

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

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**Name:** Comfort Linda Adebayo (also known as Comfort Ofomu Aideloje)

**SCR No:** 6000879

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **26 and 27 July 2017**, 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 misconduct;**

**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. You applied and obtained registration to the Northern Ireland Social Care Council in March 2012 under a false identity, namely Comfort Linda Adebayo D.O.B 02.09.1977.
2. You used false identity documents in your application for registration to the Northern Ireland Social Care Council, submitted in March 2012, under the false identity of Comfort Linda Adebayo D.O.B 02.09.1977.
3. You worked as a social care worker in Kingsway Private Nursing Home, Dunmurry, under the false identity of Comfort Linda Adebayo in the period from registration with the Northern Ireland Social Care Council in June 2012 until June 2015.
4. You applied for registration to the Northern Ireland Social Care Council in July 2015 using a different identity, namely Comfort Ofomu Aideloje D.O.B 02.09.1975.
5. And your actions as set above at 1, 2, 3, and 4 were dishonest.

And that in relation to the facts alleged, your fitness to practise is impaired by reason of your misconduct.

**Preliminary Matters**

**Service**

The Registrant was neither present nor represented. The Council was represented by Mr John Johnston, Solicitor, Directorate of Legal Services. In a Notice of Hearing dated 27 June 2017, 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 as received on 28 June 2017.

The Committee is satisfied that the Notice of Hearing has been served in accordance with the requirements of Rule 3 of the NISCC Fitness to Practise Rules (the Rules) and the requirements of Paragraph 5 of Schedule 2 of the Rules.

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

Mr Johnston made an application to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules.

The Committee heard and accepted the advice of the Legal Adviser.

The Committee took into account that its discretion to proceed in the absence of the Registrant should only be exercised with the utmost care and caution. The Committee considered the information before it and, in particular, gave weight to the fact that the Registrant and her solicitor had completed an Attendance Form sent to her by NISCC. In that document, the Registrant indicated that she did not intend to attend the hearing and did not seek a postponement. The Committee is of the view that the Registrant is aware of the hearing and has voluntarily waived her right to attend.

The Committee had regard to the issue of fairness to the Registrant and to NISCC in the proper discharge of its regulatory functions. The Committee noted that there was no evidence to suggest that an adjournment would be likely to secure the Registrant's attendance at a later date.

After careful consideration of all the available information, the Committee is satisfied that it is in the public interest to proceed with this case in the absence of the Registrant. The Committee will not draw any adverse inference from the Registrant's absence.

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

The Committee received an application under Paragraph 12 (1) of Schedule 2 of the Rules to admit a bundle of papers into evidence. The Committee is satisfied that the bundle met with the requirements of fairness and relevance.

The Committee also received into evidence a bundle of documents submitted on behalf of the Registrant.

### **Background**

The Committee heard that the Registrant is registered on Part 2 of the Register as an adult residential care worker, in the name of Comfort Linda Adebayo (also known as Comfort Ofomu Aideloje) (the Registrant). Her application for registration was completed on 27 February 2012 and registration was granted on 22 June 2012.

Mr Johnston advised the Committee that the Registrant was employed as a care assistant at Kingsway Residential Nursing Home, Dunmurry, from 28 August 2009 until June 2015.

The Committee heard that on 08 July 2015, NISCC received an application for registration in the name of Comfort Ofomu Aideloje (the Applicant). One of the members of the Registration team raised concerns about similarities between the Registrant and the Applicant. Both had a birthday of 02 September (although the years were different) and both had worked in Kingsway Residential Nursing Home. NISCC contacted the Registrant by telephone. She said that she was living in England and had given her home to her friend, Comfort Aideloje. They had both worked together in Kingsway until June 2015.

NISCC contacted the Home Office. The Registrant was arrested on 14.10.15 in relation to 3 offences, namely possession of a false ID document with intent, fraud by false representation, and seeking to obtain leave in the UK by deception. She was interviewed in Musgrave PSNI station, Belfast. She denied all offences but admitted using the name Adebayo.

The Committee heard that NISCC was advised that there would be no prosecution. The Home Office provided the Council with the evidence from their investigation and the Council conducted its own investigation.

## **Evidence**

In addition to the hearing bundle and documents submitted by the Registrant, the Council heard oral evidence from two witnesses and found both witnesses to be honest, open, credible and co-operative. Witness A is employed as an officer of the Home Office, part of the criminal and financial investigations team. Witness A conducted a criminal investigation into Comfort Ofomu Aideloje. Witness B is the Head of Human Resources for Care Circle Management Ltd, formerly responsible for Kingsway Private Nursing Home.

The Committee found Witness A to be clear and professional in his evidence. The Committee accepted the evidence of Witness A as an honest account of the detailed investigation which he conducted.

The Committee found Witness B to be credible and straightforward. Although she had only met the Registrant during two meetings, she had a clear memory of the Registrant. The Committee accepted the evidence of Witness B.

## **Finding of Facts**

In reaching a decision on the facts, the Committee gave careful consideration to all of the evidence in this case and to the submissions of Mr Johnston on behalf of the Council.

The Committee heard and accepted the advice of the Legal Adviser.

The Committee considered each of the Particulars of the Allegation as follows:

### **1. You applied and obtained registration to the Northern Ireland Social Care Council in March 2012 under a false identity namely Comfort Linda Adebayo DOB 02.09.1977**

The Committee considered the application to register with NISCC, completed by the Registrant on 07 February 2012 and stamped as received by NISCC on 07 March 2012. This application was made in the name of Miss Comfort Linda Adebayo, date of birth 02.09.1977. The Committee heard that registration was granted in June

2012. The Committee is satisfied that the Registrant applied for and obtained registration to the Northern Ireland Social Care Council in March 2012 under the name Comfort Linda Adebayo.

The Committee next considered whether this was a false identity. The statement submitted by the Registrant in support of her application for leave to remain in the UK to the Home Office, and submitted to the Committee today, records the Registrant's explanation for the different identities. She stated that:

'When I arrived in the UK I had no formal Identification Documents. My name was processed as Comfort Aideloje Adebayo, which I had also been known as in Africa.....It is common in my part of Africa for people to be known by several (usually related) names for social, cultural, familial and traditional reasons'.

The Committee does not accept the explanation put forward by the Registrant that she had no formal identification documents when she came to the UK. The Committee prefers the evidence of Witness A that the Registrant came to the UK using a passport and a visa which allowed her to stay for six months, but that she overstayed the six months and then, to achieve employment, she acquired another identity. The Committee finds that when the Registrant came to the UK her passport number was A3363916A, and the name on her visa application was Comfort Ofomu Aideloje, DOB 02/09/1972. The Committee does not accept that her name was processed as Comfort Aideloje Adebayo.

The Committee accepts that the evidence suggests that the name Adebayo may well be related to the Registrant. The Committee is of the view that, based on all of the evidence, and in particular the different dates of birth, it is more likely than not that the Registrant used the name Comfort Linda Adebayo DOB 02.09.1977 as a false identity when she applied for registration with NISCC in March 2012.

Accordingly, Particular 1 is found proved.

**2. You used false identity documents in your application for registration to the Northern Ireland Social Care Council, submitted in March 2012 under the false identify of Comfort Linda Adebayo DOB 02.09.1977**

The Committee is satisfied that the application in March 2012 was supported by a Nigerian Passport, No. A3290702A, in the name of Comfort Linda Adebayo DOB 02.09.1977, and a birth certificate, No. 847289. The Committee accepts the evidence of Witness A that these documents were false. The Committee heard that the passport number A3290702A was quickly identified as relating to the passport of a male Nigerian.

Witness A referred to a report obtained as part of his investigation from a specialist document examiner. The Committee has had the opportunity to carefully consider this report and gives weight to the report in finding this Particular proved. The report concludes that the copy passport submitted to NISCC in March 2012 (a Nigerian passport A3290702A) was 'not a genuine passport issued by the competent Nigerian authorities. Furthermore, the questioned indefinite leave to remain vignette and Heathrow Immigration Officer stamp were not genuine items issued by the Home Office.'

Accordingly, Particular 2 is found proved.

**3. You worked as a social care worker in Kingsway Private Nursing Home, Dunmurry, under the false identity of Comfort Linda Adebayo in the period from registration with the Northern Ireland Social Care Council in June 2012 until June 2015.**

The Committee considered the Registrant's application for employment with Care Circle, which was in the name of Comfort Linda Adebayo. The Committee heard and accepted the evidence from Witness B that they employed Comfort Adebayo. Witness B gave evidence that they did not employ another member of staff with the first name 'Comfort'. The Committee heard that if Witness B was asked to provide a reference for Comfort Aideloje, she would have said that they did not employ anyone of that name. Witness B gave evidence that she met with Comfort Adebayo on two occasions in approximately 2014. The Committee heard from Witness B that Comfort Adebayo was employed by Care Circle until June 2015. The Committee is therefore satisfied that the Registrant worked as a social care worker at Kingsway Private Nursing Home under the identity of Comfort Linda Adebayo.

As the Committee has already determined that Comfort Linda Adebayo DOB 02.09.19777 was a false identity, and that false identity documents were used in the application for registration with NISCC under this name, the Committee finds that the Registrant worked as a social care worker in Kingsway Private Nursing Home under the false identity of Comfort Linda Adebayo in the period from registration with the NISCC in June 2012 until June 2015.

Accordingly, the Committee finds this Particular proved.

**4. You applied for registration to the Northern Ireland Social Care Council in July 2015 using a different identity, namely Comfort Ofomu Aideloje D.O.B 02.09.1975.**

The Committee carefully considered the application form to NISCC made in July 2015 for Comfort Ofomu Aideloje. The Committee considered the date of birth, which was 02.09.1975, and the address, which was the same as in the 2012 application in the name of Comfort Adebayo. The Applicant had ticked that she had not made any previous application to NISCC and was not known under any other names. The employment history on this application recorded previous employment with Kingsway Nursing Home.

The Committee heard from Witness A that, in 2013, Comfort Aideloje made a report to the PSNI that she had lost her passport. This report was made in the name Comfort Aideloje Adebayo DOB 02.09.1977. She then applied for a new legitimate Nigerian passport in 2013, and in 2014 applied to regularise her stay in the UK on the basis of family life. The Committee notes that after her stay in the UK was regularised in the name of Comfort Aideloje DOB 02.09.1975, an application was made to NISCC using these details in July 2015.

The Committee accepted the evidence of Witness B that the person arrested by Witness A (Comfort Aideloje) was the person employed by Care Circle and known to her as Comfort Adebayo.

During her interview with Witness A, the Registrant stated that when she applied to be registered with NISCC, she was told that somebody already had a NISCC registration with them that was in her name. She said:

'Adebayo is a very common name, Comfort is a very common name in my country. So it could be anybody and then they say that the person has the same date of birth as me. That's not my fault, that they have the same date of birth as me. If they have the same surname and the same date of birth I said there was a girl that lived in my house, her name is Comfort Adebayo but she was not born on the same year as me'.

The Committee considered this explanation that the two applications were made by different people. On the balance of probabilities, the Committee does not accept the Registrant's explanation and preferred the evidence of Witness A and Witness B.

Accordingly, this Particular is found proved.

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

The Committee next considered the issue of dishonesty. The Committee has no hesitation in concluding that the Registrant's actions in obtaining registration and employment under a false identity, using a false passport and birth certificate, and applying to NISCC for registration using a different identity (without referring to her previous registration) would be considered dishonest by the standards of ordinary and honest social care workers.

The Committee then considered whether, on the balance of probabilities, the Registrant realised that what she was doing was dishonest by that standard. The Committee is satisfied that she did. The Committee considered the evidence of Witness A that during his interview with the Registrant, she did not answer direct questions but did admit that she had worked illegally, she had lied and she said that she done 'bad things'. The Committee therefore concludes that she understood that what she was doing was wrong. The evidence before the Committee is that her actions were deliberate and misleading, and the Committee is of the view that she must have realised that what she was doing was dishonest.

Accordingly, this Particular is found proved.

**Fitness to Practise**

The Committee heard submissions from Mr Johnston that, in light of the facts found proved, the Registrant's fitness to practise was currently impaired. Mr Johnston directed the Committee to Paragraph 24 of Schedule 2 of the Rules, and submitted that the conduct in this case fell far below the standards of a social care worker and constitutes misconduct. Mr Johnston submitted that the Registrant's actions were in breach of the following sections of the Code of Practice for Social Care Workers (in force at the time): Code 2, 2.1, 5, 5.8. In terms of current impairment, Mr Johnston submitted that due to her lack of insight, the Registrant was also in breach of the Standards of Conduct and Practice for Social Care Workers, in particular Standard 2, 2.1, 5 and 5.8. Mr Johnston invited the Committee to conclude that the Registrant's actions fell so far below acceptable standards that her impairment is not capable of remediation. In the alternative, he submitted that, as a fact, her conduct has not been remediated.

The Committee had careful regard to all of the evidence in the case and to the submissions of Mr Johnston. The Committee heard and accepted the advice of the Legal Adviser.

## Misconduct

The Committee first considered whether the facts found proved amounted to misconduct. The Committee is of the view that any dishonesty by a social care worker falls below the appropriate standards. The Registrant's actions were deliberate. Her application to NISCC in 2012 was based on a false passport and false birth certificate, and contained untrue information.

The Committee finds that the Registrant's actions were in breach of the following sections of the Codes of Practice for Social Care Workers September 2002, in force at the time:

**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 is in no doubt that the Registrant's acts and omissions fall short of what would be considered proper by the standards of a social care worker.

## Impairment

The Committee is satisfied that at the time the Registrant dishonestly completed her applications to NISCC in 2012 and 2015, her fitness to practise was impaired. Her actions clearly had the potential to bring the profession into disrepute, breached a fundamental tenet of the social care profession, and were dishonest.

The Committee moved on to consider whether the Registrant's fitness to practise is currently impaired. The Committee had regard to the Standards of Conduct and Practice for Social Care Workers (November 2015) and finds that the Registrant is in breach of the following standards:

**Standard 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;

2.6 Being reliable and dependable.

**Standard 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 whether the misconduct was capable of remediation, and concluded that it was. However, the Committee determined that it has not been remediated in this case. The Committee is of the view that the Registrant has demonstrated some insight into her actions but that this insight is limited. The Committee accepts that the Registrant has made a general apology to the Council for 'any inconvenience caused by [her] previous actions'. This apology is evidence of remorse, but does not demonstrate an understanding of the seriousness of the Registrant's actions over a prolonged period of time.

The lack of insight and remediation on the part of the Registrant leads the Committee to the conclusion that there remains a risk that the Registrant would repeat her misconduct. The Committee considered the statement from the Registrant, in which she referred to 'legitimate' reasons for her actions. This caused the Committee concern that if a situation arose in the future when she considered there were legitimate reasons for her to be dishonest, she would do so.

The Committee next considered the public interest, which includes maintaining public confidence in the system of regulation and the reputation of the social care profession. The Committee concludes that a finding of impairment on public interest grounds is also required. The Committee considers that the public would be surprised and shocked if a finding of impairment were not made when a registrant dishonestly obtains registration.

Having regard to all of the above, the Committee is of the view that the Registrant's fitness to practise is currently impaired.

## **Sanction**

The Committee heard a submission from Mr Johnston in relation to sanction. The Committee heard and accepted the advice of the Legal Adviser. The Committee had regard to its powers under Paragraph 26 of Schedule 2 of the Rules in relation to the sanctions available, and also took into consideration the Indicative Sanctions Guidance issued by NISCC.

The Committee first considered the mitigating and aggravating factors in the case. The Committee identified the following mitigating factors:

- There has been a degree of cooperation with the NISCC investigation;
- The Registrant has shown some insight albeit that this is limited;
- The Registrant has made a general apology;
- The Registrant has a previous good work history, and Witness B gave evidence that there were no issues with the standard of her work; and
- Her misconduct did not cause direct or indirect harm to service users.

The Committee then considered the aggravating factors, and identified the following:

- The Registrant's actions were dishonest;



- She has abused her position of trust;
- There has been concealment of wrong-doing, in particular when the Registrant submitted the 2015 application to NISCC;
- Her actions were premeditated by obtaining false documents to support her 2012 application;
- Full insight is lacking;
- Whilst the Registrant did make a general apology, she has demonstrated a lack of understanding of the impact of her actions and the importance of the regulatory system;
- By submitting a false application to the regulator, the Registrant has demonstrated a serious disregard for the relevant Standards; and
- The misconduct occurred over a period of some years, and although the misconduct did not relate to an incident in work, it was still inextricably linked to her working life.

**Warning** – the Committee is of the view that a Warning would be inappropriate having regard to the finding of facts in this case. Although the Committee accepts that there is no evidence of direct or indirect harm to service users, a Warning would not reflect the seriousness of her actions, and would not meet the public interest.

**Conditions of Practice Order** – the Committee was not able to formulate workable, enforceable or measurable Conditions of Practice, and determined that Conditions of Practice were not relevant or proportionate in light of the seriousness of the misconduct. This was not an isolated incident involving a particular area of the Registrant's performance, but rather a prolonged period of dishonesty.

**Suspension** – the Committee is of the view that suspension would not be appropriate in this case. The impairment is serious and there has been a lack of insight from the Registrant. The misconduct took place over a period of three years, and during this time there is no evidence that the Registrant understood the seriousness of her actions or attempted to remediate them. The Registrant has breached a number of the Standards which are fundamental to being a social care worker, and has shown a blatant disregard for the system of regulation. Suspension would not address her behaviour in a proportionate way or meet the public interest.

**Removal** – after careful deliberation, the Committee is of the view that this is a case where removal from the Register is the only appropriate and proportionate sanction. The Committee finds that the Registrant's prolonged dishonesty is fundamentally incompatible with being a social care worker. The Standards state that social care workers must be honest and trustworthy. The Committee took into account Paragraphs 5.11 and 5.13 of the Indicative Sanctions Guidance. The public must be able to place complete reliance on the integrity of registrants. As a result of her actions, the integrity of the Registrant is seriously compromised, and removal is the only appropriate outcome. The Committee is of the clear opinion that removal is necessary in the public interest, as public confidence in the reputation of the social care workforce and in NISCC as the regulator would be seriously undermined by allowing the Registrant to remain on the Register.

The Committee took into account the written submissions from the Registrant and the apology which she made, but concluded that the seriousness of her actions and the importance of upholding proper standards of behaviour for social care workers outweigh the personal impact of this Order on the Registrant.

Accordingly, the decision of the Committee is to remove the Registrant's entry from the Register.

The Interim Suspension Order on the Registrant's registration is hereby revoked with immediate effect.

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## Legal Advice Given

### Service

In accordance with Paragraph 5 of Schedule 2 of the Fitness to Practise Rules 2016, a hearing should not be fixed earlier than 28 days after the posting of the Notice of Hearing except with the agreement of the Parties. The Notice of Hearing in this case was sent by Special Delivery post on 27 June 2017, which is more than 28 days before today's hearing. Rule 3 of the Fitness to Practise Rules provides that a Notice should be served by sending it by recorded delivery post to the Registrant's address as it appears on the Register or her last known address, and the Notice is treated as having been served on the day after it was so posted. I have been shown proof of posting of the Notice on 27 June 2017 and the electronic receipted delivery dated 28 June 2017. It would be my advice to you as a Committee, at this stage, that it would be safe and proper for you to proceed on the basis that service has been effected in accordance with the requirements of the Rules.

### Proceeding in the Absence of the Registrant

Paragraph 15 of Schedule 2, as Mr Johnston has outlined for you, deals with your ability to proceed with the hearing in the absence of the Registrant. Where the Registrant fails to attend and is not represented at the hearing, the Rules require firstly that the Committee shall require the presenter to ensure that service has been effected, and you as a Committee have already taken that step. When you are satisfied that the Notice of Hearing has been duly served it is up to you as a Committee then to decide whether to direct that the case should proceed and be determined notwithstanding the absence of the Registrant, or to adjourn the hearing and issue directions.

I would refer you as a Committee to the case of **GMC v Adeogba**, which is a case which the Court of Appeal heard in March 2016. In that case, the Court of Appeal set out the basis upon which a panel such as this in a regulatory forum should exercise its discretion in deciding whether or not to proceed in the absence of a registrant. Lord Bingham said that the principles set out in the well-known case of **R v Heyward** and **R v Jones** do provide a usual starting point for any direction given to a panel and the approach that they take. But he went on to say that it is important to bear in mind that there is a difference between a criminal trial proceeding in the absence of a defendant and the decision for a regulator to continue in a disciplinary hearing. The principles in **R v Heyward** and **R v Jones** were set out and summarised as follows: The trial judge has a discretion as to whether a trial should take place or continue in the absence of the defendant and / or his legal

representatives. That discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented. In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular, the nature and circumstances of the defendant's behaviour in absenting himself from the trial, whether his behaviour was deliberate, voluntary and, as such, plainly waived his right to appear; whether an adjournment might result in the defendant attending voluntarily and the length of time of such adjournment; whether there is any indication that the defendant wishes to be legally represented even though absent; the extent of the disadvantage to the defendant in not being able to give his account of events having regard to the nature of the evidence against him; the risk of the jury reaching an improper conclusion about the absence of the defendant; then the general public interest and the particular interest of any victims and witnesses that a trial should take place within a reasonable period of time and the effect of delay on the memory of any witnesses. Then Lord Bingham, having said that it was useful as a starting point, went on to say that relating to disciplinary hearings they must also be guided by the context and the main statutory objective of the regulator, mainly protection, promotion and maintenance of the health and safety of the public. In that regard, the fair, economical, expeditious and efficient disposal of allegations made against a registrant is of real importance. It goes without saying that fairness fully encompasses fairness to the affected practitioner, which is a feature of prime importance, but it also involves fairness to the Council in proceeding with this case.

Lord Bingham went on to say that there is also a burden on practitioners, as with all professionals subject to a regulatory regime, to engage with their regulator both in relation to the investigation and ultimately resolution of the allegations made against them. That is part of the responsibility which they sign up when being admitted to the profession. I would advise that you retire to consider your decision.

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

Simply just to confirm the position as outlined by Mr Johnston, that you do have the ability to admit the bundle into evidence if it is fair and it is relevant. It is difficult for you to make that determination as you have not seen the bundle. I have had the opportunity to consider it and objectively I can advise you I do consider it to be relevant. I agree with the submission made by Mr Johnston that the Registrant has not objected to it. There are documents contained within the bundle which are the record of the Registrant's interview with the Home Office and the Registrant is not in attendance and won't have the opportunity to cross-examine her on that evidence for you, but as an experienced Committee I anticipate that it will be a matter for you what weight you apply to the evidence in the documents if you do choose to admit them.

### **Finding of Facts**

It is now my role to give you, as a Committee, some advice in relation to this, the fact finding stage of these proceedings against the Registrant Comfort Adebayo.

This point in the proceedings, as Mr Johnston has just referred you to, is governed by Paragraph 13 of Schedule 2 which deals with the burden of proof. The burden of proof to prove the facts shall rest on the Council and the standard of proof shall be the balance of probabilities. The Council has brought these proceedings and it is up to the Council to prove its case. I would remind you that the Registrant does not have to prove that she is innocent of the Particulars of the Allegation.

As set out at Paragraph 23 (1) of Schedule 2, the Committee must consider whether the Particulars of the allegation have been proved on the balance of probabilities. The balance of probability standard is defined in the case of **Re H**, which is a 1990 case, and the balance of probability means that the court is satisfied that an event occurred if the court considers, on the evidence, that the event was more likely than not. This is a single and unwavering standard and it means that you, as a Committee, will find the fact proved if you consider that it is more likely than not that it occurred. You should consider the evidence before you, both documentary and oral, and as a Committee, applying both logic and common sense, weigh the strength of this evidence.

You must consider the evidence in respect of each of the Particulars of the Allegation separately. This obligation does not mean that you ignore the surrounding evidence or the background circumstances. This may well be evidence which will assist you in reaching your decision. You are entitled to draw inferences as you use common sense to come to your conclusions, but you must not speculate about what evidence there might have been that is not before you today.

This is a case in which you have received both oral and documentary evidence. It is often said that oral or live evidence is the best type of evidence, and this is because you have the opportunity to observe the bearing and the demeanour of the witnesses and you can hear the way in which they present their evidence, and indeed you have been able to put your own questions to the two witnesses before you today. As you assess the evidence you have heard, you should consider whether it assists you in reaching that conclusion as to whether the facts have been found proved on the balance of probabilities.

You will note that Particular 5 of the allegation relates to dishonesty, it therefore falls to me to give you some advice as to how you should approach this dishonesty aspect of the case. You are an experienced Committee and you will be aware and familiar that this is a two-stage process. Firstly you approach the objective test. You should consider in the first instance whether, on the balance of probabilities, the Registrant's actions were dishonest by the standards of ordinary and honest social care workers. If you decide that she did act dishonestly by this standard, only then should you move on to consider the subjective test; that is whether on the balance of probabilities the Registrant realised that what she was doing was dishonest by that standard. These principles are taken from the case of **R v Ghosh**, and that is a 1982 case, as modified in the case of **Hussain v GMC** where Longmore LJ stated: "It seems to me in the future it would be right and proper for the first part of the direction to be adopted to read that the panel should decide whether according to the standard of reasonable and honest doctors, not members of the public, what was done was dishonest".

The same principle is equally applicable to social care workers as it is to doctors. This means you should be satisfied that the Registrant acted dishonestly if, on the balance of probabilities, you consider that her actions were dishonest by the ordinary standards of reasonable and honest social care workers, and it is for you to decide what those standards are and to apply them to this question.

The Registrant has not appeared and has not given evidence before you today and I would remind you that she is not obliged so to do. She has denied the allegations at all times and you should take this into account as you make your assessment in respect of the facts.

### **Fitness to Practise**

You are now at the second stage in the proceedings and you are tasked with deciding whether this Registrant's fitness to practise is impaired by reason of her misconduct.

As Mr Johnston has already outlined for you, Rule 4 provides for a finding of impairment of fitness to practise by one or more of six routes, and today we are looking at the route of misconduct. In approaching this task you should have careful regard to all of the evidence that is placed before you, as well as submissions of Mr Johnston.

The facts have been found proved but this does not mean that you should assume or naturally conclude that the Registrant's fitness to practise must be impaired. You can and should view the matters found proved and the context in particular, and examine the surrounding offence in circumstances at the times in question and subsequently, and address the issue of misconduct.

As an experienced Committee you will be familiar with the case of **Cheatle v GMC**. That is a 2009 case in which Cranston J made it clear that panels such as this in considering the question of impairment should engage in a two-step process. What he said was first the panel must decide whether there has been misconduct, then it must go on to determine whether, as a result, fitness to practise is impaired. Thus it may be that despite a doctor having been guilty of misconduct, for example, a Fitness to Practise Committee may decide that his or her fitness to practise is not impaired. Step one is therefore for you to ask yourselves has there been conduct which has fallen short of the required standards and is sufficiently serious that it can properly be described as misconduct going to fitness to practise.

Cranston J went on to refer the definition of misconduct in the much quoted case of **Roylance v GMC**, which you will all be familiar with. I remind you that the definition set out in that case was that misconduct is not usually defined in legislation but is taken to be a word of general effect involving some act or omission which falls short of what would be proper in the circumstances. Lord Clyde, giving judgment in **Roylance**, said that the standards of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in those particular circumstances. The same principles apply when you are dealing with a social care worker and, therefore, Mr Johnston has correctly referred you to the Codes of Practice which were in force at the time of the conduct alleged.

If you are satisfied that the actions of the Registrant, in this case, did constitute misconduct, then you move on to the separate issue of whether, in light of the misconduct, the Registrant's fitness to practise is impaired.

The principle of impairment was initially considered in the case of **Cohen v GMC** [2008] when Silber J said: "There must always be situations in which a panel can properly conclude that the act of misconduct was an isolated error on the part of the medical practitioner and the chance of it being repeated in the future is so remote that his or her fitness to practise has not been impaired".

Mrs Justice Cox in the Grant case, and it is **Grant v NMC**, went on to refer to the formulation adopted by Dame Janet Smith in her Fifth Shipman report, and the test which she formulated as an appropriate test for panels, such as you, considering the question of impairment. If I could summarise the test as follows:

Firstly, has the Registrant act in the past and / or is she liable to act in the future to put a service user at unwarranted risk of harm?

Secondly, has the Registrant in the past and / or is she liable in the future to bring the profession into disrepute?

Thirdly, has the Registrant in the past and / or is she liable in the future to behave in a way such as to breach one or more of the fundamental tenets of the social care profession?

Fourthly, has the Registrant in the past acted dishonestly and is she liable to act dishonestly in the future?

It is, of course, right to point out that Dame Janet Smith was considering the standards of doctors, but her words are equally applicable when you are considering social care workers.

In the case of **Meadows v GMC** it was highlighted that the purpose of the fitness to practise procedure is not to punish a practitioner for past misdoings but to protect the public against acts and omissions of those who are not now fit to practice. I would remind you as a Committee you should, therefore, look forward, not backwards.

As you consider the issue of impairment you will be familiar with the test of current impairment. That is to look at things as they stand today. I would refer you again to Silber's J guidance on remediation in the case of Cohen. He said that you should take into account three questions. Firstly, whether the conduct which has led to the charge is easily remediable; secondly, whether it has indeed been remedied; and thirdly, whether it is likely to be repeated. It is a matter then for you, using your own independent skill and judgment, to assess whether this case falls into the category such as described by Silber J in **Cohen** as an otherwise unblemished career with one isolated incident.

You have received submissions from Mr Johnston that you take into account the public interest, and I can confirm to you as a Committee it is proper for you to take into account the public interest when you are deciding if the Registrant's fitness to practise is impaired. In the case of **CHRE v NMC and Grant**, which I have referred to already, Mrs Justice Cox at paragraph 74 stated:

"In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant panel should generally consider not only whether the practitioner 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 should ask yourselves in your deliberations whether, in all the circumstances of this case, the need to uphold proper professional standards and public confidence in the profession would be undermined if you did not make a finding of impaired fitness to practise.

Finally, I would remind you that in your deliberations you are not required to adhere to any standard of proof and it is a matter for you, as a Committee, to exercise your own skill and judgment as you reach your decisions.

## **Sanction**

Before you retire at this the third stage of these proceedings to consider sanction, I am advised to give you some advice in relation to the matters which you can take into account.

If I could start with one point which does arise from Mr Johnston's submission directly in that I think it is not entirely accurate to say that the Registrant has given no reason for her non-attendance. She has stated in her statement that she couldn't afford legal representation and that would, in my view, be considered as a reason for her non-attendance and you should take that into account.

Chair, you have outlined already the sanctions that are available for you as a Committee, and those are set out at Paragraph 26 of Schedule 2 of the Rules, and that is namely to warn the registrant, to make a Conditions of Practise Order, to make an Order of suspension, to make a Removal Order, or to deal with any current ISO which is in place. Paragraph 26 (2) of the Rules requires you to take into account the following matters as you reach your decision: that is the seriousness of the Particulars of the Allegation, the degree to which the Registrant has fallen short of any expected standards, the protection of the public, the public interest in maintaining confidence in social care services, and the issue of proportionality.

Mr Johnston has referred you to the Indicative Sanctions Guidance and I commend this document to as you make your decision. Paragraph 2.6 of the Indicative Sanctions Guidance deals with proportionality. This principle requires that the consequences of a sanction 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 must be weighed against the interests of this particular Registrant. The need to act proportionately requires you as a Committee to consider all of the sanctions available to you in an ascending order of seriousness, that is starting with the least restrictive sanction first until you find the Order that is sufficient to deal with the factors in this case. The Guidance encourages you to take into account mitigating and aggravating factors and to weigh those in the balance. Mr Johnston has already referred to you his view that there is no mitigation in this case, but it is a matter for you as a Committee to assess the evidence and to reach your own view in relation to that. You should take into account any information you do have from the Registrant about the potential effect of a sanction, both financially and professionally.

You will appreciate that case law has made it clear that the purpose of sanction is not to punish a practitioner for

past wrongdoings but rather to protect the public and to promote the public interest. This may, however, be a punitive element because a registrant can no longer work in their chosen profession and this is something that you cannot shy away from, although it is not your primary purpose as you address sanction.

You will of course be familiar with the much quoted from case of **Parkinson v NMC** which deals with dishonesty cases and it does highlight -- in that case it was a nurse -- that a nurse who has acted dishonestly and who does not appear before the panel, either personally or by solicitor or counsel to demonstrate remorse, is at risk of being removed from the Register.

I would also refer you to the specific elements Mr Johnston has already directed you to within the Indicative Sanctions Guidance that deal with dishonesty, and that's at paragraphs 5.10 to 5.13.

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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.

PP. N. Stewart

Committee Manager

31 July 2017

Date