidence that any actual or potential harm was caused to vulnerable service users in his care, Mr Linton had acted in a deliberate and dishonest manner. The Committee considered that failing to find Mr Linton's fitness to practise to be currently impaired on public interest grounds would undermine the need to protect vulnerable service users, declare and uphold proper standards of behaviour and maintain public confidence in the social care profession.

For the reasons given above, the Committee concluded that Mr Linton's fitness to practise is impaired by reason of his misconduct and receiving an adult caution from the PSNI.

Sanction

The Committee heard a submission from Ms Harvey on the question of sanction. The Committee received and accepted the advice of the Legal Adviser.

The Committee was informed that Mr Linton had no previous regulatory findings against him.

The Committee had regard to the NISCC Indicative Sanctions Guidance document (issued May 2016) and paid attention to those paragraphs dealing with dishonesty at Paragraphs 5.1 and 5.10 to 5.13. The Committee had regard to the principle of proportionality and the need to balance the public interest against Mr Linton's interests. The Committee was also mindful that the purpose of any sanction was not to be punitive but designed to protect members of the public, maintain public confidence in the profession and NISCC, and to declare and uphold proper standards of conduct and performance.

When considering the appropriate sanction to apply, the Committee considered the aggravating and mitigating factors in the case.

The Committee took into account, as a mitigating factor, that Mr Linton had a previous good history.

The Committee took into account, as aggravating factors, the following:

- Mr Linton had acted dishonestly. He had contravened the trust placed in him over a prolonged period by a third party, and acted in a deliberate manner in taking money which did not belong to him. He had sought to conceal his wrongdoing. He had expressed no remorse for his actions and demonstrated no insight; and

- Mr Linton had failed to co-operate in the NISCC investigation into his actions.

Warning – In light of its findings of fact and its determination that he posed an ongoing risk of repeating the behaviour complained of in the future, the Committee was satisfied that it would be inappropriate to issue him with a warning. The Committee noted that applying a warning as a sanction would entitle a Registrant to practise unrestricted. The Committee considered that the public would not be adequately protected if it concluded this case with a warning.

Conditions of Practice Order – The Committee reminded itself that Mr Linton had stolen money belonging to another on a number of occasions, over a prolonged period, and had acted dishonestly. He had chosen, for his own reasons, not to engage in the regulatory process and had demonstrated no insight into his wrongdoing. The Committee, in these circumstances, could formulate no workable, enforceable or verifiable conditions which would address the misconduct and dishonesty proved in this case, which would adequately protect the public.

Suspension – The Committee noted that it had made findings, at the fact and impairment stage of the proceedings, which were of a very serious nature and which touched upon Mr Linton's failure to adhere to the basic and fundamental responsibilities resting upon a social care worker which the public rightly expect. Those responsibilities require a social care worker to be open and honest. Mr Linton had failed to discharge this fundamental duty and had failed to acknowledge any of his failings. Mr Linton had acted in a seriously reprehensible manner. The Committee had no evidence that Mr Linton had any insight into this behaviour. In addition, the Committee had no evidence from Mr Linton that he would be unlikely to repeat the behaviour complained of in the future. Given the serious nature of the findings against him, the Committee decided that the public would not be adequately protected, and it would not be proportionate to impose a Suspension Order in this case.

Removal – The Committee, therefore, decided that the only appropriate and proportionate sanction to apply in this case was a Removal Order. Mr Linton had acted in a manner which was fundamentally incompatible with his entitlement to remain on the Register. His actions amounted to a serious departure from the standards to be expected from the social care profession. He had engaged in a pattern of behaviour over a prolonged period in which he abused the trust reposed in him by another, and had sought, subsequently, to cover up his actions by giving varying and untruthful accounts of his actions in handling monies which he had in fact stolen. He had shown a blatant disregard for the standards expected of the social care workforce and had evidenced no insight or remedial action to the Committee. For these reasons, and in order to declare and uphold proper standards of conduct and performance, and in order to protect the public from the ongoing risk posed by Mr Linton, the Committee resolved to remove him from the Register with immediate effect

Legal Advice Given

Service:

Obviously you are no doubt at liberty to look at this documentation as well, but I can confirm for you and your

colleagues that I have, with the assistance of the Committee Clerk, seen the letter of 28th of June referred to by Ms Harvey in her submission and also a copy of the relevant track and trace documentation which confirms that the document, the Notice of Hearing, was sent by NISCC on 28th of June and was signed for the following day, 29th of June. As Ms Harvey has rightly pointed, the issue of service of the proceedings is governed by virtue of Rule 3 and Schedule 2, Paragraph 5 (2) of the Northern Ireland Social Care Council (Fitness to Practise) Rules 2016.

Turning first of all to Paragraph 5 (2), it makes clear that the Registrant is entitled to be advised of the date, time and venue of the Hearing and the Particulars of the Allegation are also to be set out and the paragraph 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 Registrant's agreement. Rule 3, in terms of service of documents, makes clear that in relation to the address to which the documentation is to be served in the case of the Registrant, that that should be 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 and that any Notice shall be treated as having been served on the day after it was posted. So in this case the Rules will presumptively establish that these proceedings were served on 29th of June and that the Hearing date should not be fixed for a date any earlier than 28 days after that. I don't have a calendar, I am afraid, in front of me at the moment but I am making a reasonable assumption that today's date is no earlier than 28 days from 29th of June. Ms Harvey is nodding in agreement so on that basis, for assistance, I can advise you that it is safe to determine that service of the proceedings has been effected in this case in accordance with the Rules.

Proceeding in absence

I propose to give you hopefully some very brief advice, after which I would invite you to retire and to decide in the exercise of your discretion whether it would be appropriate in the circumstances of this case, having heard the submission from the Social Care Council, to proceed in the absence of Mr Linton.

It is first of all important to note the general principles that a Registrant who is facing a fitness to practise allegation has the right to be present and to be represented at a Hearing. However, the procedural rules for the Hearing provides that if a Registrant is neither present nor represented that you 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 must remember that the decision to proceed with the Hearing in the Registrant's absence is a matter within the discretion of the Committee. The discretion, however, is one which has been described by the courts as "severely constrained" and as the House of Lords held in the leading case in *R v Jones* the discretion to commence and conduct proceedings in the absence of a Registrant should be exercised with the utmost care and caution.

In exercising your discretion, you must strike a careful balance between the fairness to the Registrant and the wider public interest. You must consider all the circumstances of the case and you must consider whether the

Registrant's actions amount to a waiver of the right to be present or represented. You should in reaching your decision take account of the factors identified by the Court of Appeal in the case of the *R v Jones* and whilst that case concerned the absence of a criminal defendant the factors identified in that case are relevant to fitness to practise proceedings.

The factors have been enunciated by Ms Harvey and unless you wish me to do so I don't intend to repeat them. They are the guidance given by the Court of Appeal with particular regard to the facts of this case. If the Registrant, as is clear here, has failed to attend the Hearing and has not on the face of it provided any explanation for being absent then you will need to determine whether it is appropriate to proceed in his absence.

You must also remember that should you decide to proceed in the absence of the Registrant you must ensure that the Hearing, thereafter, is as fair as circumstances permit and reasonable steps must be taken during the giving of evidence to test the Social Care Council's case and to make such points on behalf of the Registrant as the evidence permits. You must also avoid reaching any improper conclusion about the absence of the Registrant and, in particular, you must not treat his absence as an admission that any allegation is well founded.

So unless you have any questions for me these are any representations upon my advice, that would conclude my advice to you at this stage.

Finding of facts

If it is appropriate, at this stage, I am now able to give you some advice in relation to those matters which you and your colleagues can properly take into account at this, the fact finding stage, of the proceedings against Martin Daniel Linton.

As Ms Harvey has rightly pointed out Paragraph 13 of the second Schedule of the Fitness to Practise Rules makes clear that the burden of proof to prove the facts alleged, in the allegations, shall rest upon the Council and the standard of proof shall be the balance of probabilities. First of all as I have already explained to you at the proceeding in absence stage, the Registrant is not here and that should add nothing at all to the Council's case, nor should you infer anything against the Registrant in relation to any fact that is in dispute by his non-attendance. It is of course for the Council to prove the case, the Council has brought the case and it must prove the case. The Registrant, absent or otherwise, does not have to prove his innocence.

The standard of proof as made clear is the civil standard, the balance of probabilities, and in that context guidance was given by the House of Lords in the 1996 case in relation to the balance of probabilities in which it was made clear that the balance of probabilities is, a fact is proved on the balance of probabilities if a tribunal is satisfied that on the evidence that the occurrence of the event is more likely than not, it does not require the tribunal to be certain that an event occurred. The House of Lords in a further case in 2008, two further cases in 2008 sought to further clarify the application of the civil standard of proof and these decisions make clear that there is only one civil standard of proof, the balance of probabilities, and neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied.

Although it is recognised in some cases, the tribunal has to look at the facts more critically or more anxiously than in others before it could be satisfied to the requisite standard. The standard itself is however finite and unvarying, situations which might make heightened examination necessary may be the inherent unlikelihood of the occurrence taking place, the seriousness of the allegation to be proved or in some cases the consequences which could flow from acceptance of proof to the relevant fact. But the seriousness of the allegation, nor the consequences which might flow from the finding makes no requirement that there is a higher standard or a varying standard, it is finite and unvarying.

In relation then to the question of the allegation, the allegation is particularised in four ways and of course you must bring your judgment to bear applying the civil standard in relation to whether those particulars are proved or not by addressing each particular sequentially. You have heard evidence from Witness 1 in that regard and of course you no doubt will pay careful regard to the Hearing bundle adduced in evidence before you. The only thing which I would say about the allegations in relation to the particulars set out at number 2 is that it pleads a failure on the part of Mr Linton to make a declaration to Crossroads. A failure must require there to be a pre-existing duty to disclose and you have already sought to examine that issue in the questioning of the witness. You must look at the extent, if any, to which there was a duty and decide thereafter whether there has been a failure to make a declaration in accordance with that duty.

The other matters are plainly more factual and of course you have heard evidence and read evidence in that regard. You are also in this case not presented with any certificate or memorandum which confirms the existence of an Adult Caution. You may be familiar in cases which are pleaded in relation to a conviction where fitness to practise has been alleged to be impaired by reason of a conviction, that it is almost a procedural requirement now for a Certificate of Conviction to be adduced in evidence in relation to the proceedings. You have not been provided with such a Certificate or memorandum in relation to the caution. I would echo what Ms Harvey had said to you in relation to the status of a caution and make it clear that they are treated as an offence brought to justice, they are a discretionary and non-statutory means of disposing of offences without the need for an offender to be required to appear before a court and the general principles to be drawn from a caution is that they can and should only be administered, first where there is evidence of guilt which is sufficient to provide a realistic prospect of conviction and, second, where the offender makes a clear and reliable admission of the offence and that, third, the offender understands the significance of and gives informed consent to accepting the caution. You will have to look very carefully at the available documentary evidence which seeks to prove impairment by reason of conviction which is contained in the letter to which reference has been made at page 38 of your bundle.

In this case you must also look at dishonesty. You have heard from Ms Harvey in that regard and you must establish whether dishonesty is proved as a fact in relation to the Particulars set out through 1, 2, 3 and 4. A recent case in 2016 has approved of the approach in relation to dishonesty now and in addressing the question you must consider whether on the balance of probabilities the Registrant acted dishonestly by the standards of reasonable and honest social care workers. That is a matter which you and your colleagues must bring a

judgment to bear upon having regard to your understanding of standards which reasonable and honest social care workers and perhaps invisibly the public at large would expect to adhere to. If you are satisfied that he did act in that dishonest fashion, and only if you are satisfied, you must then consider whether on the balance of probabilities the Registrant himself realised that what he was doing was by those standards dishonest. That requires you to assess the evidence which you have heard and read to establish his state of mind and whether you are satisfied it is more likely than not that in acting as he did he must, sorry that he did realise that what he was doing was by those standards dishonest. So, if and only if you answered both of those questions in the affirmative can you find dishonesty to be proved in relation to one or any of the particulars set out from 1, 2, 3 and 4.

You must also have regard to all of the available documentary evidence in that regard and to carefully weigh up the oral evidence which you have heard and you must apply the civil standard as I have described it to you in relation to your findings and you also must of course give reasons for your decisions either to find a particular fact proved or not proved as the case may be.

So, unless you have any questions for me, or unless there are any representations upon my advice, that would conclude my advice to you at this stage.

Impairment

Before you retire to consider this, the impairment stage of the proceedings in respect of Martin Daniel Linton, I am required to give you some brief advice in relation to those matters which you can properly take into account at this stage.

As Ms Harvey has rightly pointed out to you, impairment of fitness to practise is defined in the applicable Rules as those circumstances set out which call into question the suitability of a Registrant to remain on the Register without restriction or to be registered at all. It is also important to remind you, at this stage in the proceedings, that in accordance with the case law you are not required to adhere to any standard of proof in relation to impairment in order to arrive at a decision on impairment, you are rather required to exercise your judgment.

The first thing that you must look at is the conduct underlying the facts which you have found proved and you must look at that through two different gateways, the first is through the caution which was administered to Mr Linton on 19th of May 2015 and the other gateway is misconduct which founds the basis of the allegations set out at 2, 3 and 4. You must therefore, first of all look at the behaviour underlying the caution and you have established that Mr Linton was cautioned. You must look at what the behaviour for which Mr Linton was cautioned related to and form a judgment about that behaviour. You must also look at whether Mr Linton's conduct as set out at 2, 3 and 4 in his behaviour as described can properly be said to amount to misconduct.

Now, in relation to misconduct, misconduct was previously defined by the Rules, and I am just quickly looking, I cannot see misconduct defined in these Rules but in any event case law helpfully provides a definition in the case of *Roylance*, the leading case in this area, which described misconduct as 'a word of general effect,

involving some act or omission which falls short of what would be proper in the circumstances'. Of course in order to assist you, in relation to whether the behaviour underlying the caution and the behaviour underlying the allegations at 2, 3 and 4 amount to misconduct you should be guided by the Code of Conduct which was applicable to the Registrant, Mr Linton, at the time of the behaviour complained of and which you have found proved.

If you are satisfied that misconduct is made out in this particular case, you must then consider the separate issue of whether in light of misconduct and caution Mr Linton's fitness to practise can be said to be impaired. The position is that the test for impairment is expressed in the present tense, that is to say that fitness to practise is as and of today impaired. As the Court of Appeal noted in the case of *GMC v Meadow*, the purpose of fitness to practise procedures is not to punish the practitioner for past misdoings but to protect the public against the acts and omissions of those who are not fit to practise, the Panel thus looks forward, not back. However, in order to form a view as to the fitness of a person to practise today, it is evident that it will have to take account of the way in which the person concerned has acted or failed to act in the past. Thus, although your task is not to punish for past misdoings, you do need to take account for past acts or omissions in determining whether the Registrant's fitness to practise can be said to be currently impaired.

What then of the factors to be taken into account?

The High Court in the case of *Cohen v GMC* stated that it was critically important to appreciate the different tasks which Panels undertake at each step in the adjudicative process. The Panel, in this particular case, is now concerned with the issue of whether in light of any misconduct proved the fitness of the Registrant to practise has been impaired taking account of the critically important public policy issues. Those critically important public policy issues which must be taken into account by Panels such as yours, sir, were described by the Court as:

"The need to protect the individual [service user] and the collective need to maintain confidence in the profession as well as declaring and upholding proper standards of conduct and behaviour which the public expect... and that public interest includes amongst other things the protection of [service users] and maintenance of public confidence in the profession.

Thus, in determining whether fitness to practise is impaired, Panels must take account of a range of issues which, in essence, comprise two components:

1. The 'personal' component:

The current competence, behaviour etc, of the individual registrant; (if known) and

2. The 'public' component: The need to protect service users, declare and uphold proper standards of behaviour and maintain public confidence in the profession"

The Committee may also derive assistance from the approach set out by Dame Janet Smith in her Fifth Report to the Shipman Inquiry in which she formulated an appropriate test for Panels and Committees such as yours when considering current impairment. Although it is phrased in the context of a doctor's fitness to practise, it certainly is accepted that it has general application and can also be read across to include the fitness to practise of a

social care worker such as Mr Linton. With the appropriate modification for the use of the word 'doctor', the test formulated by Dame Janet Smith is as follows:

"Do our findings of fact in respect of the (social care worker's) misconduct ... and/or caution ... show that his fitness to practise is impaired in the sense that he: A. Has in the past acted and/or is liable in the future to act so as to put a patient (Service user) at unwarranted risk of harm; and/or b. Has in the past brought and/or is liable in the future to bring the (social care) profession into disrepute; and/or c. Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the (social care) profession; and/or d. Has in the past acted dishonestly and/or is liable to act dishonestly in the future."

As the Court in *Cohen* noted the sequential approach to considering allegations means that not every finding of misconduct will automatically result in a Panel concluding that fitness to practise is impaired as there must always be situations in which a Panel can properly conclude that the act was an isolated error on the part of the practitioner and that the chance of it being repeated in the future is so remote that his fitness to practise has not been impaired. *"It must be highly relevant ..."*, the Court continued in *Cohen*:

"... in determining if ... fitness to

Practise is impaired that first the conduct which led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated."

So critical to your determination, in respect of the impairment stage of your deliberations, is that you will critically look at, first of all, at any evidence of Mr Linton's insight into the behaviour which has been found proved against him and also whether there is any evidence of remedial behaviour in respect of that behaviour. It is also important for you to recognise that the need to address the critically important public policy issues identified in *Cohen*, that is to say to protect service users, declare and uphold proper standards of behaviour and maintain public confidence in the profession means that you can not adopt a simplistic view and conclude that fitness to practise is not impaired simply on the basis that since the allegation arose the Registrant has corrected matters or learned his or her lesson.

You should also remember as indicated in the case of *Brennan v Health Professions Council*, in a case where a Panel makes a finding of impairment solely on the basis of the public component of an allegation the Panel is obliged to explain the reasons for that decision. It is insufficient simply to recite that, for example, 'it is necessary in order to maintain public confidence in the profession'.

You have no references or testimonials in respect of this case and therefore, I don't seek to give you advice in relation to that matter or evidence arising from it in relation to culpability in mitigation and I would just remind you, that at, this stage in the proceedings, that this is a matter for your judgment, to attach such weight as you consider appropriate to the public and the private components which I have sought to describe to you.

So, unless you have any questions for me, or unless there are any representations upon my advice by Ms Harvey, that would conclude my advice to you at this stage.

Sanction

Before you retire at this, the final stage in the proceedings against this Registrant, Mr Martin Daniel Linton, I am required to give you some brief advice in relation to those matters which you can properly take into account at this stage.

You have the list of available sanctions available to you upon a finding of impairment are set out in Paragraph 26 of Schedule 2 of the 2016 Rules and working in ascending order:

- a) You may issue a warning to the Registrant for a period of up to five years;
- b) You may make a Conditions of Practice Order not to exceed three years;
- c) You may make a Suspension Order for a period not to exceed two years;
- d) Or you may make a Removal Order to remove the Registrant from the Register.

Paragraph 26 makes clear that in deciding what sanction to apply, you should consider the seriousness of the allegation and the facts found proved, the degree to which you have found that the Registrant has fallen short of the applicable standards, public protection, and also the issue of the public interest which includes of course maintaining public confidence in the Social Care service.

I would also commend to you the document for use at this stage in the proceedings issued by the Social Care Council in May 2016 which is the Indicative Sanctions Guidance document. To be clear, this is a guidance document and no more and you are not obliged to follow any particular path, you must exercise your judgment as to what the most appropriate sanction is to apply. The Guidance document, however, seeks to provide some consistency for you and other Committees in an approach to the issue of sanction.

The first thing which you must do is to consider those factors set out at paragraphs 3.2 and 3.3, you must look at those factors which might be considered mitigating factors and you must look at those factors which might be considered aggravating factors so that you can come to a view as to the seriousness of the conduct found proved in this particular case. Once you have done that you may look at the various options open to you and consider whether it would be appropriate to apply a sanction starting with the least restrictive sanction, that is to say a warning, and moving to a more restrictive sanction if and only if you are satisfied that the factors identified and in the exercise of your judgment are not sufficient to adequately protect the public. If you arrive at a sanction which you consider does adequately protect the public, then you must not move to consider a more restrictive sanction as to do so would seek to punish the Registrant. Of course it is right to say that case law has made clear that the purpose of the sanction is not to punish the practitioner for any past wrongdoing but it is rather designed to promote and uphold the public interest. The public interest, of course, is defined for you at paragraph 2.3 of the Indicative Sanctions Guidance document and you are reminded that the public should have confidence that 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 social care workforce in general is maintained.

The Rules and the Guidance also reminds you that you must act in a proportionate fashion and I have explained

that to you a short while ago, but again the Guidance document makes clear at paragraph 2.6 that the principle of proportionality requires 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 service users.

The interests of the public and service users have to be weighed against those of the Registrant.

The Committee is also reminded of course that a Committee by virtue of paragraph 2.7 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 of the case.

This is also a case in which you have made a finding in respect of two particulars, that the Registrant Mr Linton has acted dishonestly and, in that regard, I would commend to you paragraph 5.1 of the Guidance document which states that dishonesty is an example of impairment where the courts have upheld decisions to remove individuals from other statutory registers despite strong mitigation. Whilst the decision will depend on the particular facts of each case the courts have made clear that it would not have been in the public interest in those cases examined to do other than to remove given the circumstances concerned. The Committee is also reminded to look at the provisions concerning dishonesty covered by paragraphs 5.10 to 5.13 inclusive. I would also remind you of the guidance given by Mr Justice Mitting in the case of *Parkinson v Nursing & Midwifery Council* in which in broad terms he stated that where dishonesty has been made out by the regulatory Committee in the absence of the attendance of the Registrant being represented and in the absence of an acceptance of previous wrongdoing and in the absence of an undertaking not to repeat the dishonest conduct in the future the Registrant might, in all the circumstances, forfeit the small chance that he may not be erased from his professional Register. Whilst that case involved a dishonest nurse, it has been held to have been generally applicable in dishonesty cases, in the healthcare regulatory sphere.

So, unless you have any questions for me, or unless there are any representations upon my advice from Ms Harvey, that would conclude my advice to you at this stage.

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 Fitness to Practise Committee's decision takes effect from the date upon which it was made.

The effect of this decision is that your entry in the Register has been removed.

You are prohibited from working as a social care worker in any of the following positions:

- Care staff in a children's home, residential care home or nursing home.
- Manager of a residential care home, day care setting or domiciliary care agency.

It is **compulsory** for the above social care workers to be registered with the Northern Ireland Social Care Council in order to work. This is pursuant to the Northern Ireland Social Care Register (Social Care Workers Prohibition) and Fitness of Workers Regulations (Northern Ireland) 2013.

In accordance with Schedule 3, Paragraph 9 of the NISCC Fitness to Practise Rules, you may not apply to be restored to the Register within five years from the date of removal. This does not affect your right to appeal the Committee's decision to the Care Tribunal.

L. Chamberland.

Committee Manager

06.08.16

Date