

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

Name: Jackie Diane Houston

SCR No: 6023074

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **23 April 2018**, 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 and misconduct;

The Committee decided to make an Order suspending your registration for a specified period of two years ('a Suspension Order').

Particulars of the Allegation:

That, being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), and whilst working as a domiciliary care worker:

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| 1. | On 24 May 2016, you stole household items to the value of £13 or thereabouts belonging to Iceland contrary to Section 1 of the Theft Act (Northern Ireland) 1969. On 19 May 2017, a fine of £100 was imposed. |
| 2. | On 04 October 2016, you stole various items to the value of £21 belonging to Dunnes, Flagship store, Bangor, contrary to Section 1 of the Theft Act (Northern Ireland) 1969. On 19 May 2017, a conditional discharge for 2 years was made. |
| 3. | And your actions as set out at 1 and 2 above were dishonest. |

And your actions as set out above at 1 show that your fitness to practise is impaired by reason of your conviction.

And your actions as set out above at 2 show that your fitness to practise is impaired by reason of your misconduct.

Procedure:

The hearing was held under the fitness to practise procedure.

Preliminary Matters

Service

The Registrant was neither present nor represented. The Council was represented by Mr Anthony Gilmore.

In a Notice of Hearing dated 16 March 2018, 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 17 March 2018. The Committee determined that the Notice of Hearing had been served in accordance with Rule 3 of the NISCC Fitness to Practices 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. Mr Gilmore advised the Committee that the Registrant had returned her attendance form and recorded that she did not intend to attend the hearing and that she no longer worked as a social care worker. Mr Gilmore invited the Committee to conclude that her 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. The Committee heard and accepted the advice of the Legal Adviser. The Committee noted that there was no evidence to indicate that the Registrant would be more likely to attend a future hearing if the matter was adjourned. 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.

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 had been served on the Registrant and she had not raised any objections in respect of the content of the bundle. Furthermore, she had provided consent for the bundle to be provided to the Committee in advance of the hearing. After 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.

Background

The Registrant is registered as a social care worker on Part 2 of the Register. She was first employed as a domiciliary care worker by the South Eastern Health and Social Care Trust ('the Trust') on 27 May 2002. She was first registered with the Council on 08 August 2016.

On 16 June 2017, the Council received an Employer Referral Form dated 09 June 2017 from the Trust. This Form set out that the Trust had become aware of two reports which had appeared in the local press regarding the Registrant. The press reports stated that on two separate occasions the Registrant had stolen household items to the value of £13 from Iceland and also items worth £21 from Dunnes Stores in Bangor.

The Trust form confirmed that a Disciplinary Investigation had commenced and that there were no previous allegations of this nature in relation to this Registrant. The Employer Referral Form also confirmed that the Registrant admitted that the newspaper articles referred to her.

Evidence

The Committee heard submissions from Mr Gilmore and gave careful consideration to all the documentation contained within the hearing bundle.

Mr Gilmore submitted that the Council could prove the facts of the case based on three strands of evidence, namely the Certificates of Order/Conviction provided by the Criminal Court, the correspondence from the PSNI dated 03 July 2017 and 15 September 2017, and the Registrant's own submissions to the Council, received on 23 June 2017.

Mr Gilmore submitted that in respect of the first Particular of the Allegation, the Council relied on the Certificate of Conviction. This related to the offence on 24 May 2016 at the Iceland Store in Bangor. This matter was dealt with by Newtownards Magistrates' Court on 30 September 2016 and the Registrant received a Conditional Discharge for one year. Mr Gilmore submitted that when the Registrant appeared before Newtownards Magistrates' Court on 19 May 2017 in respect of the second offence at Dunnes Stores, a fine of £100 was imposed for the Breach of the Conditional Discharge. Mr Gilmore referred the Committee to the Certificate of Conviction contained within the papers and relied on Schedule 2 Paragraph 12 (5) of the Rules, which sets out that the findings of fact and certification of any UK Criminal Court shall be conclusive proof of the facts or the conviction so found.

In respect of the second Particular of the Allegation, Mr Gilmore submitted that the Certificate of Order/Conviction proved that on 19 May 2017 at Newtownards Magistrates' Court, the Registrant received a Conditional Discharge for two years for theft of items to the value of £21 belonging to Dunnes Flagship Store, Bangor. He submitted that on the balance of probabilities, the Council could prove this allegation and that the Certificate, whilst for a Conditional Discharge not a conviction, was corroborated by the correspondence from the PSNI.

The Committee heard that the third matter is an allegation of dishonesty. Mr Gilmore submitted that the Registrant had pleaded guilty to each of the matters, both the theft from Iceland and from Dunnes. She accepted the offences. The Council's position is that both offences involve dishonesty.

Finding of Facts

The Committee was aware that the burden of proof rests with the Council and that the standard of proof is the civil standard, namely, the balance of probabilities. This means that the facts will be proved if the Committee is satisfied that it is more likely than not that the incidents as described in the Particulars of the Allegation occurred.

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

The Committee finds that the Particulars of the Allegation are proved on the balance of probabilities.

In respect of Particular 1, the Committee was satisfied that the Certificate of Conviction is conclusive proof of the conviction referred to. The Committee finds that on 30 September 2016 at Newtownards Magistrates' Court, the Registrant pleaded guilty to the theft of household items to the value of £13 belonging to Iceland. She received a Conditional Discharge but as she appeared before the Court in relation to another offence during the operational period of the Conditional Discharge, a monetary penalty of £100 was imposed. The Certificate of Order/Conviction made on 30 September 2016 was amended to reflect the monetary penalty and was found by the Committee to be a Certificate of Conviction. The Committee also noted that a separate Certificate was issued in respect of the same monetary penalty on 15 September 2017. Both Certificates relate to the same conviction.

In respect of Particular 2, the Committee noted the information contained within the Certificate of Conviction/Order dated 15 September 2017, which records that on 19 May 2017 at Newtownards Magistrates' Court, the Registrant received a Conditional Discharge for two years for the theft of items to the value of £21 belonging to Dunnes Flagship Store, Bangor. The Committee also took into consideration the additional information contained within the correspondence from the PSNI, dated 15 September 2017, in relation to this offence. This correspondence stated that on 25 October 2016, the police attended Dunnes Stores, Flagship Centre, Bangor in relation to a theft which had occurred on 04 October 2016. The police were informed that staff had become aware that a number of items were missing from the children's section while carrying out a stock check. On reviewing the CCTV, they observed a female, identified as the Registrant, lift a number of items and then call a second female. The other female stood in front of the Registrant who then placed the items into a shopping bag which the other female had brought with her. The Committee noted that the Registrant had pleaded guilty to this offence. Having taken all these factors into account, the Committee finds this Particular proved.

The Committee considered that the Registrant's actions in relation to these offences were dishonest. The Committee noted that both matters relate to stealing items contrary to Section 1 of the Theft Act (NI) 1968. The Committee was satisfied that it was more likely than not that the Registrant's actions would be considered to be dishonest by the standards of ordinary members of the social care profession and that it was more likely than not that the Registrant realised that what she was doing was dishonest by those standards. On the balance of probabilities, the Committee finds this Particular proved.

Fitness to Practise

The Committee then moved on to consider if the Registrant's fitness to practise is impaired.

The Committee heard submissions from Mr Gilmore on the question of impairment. Mr Gilmore submitted that the Registrant's fitness to practise is impaired because of her conviction and misconduct. He submitted that the evidence before the Committee and the facts found proved have established that the Registrant's actions fell short of the standards expected of a registered social care worker.

Mr Gilmore invited the Committee to conclude that the Registrant's actions amount to misconduct and outlined the relevant parts of the Standards of Conduct and Practice for Social Care Workers that in his submission had been breached, namely, Standards of Conduct 2: 2.1 and Standards of Conduct 5: 5.8.

When considering the issue of remediation, Mr Gilmore submitted that the Registrant had demonstrated some insight and had pleaded guilty to both offences. He also submitted that she had written to her regulator expressing remorse.

Mr Gilmore submitted that in light of the facts found proved, public confidence in NISCC to maintain proper standards and in NISCC as a regulatory body would be undermined if a finding of impaired fitness to practise was not made. He submitted that the Registrant had been working as a domiciliary care worker, providing care to vulnerable service users in their own homes. The Council is concerned that there is a risk of repetition and that if she returned to work as a domiciliary care worker, service users could be placed at a risk of harm or could not trust the Registrant.

The Committee had careful regard to all of the evidence and the submissions of Mr Gilmore. The Committee accepted the advice of the Legal Adviser. The Committee took into account that this is a matter for the Committee to determine exercising its own independent judgement with no burden or standard of proof.

The Committee first considered whether the Registrant's fitness to practise was impaired by reason of her conviction. The Committee had no hesitation in concluding that the Registrant's fitness to practise was impaired at the time the offence took place and when the Conditional Discharge was breached. The Committee determined that the Registrant had breached the NISCC Standards of Conduct and Practice for Social Care Workers, in particular the Standards of Conduct:

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.

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 then considered whether her fitness to practise is currently impaired by reason of her conviction. The Committee noted that the Registrant breached the Conditional Discharge only a matter of days after it had been imposed. This is a matter of concern to the Committee. The Committee took into account the fact that the Registrant pleaded guilty and wrote to NISCC expressing her remorse. However, whilst she has demonstrated some insight, the Committee has no evidence that the Registrant has remediated the cause of her criminal offending. The Committee therefore found that there was a risk of repetition and a risk to the public.

The Committee also took into account the public interest. The Committee is satisfied that without evidence of remediation and because of the nature of her conviction, public confidence in the profession would be undermined if no finding of impairment was made.

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

The Committee then went on to consider whether the Registrant's conduct as set out in the Particulars of the Allegation at Paragraphs 2 and 3 constituted misconduct. The Committee determined that the Registrant's conduct in stealing various items to the value of £21 belonging to Dunnes Flagship Store was sufficiently serious and could properly be described as misconduct impacting on her fitness to practise. The Committee was in no doubt that the dishonesty aspect of both offences fell far below the standards which could be considered proper for a social care worker. Honesty is one of the fundamental tenets of the social care profession.

The Committee determined that the Registrant had breached the NISCC Standards of Conduct and Practice for Social Care Workers, in particular the Standards of Conduct:

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.

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 then considered whether the Registrant's fitness to practise is currently impaired by reason of her misconduct. The Committee concluded that the misconduct is capable of remediation in certain circumstances, although dishonesty is always difficult to remediate. In considering whether she has remediated, the Committee took into account the fact that the Registrant pleaded guilty and wrote to NISCC expressing her remorse. However, the Committee concluded that as this was a second offence, which occurred shortly after the criminal proceedings for the first offence, there was a pattern of dishonest behaviour. Also, although the Registrant had expressed remorse to NISCC on 23 June 2017, the Committee was not satisfied that she notified either her employer or her regulator at the first reasonable opportunity. The Committee considered that she had shown limited insight through her acceptance of her wrongdoing but could not be satisfied that she has remediated her misconduct. The Committee therefore found that there was a risk of repetition and a risk to the public.

The Committee also took into account the public interest. The Committee is satisfied that without evidence of remediation and because of the nature of her conviction, public confidence in the profession would be undermined if no finding of impairment was made. The Committee concluded that a member of the public familiar with the events surrounding this case would lose confidence in the social care profession and NISCC as

a regulator if a finding of impairment were not made. The Committee therefore determined that a finding of impairment is necessary on the grounds of public interest.

For these reasons, the Committee concluded that the Registrant's fitness to practise is impaired by reason of her misconduct.

Sanction

In reaching the decision on sanction, the Committee had careful regard to all the evidence in the case, together with the detailed submissions from Mr Gilmore. The Committee heard and accepted the advice of the Legal Adviser.

The Committee has taken into account that any sanction imposed must be appropriate and proportionate and although not intended to be punitive in its effect may have such consequences.

The Committee considered the offences to be serious even though the amounts involved were small.

The Committee first addressed the mitigating and aggravating factors. The Committee determined that the mitigating factors are:

- There is no evidence that the Registrant has repeated her offending since the date of her last court appearance;
- The Registrant has co-operated with NISCC;
- The Registrant pleaded guilty to both offences on the first appearance in court;
- The Registrant has a previous good work history, has been with the Trust for a long period of time and remains so, albeit in a different capacity;
- The Registrant's actions did not cause any direct or indirect harm to service users;
- The offences were committed outside work;
- The Registrant has shown some limited insight. She expressed her shame and remorse to the Council in her letter of 23 June 2017.

The Committee determined that the aggravating factors are:

- The Registrant's actions were dishonest;
- The Registrant did not bring her court appearances to the attention of her employer or NISCC at the first opportunity;
- This is not an isolated incident and, in particular, the second offence occurred very shortly after attending court in respect of the first offence;
- There is a lack of full insight and without full insight and remediation some risk of repetition remains.

The Committee noted the Registrant's reference to her difficult personal circumstances at the time these events occurred. However, in the absence of supporting material from the Registrant, the Committee was only able to give this limited weight.

The Committee had careful regard to the Indicative Sanctions Guidance which highlights dishonesty as particularly serious. The Committee took into consideration that the Registrant's dishonesty was not work related and had no direct impact on a service user. However, the Committee remains of the view that her actions were serious and that the public is entitled to place complete reliance on the integrity of registrants.

The Committee went on to consider the appropriate sanction. The Committee took the view that the Registrant's actions had fallen well below the standard of a registered social care worker.

Warning – the Committee considered the Registrant's conviction and misconduct were serious. The Committee therefore concluded that a Warning would not be an appropriate sanction.

Conditions of Practice Order – the Registrant, for her own reasons, was not present at the hearing today and was unable to confirm whether conditions of practice would be workable and achievable. Furthermore, the Committee is of the view that it is not possible to determine conditions of practice which would be sufficient to meet the public interest in this case, in light of the serious nature of the offences and finding of dishonesty.

Suspension – the Committee was of the view that in the circumstances of this case, a Suspension Order for a period of two years is the most appropriate and proportionate sanction. Suspension gives a clear message to the public and the profession that the Registrant's conduct is not appropriate for a registered social care worker. In reaching this decision, the Committee took into account the mitigating factors identified and in particular:

- The Registrant's long work history;
- The dishonesty occurred outside of work; and
- Her actions did not impact on any service user.

Although the Committee is not satisfied that her misconduct has been remediated, it is capable of remediation. The Registrant should be aware that a review of her fitness to resume practise will be undertaken towards the end of the period of her Suspension Order. At any review hearing she would have the opportunity to present evidence of insight and remediation. This would protect the public from the risk of repetition.

The Committee concluded that in all the circumstances of this case, the Registrant's behaviour was not fundamentally incompatible with being a social care worker in the long term. A more severe sanction would be disproportionate to the harm from which the sanction is intended to protect the public and service users.

The Committee next considered the public interest. The public must be able to place complete reliance on the integrity of registrants and a finding of dishonesty against any social care worker is serious. In all the circumstances of this case, the Committee has determined that the reputation of the profession and the role of NISCC to maintain standards will be met by a Suspension Order.

The Committee concluded that a Suspension Order was the most suitable, appropriate and proportionate sanction to be imposed on the Registrant's registration with immediate effect.

The Committee considered that this case was borderline between suspension and removal and decided, in order to reflect this fact, to impose a Suspension Order for the maximum available period of two years.

Legal Advice Given

Service

The position as outlined by the Council's Solicitor is indeed that the Notice was served by the Council on the Registrant on 16 March 2018 by Special Delivery post and I've been shown documentation to confirm that it was signed for as received on 17 March 2018.

In accordance with Paragraph 5 of Schedule 2 of the Fitness to Practice Rules 2016, a Hearing should not be fixed earlier than 28 days after service of the Notice of Hearing and I can confirm that the Notice was served in this case more than 28 days before today's Hearing. Rule 3 of the Rules sets out the service relates to sending a Notice to the Registrant's home address or electronic address as it appears on the Register or, if the last known address differs, then to the last known address and the Notice is deemed to have been served on the day after it was posted. Here we have been told and I have seen the documentation to confirm in fact that it has been signed for, although that is not required in the Rules; it is deemed to be served the day after it is so sent. It is therefore my advice to you that it is safe to proceed on the basis that service has been effected in accordance with the requirement of the NISCC Fitness to Practice Rules 2016.

Proceeding in the Absence of the Registrant

So you have now received an application from the Council under Paragraph 15 of Schedule 2 of the Rules to proceed with the Hearing today in the absence of the Registrant, and you have already made the decision that the Notice of Hearing has been duly served and it has been outlined for you that there has been no clear reason why the Registrant is not in attendance today. I would refer the Committee to the case of the GMC and Adeogba, which is a March 2016 case heard by the Court of Appeal. In that case they set out the basis upon which a Committee such as this should exercise its discretion in deciding whether or not to go ahead in the absence of the Registrant. Lord Bingham said:

"The principles set out in the well-known cases of R v Hayward and R v Jones, do provide a useful starting point for any direction given to a committee and the approach that they take."

He went on to say however:

"Having said that, it is important to bear in mind that there is a difference between a criminal trial proceeding in the absence of the Defendant and a decision for a Regulator in continuing a disciplinary hearing".

He went on to set out the principles and the guidance given in *R v Hayward* and *R v Jones*, which reads as follows:

"The trial judge has a discretion as to whether a trial should take place or continue in the absence of a defendant and/or his legal representatives. That discretion must be exercised with great care and its 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 judgments have regard to all of the circumstances in the case including the nature of the defendant's behaviour in absenting himself from the trial, whether the behaviour was deliberate, voluntarily and as such plainly waived his right to appear. Whether an adjournment might result in the defendant attending voluntarily, the length of such an adjournment, and whether there is any indication that the defendant wishes to be legally represented at the trial even though absent. The extent of the disadvantage to the defendant in not being able to give his accounts 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 interests of any victims and witnesses that a trial should take place within a reasonable period of time of the events to which it relates and the effect of any delay on the memory of witnesses."

Lord Bingham having said that that was the starting point, and having commented that it's important to bear in mind that there's a difference between a criminal trial and a disciplinary hearing said:

"When relating to a disciplinary hearing, you must also be guided by the context and the main statutory objective of the Regulator namely the protection, promotion and maintenance of health and safety of the public. In that regard the fair, economical, expeditious and efficient disposal of any allegations against any health care practitioner is a very real importance."

He went on to say:

"That there's a burden on all practitioners", which applies to social care workers in this instance, "as with all professionals subject to regulatory regime to engage with the Regulator both in relation to the investigation and the ultimate resolution of any allegations made against them. That was part of the responsibility to which they sign up to when being admitted to the profession".

You should therefore in reaching your decision take into account the advice given by Lord Bingham and balance these issues and I would recommend that you do adjourn to consider this matter in full.

Application to Admit Hearing Bundle

The advice is straightforward at this point, to you as a Committee, it is simply that you can admit the bundle into evidence if you are satisfied that it meets the test of fairness and relevance. The submission that you have received is that the bundle has been properly served on the Registrant. She made no objection to the content of the bundle and more than that, she was asked to consent that it be disclosed to the Committee in advance of today's Hearing and, on that basis, it certainly appears to be appropriate to conclude that there is no undue unfairness to the Registrant in admitting the bundle into evidence and its contents, as you are aware, are certainly relevant to today's Hearing.

Findings of Fact

It now falls to me to provide you as a Committee with some advice in relation to this, the fact finding stage of these proceedings and let me be clear, the task in front of you is to decide the facts at this point. You do not need to address your mind at this stage of your deliberations to the gateways of impairment. If you find the facts proved that is something you can move on to but the first task in front of you is to deliberate on the facts of the Particulars of the Allegation. Paragraph 13 of Schedule 2 of the Rules sets down that the burden of proof shall rest with the Council, and that the standard of proof shall be the balance of probabilities.

The Council has brought these proceedings and it is a matter for the Council to prove its case. You have had drawn to your attention that the Registrant has made no contrary submissions. The Registrant is not obliged to do so at this point. It is a matter for the Council to prove its case. As defined in the case of *Re H* and that's a 1990 case, the balance of probabilities standard means that a court is satisfied that an event occurred if the court considers on the evidence that the event was more likely than not. You should therefore consider all the documentary evidence before you and the submissions you have received today, and apply both logic and common sense to why this strengthens this evidence. The Council's Solicitor has quite correctly referred you to Paragraph 12 (5) of Schedule 2 of the Rules which sets out that when dealing with findings of fact the certification of any U.K. Criminal Court shall be conclusive proof of the facts in the conviction so found. So in relation to the first Particular you can rely on that Rule as you reach your deliberations and he has referred you to Appendix 6 and Appendix 8 of the bundle to prove that Particular and again you should ensure that the facts as found within those certificates match with the Particular of the Allegation.

In respect of the second Particular, you have had your attention drawn to the Certification of Conviction or Order and the Conditional Discharge to the fact that the Registrant entered a guilty plea in her submissions to the Council and also the correspondence from the PSNI.

In relation to Particular three, the Particular refers that the Registrant's actions were dishonest. In considering this Particular of the Allegation, you must consider the merits of the evidence that have been called in support of it. You will, as an experienced Committee, be aware that when approaching a dishonesty issue it's a two stage process. Firstly, you apply the objective task, that is in the first instance and the balance of probabilities consider whether 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 then move onto the second part, that is the subjective task. Whether on the balance of probabilities the Registrant realised that what she was doing was dishonest by that standard. Those principles are taken from the case of *R v Goat* a case modified in the case of *Hussein* and the GMC which is a 2014 case.

Just to clarify, there are only very particular grounds set out in the Rules where a Committee can look behind the Certificate of Conviction and Mr Gilmore is explaining when he previously referred to the fact that the Registrant had made no submissions to the contrary, he wasn't suggesting that it was up to her to prove that she was innocent but rather that she hadn't asked the Council, or the Committee deliberating today, to go behind the Certificate of Conviction because she was not the person named. So that was just a point of clarity.

Just one very minor point that in these deliberations about when the Registrant submitted information to NISCC or when she spoke to her employer, there is no particular allegation that charges her with failing to notify either her employer or the Council. So whilst you may look at that in terms of factual background, in fairness to the Registrant that is not a Particular that is being put to her.

Fitness to Practise

The position at this point is that you have reached the second stage of these proceedings that is the impairment stage. So you are now tasked with deciding whether the Registrant's fitness to practice is impaired. Mr Gilmore has correctly directed you to Rule 4 which sets out that a Registrant's fitness to practice may be impaired by one or more of a number of following reasons and in this case you are asked to consider impairment by reason of the Registrant's conviction and also misconduct. Mr Gilmore has also correctly referred you to Paragraph 24 of Schedule 2 of the Rules. I would highlight that Paragraph 24 (3) sets out issues which the Committee *shall* have regard to, not *may* have regard. You shall have regard to whether you are satisfied as to the reason for the alleged impaired fitness to practice. That the Standards of Conduct and Practice issued by the Council, you have got to take those into consideration, whether the impairment is capable of remediation, whether the impairment has indeed been remediated, the risk of repetition and the public interest. Those are the factors that you shall take into account but it might be helpful if I give you some examples in terms of case law as to how you do take those factors properly into account.

In the case of *Cheadle -v- GMC*, Mr Justice Constance made it clear that a Committee or a panel such as this considering the question of impairment should engage in a two-step process.

Firstly, you should establish whether on the facts found proved, one or more of the routes for impairment set out in the Rules has been met. Step one is therefore to properly ask yourself whether there has been conduct which has led to a conviction. You have already found in the facts that there has and then whether there is conduct which is sufficiently serious that it can properly be described as misconduct going to fitness to practice. As an experienced committee you are aware that misconduct is not usually defined within legislation but is set out in the case of *GMC -v- Roylance*, misconduct has 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 that case said that the standard of propriety may often be found by reference to the rules and standards required to be followed by a medical practitioner in that case or in this case a social care worker. The codes enforced at the time will assist you in doing this. You should consider whether the Registrant's conduct fell short of the proper standards of behaviour and the Council has outlined for you the issues in the Code that they feel her conduct breached but it is a matter for you exercising your own judgement without any reference to a burden or standard of proof to make a decision on that point.

If you are satisfied that the actions of the Registrant did constitute misconduct, then you move to the second step and that is whether her fitness to practice is currently impaired. It is well established that panels considering impairment should do so in the present tense. That is to determine whether her fitness to practice is impaired at

the time you are considering the matter, that is today. It might be helpful if I reminded you of the issues raised in the case of CHRE -v- Grant, which is a 2011 case, and the particular comments of Ms Justice Cox at paragraph 74 when she stated that in determining whether a practitioner's fitness to practice 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 the need to uphold proper professional standards and whether public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances. It is therefore proper for you to take into account the public interest in your deliberations. Ms Justice Cox went on to refer to the formulation adopted by Dame Janet Smith in her Fifth report for the Shipman Inquiry and the tasks which she formulated as appropriate for panels when considering the question of impairment. You might find this test helpful in your deliberations. Firstly, has the Registrant acted in the past or is liable to act in the future so as to put any service user at unwarranted risk of harm. Secondly, has the Registrant acted in the past or is she likely in the future to behave in a way so as to bring the profession into disrepute.

Thirdly, has the Registrant in the past or is she liable in the future to behave in a way so as to breach one of the fundamental tenets of the social care profession. Fourthly, has the Registrant in the past or is she liable in the future to act dishonestly.

I know that the Committee will also be familiar but it might be helpful if I remind you of Mr Justice Silvers guidance on remediation as set out in the case of Cohen whether to decide whether an issue has been remediated to take into account the following factors. Firstly, whether the conduct which has led to this charge is easily remediable? Was it capable of being remediated? Secondly, whether it has in fact being remedied and thirdly whether it is likely to be repeated.

Sanction

At this point it falls to me to give you some advice on the sanctions which you can properly consider in respect of this Registrant, Jackie Houston. You have heard submissions from Mr Gilmore but I will start by reminding you that it is not for the Council to persuade you to take a particular course or is it for the Registrant to persuade you to take another. Rather, it is for you as a Committee, exercising your own independent judgement, to decide what is the appropriate response to the findings that you have made so far.

I remind you that the purpose of sanction is not to be punitive although sanction may have a punitive effect. Rather, the purpose of sanction is the protection of service users and the wider public interest. The public interest includes the maintenance of confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour. As Lord Justice Law said in the case of *Rashid -v- GMC*, and that is a 2007 case, the panel is centrally concerned with the reputational standing of the profession rather than the punishment of the doctor. Again, this would equally apply to a social care worker.

You have already outlined the options in terms of sanction, which I will remind you are set out for you in Paragraph 26 of Schedule 2. So you may warn the Registrant, you may direct and make a Conditions of Practice

Order, you may make an Order suspending the Registrant for a specified period not exceeding two years or make a Removal Order.

In reaching your decision, you should consider all the evidence that has been placed before you as balanced with the submissions of Mr Gilmore. Mr Gilmore has also correctly directed you to Paragraph 26 (2) of Schedule 2 which sets out for you the factors to take into account, namely, 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.

I remind you that proportionality, you are given specific guidance on proportionality in the Indicative Sanctions Guidance at Paragraphs 2.6, and it really means that the consequence of the sanction which you impose must not be disproportionate to the harm from which the sanction is intended to protect the public or service users.

In reaching your decision, you should take into account both the aggravating and mitigating features of the case. In reaching your decision, you must weigh the public interest with that of the Registrant. You should, as you have been directed to by Mr Gilmore already, consider each of the options that are available starting with the least restrictive and only working up the scale of restrictiveness if the option you are considering is the one you reject. Mr Gilmore has also directed you to Paragraph 5.10 of the Indicative Sanctions Guidance which deals with dishonesty and highlighted Paragraph 5.13. You should take this into account when reaching your decision. And finally you will be familiar as an experienced Committee with the guidance given in the case of *Parkinson -v- NMC* where it was held that a nurse found to have acted dishonestly is always going to be at severe risk of having his or her name erased from the Register. A nurse who has acted dishonestly who does not appear before the panel either personally or by solicitors or counsel to demonstrate remorse, a realisation that the conduct criticized was dishonest and an undertaking that there would be no repetition effectively forfeits a small chance of persuading the panel to adopt a lenient or merciful outcome and to suspend for a period rather than direct erasure. However, I would remind you although *Parkinson -v- NMC* is guidance that you can take into account, and Mr Gilmore has already said that in this case the Council's position is either suspension or erasure or removal could be appropriate sanctions, this does not mean as a Committee that you are left with an arbitrary choice between suspension and removal. Or that a Removal Order should be the default outcome in this case. You should take into account all these factors in your deliberations and give reasons when you have made your decision.

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 suspended for a specified period of two years and you may not practise as a social care worker during the period 23 April 2018 to 22 April 2020 inclusive.

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

1. A member of care staff at a:
 - a.) Children's home;
 - b.) Residential care home;
 - c.) Nursing home;
 - d.) Day care setting;
 - e.) Residential family centre.
2. A person who is supplied by a domiciliary care agency to provide personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
3. A manager of a:
 - a.) Residential care home;
 - b.) Day care setting;
 - c.) Residential family care centre; or
 - d.) 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 Council (Social Care Workers Prohibition) and Fitness of Workers Regulations (Northern Ireland) 2013 and the Northern Ireland Social Care Council (Social Care Workers Prohibition) and Fitness of Workers (Amendment) Regulations (Northern Ireland) 2017.

Early Review

The Fitness to Practise Committee may, at your request, review the Order before the end of the period for which the suspension has been imposed if there has been a material change of circumstances since the Order was imposed. The Committee may, after reviewing a Suspension Order, revoke that Order or replace that Order with a Conditions of Practice Order.

Review at Conclusion of Sanction

The Council will seek information from you towards the end of the period for which the suspension has been imposed, and may refer the matter for review by the Fitness to Practise Committee. If the Committee reviews the Order and it is satisfied that your fitness to practise remains impaired, it may impose a further Order to commence upon expiry of the existing Order, or it may impose a Conditions of Practice Order to commence upon expiry of the existing Order, or it may revoke the existing Order and impose a Removal Order. You will be contacted by the Council towards the end of your period of suspension.

P.P. M. Stewart

Committee Manager

27 April 2018

Date