

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

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**Name:** Rhonda Anne Wylie

**SCR No:** 6011648

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **02 September 2016**, made the following decision about your registration with the Northern Ireland Social Care Council:

**The Committee found the facts proved;**

**The Committee found that your fitness to practise is impaired by reason of your conviction;**

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

**Particulars of the Allegation (As Amended):**

That, being registered as a social care worker under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), and whilst employed as a care assistant with Support Care Recruitment Ltd and having worked as a care assistant at Cherry Tree Nursing Home, you committed the following offence:

1. Defendant between the 8<sup>th</sup> day of March 2015 and the 25<sup>th</sup> day of April 2015 in the County Court Division of Antrim, dishonestly made a false representation, namely, submitted timesheets for work carried out by you at Cherry Tree Nursing Home, Carrickfergus, even though you were no longer employed there with the intention, by making the representation, to make a gain for yourself or another, or to cause loss to Cherry Tree Nursing Home, Carrickfergus or to expose the company to a risk of loss, in breach of section 2 of the Fraud Act 2006, contrary to section 1 of the Fraud Act 2006.

You pleaded guilty to the above stated offence on 19<sup>th</sup> November 2015.

A conviction was made by the Magistrates' Court for the said District on the 17<sup>th</sup> December 2015.

AND your actions as set out above were dishonest and your fitness to practise is impaired because of your conviction.

## **Preliminary Matters**

### **Service**

The Registrant was neither present nor represented. The Council was represented by Mr Anthony Gilmore, Solicitor, Directorate of Legal Services, Business Services Organisation. In a Notice of Hearing dated 03 August 2016, sent by Special Delivery and addressed to the Registrant at her address as it appears on the Register, the Council notified her of the date, time and venue for this hearing. The Notice was signed for on 05 August 2016. The Committee, in all the circumstances of the case, is satisfied that the Notice of Hearing has been served in accordance with Rule 3 of the NISCC Fitness to Practise Rules 2016 ("the Rules"), and the requirements of Paragraph 5 of Schedule 2 of the Rules.

### **Proceeding in the Absence of the Registrant**

Mr Gilmore made an application to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules, and that the Committee should hear and determine the case in the absence of the Registrant. Mr Gilmore advised the Committee that the Registrant had not responded in any way to the Notice of Hearing. Mr Gilmore invited the Committee to conclude that the Registrant's absence was voluntary.

The Committee was mindful that the discretion to proceed in the absence of the Registrant should only be exercised with the utmost care and caution. In considering the application, the Committee sought to satisfy itself that all reasonable efforts had been made to notify the Registrant of the hearing, and accepted the advice of the Legal Adviser.

The Committee bore in mind the public interest in the expeditious disposal of the hearing, and that there was no evidence to indicate that the Registrant would be more likely to attend a future hearing if the matter was adjourned. Therefore, after careful consideration of all the issues, the Committee decided to exercise its discretion to proceed in the absence of the Registrant, taking into account the nature of the allegation and striking a careful balance between fairness to the Registrant and the wider public interest. The Committee, in all the circumstances, considers that the Registrant has voluntarily absented herself from today's hearing. However, the Committee reminded itself that it must avoid reaching any improper conclusion about the Registrant's absence, nor treat the absence as an admission of guilt.

### **Application to Admit Hearing Bundle**

The Committee heard an application from Mr Gilmore under Paragraph 12 of Schedule 2 of the Rules to admit a bundle of papers into evidence. He advised the Committee that this bundle of papers had been served on the Registrant by way of Special Delivery on 03 August 2016, with service signed for on 05 August 2016.

On receiving advice from the Legal Adviser, and there being no objection from the Registrant, the Committee was satisfied that the bundle met with the requirements of fairness and relevance and should be admitted.

## **Amendment to the Particulars of the Allegation**

Mr Gilmore, on behalf of the Council, applied to amend the Particulars of the Allegation, pursuant to Paragraph 18 of Schedule 2 of the NISCC Fitness to Practise Rules 2016. He submitted that the Council wished to remove the words 'and / or misconduct' at the end of the Particulars. He submitted that the Council wished to confine its case to alleging that the Registrant's fitness to practise is impaired due to her conviction. He submitted that the amendment was not prejudicial to the Registrant, and in fact was beneficial to her.

The Committee received legal advice from the Legal Adviser, who reminded them that in accordance with Paragraph 18 of the Rules, the Particulars of the Allegation may be amended at any stage prior to any findings of fact, subject to the requirement of fairness. She further advised the Committee that it should consider the nature of the proposed amendment and whether it was substantial or of a major or minor effect.

In the circumstances, and having accepted the Legal Adviser's advice, the Committee determined that the Particulars of the Allegation should be amended as requested, and the words 'and / or misconduct' deleted. The Committee determined that the deletion narrowed the allegation and was not unfair to the Registrant.

## **Background**

Mr Gilmore advised the Committee that the Registrant was registered at Part 2 of the Northern Ireland Social Care Register on 24 July 2014. Subsequent to her registration, the Registrant worked with Support Care Recruitment Ltd ('the Agency'), which is a recruitment agency providing social care staff to care homes. The Registrant commenced work with the Agency in and around February 2015, and worked for them at Cherry Tree Nursing Home ('the Home') in Carrickfergus. The arrangement between the Agency and the Home allows for the care worker to complete time-sheets with the dates and times worked, and for the employer to sign off on these sheets. The care worker then submits the time-sheet to the Agency, which reimburses the care worker for the work carried out. In and around March 2015, the Registrant stopped working at the Home but continued to submit time-sheets to the Agency on a weekly basis. It was subsequently discovered by the Agency that the Registrant was no longer working at the Home. The matter was reported by the Agency to the police and the Registrant was interviewed on 21 July 2015, when she made a full admission to submitting time-sheets for work she had not carried out.

On 19 November 2015, the Registrant pleaded guilty to the criminal charge as set out in the Particulars of the Allegation. On 17 December 2015, the Registrant was convicted and a monetary penalty of £2231.00 was imposed, with an Instalment Order of £10 a month. In addition, a Community Service Order was ordered for 120 hours over a period of twelve months.

## **Evidence**

Mr Gilmore referred the Committee to the Certificate of Conviction dated 04 February 2016, which confirmed that the Registrant, between 08 March 2015 and 25 April 2015, dishonestly made a false representation by submitting time-sheets for work carried out at the Home, even though she was no longer employed there. The conviction

certifies that the Registrant's false representation was made to make a gain for herself and was in breach of Section 2 of the Fraud Act 2006. Mr Gilmore reminded the Committee that the Certificate of Conviction shows that the Registrant pleaded guilty to the criminal charge and that, in accordance with Paragraph 12 (5) of Schedule 2 of the Rules, the Certificate of Conviction is conclusive proof of the conviction against the Registrant. He further advised the Committee that the Registrant did not appeal her conviction. In relation to the allegation that the Registrant's actions were dishonest, he submitted that the offence includes the necessary element of dishonesty and that the Certificate of Conviction supports this. He referred the Committee to the witness statement from the registered manager of the Agency, which provides a background to their employment of the Registrant and the circumstances leading to the criminal conviction for fraudulent misrepresentation. He told the Committee that the Agency was in fact the victim in this matter, and that they fully cooperated with the police investigation with their evidence being basis for the prosecution. He further referred the Committee to the letter from Detective Chief Inspector Galbraith of 02 February 2016, which provides further information as regards the background to the offence, along with confirmation as to the Registrant's admission and reasons for her actions. He referred the Committee to the Registrant's comments to the police that she used the monies to buy groceries, paid her gas bills and bought ornaments for her house.

He submitted that the sums of money involved, approximately £2231.00, were significant and noted the Court's direction that the monies should be repaid by the Registrant.

Mr Gilmore told the Committee that although there may be some discrepancies in the papers as regards dates, the Certificate of Conviction stands on its own and shows the Registrant committed fraud during a period from March to April 2015, and the Registrant admits her guilt.

### **Finding of Facts**

The Committee reminded itself that the burden is on the Council to prove the facts as set out in the allegation, and that to find the facts proved the Committee must be satisfied on the balance of probabilities. This means that for any fact to be found proved, the Committee must be satisfied that it is more likely than not to have occurred.

The Committee heard the submissions from Mr Gilmore on behalf of the Council, and had regard to all of the documentary evidence in this case. The Committee accepted the advice from the Legal Adviser. The Committee finds, on the balance of probabilities, that the facts contained within the allegations have been established. Taking into account Paragraph 12 (5) of the Rules, the Committee was satisfied that the Certificate of Conviction proved that the Registrant dishonestly made a false representation by submitting time-sheets for work she had not carried out at the Home, with the purpose of making a gain for herself.

In relation to the allegation of dishonesty, the Committee notes the findings of fact in the Certificate of Conviction dated 04 February 2016, where the Registrant was convicted of dishonestly making a false representation. The Committee reminded itself that when considering an allegation as serious as dishonesty, it must put its mind to the Registrant's motive, and in that regard the Committee gave careful consideration to the Certificate of Conviction dated 04 February 2016. Taking into account the contents of the Certificate of Conviction, and the

information from the Home and the PSNI, the Committee is satisfied that the Registrant's actions as set out in the allegations were dishonest, and were made knowing that they were dishonest with the motive of personal gain.

### **Fitness to Practise**

Mr Gilmore addressed the Committee in relation to the allegation that the Registrant's fitness to practise is impaired because of her conviction for a criminal offence. He submitted that the Registrant's conviction for fraud calls into question her ability to work in social care services and falls well below the standard reasonably expected of a registered social care worker. He directed the Committee to the fact the Registrant's fraudulent actions occurred within nine months of the Registrant being registered with the Council, this being a relatively short period. He submitted that the Registrant's dishonest actions were difficult to remediate and, in particular, the Committee has no evidence before them as regards this. He addressed the Committee on the issue of the Registrant's insight into her actions and accepted that, although she pleaded guilty to the offence and cooperated with her employer, she has not engaged with the Council despite repeated attempts to contact her.

Mr Gilmore further submitted that the Registrant's actions presented a risk to service users, colleagues and employers who should be able to rely on the integrity of a social care worker. He submitted that the public should be assured that the Council will take action in the case of a Registrant being convicted of a serious fraud offence, and that the Registrant's conviction brought the social care profession into disrepute. He referred the Committee to the Codes of Practice for Social Care Workers 2002, at Code 2, 2.1 and Code 5, 5.8.

The Committee considered the submissions of Mr Gilmore on behalf of the Council, and had regard to all of the evidence in this case. The Committee accepted the advice of the Legal Adviser.

The Committee considered whether the Registrant's fitness to practise is impaired by reason of her conviction, as set out in the Particulars of the Allegation.

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

**Code 2: As a social care worker, you must strive to establish and maintain the trust and confidence of service users and carers. This includes:**

2.1 Being honest and trustworthy.

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

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

The Committee had regard to the Standards of Conduct and Practice for Social Care Workers and the Council guidance entitled 'Making a Determination of Impaired Fitness to Practise: Guidance for Committees on

Remediation'. The Committee is satisfied that the Registrant's actions were in breach of the following Standards of Conduct: Standard 2 - 2.1 and Standard 5 - 5.8.

The Committee noted that the Registrant's fraudulent actions involved dishonesty on a number of occasions over a period from March to April 2015. The Committee considered that the Registrant's conviction was serious, involving an amount of approximately £2231.00, and that her actions brought the profession into disrepute. The Committee considered that the Registrant's dishonest actions posed a risk to service users and that, as a result, her integrity cannot be relied upon. The Committee had no evidence from the Registrant as regards any action she has taken in an attempt to remediate her dishonesty. The Committee acknowledges that dishonesty is difficult to remediate, particularly when serious and linked to a Registrant's practice. The Committee noted that the Registrant pleaded guilty to the offence and expressed remorse and apology to her employer for her actions. The Committee considered that whilst this showed insight by the Registrant at that time, she has not today presented any evidence of insight to the Committee to show her appreciation of the effect of her actions on public confidence in the profession, or on her bringing the profession in disrepute. The Committee considered the risk of repetition of the Registrant's actions. However, it had no evidence before it to assist it as to her future behaviour. In the circumstances, the Committee concluded that a finding of impaired fitness to practise is necessary for the maintenance of public confidence in the social care profession and the Council as its regulator. Furthermore, given the serious nature of the Registrant's conviction for fraudulent representation, public confidence in the social care profession, and in the Council as its regulator, would be undermined if a finding of impaired fitness to practise was not made.

Therefore, the Committee concluded that the Registrant's fitness to practise is impaired by reason of her conviction.

### **Sanction**

In reaching its decision on sanction, the Committee considered the submissions of Mr Gilmore on behalf of the Council, and had regard to all of the evidence in this case.

It accepted the advice of the Legal Adviser.

The Committee has applied the principles of fairness, reasonableness and proportionality, weighing the public interest with the Registrant's interests, and taking into account any aggravating and mitigating factors in the case. The public interest includes the protection of members of the public, including service users, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour within the profession. The Committee has taken account of the Council's Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance'), bearing in mind that the decision on sanction is one for its own independent judgment.

The Committee recognises that the purpose of sanction is not to be punitive, although a sanction may have a punitive effect. The Committee considered the aggravating and mitigating factors in this case.

The Committee considers the aggravating factors to be:

- The Registrant's criminal conviction related to dishonestly making a false representation;
- The Registrant's actions constituted a breach of trust with her employer;
- The Registrant's actions involved premeditated behaviour in that she fraudulently compiled time-sheets for personal gain;
- The Registrant has not engaged with her regulator or the Committee, which reflects on her level of insight and the value she places on her registration;
- There is no evidence of remediation, and the Registrant has provided no personal mitigation or testimonials.

The Committee considers the mitigating factors to be:

- There were no previous concerns raised with the Council;
- The Registrant expressed regret and remorse during the investigation of her actions to her employer and also during the police investigation. In addition, the Registrant pleaded guilty at Court to the charge;
- The Registrant is making restitution in accordance with the Court Order.

The Committee was advised that the Registrant had no previous disciplinary record with the Council.

**Warning** – the Committee considered the issue of a Warning in this case. It bore in mind that the imposition of a Warning for a period of time would not protect the public from the risk of repetition and consequent risk of serious harm to service users. The Registrant's impairment of fitness to practise is not at the lower end of the spectrum, nor are the circumstances such that the Committee would be confident that this sanction would provide adequate public protection as far as the Registrant's suitability is concerned, bearing in mind that a Warning would entitle the Registrant to work as a social care worker.

**Conditions of Practice Order** – the Committee next considered a Conditions of Practice Order. The Registrant has demonstrated no insight into her actions, nor expressed her desire to remediate her dishonest behaviour. The Committee concludes that the Registrant's actions arose from an attitudinal issue which could not, therefore, be addressed by a Conditions of Practice Order, and that such an Order would not be sufficient to protect the public. The Committee also concludes that a Conditions of Practice Order would not be sufficient to meet the public interest in this matter, given the seriousness of the Registrant's departure from the standards expected of a registered social care worker. In these circumstances, the Committee could not formulate workable, enforceable or verifiable conditions which would address the Registrant's dishonesty and adequately protect the public.

**Suspension** – the Committee next considered a Suspension Order. 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 related to the Registrant's breaching of fundamental tenets of the social care profession. The Code of Practice, now known as Standards of Conduct and Practice for Social Care Workers, requires a social care worker to be open and

honest and the Registrant's fraudulent actions are in clear breach of this requirement. The Committee is therefore concerned that the Registrant's dishonesty arises from a harmful deep-seated attitudinal problem. The Committee has no evidence before it of remorse, remediation or insight from the Registrant, nor has it any information to indicate that the Registrant is unlikely to repeat her dishonest behaviour in the future. The Committee considered the public interest in this matter. The Committee considers that the public would perceive the Registrant's dishonest behaviour as falling short of what would be expected of a registered social care worker. In all of the circumstances, the Committee concludes that a Suspension Order would not be sufficient to mark the seriousness and unacceptability of the Registrant's criminal conviction.

**Removal** – the Committee then considered a Removal Order. In considering this, the Committee took into account the Guidance at 4.26 – 4.28. It concludes that, given the seriousness of the Registrant's criminal conviction and her lack of insight into and remediation of her failings, a Removal Order is the only sanction sufficient to protect the public and maintain public confidence in the social care profession and the Council as its regulator. The Committee considers the Registrant's actions to constitute a serious departure from the professional standards as set out in the Codes of Practice and Standards of Conduct and Practice for Social Care Workers. The Registrant's dishonest behaviour over a period of time, and on a number of occasions, constituted an abuse of trust with her employer and her actions brought the social care profession into disrepute. The Registrant has shown no insight or remorse, has taken no remedial action and has failed to engage with the Council in relation to this matter. In all of the circumstances, the Committee concludes that a Removal Order is the only sanction available to it to protect the public and to meet the public interest in upholding confidence in the social care profession and its regulator, by marking the seriousness and unacceptability of the Registrant's actions. The Committee considers that public confidence in the social care profession, and the Council as its regulator, would be undermined if a social care worker who was criminally convicted of dishonest fraudulent representation, linked to her employment, and having failed to show insight or remediation, was allowed to remain on the Register. The Committee considered a Removal Order to be a suitable, appropriate and proportionate sanction which will be imposed on the Registrant's registration with immediate effect.

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## **Legal Advice Given**

### **Service**

The Committee Clerk has provided me with the documentation, as Mr Gilmore has indicated, to show that firstly, and in accordance with paragraph 5, Schedule 2 of the Fitness to Practise Rules 2016, and they govern the requirement that a Hearing should not be fixed for hearing earlier than 28 days after the posting of the Notice, except with the agreement of the Registrant, and in this case I can confirm that the documentation shows that the Registrant was served on 03 August 2016 and, in fact, there is quite clearly a signed receipt in relation to both the Notice and Hearing bundle and it is clearly signed by an 'R Wylie'. That documentation is available if any of the Committee would like to consider it.



Rule 3 of Part 1 of the Rules provides that the Notice should be sent by Special Delivery and this has taken place, sent to the Registrant's last known address, as Mr Gilmore has indicated the Notice has been treated as having been served on the day after it was posted.

### **Proceeding in Absence**

In view of the Registrant's absence today, you must now consider whether to proceed with this matter and an application has been made by the Council under paragraph 15 of Schedule 2 of the Rules for the matter to proceed in her absence. You have had notification in relation to service of the documents, and Mr Gilmore has indicated there has been absolutely no engagement from the Registrant, nor has she engaged in the past, nor is there any indication that she would like to engage at a further date. You will be aware that this is a matter for your discretion. I would refer the Committee to the case of *R v Jones [2003]* and you will be familiar with this. This is a criminal case which has been approved as applicable in regulatory matters. In this case, Lord Bingham stated, and I quote:

*'That the discretion to commence a trial in the absence of a defendant should be exercised with the utmost care and caution.'*

Therefore you should consider today whether an adjournment may result in this Registrant attending proceedings at a later date, you should look at the time involved in such an adjournment, the extent of any disadvantage to her in not being able to present her account of events. In addition to that, you must look at the seriousness of the allegations, the general public interest in this matter being dealt with, and the interests of any victims.

I would remind you that Ms Wylie is entitled to a fair Hearing, to attend, be represented, to test the Council's case, present evidence on her own behalf. However, if she has knowledge or the means of knowledge of today's proceedings, you may conclude that she has voluntarily absented herself and proceed in her absence. In considering this, you should look at whether the information provided to the Registrant was sufficient to advise her of the importance of attending today. You have the Notice before you that was sent to the Registrant which included, as is set out in the Rules, various information in relation to the powers of the Committee today if it was to proceed in her absence.

You should look at the allegations and consider whether they have been particularised so that she knows and is aware of the case that has been made against her. This principle of fairness applies equally to the presentation of the Council's case, therefore in exercising your discretion you must balance the rights of the Registrant against the wider public interest in the expeditious disposal of the matter.

If you do consider this matter should proceed in her absence, you must avoid reaching any improper conclusions about this absence and must not treat this absence as an admission in any way.

### **Application to Amend Charge**

As Mr Gilmore has indicated, Schedule 2, paragraph 18 of the 2016 Fitness to Practise Rules governs such amendments of particulars of allegations, and this states that a Committee may amend the wording in the

particulars of the allegations at any stage prior to the findings of fact, subject to the requirements of fairness.

The Committee should hear representations from the parties, which has happened in this case, and take legal advice before deciding their position as regards the amendment.

In considering this application you should look at the nature of the proposed amendment and consider whether it is technical, substantial, major or minor. You should consider whether the amendment would cause prejudice to the Registrant in affecting the substance of the case being made against her, and you should consider whether you have any notice of the proposed amendment application being given to the Registrant, and whether you have any evidence before you of an objection or consent. You have heard from Mr Gilmore in relation to the fact that this amendment lessens the issues before you today and is not prejudicial to the Registrant, nor is there something being added to which she would not be aware.

### **Application to Admit Hearing Bundle**

Mr Gilmore has referred you to paragraph 12 of Schedule 2 of the 2016 Fitness to Practise Rules. You will be aware that this allows the Committee to admit evidence, either oral or documentary, or other, whether or not it would be admissible in a court of law, subject to the requirements of relevance and fairness. To assist you in relation to relevance, this means having a reasonable connection with the evidence in the case, and having value or a tendency to prove a matter of fact significant to the case. When you are considering fairness, I would ask you to direct yourselves to the issue of equality, reasonableness, public interest and the interests of justice.

I have had an opportunity to consider the bundle, and I can advise you that the documents in that bundle are relevant to the particulars of the allegations before you, and you have been aware and you have accepted that that bundle was served on the Registrant, and as there has been no response to this, the Notice of Hearing, we have no information or you have no information as to whether the Registrant objects to anything within the bundle. Therefore, I would advise you that at this stage there would appear to be no undue unfairness to the Registrant in admitting the bundle.

I would remind you that within the bundle there may be hearsay evidence, and you must take account of the fact that the person who is the source of that evidence is not before you today, and therefore you may not have the fuller opportunity to assess credibility.

But, taking that into account, you will always decide what weight to give, if any, to that witness.

### **Findings of Fact**

At this, the fact finding stage of the proceedings, you as a Committee must consider all of the evidence received, bearing in mind the burden proof lies with the Council and that the standard of proof is on the balance of probabilities. The Council has brought these proceedings and it is up to them to prove the case. I would remind you that this Registrant does not have to prove she is in respect of the Charges. In this regard, I would direct you to Schedule 2 of the NISCC Fitness to Practise Rules 2016 at paragraphs 13 and 23, and this means that a fact will be found proved if you consider it more likely than not to have happened, and of course your decision must

always be based on the evidence presented to you by way of documentary evidence, or which isn't in this particular matter, oral testimony; in this particular matter, the bundle of documents that you have accepted from the Council, and within that there is a Certificate of Conviction, and also copy correspondence, and also information by way of a letter from Detective Chief Inspector Galbraith. Therefore, you have to determine on the basis of the evidence and on the balance of probabilities whether the allegations have been proved.

There are two particulars of allegations before you today. The first relates to a Certificate of Conviction and the other relates to dishonesty. In relation to the Certificate of Conviction, I would refer you to paragraph 12, subsection 5 of Schedule 2 of the 2016 Fitness to Practise Rules, which indicates that with the submission to you of a Certificate of Conviction, and that means that the findings of fact of a UK Criminal Court shall be conclusive proof of the facts or convictions so found. In this particular instance, the Certificate of Conviction is a matter of public record and my advice would be that it is proper for you to accept it today.

In relation to the issue of dishonesty, you will be aware from the Charge and on the face of the Charge that, and I will quote *'the Registrant was convicted and pleaded guilty to dishonestly making a false representation, namely, submitting timesheets for work carried out by her at Cherry Tree Nursing Home even though she was no longer employed there. And that she did so with the intention of making a gain for herself'*, and that, in accordance with the Regulations, should be accepted as conclusive proof.

In relation, and in respect of, the allegation of dishonesty, I would refer you to the case of *R v Ghosh [1982]*, a criminal matter, and with the standard of proof in this matter being that of civil, the further case of *Twinsectra v Yardley [2002]*. Lord Hutton in the case of *Yardley* indicated that:

*'Dishonesty requires knowledge by the defendant that what he was doing would be regarded as dishonest by honest people, although a finding of dishonesty ...' cannot be avoided because a defendant sets his or her "... own standards of honesty ..." and does not regard as dishonest what he or she "... knows would offend the normally accepted standards of honest conduct.'*

The recent case of *GMC v Fish [2012]* emphasised that the starting point with regards to dishonesty is that a Registrant of good character is most unlikely to act dishonestly. Therefore, you should take care when considering an allegation as serious as dishonesty, and put your minds to the Registrant's motive and what evidence you have as regards this and, in this particular instance, you have before you the Certificate of Conviction to which the Registrant pleaded guilty.

The cases of *Re B [2008]* and *Re D [2008]*, as decided by the House of Lords, make it clear that whilst the seriousness of an allegation or its consequences may necessitate more careful consideration of the evidence, this does not require a different standard of proof or an especially cogent type of evidence.

### **Impairment of Fitness to Practise**

In addition to the detailed submissions of Mr Gilmore, as well as the specific references to the Standards of Conduct of Practice for Social Care Workers and also the previous Code, you as a Committee will know that in

determining whether fitness to practise is impaired you should adopt a sequential approach, and I would refer you to the case of *GMC v Cohen G [2008]* in support of this.

In this matter, you have decided that the particulars in the allegations have been found proved. These particulars as against Ms Wylie, as found proved by yourselves, arise out of a criminal conviction for dishonestly making a false representation and it is alleged that, as a result, her fitness to practise is impaired because of that conviction. In accordance with Rule 4 of the 2016 Rules, a Registrant's fitness to practise may be impaired by one or more specific reasons, and the Council today is pleading before you that the specific reason they will be relying upon is a conviction in the UK for a criminal offence, and this is what you have been dealing with today. In this matter, the circumstances of the criminal conviction are a matter of record, and the Registrant pleaded guilty to that Charge, and you have been asked to determine whether fitness to practise is impaired because of her conviction.

Schedule 2, Paragraph 24, as referred to by Mr Gilmore, states that in deciding on the issue of impairment of fitness to practise there are a number of issues you should have regard to. Firstly, you should have regard to your being satisfied as to the reasons for the alleged impairment of fitness to practise, and I would suggest that when you are considering this first aspect you should direct yourself to the Certificate of Conviction and the background information in the bundle that you have. You should consider the Code and / or Standards of Conduct of Practice, and you have been referred to some specific sections within that by Mr Gilmore. Thirdly, you should consider whether the impairment is capable of remediation and whether you have any evidence that it has been remediated. As regards this, I would also refer you to the Northern Ireland Social Care Council guidance as regards fitness to practise impairment and remediation. It would not be my intention to highlight the contents of this for you as you have this available for your consideration. Then you should go on to consider the risk of repetition and, lastly, you should consider the public interest.

In the case of *GMC v Cohen*, the High Court directed you to consider, firstly, the current competence and behaviour of the Registrant, and this is referred to as the personal component, and then take account of the need to protect service users and members of the public, uphold proper standards of behaviour and maintain public confidence in the Social Care profession, and this is sometimes referred to as the public component of the test. You should also consider any evidence you have as to a degree of harm caused by the Registrant and her culpability in that harm.

Mr Gilmore earlier today referred you to the company as being the victim in this matter, although you have no evidence that in her clinical practice that this was an issue that would be open to you today. Again, I would ask you to take careful consideration of all the documentary evidence before you as you have no evidence before you from the Registrant.

I would emphasise that as regards impairment, and as set out by the Court of Appeal in the case of *GMC v Meadow [2006]*, you are exercising your professional judgment, there is no applicable burden or standard of proof.

I would refer you to the case of *CHRE v NMC & Grant [2011]* and, in particular, the findings of Mrs Justice Cox at paragraphs 74 and 75 where she indicates:

*'In determining whether a Registrant's fitness to practise is impaired ...', (although that refers specifically to misconduct, it is of assistance to you today in considering impairment on the basis of a conviction), you should '... consider not only whether the (Registrant) continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.'*

You will be aware of the findings of Dame Janet Smith, as set out in the Fifth Shipman report, where she refers to the potential causes of impairment as arising when a Registrant presents a risk to patients, has brought the profession into disrepute, has breached one of the fundamental tenets of the profession, or has acted in such a way that her integrity can no longer be relied upon. She also noted that present impairment of fitness to practise can be founded on past matters, and by reference to how a Registrant is likely to behave in the future, and I think Mr Gilmore referred to this.

Impaired fitness to practise is defined as circumstances which call into question the suitability of a Registrant to remain on the Register without restriction or to be registered at all. You have before you today circumstances relating to a conviction for dishonest, fraudulent representation and that is what you should put your mind to when you are considering this matter.

You should consider, in addition, any evidence you have before you indicating any degree of insight the Registrant has now in relation to her failings and any evidence of steps that the Registrant has taken in an attempt to remedy her deficiencies. In this particular instance, since the instigation of the proceedings before you today there would appear to be no engagement by the Registrant, although within the bundle of documents you have on several occasions references to this Registrant apologising for her actions, admitting to her actions and expressing remorse.

## **Sanction**

Paragraph 26, Schedule 2 of the NISCC Fitness to Practise Rules 2016 sets out the available sanctions open to you as a Committee at this stage and, Madam Chair, you have already referred to these at the outset of the proceedings and I wouldn't remind you again, you are very much aware of them, you are an experienced panel.

In considering and determining the appropriate sanction, you are obliged to take into account the following factors:

Firstly, the seriousness of the Registrant's impaired fitness to practise. Secondly, the degree to which the Registrant has fallen short of any expected standard. Thirdly, the protection of the public. Fourthly, the public interest in maintaining confidence in social care services and, lastly, and very importantly, the issue of proportionality which means weighing on the one part the Registrant's interests against on the other part the interests of the public.

I would also, in addition to Mr Gilmore, refer you to the Northern Ireland Social Care Council Indicative Sanctions Guidance 2016, and remind you that the purpose of sanction is not punitive. Paragraphs 2.5, 2.6 and 2.7 of the Guidance deal with considerations of fairness and proportionality. You should consider the question of sanction in ascending order of severity, beginning your deliberations by considering warning first. The primary purpose of sanctions is the protection of the public and also maintaining the reputation of the profession. I would refer you in particular to paragraphs 2.3 and 2.4 of the Guidance. This directs that the public should have confidence that the Northern Ireland Social Care Council will uphold proper standards of behaviour and conduct in regulating social care workers. Public interest requires that both the public and social care users are protected from unsafe practice and confidence in the social care workforce is maintained. In serving that public interest, the purpose of sanctions is to ensure that the social care worker does not have an opportunity to repeat their actions and maintain the reputation of the profession. I would refer you to paragraphs 2.2 and 2.5 of the Guidance, which remind you that any limitation of the right to practise one's profession should be no more than is necessary in the circumstances and you have a duty to act fairly.

Mr Gilmore has very fairly set out the mitigating factors arising out of the documentation before you, and unfortunately you have had nothing from the Registrant today that would assist you in relation to this aspect, but they have been very fairly set out for you by Mr Gilmore and you should take account of those. You have no references, you have no testimonials to consider. Mr Gilmore has very helpfully referred you to the expressions of remorse that are within the papers.

In relation to the matter that he referred you to as regards the profession and the fortunes of an individual member, there is the case of *Bolton v Law Society [1994]*, and that confirmed that it may be of assistance to hear this, that the reputation of the profession is more important than the fortunes of any individual member.

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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 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.

C Chamberlain

Committee Manager

07 September 2016

Date