

**IN THE CARE TRIBUNAL**

**Between**

**Rhian Martin Ellison (Appellant)**

**and**

**Northern Ireland Social Care Council (Respondent)**

**Tribunal Panel:**

**Chairman:** Diane Drennan

**Lay Members:** Harry Murray and Kerry O'Halloran

**Date:** 27<sup>th</sup> July 2016

**Venue:** Tribunal Hearing Centre, Royal Courts of Justice, Chichester Street, Belfast BT1 3JF

**Representation:** The appellant was represented by Mr Mark McAvoy of Counsel instructed by Rosemary Connelly Solicitors of 2 The Square, Warrenpoint, County Down BT34 3JT. The respondent was represented by Mr Conrad Dixon of Tughans solicitors of Marlborough House, 30 Victoria Street, Belfast BT1 3GG.

**Decision:** The appeal is dismissed. The Council's decision of the 10<sup>th</sup> March 2015 is confirmed.

**Appeal**

1. Rhian Ellison ('the appellant') appeals under section 15 of the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended by section 5 of the Health and Personal Social Services (Amendment) Act (Northern Ireland) 2016) against the decision of the Registration Committee of the Northern Ireland Social Care Council ('the Council') dated 10<sup>th</sup> March 2015 to remove him from the Social Care Register.

## Preliminary Issues

2. At a preliminary directions hearing on the 23<sup>rd</sup> March 2016, directions were made by the Chairman dealing with the exchange of documents, the preparation of a Tribunal bundle and the filing of hearing dates.

It was also directed that written submissions be sent by the appellant's solicitor regarding an application on behalf of the appellant under rule 36 of the Care Tribunal Regulations (Northern Ireland) 2005 (as amended) for an extension of time to submit an appeal under Schedule 6 paragraph 1 of the Care Tribunal Regulations 2005 (as amended) ('the 2005 regulations').

On the morning of the hearing three preliminary matters were dealt with:

- i. **Extension of time limits** - the Tribunal heard submissions from the appellant's counsel under regulation 36(1) (as noted above). The respondent's representative raising no objection, the Chairman decided to extend time, as the requirements of regulation 36(1)(a) and (b) had been satisfied.
- ii. **Amendment of grounds of appeal** – on foot of a written submission dated 27<sup>th</sup> April 2016 to amend the grounds of appeal to include issues as to the appellant's mental health and the diagnosis of a depressive episode under regulation 33 of the 2005 regulations. The Tribunal considered the submission and the respondent having raised no objection, allowed the amendment under rule 33(1).
- iii. **Admission of evidence** – concerning an article taken from a tabloid Sunday newspaper and forwarded by the respondent's representatives to the Tribunal office concerning matters at issue in the case. A request was made for copies of the article to be included in the tribunal bundle. The Chairman instructed the Secretary to hold the report in a sealed envelope, not to include it in the bundle and to await the hearing date when the matter could be dealt with in the presence of both parties. During submissions, it became apparent that the appellant's counsel had not received the article and had no prior knowledge of it. Instructions were taken from the appellant and counsel advised that the Tribunal Panel could read the article.

## The Law

3. Section 3(1) of the Health & Personal Services Act (Northern Ireland) 2001 ('the 2001 Act') requires the respondent to maintain a register of social workers and social care workers. Section 4(1) of the 2001 Act states that an application for registration must be made to the Council in accordance with relevant rules which are the NISCC (Registration) Rules 2014 ('the 2014 Rules').

4. Section 6 of the Act permits the respondent to determine the circumstances in which and the means by which a person can be sanctioned in relation to their registration or removed from the register.
5. Section 9 of the 2001 Act provides for the preparation by the Council of Codes of Practice laying down standards of conduct and practice expected of social care workers and a requirement for the code to be taken into account by the Council in making a decision and also in any proceedings on an appeal against such a decision. The relevant code of practice was issued in September 2002.
6. The relevant rules are the NISCC (Conduct) Rules 2014 ('the 2014 Rules') which define misconduct in Rule 2(1) as '*conduct which calls into question the suitability of the Registrant to remain on the register*'.

The available sanctions upon a finding of misconduct, to be considered by the Council's Conduct Committee, are set out in paragraph 25 of Schedule 2 of the 2014 Rules as follows:

- i. Admonishment, a note of which can remain on the register for 5 years.
  - ii. A suspension Order for a maximum term of 2 years.
  - iii. An Order for removal of the Registrant's registration ("*a removal Order*").
  - iv. Power to revoke an interim suspension Order.
7. When deciding what sanction to be imposed the Committee must take into account:
    - i. The seriousness of the Registrant's misconduct;
    - ii. the protection of the public;
    - iii. the public interest in maintaining confidence in social care services; and
    - iv. the issue of proportionality.
  8. Under section 15 of the 2001 Act (as amended and substituted by section 5 of the Health and Personal Social Services (Amendment) Act (Northern Ireland) 2016), a person may appeal against a decision of the Council in respect of registration. Such appeal is to the Care Tribunal.
  9. The relevant parts of section 15 are as follows:

- (1) "A person may appeal to the Care Tribunal against a relevant decision.
  - (2) On the appeal, the Care Tribunal may-
    - (a) confirm the decision,
    - (b) set aside the decision, or
    - (c) substitute for the decision appealed against any other decision that could have been made.
  - (3) "Relevant decision" means—
    - (a) a decision under this Part in respect of registration...
- (2) Section 15 of the 2001 Act as substituted by subsection (1) applies in relation to an appeal made before, but not determined by, the time this section comes into operation (as well as in relation to appeals made after that time)".

The Health and Personal Social Services (Amendment) Act (Northern Ireland) 2016 ("the 2016 Act") received Royal Assent on the 12<sup>th</sup> May 2016 and, by section 8, came into operation on the day after Royal Assent.

### **Standard of Proof**

10. The standard of proof is the civil standard, that is, the balance of probability, as defined in **Re H and others (Minors) [1995] UKHL 16** at paragraph 73:

*'The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not'.*

### **Background**

11. The appellant was born on the 27<sup>th</sup> September 1987. He graduated from Queens University Belfast with a degree in social work in July 2013.
12. The appellant worked from September to December 2013 in F residential children's unit. He then worked as an agency social worker in S Road Health Centre from February 3<sup>rd</sup> to the 28<sup>th</sup> 2014 and in the H LAC (looked after children) team from the 3<sup>rd</sup> to the 28<sup>th</sup> March 2014. Both places of employment were part of the South Eastern Health & Social Care Trust. The agency involved was R Recruitment.
13. The appellant was on the waiting list for a full time social worker vacancy within the Trust.

14. For the first three weeks of his time in S Road Health Centre, the appellant was managed by Ms LMcN (now Mrs LB), who was acting as a Senior Social Worker (SSW) and during his last week by Ms JP, Senior Social Worker (SSW). The Assistant Principal Social Worker (APSW) Ms NMcB was also available if the appellant needed assistance. He was managed during his time in H LAC (looked after children) team by Mr PG, Senior Social Worker (SSW).
  15. During the appellant's time with the South Eastern Health & Social Care Trust, his mother became very ill and was taken into hospital. She died in January 2015.
  16. The appellant was employed in S Road Health Centre initially for two weeks, but this was extended for a further 2 weeks. He was based in the Family Intervention Team which covers Family Support, Looked after Children and Child Protection cases. He was not given a full case load and was to cover some statutory visits for a senior practitioner who was temporarily office based. The appellant had full access to this practitioner on a daily basis to obtain up to date information on each family.
  17. On 28<sup>th</sup> February 2014, the appellant's last day in S Road Health Centre, he informed Ms NMcB that he had to complete some recording in relation to visits. This was to be left into the Health Centre on 3<sup>rd</sup> March 2014, but was not received until 5<sup>th</sup> March 2014.
  18. On 20<sup>th</sup> and 21<sup>st</sup> March 2014, it was reported to Ms JP that visits documented by the appellant might not have taken place. Having carried out investigations and informed PG at the H LAC team of the position (without giving further detail), a meeting between Ms JP, Ms NMcB and the appellant was eventually arranged on the 28<sup>th</sup> March 2014 to discuss these concerns.
  19. Four statutory visits to three families were discussed at the meeting and the appellant was referred to records completed by him:
    - i. **Family 1: child 1** - LAC statutory visit record dated 18<sup>th</sup> February 2014. This was detailed and contained, for example, child 1's views on living with his carer, seeing his mother, school and his attendance at football club.
    - ii. **Family 1: child 2** - contact record form dated 18<sup>th</sup> February 2014. This record was also detailed and reported the mother's views and concerns following child 2's return to her care, as well as noting how child 2 presented and views on family contact.
    - iii. **Family 2:** - contact record form dated 28<sup>th</sup> February 2014. It related to following up concerns regarding drug use in the home and was a child protection visit. Key issues noted included a search of the property, the young mother's clear statement that she was not using
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drugs as she was pregnant and the appellant's assessment of her 10 month old baby.

- iv. **Family 3:** contact record form dated 19<sup>th</sup> February 2014 regarding a visit to a family living in C hostel. The form provided precise details as to, for example, the mother's engagement with services at the hostel and her statement that she was not using drugs. It also reported the views of child 1 as to mood, contact with grandparents and the child's future hope of sharing a home with her mother.
20. At the meeting of 28<sup>th</sup> March 2014, the appellant admitted that the visits to families 1, 2 and 3 had not been completed and had been fabricated, signing records to confirm this. He also confirmed that he had attempted to undertake these visits. The appellant stated that he had made other visits where he called and obtained no response, signing the records of these visits to confirm this.
  21. The appellant stated during the meeting that he had been very stressed over the past 6 weeks due to his mother's illness. Ms NMcB advised the appellant that the Trust would have to refer him to the Council, update the Trust HR department and inform R Recruitment. She also advised him to speak to a solicitor and his GP.
  22. On 3<sup>rd</sup> March 2014, Mr Ellison commenced employment as an agency social worker with H LAC team. He was taken on for a period of 4–6 weeks. As the appellant had AYE ('*assessed year in employment*') status and because of the short nature of his time with LAC, he was allocated duties which were limited in complexity. Ms LH (APSW) met jointly with Mr Ellison and other LAC team members on the 3<sup>rd</sup> March to identify visits which needed covered.
  23. PG (SSW) met with the appellant on 4<sup>th</sup>, 10<sup>th</sup> and the 24<sup>th</sup> March 2014 to discuss his work. On the last occasion, the appellant appeared very distressed and informed PG that his mother had cancer, her condition was advanced and she would require surgery. PG agreed that the appellant was to take 25<sup>th</sup> and the 26<sup>th</sup> March off. The appellant was to make contact on 27<sup>th</sup> March and hopefully return to work on that day.
  24. On 28<sup>th</sup> March 2014, PG was contacted by the Family Intervention team from S Road Health Centre and was informed that Mr Ellison had admitted falsifying contact records. The LAC team then undertook a review of all the cases the appellant had worked on.
  25. The appellant did not return to the LAC team after this. PG tried unsuccessfully to contact him by telephone on 31<sup>st</sup> March and the 1<sup>st</sup> April 2014. PG then contacted R Recruitment and outstanding documentation was sent to the LAC office on 9<sup>th</sup> April 2014.
  26. Following the case review, 3 issues came to light:

- i. **Family 4:** LAC visit noted on 5<sup>th</sup> March 2014 by the appellant actually took place on the 21<sup>st</sup> March 2014.
  - ii. **Family 5:** A statutory visit and contact for child 1 did not take place. The child who has a learning disability had not seen her mother in over a month.
  - iii. **Family 6:** the foster carer stated that no statutory visit had taken place in March.
27. Following an employer referral, the Council investigated the matter, sending out documentation to the appellant at various stages. A Notice of Intention to apply for an ISO (Interim Suspension Order) was sent to the appellant on the 27<sup>th</sup> June 2014.
28. The appellant contacted the Council by telephone on the 3<sup>rd</sup> July 2014, saying he intended to submit a written submission. An ISO for a period of 6 months was imposed by the Preliminary Proceedings Committee by a decision dated 10<sup>th</sup> July 2014. The appellant neither attended the hearing, nor submitted written submissions.
29. The Preliminary Proceedings Committee, by a decision of 18<sup>th</sup> December 2014, reviewed the ISO and imposed a further ISO for a period of 6 months. The appellant's case was referred to the Conduct Committee.
30. The Conduct Committee met on the 4<sup>th</sup> and 5<sup>th</sup> March 2015, having sent all relevant documentation and a date of hearing to the appellant at his registered address. No response was received by the appellant, no written submission was received nor was there any request for a postponement of the hearing. The hearing proceeded in the appellant's absence and witnesses from the Council (Ms JP, Ms NMCB and Mr PG) gave oral evidence.

#### **Decision of the Northern Ireland Social Care Council Conduct Committee**

31. The decision was dated 10<sup>th</sup> March 2015. It noted the charges against the appellant as follows:
  - 1) "You falsified a Looked After Children Statutory Visit Record to Child 1 Family 1, dated 18<sup>th</sup> February 2014.
  - 2) You falsified a Contact Record of a visit to a mother and Child 2, Family 1, dated 18<sup>th</sup> February 2014.
  - 3) You falsified a Contact Record of a child protection visit to Family 2, dated 28<sup>th</sup> February 2014.
  - 4) You falsified a Contact Record of a visit to Family 3, dated 19<sup>th</sup> February 2014.
  - 5) You falsified that you had attended a visit to Family 4 on 5<sup>th</sup> March 2014.
  - 6) You did not complete a statutory visit /contact to Family 5 which you had been allocated.
  - 7) You did not complete a statutory visit /contact to Family 6 which you had been allocated".

32. The decision also stated the actions *"set out above at 1, 2, 3, 4 & 5 were dishonest. And your actions set out at 1 to 7 amount to misconduct, such as to call into question your suitability to remain on the social care register"*.
33. After considering detailed legal advice given by the Legal Adviser as well as the Code of Practice and the Conduct Rules 2014, the allegations were examined. The Committee found the facts in Charges 1, 2, 3, 4, 6 and 7 proved and the facts found in charge 5 not proved. It found that the appellant had committed misconduct.
34. Available sanctions were discussed. The Committee accepted comprehensive legal advice from the Legal Adviser and took into account the 4 factors outlined in paragraph 7(i)–(iv) (seriousness of misconduct, protection of the public, public interest and proportionality).
35. The Committee considered the sanctions in ascending order of severity. In rejecting admonishment, it noted *"that there had been no expression of regret or apology from the registrant, nor is there any evidence of remediation"*. It also noted that while there was no previous disciplinary record, there were no details as to the appellant's personal circumstances.
36. When considering suspension, the Committee noted that, although the appellant admitted fabricating the records, he provided no reason for his actions. The Committee referred to the appellant being stressed at the time of the events in question and also noted that the appellant *"... advised his employers of a family member being ill at this time"*. However, the Committee referred to the appellant's failure during his time at the LAC team to carry out statutory visits, therefore concluding that the appellant's actions were not isolated and could be repeated. The Committee commented that *'the Registrant showed no insight into the effects of falsifying these records, both on the families concerned and also his colleagues'*.
37. When considering the sanction of removal, the Committee, as well as noting the seriousness of the misconduct, commented: *"... the Committee's finding of dishonesty by the Registrant undermines trust in Social Services....The Committee finds the Registrant's dishonesty to have been deliberately repeated and serious. The Registrant has abused the position of trust placed in him by his employer, putting at risk vulnerable service users"*.
38. The Committee referred to the absence of any evidence as to insight on the appellant's part and stated: *"Although the Committee has been referred to the Registrant experiencing family difficulties around the time of these events, the Registrant's lack of engagement with these proceedings means there is no evidence before this Committee that this Registrant will not repeat this behaviour again"*



39. The Committee balanced any prejudice to the Registrant with "*the interests of the public, service users, potential social care employers and the social care profession generally, in maintaining confidence in the social care profession, and the NISCC as a professional regulator*". It revoked the ISO and made an Order for the removal of the appellant's registration from the register ('a removal Order').
40. The decision was sent out to the appellant at his registered address but was returned to the Council on 15<sup>th</sup> April 2015 undelivered and did not reach him until after the time stated for an appeal. When the documentation did reach the appellant he filled out and sent a notice of appeal dated 20<sup>th</sup> April 2015.

### **Grounds of appeal**

41. In his original grounds of appeal, the appellant included a detailed statement. After commenting initially on the late notification of the original decision as the reason for the late submission of his appeal, he noted a number of reasons for appeal, for example, '*significant stress*' and a failure by the Trust to provide '*formal training or formal supervision*'. In a final paragraph the appellant stated that: '*I appreciate the seriousness of these charges against me...*' The appellant ended his statement by stating that he wished to provide medical evidence of his treatment for depression and the improvements he had made in dealing with it.
42. On November 16<sup>th</sup> 2015, the appellant attended Dr Philip McGarry, Consultant Psychiatrist, who provided a report dated 22<sup>nd</sup> November 2015. The report also contained a review of the appellant's GP notes. Following this report, the appellant amended the grounds of appeal to refer to a depressive episode, as noted at paragraph 2(ii).

### **Evidence and submissions**

43. The Tribunal Panel had the benefit of reading the extensive bundle of documents, which included a full written transcript of the hearing before the Conduct Committee, containing a verbatim note of the sworn evidence of Ms JP, Ms NMcB and Mr PG. The bundle also included the medical evidence noted above. It heard the sworn evidence of Mrs LB as well as the appellant himself. It has considered all of the evidence even if it has not specifically referred to it.
  44. Detailed submissions were made by both representatives, which were of considerable assistance to the Tribunal in reaching their conclusions.
  45. Mr Dixon, after outlining the misconduct committed by the appellant, referred to the Code and the Indicative Sanctions document of November 2011 for the guidance of Conduct Committees when setting out the Committee's reasons for its choice of sanction. In closing his submissions, he referred to his contention
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that the Committee were correct in their determination that a removal order was a proper and appropriate sanction for such serious repeated offences. Mr Dixon also stated that, even though the appellant has been removed from the register, he would be eligible for restoration to it in about 18 months time.

46. Mr McAvoy emphasised that the purpose of the appeal was for the appellant to appear and explain his actions. In his closing submissions he invited the Tribunal to view those actions in the context of the family trauma and loss suffered by the appellant, inviting the Tribunal to use the extended powers under the 2016 Act to substitute an alternative sanction to that chosen by the Committee.

#### **Mrs LB**

47. Mrs LB (formerly Ms LMcN) gave sworn evidence on behalf of the respondent, adopting as part of her evidence a written statement dated 4<sup>th</sup> May 2016. She stated that, in February 2014, she was an SSW at S Road Health Centre. From the 3<sup>rd</sup> to the 20<sup>th</sup> February, she acted as the appellant's line manager.
48. She stated that she gave the appellant an informal induction on his first day, discussing the work of the family intervention team, making introductions and advising that the appellant could come to her at any time. Ms LB also gave her work and personal mobile numbers to the appellant so that he could make contact with her easily.
49. Mrs LB referred to the 'open door' policy in the office, where staff could come and discuss any issues whenever the need arose. She described a supervision with the appellant and herself taking place on 11<sup>th</sup> February at 10am (referring to a written diary note). Under cross examination she maintained that this supervision had taken place, describing the issues discussed, despite Mr McAvoy putting to her the appellant's contention that she had been called away. No substantive note of the supervision was available; evidence was given that this note was not on a formal supervision form, but was hand written and had been shredded.
50. Mrs LB also stated that during the appellant's second week in the office, he informed her that his mother had been taken into hospital, mentioning gall bladder problems. The appellant asked to leave the office early to visit his mother and was told there was no problem with this. The witness stated that the appellant did not return and inform her that his mother's condition was more serious.
51. The witness gave evidence of the significant effect which the falsification of forms (described at paragraphs 19 & 20) had on the service. She stated that: "*A lot of service users try to dodge social workers. The team are trying to get people to engage in the service and with child protection plans*". Mrs LB also stressed that, regarding the child protection visit noted at paragraph 19(iii), the appellant's actions had resulted in a delay in dealing with the case. She

described the good atmosphere within the team and said she was annoyed the appellant had not spoken up and said that he was struggling.

### **The appellant**

52. The appellant opened his evidence by stating that the outlining of the case against him had made him "*feel sick to his stomach*". However, he could give no logical reason for his actions in February/March 2014, except that this was a period of extreme stress in his life due to his mother's illness. He accepted that his actions were dishonest, but stated that he did not set out to act dishonestly or to deceive.
53. He described the very close bond which he had with his mother and the huge impact her death had on him. He stated that he needed help but was unable to reach out for it. Referring to Mrs LB's evidence, he commented that he did not feel able to approach her. The appellant maintained that Mrs LB did not have a supervision session with him at 10am on the 11<sup>th</sup> February 2014, but conceded that they may have had an informal meeting in the afternoon, but it was not his understanding of a formal supervision session. In answer to questions about supervision sessions with PG at H LAC, he agreed that chats had taken place, but would not have described these as formal supervision. He agreed that PG had been sympathetic towards him when told of his mother's illness.
54. In relation to previous employment, the appellant described demanding university work placements, involving vulnerable people, some of whom had committed serious offences. He also referred to his time in F children's home as pressurised, working with very vulnerable children and young people. The appellant described his most recent employment working with 17-24 year olds, some of whom were referred from youth justice, in a team programme at N Technical College. He said that work reminded him of why he wanted to be a social worker.
55. The appellant stated that his hope for the future was to work as a social worker, to make good his dishonest actions. He said he was deeply sorry, most of all to the clients and could never forget what had happened. It was the appellant's case that his misconduct was a 'one-off' incident, not a character flaw.

### **Issues**

56. In relation to misconduct, the findings of the Committee were accepted by the appellant's representatives. Therefore, the main matter before the Tribunal related to the sanction imposed and whether, under section 15 of the 2001 Act (as amended and substituted by section 5 of the Health and Personal Social Services (Amendment) Act (Northern Ireland) 2016, the Tribunal should substitute another sanction for that of removal from the register. However, it has been necessary for the Tribunal, in order to reach its decision as to sanction, to note conclusions in relation to the appellant's conduct.

## Conclusions and Reasons

57. Regarding the article in a tabloid Sunday newspaper (noted at paragraph 2(iii)), having read same with the agreement of the appellant's representatives and having heard the respondent's submissions regarding relevance and public interest, the Panel decided that the article had no relevance to the appeal and that it provided no useful comment re public interest.
  58. This was an extremely difficult and finely balanced case, involving a recently qualified social worker who presented as an intelligent and very articulate person, with previous work experience which was challenging and demanding. The appellant had also experienced the serious illness and loss of his mother. The Tribunal heard the appellant give evidence as to the special bond he had with his mother and the impact her loss had on him. The Tribunal accepts the closeness the appellant had with his mother and his great sadness at her death, which occurred when he was 26.
  59. This case involved very serious issues, with 6 admitted instances of misconduct. Four related to the fabrication of records (one in relation to a child protection matter) and are described in paragraphs 19 and 20. These were considered to be dishonest by the Conduct Committee. Two referred to statutory visits which were not carried out (referred to in paragraph 26). One of these visits involved a disabled child who had not seen her mother in over a month.
  60. The records in question were neatly written and detailed. In her statement, Ms NMcB commented: "... *he fabricated direct and detailed conversations with parents and children ... this was extremely alarming. I have never seen this level of deception before*". The significant impact of the appellant's misconduct on the social work service has been noted in the summary of Mrs LB's evidence at paragraph 51. The Tribunal Panel accepts this evidence and the comments of Ms NMcB noted above.
  61. In his consultation with Dr McGarry and in his evidence before this Tribunal, the appellant described spending fifteen minutes on the evening of the 4<sup>th</sup> March 2014 filling out the Contact sheets, stating he "*didn't think anything through and thought it would just go under the radar*". As part of his case before the Tribunal, the appellant's actions were described as "*a one-off incident, not a character flaw*".
  62. The appellant was unable to give the Tribunal a logical reason for his actions, apart from his distress at his mother's illness. However, in the supervision records dated 4<sup>th</sup> and 10<sup>th</sup> March, made by PG, there is no note of the appellant being distressed. Having considered all the evidence, the Tribunal finds that the fabrication of the records was deliberately undertaken by the appellant and that this was dishonest.
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63. The Panel also decides that, by failing to complete the statutory visits referred to above, having already fabricated records, the appellant was responsible for more than 'a one-off incident'. As indicated by PG's evidence to the Conduct Committee, the failure to complete these visits to families 5 and 6 involved an instability of approach towards two vulnerable young people, both of whom had learning disabilities. He stated: "... when there are unpredictable and unexplained and unexpected changes for very important things like contact, that can have a very damaging effect both on the young people and on our carers".
64. The Tribunal also takes into account that the appellant, despite any stress he may have felt during his time with S Road Heath Centre, decided to accept the extension of his initial two weeks by a further two weeks. He then moved on to a further period of employment at H LAC team. The Tribunal finds that by making these decisions regarding employment the appellant was able to make important choices.
65. In his amended grounds of appeal dated 27<sup>th</sup> April 2016, the appellant's representatives set out Dr Philip McGarry's diagnosis of "a depressive episode of moderate severity" exacerbated by a deterioration in his mother's condition at the time in question, having "a significant impact upon his mental state' and impacting on his decision making process". The appellant's counsel has asked the Tribunal to view the misconduct in the context of the appellant's family circumstances.
66. The Tribunal has carefully examined Dr McGarry's detailed report, dated 22<sup>nd</sup> November 2015, which includes a review of the appellant's GP notes from 30<sup>th</sup> May 2014 until 29<sup>th</sup> April 2015. The report is compiled from the information given to Dr McGarry by the appellant, as well as that contained in the notes of the appellant's GP, Dr Parry.
67. Although the Tribunal accepts Dr McGarry's diagnosis, made from the facts in his possession at the time he made the report, it notes that the report is dated more than a year after the events in question. The GP notes refer to the appellant consulting Dr Parry regarding a low mood on 8<sup>th</sup> August 2014, several months after the misconduct. Dr Parry, in a report of 2<sup>nd</sup> September 2015 (quoted in Dr McGarry's report) states: "*Mr Ellison's family circumstances and depression possibly impacted and contributed to the events leading to the complaint against him*". Dr McGarry states that the depressive episode began to develop during the appellant's time at S Road Health Centre, in association with the emerging news of his mother's illness. But Dr McGarry could not know precisely what mental state the appellant was in at the time when he fabricated the records and failed to carry out the statutory visits. Similarly, Dr Parry could only comment on the information given to him by the appellant, several months after the incidents.

68. The Tribunal accepts that the appellant's mother was seriously ill, as stated in the report and as related by the appellant in his evidence, during the time the events leading to the misconduct occurred. It also accepts that her illness would have had an effect on the appellant, as stated by Dr McGarry. However, having examined the statements given by Ms JP, Ms NMcB and Mr PG, the transcript of the hearing before the Committee, as well as the evidence given by Mrs LB and the appellant himself, the Panel does not accept that Mr Ellison was so affected as not to have been responsible for the fabrication of 4 detailed records on the 3<sup>rd</sup> March 2014 and later for the non-completion of statutory visits. We therefore conclude that the development of a depressive episode and his family circumstances did not compromise his capacity to undertake his duties and had no bearing on his fabrication of the records or his failure to undertake statutory visits.
69. The appellant sought to explain his actions in his original grounds of appeal, by alleging a lack of proper supervision while employed in S Road Health Centre and H LAC team.
70. In the transcript of Ms JP's evidence, which is accepted by the Tribunal, she describes the appellant "... *presenting as very confident and very knowledgeable of what he was supposed to be doing*". The Panel also takes into account the evidence given by Mrs LB as to the appellant's confident and competent demeanour. The Tribunal therefore finds that, during his employment with the Trust, the appellant appeared to be confident, capable and able to engage with his colleagues in an appropriate manner.
71. In her sworn evidence given to the Conduct Committee on the 4<sup>th</sup> March 2015, Ms NMcB described the last week of the appellant's employment (ending on the 28<sup>th</sup> February 2014) when he received "*informal supervision*" from her. She described having a lot of contact with him and stated: "*Rhian would have been in almost every single day... he came in to get mileage signed, ... to get his time sheet signed, he would have come in and updated me on visits, and that week... Rhian saw me every day of the week...we would consider that informal supervision*". The Tribunal Panel accepts this evidence and is of the opinion that this interaction with Ms McB, having forms signed and discussing visits on a daily basis, indicates an ability on the appellant's part to function in the workplace.
72. Mrs LB impressed the Tribunal Panel as a credible and straight forward witness. The Tribunal accepts that she gave the appellant an informal induction/introduction on his first day and provided him with her work and personal mobile numbers to enable easy contact. It also accepts that she provided, with other members of staff, a form of supervision for Mr Ellison. While there was a conflict of evidence between the appellant and Mrs LB as to the time of the supervision of 11<sup>th</sup> February and as to the formality of same, the appellant conceded that a meeting took place in the afternoon of the 11<sup>th</sup>

February and the Panel finds that a meeting did take place at some time during that day.

73. The appellant also accepted that “chats” took place at his second place of employment with H LAC team with Mr PG, whom he described in evidence as sympathetic; there are unsigned supervision records compiled by PG dated 4<sup>th</sup>, 10<sup>th</sup> and the 24<sup>th</sup> March 2014 in the tribunal bundle. The Tribunal Panel therefore accepts that the appellant had a form of supervision and access to help and advice while employed in S Road Heath Centre and in H LAC team.
74. Despite the findings above, the Tribunal Panel expresses serious concern that the supervisions, both in S Road Heath Centre and in the H LAC team, appeared to be of an informal nature, with the supervision record of the 11<sup>th</sup> February 2014 having been destroyed and the supervision records dated 4<sup>th</sup>, 10<sup>th</sup> and 24<sup>th</sup> March 2014 being unsigned. The Tribunal finds that the supervisions should have been more formal and structured, with records being retained and signed, especially as the appellant had AYE status.
75. The Tribunal must consider the Code (noted at paragraph 5) and any breaches of same. In the Decision document, a considerable number of breaches of sections 2, 4, 5 and 6 were referred to and the Tribunal does not disagree with the findings of the Committee in this regard. The Panel finds in particular that the appellant’s misconduct was inconsistent with striving “... *to establish and maintain the trust and confidence of service users and carers*” (Code: section 2) and with upholding “... *public trust and confidence in social care services*” (Code: section 5).
76. In relation to remorse and insight into the matters the subject of this case, until the oral evidence given by the appellant today and the submissions made on his behalf, there has been scant expression of remorse, either written or spoken. In his detailed original notice of appeal, there is no direct expression of remorse, other than a brief recognition of the seriousness of the charges against him, noted in the final paragraph. There is no reference to the effect of the misconduct on vulnerable families, nor is there any acknowledgement of the consequences on the social work teams in S Road Health Centre and H LAC, or the general effects on the social work profession. No written submission was received from the appellant by the Council regarding an expression of remorse or any other matter. While the Tribunal accepts that the appellant was affected by the illness and subsequent death of his mother, it notes that he contacted the Council in July 2014 by telephone, but no expression of regret was expressed at this time.
77. Although the appellant did express remorse in his oral evidence before this Tribunal, regarding the effect of his misconduct on the parties involved and there is therefore some evidence of insight into the effect of his misconduct, the Panel did not accept that he fully understood the consequences of his actions on the social work teams he worked for. He is a person with previous work experience in challenging and pressurised social work environments. He

therefore knew that employment as a social worker involves a need to liaise with very vulnerable people, to complete records and to communicate any problems to senior colleagues. The Tribunal finds, having examined all the evidence, that the appellant's insight into his actions is still limited.

78. This is a case where the appellant did not engage with the proceedings of the Council. Although he was affected by the illness and subsequent death of his mother, he could have submitted written submissions, as he did when preparing his Notice of Appeal, even if he did not wish to appear before the Conduct Committee. In the Care Standards Tribunal case of **Jennifer Brownbill v GSCC [2012] UKFTT 466 (HESC)**, where the appellant had committed a criminal offence, the English Tribunal, in allowing the appeal, referred to her "... consistent remorse for her behaviour" and "... were satisfied that Ms Brownbill is now showing significant insight into her behaviour and its potential effect on others"(paragraphs 17 & 20). The Tribunal finds by his failure to engage in any way with the Council, he missed opportunities to show remorse and insight.
79. In this case, unlike most cases heard before the Care Tribunal, there have been no references or testimonials placed in evidence to support the evidence given by the appellant himself. No satisfactory reason was given for this. The appellant referred to previous employment he had undertaken and to references provided for his most recent period of work and to a potential referee being contacted, but nothing has been produced to the Panel. Although there is no requirement for references to be produced, they would have been very helpful in this finely balanced case. The Tribunal has therefore to make its decision on the evidence before it.
80. When considering the relevant sanction to be applied, the considerations for the Tribunal are those stated in paragraph 7 – seriousness of misconduct, the protection of the public, public interest in maintaining confidence in social care services and proportionality. In this case, the serious nature of the misconduct is accepted. The appellant's counsel has ruled out the least severe sanction of admonishment and has suggested that the Tribunal consider suspension. The Tribunal has therefore to decide, as did the First-tier Care Standards Tribunal in the case of **Julian Michael Swan v Care Council for Wales [2012] UKFTT 271 (HESC)**, whether, having taken into account any mitigating factors, the sanction of removal from the register should be upheld or substituted by the sanction of suspension, which can be for up to 2 years.
81. When making our decision, the Tribunal bore in mind the increased powers available to us under section 15 of the 2001 Act (as amended and substituted by section 5 of the Health and Personal Social Services (Amendment) Act (Northern Ireland) 2016. However, the Panel has decided that suspension is not appropriate because of the very serious nature of the accepted misconduct, the lack of full insight by the appellant into the consequences of his actions on the teams in which he worked and on the social work profession as a whole. The Tribunal is aware of the need to show that the public, especially vulnerable



service users, are being adequately protected, as well as the need to recognise that the integrity of the social work profession must be upheld. The Tribunal therefore decides, unanimously, having fully considered the effect of their decision upon the appellant, that removal from the register is the only appropriate sanction and therefore upholds the Committee's decision of 10<sup>th</sup> March 2015.

82. The appellant is intelligent and articulate, he expresses his hope to return to the social work profession. He has worked with vulnerable people in challenging situations. After a period of reflection and the development of further insight, the appellant may be able to return to the social work profession in the future. As noted by Mr Dixon, an application for restoration can be made by the appellant, which will give him the opportunity to review all the documentation in this case and provide evidence to the Council that he has the ability and desire to move ahead in his chosen profession, having fully learned from past experience. However, any decisions as to registration are matters for the Council to decide.

**Diane Drennan**

Care Tribunal Chairman

A handwritten signature in blue ink that reads "Diane Drennan". The signature is written in a cursive style with a large initial 'D'.

Date:

2<sup>nd</sup> September 2016

Date recorded in Register:

2/9/16