

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

**Name:** Sarah Jessica Allen

**SCR No:** 6020415

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **26 September 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 CONVICTIONS;**

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

**Particulars of the Allegation:**

That on 29 May 2018, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted of the following offences at Omagh Magistrates Court:

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| 1. | Defendant on a date unknown between the 14 <sup>th</sup> day of June 2017 and the 14 <sup>th</sup> day of July 2017 stole cash to the value of £60 or thereabouts belonging to Service User A, contrary to Section 1 of the Theft Act (Northern Ireland) 1969.   |
| 2. | Defendant on a date unknown between the 1 <sup>st</sup> day of July 2017 and the 12 <sup>th</sup> day of July 2017 stole cash to the value of £20 or thereabouts belonging to Service User B, contrary to Section 1 of the Theft Act (Northern Ireland) 1969.  |
| 3. | Defendant on the 14 <sup>th</sup> day of July 2017 stole cash to the value of £30 or thereabouts belonging to Service User B, contrary to Section 1 of the Theft Act (Northern Ireland) 1969.  |
| 4. | Defendant on a date unknown between the 18 <sup>th</sup> day of July 2017 and the 19 <sup>th</sup> day of July 2017 stole cash to the value of £70 or thereabouts belonging to Service User B, contrary to Section 1 of the Theft Act (Northern Ireland) 1969.   |
| 5. | Defendant on the 6 <sup>th</sup> day of July 2017 dishonestly made a false representation, namely, that she was entitled to use an Ulster Bank debit card for an account belonging to Service User A with the intention, by making the representation, to make a gain for herself or another or to cause loss to Service User A or to expose him to a risk of loss, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud |

	Act 2006.
6.	Defendant on the 7 <sup>th</sup> day of July 2017 dishonestly made a false representation, namely, that she was entitled to use an Ulster Bank debit card for an account belonging to Service User A with the intention, by making the representation, to make a gain for herself or another or to cause loss to Service User A or to expose him to a risk of loss, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006
7.	Defendant on the 21 <sup>st</sup> day of July 2017 dishonestly made a false representation, namely, that she was entitled to use an Ulster Bank debit card for an account belonging to Service User A with the intention, by making the representation, to make a gain for herself or another or to cause loss to Service User A or to expose him to a risk of loss, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.
8.	Defendant on the 30 <sup>th</sup> day of July 2017 dishonestly made a false representation, namely, that she was entitled to use an Ulster Bank debit card for an account belonging to Service User A with the intention, by making the representation, to make a gain for herself or another or to cause loss to Service User A or to expose him to a risk of loss, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.
9.	Defendant on the 1 <sup>st</sup> day of August 2017 dishonestly made a false representation, namely, that she was entitled to use an Ulster Bank debit card for an account belonging to Service User A with the intention, by making the representation, to make a gain for herself or another or to cause loss to Service User A or to expose him to a risk of loss, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.
And, that by reason of the matters set out above, your fitness to practise is impaired because of your convictions.	

### **Procedure:**

The hearing was held under the fitness to practise procedure.

### **Preliminary Matters**

#### **Service**

In a Notice of Hearing dated 21 August 2018, sent by Special Delivery post 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 22 August 2018.

The Committee was advised that solicitors representing the Registrant had confirmed by way of letter, dated 07 September 2018, that the Registrant was aware of today's hearing.

The Committee, in all of the circumstances of the case, is satisfied that the Notice of Hearing has been served in accordance with Rule 3 of the NISCC Fitness to Practise Rules 2016 ('the Rules'), and the requirements of Paragraph 5 of Schedule 2 of the Rules.

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

Mr Gilmore made an application to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules, and that the Committee should hear and determine the case in her absence. He advised that reasonable efforts had been made to inform the Registrant of today's hearing and referred the Committee to her solicitor's letter to NISCC, dated 07 September 2018. This correspondence confirmed that the Registrant did not wish to attend the hearing or to avail of representation at the hearing. In addition, it confirmed that the Registrant was prepared for the matter to be dealt with on the papers in her absence. Mr Gilmore further referred the Committee to the proforma signed by the Registrant, which indicated that she would not be attending the hearing.

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

The Committee bore in mind the public interest in the expeditious disposal of the hearing, and that there was no evidence to indicate that the Registrant would be more likely to attend a future hearing if the matter was adjourned. The Committee took into account the signed proforma from the Registrant, dated 05 September 2018, and her solicitor's letter to NISCC of 07 September 2018. After careful consideration of all of the issues, the Committee decided to exercise its discretion to proceed in the absence of the Registrant, taking into account the nature of the allegations and striking a careful balance between fairness to the Registrant and the wider public interest. The Committee, in all of the circumstances, considers that the Registrant has voluntarily absented herself from today's hearing. However, the Committee reminded itself that it must avoid reaching any improper conclusion about the Registrant's absence, nor treat the absence as an admission of guilt.

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

The Committee heard an application from Mr Gilmore under Paragraph 12 of Schedule 2 of the Rules to admit a bundle of papers into evidence. The Committee was satisfied that the bundle met with the requirements of relevance and fairness and admitted the bundle (Exhibit 1).

### **Background**

Mr Gilmore told the Committee that the Registrant is registered at Part 2 of the Register as a social care worker. During the period of the allegations, she was employed as a domiciliary care worker with Derg Valley Care, having commenced with them in March 2017. The allegations relate to the Registrant's provision of care to Service User A and Service User B at their residence.

### **Evidence**

Mr Gilmore referred the Committee to the nine certificates of conviction in the bundle of papers. He advised that the convictions against the Registrant relate to four counts of theft and five counts of dishonest false representation whilst using Service User A's debit card. The Registrant was convicted of the offences on 29 May

2018, and was sentenced on 12 June 2018 to three months' imprisonment with a Compensation Order against her for the amount of £1441.52. The convictions were appealed by the Registrant. However, this was unsuccessful and the sentence was confirmed on appeal. Mr Gilmore referred the Committee to the letter from the PSNI to NISCC, dated 01 August 2018, which provides details in relation to the Registrant's convictions. This correspondence indicates that on 19 July 2017, the police were contacted in relation to the theft of cash from the home of an elderly couple. At this stage, the police were made aware of two possible suspects who were in-house carers for the couple. Subsequent to this, on 02 August 2017, the police were contacted again in relation to the discovery of false bank transactions concerning the same couple. On investigation, the bank involved confirmed that the monies transferred without permission had been paid into the Registrant's credit card account. The police interviewed the Registrant on 29 August 2017, when she made full admissions to the false offences concerning the bank card, although she refuted that she was responsible for the theft of any cash from the service users' house. The police at this stage noted that the Registrant 'showed little, if any remorse for her actions, and admitted that she had been 'stupid'".

Mr Gilmore further referred the Committee to the employer referral form received from Derg Valley Care, dated 26 July 2017. This detailed the allegations concerning the Registrant and the statutory notification to RQIA. In addition, a hand written statement from the Registrant, dated 20 July 2017, was provided. In this statement, the Registrant denied the allegation that she had been stealing money from vulnerable service users. Mr Gilmore directed the Committee to the nine certificates of conviction, which confirm that the Registrant pleaded guilty to the charges against her, and her solicitor's letter of 14 August 2018 which confirms the Registrant's sentence arising out of her convictions, and that the compensation monies had been paid by her. Mr Gilmore submitted that the Registrant's convictions related to a period from June through to August 2017, and involved theft from two service users for whom the Registrant was providing care.

### **Finding of Facts**

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

The Committee took into account the submissions from Mr Gilmore on behalf of the Council, and had careful regard to all of the documentary evidence submitted. The Committee finds that, on the balance of probabilities, the facts contained in the Particulars have been established. Taking into account Paragraph 12 (5) of Schedule 2 of the Rules, the Committee was satisfied that the certificates of conviction against the Registrant proved the facts therein. The nine certificates of conviction against the Registrant relate to a period from 14 June 2017 to 01 August 2017, and concern theft of monies from Service User A and Service User B and the use by the Registrant, by way of dishonest false representation, of Service User A's bank debit card. The Committee notes

that the Registrant pleaded guilty to the aforementioned criminal charges, and that this is acknowledged in the correspondence from her solicitor.

Taking all of this into account, the Committee finds proved, on the balance of probabilities, the facts in accordance with Rule 4 (1) (d) of the Rules.

### **Fitness to Practise**

The Committee proceeded to consider if the Registrant's fitness to practise is impaired. The Committee heard and accepted the advice of the Legal Adviser.

The Committee heard submissions from Mr Gilmore, who advised that there were no formal admissions from the Registrant in relation to the allegations. He submitted that the Registrant's convictions call into question her ability to work in social care services, such as to bring into question her suitability to remain on the Register without restriction or to be registered at all. Arising out of the Registrant's criminal convictions, he referred the Committee to breaches of the Standards of Conduct and Practice for Social Care Workers as follows: 1: 1.2; 2: 2.1; 2.11; 5: 5.2; 5.3; 5.8. He submitted that the Registrant's actions, as well as amounting to a clear breach of the Standards, were unfair to her work colleagues, particularly when she initially denied the allegations, causing scrutiny of her co-worker to take place. He submitted that there is a basic need for social care workers to act honestly, and that the Registrant's serious misconduct fell well below the minimum standards expected of a registered social care worker, calling into question her right to practise. He reminded the Committee that the Registrant was involved in a series of thefts and false actions which took place over a period of two months, and which evidenced a serious breach of the trust placed in her as a social care worker. He said that even after concerns were raised against the Registrant by her employer, she continued to take money from Service User A's bank account. He also referred the Committee to the correspondence from the PSNI, which indicated that when the Registrant was interviewed, she appeared to show no evidence of remorse. Mr Gilmore told the Committee that there is no evidence of insight on behalf of the Registrant, nor is there any evidence of remediation to date. He suggested therefore that there was a risk of repetition and that the public interest demanded those caring for vulnerable individuals should not themselves present a risk to service users.

In considering whether the Registrant's fitness to practise is impaired, the Committee took into account the relevant provisions of the Rules, along with the Making a Determination of Impaired Fitness to Practise Guidance for Committees on Remediation. The Committee first referred itself to the reasons for the Registrant's alleged impairment of fitness to practise. The nine certificates of conviction, along with the information from the Registrant's employer and the PSNI, show the Registrant's involvement in serious acts of theft and false representation.

In considering this, the Committee had regard to the Standards of Conduct and Practice for Social Care Workers and found the Registrant's actions, as evidenced in her criminal convictions, to be in breach of the following provisions:

**Standard 1: As a social care worker, you must protect the rights and promote the interests and wellbeing of service users and carers. This includes:**

1.2 Treating people with consideration, respect and compassion.

**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;

2.11 Not engaging in practices which are false in respect of use of public or private monies.

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

5.2 Exploit service users, carers or colleagues in any way

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

5.7 Put yourself or other people at unnecessary risk

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, in considering the issue of impairment of fitness to practise, took account of Paragraph 24 (3) of Schedule 2 of the Rules which states it should have regard to:

- (a) whether it is satisfied as to the reason for the alleged impairment of fitness to practise;
- (b) the Standards of Conduct and Practice issued by the Council under Section 9 of the Act;
- (c) whether the impairment is capable of remediation;
- (d) whether the impairment has been remediated;
- (e) the risk of repetition; and
- (f) the public interest.

The Committee noted the Registrant's nine convictions for theft and dishonest false representation took place during a period from June 2017 to August 2017 and involved two elderly service users. The Committee concluded these are very serious convictions which took place during the Registrant's employment. The Committee further notes that during the subsequent employer investigation when the Registrant denied the allegation of theft, her actions put her co-worker at risk of being subject to investigation by both her employer and outside adult safeguarding agencies. Although the Registrant pleaded guilty to the charges against her, the Committee has no information or evidence from her as regards any actions she has taken to remediate her behaviour. The Registrant's solicitor's letter of 07 September 2018 indicates that she expressed genuine remorse for her actions throughout the process and wished that this be conveyed to the Council. However, the Committee concludes that the Registrant's actions were deliberate, and it has no evidence to suggest that the

Registrant would act differently in the future. Accordingly, the Committee considers there to be a continued risk of repetition by the Registrant of her behaviour.

The Committee concluded that the Registrant's convictions bring the social care profession into disrepute and that the public would find it totally unacceptable that a Registrant convicted in these circumstances remained on the Register without restriction.

In all the circumstances, the Committee concluded that a finding of impaired fitness to practise is, therefore, necessary for the maintenance of public confidence in the social care profession and the Council as its regulator, and public confidence in the social care profession would be undermined if a finding of impaired fitness to practise was not made.

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

### **Sanction**

In reaching its decision on sanction, the Committee considered the submissions of Mr Gilmore on behalf of the Council, and had regard to all of the evidence in this case. Mr Gilmore referred the Committee to various mitigating and aggravating factors, and the NISCC Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance').

It accepted the advice of the Legal Adviser.

The Committee has applied the principles of fairness, reasonableness and proportionality, weighing the public interest with the Registrant's interests, and taking into account any aggravating and mitigating factors in the case. The public interest includes the protection of members of the public, including service users, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour within the profession. The Committee took into account its powers under Paragraph 26 of Schedule 2 of the Rules in relation to the sanctions available to it, and also had regard to the Council's Guidance, bearing in mind that the decision on sanction is one for its own independent judgement.

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

The Committee considers the aggravating factors to be:

- The Registrant's criminal convictions relate to nine convictions involving theft and dishonest false representation, against two vulnerable service users where the Registrant was providing care in their home;
- The Registrant's criminal convictions involved theft of a substantial sum of money amounting to £1441.52;

- The Registrant's actions in relation to dishonest false representation were premeditated and the criminal convictions in total constituted an abuse of trust against service users and their family;
- Three offences of dishonest false representation took place after concerns were raised against the Registrant by her employer and her denials of any wrongdoing;
- At the time of the police interview, the Registrant denied the allegation of theft of cash;
- The Committee has no evidence of remediation or rehabilitation by the Registrant, nor has she provided any personal mitigation or testimonials.

The Committee considered the mitigating factors to be:

- The Registrant complied with the Compensation Order imposed by the Court;
- When interviewed by the police on 29 August 2017, the Registrant admitted the fraud offences;
- The Registrant commenced employment with Derg Valley Care in March 2016, and there were no incidents regarding her performance up until the time of these allegations;
- The Registrant has no prior disciplinary matters with NISCC;
- The Registrant co-operated with NISCC via her solicitor, and expressed genuine remorse for her actions.

Having balanced the aggravating and mitigating factors, the Committee proceeded to consider which sanction to apply in this case.

**Warning** – the Committee considered the issue of a Warning in this case. It bore in mind that the imposition of a Warning for a period of time would not protect the public from the risk of repetition and consequent risk of serious harm to service users or colleagues. The Committee considers that the Registrant's criminal convictions demonstrate a serious disregard for the Standards of Conduct and Practice for Social Care Workers. The Registrant's impairment of fitness to practise is not at the lower end of the spectrum, nor are the circumstances such that the Committee would be confident that this sanction would provide adequate public protection as far as the Registrant's suitability is concerned, bearing in mind that a Warning would entitle the Registrant to work unrestricted as a social care worker. The Committee has no evidence of corrective steps being taken by the Registrant, nor does it have any references or testimonials as to her character and current circumstances. The Committee notes that there is no evidence before it as regards the Registrant's insight into her behaviour or its impact on Service User A and B. Therefore, a Warning would not be appropriate or proportionate in these circumstances.

**Conditions of Practice Order** – the Committee next considered a Conditions of Practice Order. The Committee noted the Guidance at Paragraph 4.13, which states that conditions may be appropriate in cases involving particular areas of a registrant's performance and where a Committee is satisfied that it is appropriate for an individual to remain on the Register. The Registrant has demonstrated no insight into her dishonest actions, nor expressed a desire to remediate her criminal behaviour. The Committee notes that, as a result of the series of



criminal convictions for theft and dishonest false representation, the Registrant was sentenced to three months' imprisonment.

The Committee, therefore, concludes that a Conditions of Practice Order would not be sufficient to meet the public interest in this matter, given the seriousness of the Registrant's departure from the standards expected of a registered social care worker. In these circumstances, the Committee could not formulate workable, enforceable or verifiable conditions which would address the Registrant's criminal behaviour and adequately protect the public.

**Suspension Order** – the Committee next considered a Suspension Order. The Committee noted that the criminal convictions of the Registrant are of a very serious nature and related to the Registrant's breaching of fundamental principles of honesty. The Committee took into account the Guidance at Paragraph 4.19 which states: 'Suspension from the Register may be an appropriate sanction for impairment which while very serious, is not so serious as to justify removal from the Register; for example, where there has been an acknowledgment of failings and where a Committee is satisfied that the behaviour is unlikely to be repeated, and the Registrant has no psychological or other difficulties preventing them from understanding and seeking to remedy the failings and the failings are realistically capable of being remedied, then suspension may be appropriate.'

The Committee considers that the Registrant's nine criminal convictions evidenced behaviour that is fundamentally incompatible with unrestricted registration as a social care worker. The Committee determined that a Suspension Order would not address the risk of repetition as identified above. The Committee has no evidence of insight or remediation from the Registrant, nor has it any information to indicate that the Registrant is unlikely to repeat her criminal behaviour in the future. The Committee considers that a social care worker should be honest and trustworthy and not engage in any false practices or exploit service users. The Committee notes the Registrant's solicitor, in his letter of 07 September 2018, confirms the Registrant's genuine remorse for her actions. However, the Committee considers that the public would view the Registrant's criminal behaviour as falling short of what would be expected of a registered social care worker. In all of the circumstances, the Committee concludes that a Suspension Order would not be sufficient to mark the seriousness and unacceptable nature of the Registrant's criminal convictions.

**Removal Order** – the Committee next considered a Removal Order. In considering this, the Committee took into account the Guidance at Paragraph 4.26 – 4.28. The Committee concluded that given the seriousness of the Registrant's criminal convictions, and her lack of insight into, and remediation of, her failings, a Removal Order is the only sanction sufficient to protect the public and maintain public confidence in the social care profession and the Council as its regulator. In all of the circumstances, the Committee concluded that a Removal Order is the only sanction available to it to protect the public and to meet the public interest and to mark the seriousness and unacceptability of the Registrant's criminal behaviour. The Committee considered the potential devastating impact of a Removal Order on the Registrant, but concluded that the safety and interest of service users was more important than the impact on the Registrant.

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

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## **Legal Advice Given**

### **Service**

As you have heard from Mr Gilmore, the Notice was sent to this Registrant at her registered address by Special Delivery on 21 August 2018, along with the bundle of documents, and service was accepted on 22 August 2018 and I've had an opportunity to consider the documentation in support of this and can confirm that it is in order and it is available for the Committee if they wish to examine it.

Paragraph 5 of Schedule 2 of Fitness to Practice Rules governs the requirement that a hearing shall not be fixed for hearing earlier than 28 days after the posting of the Notice except with the agreement of a registrant and in this case you've heard that the Notice complies with that requirement sent by Special Delivery and in that respect you can accept that service has been effected. In addition, as Mr Gilmore has referred you, you've a letter from a solicitor now on record for this Registrant which also gives you double assurance in relation to service. Therefore, you are in a position to accept service if that is what you wish to do.

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

You as a Committee in view of this Registrant's absence today must now consider whether to proceed in her absence with this matter. Application has been made by Mr Gilmore under Paragraph 15 of Schedule 2 of the Rules for the matter to proceed in her absence and you have the information before you in relation to the circumstances of the service of the documentation and you also have a response from her solicitors and that is by way of letter dated 07 September.

Where you as a Committee are satisfied that the Notice of Hearing has been duly served on the Registrant, you have a number of options. You may either hear and determine the case in the absence of the Registrant or adjourn the hearing and give directions and this is a matter of discretion for you.

As a starting point, I would refer you to the well-known case, it's a criminal case, of R V Jones and you will be familiar with this case. This is a case which was approved as applicable in regulatory matters and in that case Lord Bingham stated that:

*"The discretion to commence a trial in the absence of a Defendant should be exercised with the utmost care and caution".*

I would refer you additionally to the case of Adeogba V GMC, that's a 2016 case, in which Sir Brian Leveson warned that in respect of the case of R V Jones, which was a criminal matter, it is important to acknowledge that there is a difference between criminal prosecutions and regulatory matters. In criminal matters, steps can be taken to enforce the attendance of a Defendant and this is not open to you. In addition, as Mr Gilmore has referred you

to previously, there is an obligation on registrant's in this particular forum to engage with their regulators. Therefore, you should consider whether an adjournment today may result in this Registrant attending the proceedings at a later date, the time involved in an adjournment and the extent of the disadvantage to her in not being able to present her account of events. You should also look at the seriousness of the allegations and this is also a concern for you.

You must consider the general public interest in this matter being dealt with and the interest of any parties or victims. The Registrant is entitled to a fair hearing, attend, be represented, test the Council's case, present evidence on her own behalf. However, if she has the knowledge or the means of knowledge of today's proceedings you may conclude that she has voluntarily absented herself and proceed in her absence. Now in this particular instance you've been referred to the Registrant's response in the proforma documentation that she will not be attending the hearing today. So therefore it is open to you to accept that she is aware of the full nature and particular content of the allegations against her.

Therefore, I would ask you in fairness to look at all the matters before you but avoid reaching any improper conclusion about her absence and not treat it as an admission in any way.

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

You will be aware this is an application made by Mr Gilmore pursuant to Paragraph 12 (1) (a) and (b) of Schedule 2 of the Rules which allows a Committee such as yourselves to admit evidence either oral, documentary or other, whether or not it would be admissible in a Court of Law subject to the requirements of relevance and fairness, and relevance in this context means having some reasonable connection with the evidence in the case and having a value or a tendency to prove a matter significant to the case, and then when considering fairness I would ask you to direct yourselves to the issues of equality, reasonableness, public interests and the interests of justice.

I have had an opportunity to consider the bundle of documents, I can confirm to you they are relevant to the allegations before you and you've been advised that the Registrant has had sight or has the bundle of documents served upon her and to date there has been no objections raised by her or her solicitor to the documents and would therefore advise you that there does not appear to be any unfairness to the Registrant in admitting this bundle, and within the bundle you have a number of different types of documents. You have a number of certificates of conviction but you also have documents which may contain hearsay evidence and in considering this I would ask you when you are considering the documentation to take account of the fact that maybe the person who is the source of the information within the documents is not before you. Therefore, you and any other parties may not have had the opportunity to question credibility and again it would be relevant to what weight you give each document in question. Therefore, at this stage, it's a matter for your discretion in terms of admitting the bundle of documents.

### **Finding of Facts**

At this stage, you as a Committee are deciding whether or not the facts of the allegations as set out in the

Particulars before you in the Notice are proved and as you are aware you must apply the standard of proof applicable as in civil proceedings which is on the balance of probabilities, and case law has made this a single and unvarying standard and it means that a fact will be found proved if you consider it more likely than not to have happened.

The Council has brought these proceedings and it is up to them to prove its case. Therefore, you must look with the greatest of care at accusations against this Registrant which potentially give rise to serious consequences but in determining whether or not they occurred the standard is always the balance of probabilities.

I would remind you not to draw, at this stage, any adverse inference or consequence of this Registrant not attending today and giving evidence to you. Therefore, you must look very carefully at the Particulars weighing and balancing all the evidence presented.

Mr Gilmore has rightly referred you to Schedule 2 Paragraph 12 (5) of the 2016 Rules which indicates that:

The findings of fact and certificates of any Criminal Court shall be conclusive proof of the facts or the convictions so found. He has also referred you to Paragraph 12 (7) in relation to the nine certificates of convictions and he has confirmed by way of reference to the solicitor's letter of the 14th August 2018 that the Registrant has not disputed that these convictions relate to her, nor that there was any appeal that was successful and that is information that you may take into account when considering the Particulars of Allegation before you.

Therefore, you should bear in mind this Rule when you are considering firstly the certificates of conviction, however, a different standard relates to the referral form and the other documentation by way of correspondence etcetera within your bundle. You will be aware that some of those documents contain hearsay evidence and I've already referred you to the necessity of being careful when you are considering that type of evidence in terms of your assessment of it and the weight you give to it.

These are serious allegations and they require careful analysis of all the evidence presented and you must take into account the application of good sense. The cases of Re. B 2008 and Re. D 2008, as decided by the House of Lords, make clear that whilst the seriousness of an allegation or its consequences may necessitate more careful consideration of the evidence, this does not require a different standard of proof or an especially cogent type of evidence.

### **Fitness to Practise**

In addition to the detailed submissions from Mr Gilmore as well as the specific references to the Standards of Conduct and Practice for Social Care Workers, you as a Committee know that in determining whether fitness to practise is impaired you should adopt a sequential approach and I would refer you to the case of Cohen V GMC in support of this. In this matter, you have decided that the Particulars of the Allegation have been found proved. These Particulars against the Registrant, Ms Allen, arise out of nine criminal convictions and you have the nature of those criminal convictions very clearly set out in the documentation in the bundle.

In accordance with Rule 4 of the 2016 Rules, a Registrant's fitness to practice may be impaired by one or more of

specific reasons, and the Council today is pleading before you that the specific reason they are relying upon are those nine certificates of conviction and they are a matter of record. Therefore, you are being asked to determine whether this Registrant's fitness to practise is impaired because of those convictions.

Paragraph 24 of Schedule 2, states that in deciding on the issue of impairment of fitness to practise there are a number of issues you should have regard to. Firstly, you should have regard to you being satisfied as to the reasons for the impaired fitness to practice and I would suggest that when you are considering this aspect you should direct yourselves to the nine certificates of conviction along with the employer referral form and also the documentation within the bundle of papers before you.

You should consider the Standards of Conduct and Practice and these have been referred to you by Mr Gilmore. Thirdly, you should consider whether the impairment is capable of remediation and whether you have any evidence of remediation. I would refer you in this regard to the Northern Ireland Social Care Council Guidance as regards fitness to practise, impairment and remediation. It would not be my intention to highlight the contents of this for you as it is available for your consideration. You should then go on to consider the risk of repetition and lastly consider the public interest. Mr Gilmore has made a very detailed submission to you in relation to that.

In the case of *Cohen v GMC*, the High Court directed you to consider firstly the current competence and behaviour of the Registrant and this is referred to as the personal component and then take into account the need to protect service users and members of the public, uphold proper standards of behaviour, maintain public confidence in the social care profession and this is sometimes referred to as the public component of the test.

You should also consider any evidence you have in the papers as to the degree of harm caused by the Registrant and her culpability in that harm. Mr Gilmore has referred you to the degree of harm in relation to the service users and also the effect of the Registrant's actions on her colleagues, and again this is information that is contained in the documentary evidence before you.

In relation to impairment that is set out by the Court of Appeal, in the case of *GMC v Meadows* in 2006, you are exercising your professional judgement. There is no applicable burden or standard of proof here. I would also refer you to the case of *CHRE V NMC & Grant* in 2011 and in particular the findings of Justice Cox, at paragraphs 74 and 75 where it is indicated:

*"In determining whether a Registrant's fitness to practice is impaired"...* although that would refer specifically to misconduct and this is a conviction matter it is still of assistance to you. She stated:

*"You should consider whether the Registrant continues to present a risk to the members of the public in his or her role and 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 are an experienced Committee, you will be familiar with the findings and recommendations of Dame Janet Smith as set out in the Shipman Report where she refers to the potential causes of impairment as arising whether and when a registrant presents a risk to patients, has brought the profession into disrepute, has breached one of

the fundamental tenets of the profession or has acted in such a way as her integrity can no longer be relied upon and it is this last ground which will be relevant to you today.

She also noted that present impairment of fitness to practise can be founded on past matters and by reference to how a registrant is likely to behave in the future.

In addition, you have to consider whether you have any evidence before you which shows a degree of insight, the Registrant now has in relation to her failings and any steps in relation to remediation. Unfortunately in this particular instance since the instigation of the proceedings before you today, you appear to have little actual engagement by the Registrant, although you have a number of letters from her solicitor which I'd ask you to consider. However, you have no information as Mr Gilmore has pointed out in relation to insight or remediation.

## **Sanction**

Paragraph 26 of Schedule 2 of the Northern Ireland Social Care Council Fitness to Practise Rules 2016 sets out the available sanctions open to you as a Committee at this stage and you have already referred to these at the outset of this stage of the proceedings and I won't remind you of them again. You are very much aware of them. You are an experienced Committee.

However, in considering and determining the appropriate sanction, you are obliged to take into account the following factors. Firstly, the seriousness of the Registrant's impaired fitness to practise. Secondly, the degree to which this Registrant has fallen short of any expected standard. Thirdly, the protection of the public and fourthly public interest in maintaining confidence in the social care services and lastly, and very importantly, the issue of proportionality which means weighing on the one part the Registrant's interests against on the other part the interests of the public.

I would also, as indicated by Mr Gilmore, refer you to the Northern Ireland Social Care Council Indicative Sanction Guidance 2017 and remind you that the purpose of sanctions is not punitive. Paragraphs 2.5 through to 2.7 of the Guidance deals with the considerations of fairness and proportionality. You should consider the question of sanction in ascending order of severity beginning your deliberations by considering a Warning first.

The primary purpose of sanctions is the protection of the public and also the maintaining of the reputation of the profession.

I would also refer you to Paragraphs 2.3 and 2.4 of the Guidance and this directs that the public should have confidence that the Council will uphold proper standards of behaviour and conduct in regulating social care workers.

When considering the fourth consideration of public interest, you are required to look at that both the public and Social Care Users and ensure they are protected from unsafe practice and that confidence in the social care workforce be maintained.

In serving that public interest, the purpose of sanctions is to ensure that the social care worker does not have an

opportunity to repeat their actions, and also maintain the reputation of the profession.

Paragraphs 2.2 and 2.5 of the Guidance remind you that any limitation of the right to practise one's profession should be no more than is necessary in all the circumstances and as always you've a duty to act fairly.

In relation to consideration of the sanctions and in particular concerning the sanction of conditions of practice, there are two relevant cases for your consideration. The first is Daraghmeh V GMC in 2011 which indicates that if a Committee is considering conditions these should be clear, relevant and addressed to the Registrant and as necessary to protect patients, the public and also the interests of the Registrant. They should be proportionate to the allegations and formulated so that these conditions are not in effect a suspension and also written in such a way that compliance can be easily verified.

You are an experienced panel and will be aware that care should be taken to avoid imposing conditions which may have the effect of suspending the Registrant.

In this particular incidence, and in relation to the consideration of mitigation factors, unfortunately you have not heard directly from the Registrant. You have no evidence of remediation and as Mr Gilmore has indicated you have no indication with regards to insight. You have no testimonials to consider, nor have you any information as to the effect of any sanction on this Registrant. You have within your bundle of papers correspondence from her solicitor and you will be aware of the letter of 07 September in which the Registrant's solicitor expresses her remorse.

The case of Bolton V the Law Society is of assistance in this regard and in that matter the Judge indicated that the fortunes of an individual member of the profession should be taken into account but at the same time the reputation of the profession is more important than the fortunes of any individual.

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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:

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.

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.

P. P. M. Stanbury  
Committee Manager

02 October 2018  
Date