

NOTICE OF DECISION OF THE CONDUCT COMMITTEE

To:

Name: Mr Joseph Theodore Mahabir

Address:

Registration No: 1073150

To:

(1) The Registrant

Copied to:

(2) The General Social Care Council

(3) The Complainant

(4) The Employer (if any)

The meeting was held at:

The General Social Care Council, Goldings House, Hay's Lane, London, SE1 2HB

NOTICE IS HEREBY GIVEN THAT the Conduct Committee of the General Social Care Council met from 21 July to 22 July to consider the following Allegation against you "the Registrant" as follows:

Whilst working for Thurrock Council ("the Council") as a Social Worker between 2003 and 2008, you:

1. failed to disclose to the Council that you were convicted on 02 December 2004 at Mid South Essex Magistrates Court of driving a Motor Vehicle with Excess Alcohol;
2. failed to disclose your conviction of 02 December 2004 on a Criminal Records Bureau Application Form that you returned to the Council on or around 17 December 2007;

3. continued to receive Essential Car User Allowance from the Council during the period December 2004 to June 2005 to which you were not entitled as a result of being disqualified from driving;
4.
 - a. in an application for registration with the GSCC dated 10 September 2004 you signed a declaration to the effect that you would declare as soon as reasonably practicable 'any events that call into question your good character such as criminal convictions';
 - b. you did not inform the GSCC of the conviction of 02 December 2004 until around 19 November 2008;
5. your conduct as set out at paragraphs 1 to 4 above was:
 - a. unprofessional;
 - b. misleading;
 - c. dishonest.

And in relation to the above facts, you have committed Misconduct.

STAGE 1: PRELIMINARIES – 21 July 2010

The Committee took the Registrant to be applying for a postponement of the hearing, even though he had not explicitly asked for one on this occasion. The Chair of the Committee was informed that on a previous occasion the Registrant had applied for the proceedings to be postponed because he felt that they would prejudice his Employment Tribunal hearing; and also that he had been advised that it would be in his best interests for this hearing to be adjourned. He took these to be the same reasons advanced today.

The application for the postponement was heard by the Chair along with the Committee. The Chair and the Committee decided not to postpone the hearing, considering it was in the public interest for there to be a prompt disposal of the matter; and that the Registrant would not be prejudiced.

Attendance at the Hearing

The Committee also decided that the hearing should take place in the absence of the Registrant who had stated that he did not wish to attend. When considering this issue, the Committee took into account the public interest in need for the prompt disposal of the case; and any possible prejudice to the Registrant. Having sought to balance these factors, the Committee decided that it was appropriate to proceed in the absence of the Registrant.

Advice from the Legal Adviser:

The Legal Adviser advised the Chair and Committee that they should have regard to rule 5 of Schedule 2 of the Rules when deciding the issue of postponement; and Rule 13 when deciding the issue of proceeding in the absence of the Registrant.

Committee's Decision:

2. The Bundle

In the absence of the Registrant and in the light of his not agreeing the bundle before the hearing, the Committee only had regard to the material in the bundle to which their attention was drawn by the Presenting Officer at each particular stage, when considering that stage.

3. Application to hear evidence in public or private

No application sought was made to have the proceedings held in private.

Committee's Decision:

4. Application to amend the Formal Allegation

The Presenting Officer applied to amend the formal allegation by replacing the words 'December 2005' with words 'June 2005' in paragraph 3; and the words '08 December 2008' with the words '19 November' in paragraph 4b.

The Committee decided to allow the amendment, observing that it was not an amendment which altered the underlying nature of the case; but was one which sought only to limit the period, and arguably in the Registrant's favour.

Advice from the Legal Adviser:

The Committee was informed that it had the power to allow the formal allegation to be amended subject to the requirements of a fair hearing under rule 17; but that they should take advice from the Legal Adviser.

Committee's Decision:

STAGE 1: FINDINGS OF FACT – 22 July 2010

As an initial matter, the Committee considered that the stem of the formal allegation should be amended to read '...between 2003 and 2008, you:' and seeks to make this amendment under rule 17, Schedule 2 of the Rules.

The Committee also seeks to amend the formal allegation to read '17 December 2007', rather than '17 December 2004' in allegation 2.

The Committee found the following facts to be proved.

Concerning Fact 1. The Committee found as a fact on the balance of probabilities that the Registrant did not disclose that he had been convicted of an offence in December 2004 to Thurrock Council ('the Council'). Concerning the issue of 'failure', which the Committee took to mean that he had a duty to

disclose but failed to do so, it was also satisfied on the balance of probabilities that he failed to disclose the conviction.

Concerning Fact 2. The Committee found as a fact on the balance of probabilities that the Registrant did not disclose his conviction of December 2004 on the Criminal Records Bureau Application form that he returned to the Council on 17 December 2007.

Concerning Fact 3. The Committee found as a fact on the balance of probabilities that the Registrant did continue to receive Essential Car User Allowance (ECUA) from the Council during the period December 2004 to June 2005 when according to the Council policy he ought not to have been claiming it. The Committee took the view that it was implicit that an employee banned from driving for a year should not be entitled to claim ECUA.

Concerning Fact 4a. The Committee found as a fact on the balance of probabilities that in an application for registration with the GSCC dated 10 September 2004 the Registrant did sign a declaration that he would declare as soon as reasonably practicable 'any events that call into question your good character such as criminal convictions'.

Concerning fact 4b. The Committee found as a fact on the balance of probabilities that the Registrant did not inform the GSCC of his conviction of 02 December 2004 until around 19 November 2008.

Concerning fact 5a. The Committee found that in acting as he did in relation to the issues 1-3 and 4b above, the Registrant did, in each case, act unprofessionally.

Concerning fact 4a. The Committee observed that it was inappropriate to view the act as being unprofessional, misleading or dishonest and therefore did not find this fact to be proved.

Concerning fact 5b. The Committee observed that the word 'misleading' could bear two distinct meanings.

To the extent that it meant, 'the conduct complained of had the effect of misleading his employer or the GSCC', the Committee found this to be proved as a fact in respect of issues 1-3 and 4b above.

To the extent that 'misleading' meant that the Registrant had sought knowingly and deliberately to mislead his employer, the Committee did not find this fact to be proved in respect of 1-3 on the basis of the material produced by the Presenting Officer thus far; but did find that it was proven in relation 4b, particularly in the light of the advice given to the Registrant on 28 February 2008 by his employers.

Concerning fact 5c. The Committee did not find that the evidence adduced by the Presenting Officer thus far supports a finding that the Registrant had acted in a dishonest way, according to the definition of dishonesty contained in

R v Ghosh and others. Therefore the Committee did not find this fact to be proved in respect of 1-4.

Advice from the Legal Adviser:

The Legal Adviser advised the committee that at this stage it was undertaking a fact finding exercise only; and the burden of proving the facts alleged was on the Presenting Officer; and the standard of proof was the balance of probabilities.

STAGE 2: MISCONDUCT – 22 July 2010

The Committee has found Misconduct proved.

The Presenting Officer submitted that in the light of the findings made by the Committee the Registrant had acted unprofessionally and, in at least one instance, had knowingly misled his employer and GSCC. The Presenting Officer said that it was incumbent on a Social Worker to maintain the highest standards of integrity in his work and in his dealings with his professional body, and the facts which had been proved indicated that he had fallen substantially below these standards.

In light of the absence of the Registrant the Presenting Officer drew attention to the various accounts given by the Registrant in the interviews conducted with him in 2008 (this was not material to which the Committee had regard when finding facts in Stage 1) as well as the Registrant's letter to the GSCC in November 2008, explaining his failure to disclose.

In the light of the findings of fact made above, the Committee does find that the Registrant is guilty of misconduct.

It takes the view that the Registrant was an experienced Social Worker who ought to have known that he had a duty to disclose any criminal conviction to his employer and the GSCC. The Committee considers that he had formed an intention to conceal his conviction from those who ought to have known about it.

Even allowing for any confusion which may have existed in the Registrant's mind about whether his conviction was spent or unspent, the reasons which he advanced for failing to have informed his employer or the GSCC – in particular that it was a private and not professional matter – were in the Committee's view unacceptable and unsustainable. In the Committee's view a conviction for drink driving by a social worker who has essential use of a car in which service users may be passengers, is something which plainly ought to be disclosed to his employer and professional body.

The Committee considers that his failure to disclose his criminal conviction was a deliberate action, and is conduct which calls into question his suitability to remain on the Register.

As far as his failure to stop claiming ECUA is concerned, the Committee also finds that this amounts to misconduct.

It takes the view that although the policy may not have been drafted in the most detailed or coherent terms, and there is some doubt about the extent to which it was disseminated to employees of the Council, the Registrant ought to have known that his being banned from driving was a circumstance which would properly prevent him receiving the allowance. In reaching this conclusion, the Committee notes that he applied to have his ECUA restarted, citing a return to health as the reason, on the very day that his ban from driving finished.

The Committee considers that the facts it has found proved involve an infringement of paragraphs 2.1, 2.2, 5.8 and 6.3 of the Codes of Practice.

Advice from the Legal Adviser:

1. Misconduct is defined in Paragraph 2(1) of Part 1 of the Rules as conduct which calls into question the suitability of a Registrant to remain on the Register.
2. In accordance with Paragraph 23(2) of the Rules, in deciding upon misconduct the Committee shall have regard to the Code of Practice issued by the Council.

STAGE 3: MITIGATION AND SANCTION – 22 July 2010

Advice from the Legal Adviser:

1. In accordance with Paragraph 25(2) of Schedule 2 of the Rules, the Committee in deciding what sanction is to be imposed upon the Registrant must take into account the following:
 1. The seriousness of the proven misconduct;
 2. The protection of the public;
 3. The public interest in maintaining confidence in social care services;
and
 4. The issue of proportionality

2. The Committee should refer to the Indicative Sanctions Guidance in every case after having found misconduct, at the stage when they are considering what sanction, if any, to impose on the Registrant.

3. The Committee should consider each sanction from the least serious before deciding the appropriate sanction in any given case.

The Committee has decided to suspend the Registrant for a period of one year.

The reasons for the Committee's decision are as follows:

The Presenting Officer asserts that the Registrant's misconduct amounts to a persistent course of conduct, committed over a period of time. He also states that the Registrant has displayed no insight into his behaviour.

The Committee concluded that this was properly to be described as a course of conduct and amounts to serious misconduct.

The Committee noted that whereas the Registrant has apologised for his actions, he does not appear to have real insight into the seriousness of his behaviour.

In mitigation, the Committee noted that the Registrant had a good record in social work. Also, that he had been suffering with health problems at periods during his misconduct. The Committee is not in possession of any testimonials as the Registrant has opted not to participate in this hearing.

Considering the hierarchy of sanctions, the Committee took the view that the misconduct in this case was too serious for it not to impose any sanction. At the other end of the scale, the Committee did not consider that this was a case where the nature of the misconduct was so serious as to require the Registrant to be removed from the register.

The Committee next considered the sanction of admonishment, taking into account the Indicative Sanctions Guidance. The Committee decided that the seriousness of the misconduct, coupled with the Registrant's lack of insight into his behaviour, meant that admonishment was not appropriate.

The Committee concluded that the appropriate and proportionate sanction was suspension.

The Committee considers that the appropriate period of suspension is 1 year.

This was serious misconduct and the sanction imposed must reflect the seriousness with which the breach of standards, as summarised in the GSCC's Codes of Practice for Social Care Workers, is viewed. The Committee

considered that suspension would have the effect of sending out a signal to the profession and public at large that this type of behaviour is not acceptable.

Whereas the Committee accepts that a suspension has a punitive effect on the Registrant, the Committee considers the sanction is proportionate given the serious nature of the misconduct.

You should note that the Conduct Committee's decision took effect from the date upon which it was made.

The effect of this decision is that you are suspended from the Register and must not practise as a social worker, or purport to be a registered social worker able to practise while the order is in place. To do so may result in prosecution. This is in accordance with Part IV(61) of the Care Standards Act 2000.

Independent Safeguarding Authority (ISA)

The ISA has been created to help prevent unsuitable people from working with children and vulnerable adults.

In accordance with the Safeguarding Vulnerable Groups Act 2006 it is the GSCC's duty to refer information to the ISA in relation to certain conduct cases. The GSCC will notify you following the outcome of your hearing if we have referred you to the ISA.

Right of Appeal

The Registrant has a right to appeal to the Health, Education and Social Care Chamber of the First-tier Tribunal against this Decision no later than 28 days of service of Notice of it.

(Service is treated as having taken place on the day after this Notice was posted by registered post or recorded delivery)

Signed.....

Chair to the Conduct Committee

Dated: 22 July 2010

Signed.....

Clerk to the Conduct Committee

Dated: 22 July 2010