

NOTICE OF DECISION OF THE CONDUCT COMMITTEE

To:

Name: David Michael Cahill

Registration No: 1119498

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:

CCT Venues, Isis Building, Thames Quay, 193 Marsh Wall, Canary Wharf,
London, E14 9SG

NOTICE IS HEREBY GIVEN THAT the Conduct Committee of the General Social Care Council met from 20 July 2010 to 21 July 2010 to consider the following Allegation against you "the Registrant" as follows:

Whilst registered as a social worker with the General Social Care Council and whilst employed as an agency worker by the South West London and St George's Mental Health NHS Trust:

- (a) On Monday 10th September 2007 you invited Ms C, a service user for whom you were the allocated social worker, to accompany you to a public house.**
- (b) Whilst there you behaved in a sexually inappropriate manner towards Ms C and made a number of sexually explicit remarks to her.**

And, by virtue of the above you have committed misconduct.

STAGE 1: PRELIMINARIES – 20 July 2010

1. Attendance at the Hearing

The Registrant attended the hearing. He was not represented.

2. The Bundle

The bundle had been agreed prior to the hearing and had been submitted to the Committee. In addition, two late submission from the Registrant were sent to the Committee, namely two letters from the Registrant, one addressed to Ms Oliver of FFW Solicitors dated 1 July 2010, the other addressing mitigating circumstances, dated 6 July 2010

Advice from the Legal Adviser:

The Legal Adviser advised the committee that Paragraph 11 of Schedule 2 of the Rules permits the admission of evidence whether or not it would be admissible in a Court of Law, subject to advice from the Legal Adviser, the requirements of a fair hearing and of relevance. The Registrant agreed to the bundle being before the committee.

STAGE 1: FINDINGS OF FACT – 21 July 2010

The Registrant was employed as a locum social worker on the books of an employment agency called Sanctuary. Sanctuary sub-contracted his services to another agency called Matrix. Matrix had an arrangement with the Royal Borough of Kingston to supply locum staff. Through Sanctuary and Matrix the Registrant was engaged in a social work position at Kingston Community Mental Health Team on 20 November 2006. From 29 May 2007 he was placed in Chessington Community Mental Health Team.

At the time of the Formal Allegation the Registrant was allocated approximately 26 cases. He was viewed by his managers as competent and skilled. His team manager said that he readily joined in team discussions and seemed to be an affable kind of man.

One of the cases allocated to the Registrant was the case of Ms C. Ms C was a young woman who had married in June 2007. In her written statement Ms C said that she should have been really happy as a result of this event but that instead she found herself crying all the time and that she did not know what was wrong with her. She was consequently referred to the Trust by her family doctor who thought that she was suffering from depression. She first met the Registrant at the beginning of August 2007 when she attended her first appointment at Tolworth Hospital in Surbiton. Ms C was allocated to the Registrant. There were approximately 4 meetings.

On 10 September 2007, the Registrant had a meeting with his line manager, during which his case load of approximately 26 separate cases was discussed. No issue was taken with his work in relation to any of those cases. In relation to the case of Ms C, although a formal decision to close the case was not

taken, his line manager accepted that there may well have been discussion about whether the case should have been closed and whether the role of the Registrant in assessing Ms C had come to an end.

Ms C attended for a meeting late in the afternoon of 10 September 2007. Ms C became upset during the meeting when reference was made to her case being closed. The building closed at 5pm and the Registrant suggested they continue the session. They went to a public house in Surbiton.

At the public house the Registrant behaved in a sexually inappropriate manner towards Ms C whom he knew to be a vulnerable service user, and made a number of sexually explicit remarks to her.

In particular the Registrant:

- teased Ms C because she refused to have an alcoholic drink: he said "one won't hurt you"
- said that he could see Ms C as a private client and that she could work for him in exchange for counselling
- said that behind the depression he thought that she was an attractive and intelligent woman and that he loved her bottom
- asked questions about her husband and wanted to know if he was out of the picture
- said that he did not believe in marriage and that he thought she was stupid to be married
- asked if she and her husband had planned to have children – and that she should have two, one of which could be his
- suggested that he would pay for her to go to university
- said that he would take her on a weekend of "ecstasy" to Paris or skiing in Switzerland

The Registrant:

- kept reaching across the table and was touching and playing with her hands and saying that they were really soft
- slapped Ms C's bottom, as they left, and said that the next one could be a naked spanking
- hugged and kissed Ms C when they reached the front of the public house

Advice from the Legal Adviser:

Hearing in Private or Public

The Committee was advised that except as provided in Paragraph 14 of Schedule 2 of the Rules the hearing shall be conducted in the presence of the parties and in public. No application was made for the proceedings to be heard in private. Because of the nature of the allegations the name of the complainant has been anonymised. The Registrant has made no representations about the hearing being in public or the name of the complainant being anonymised.

The Bundle

The Legal Adviser advised the committee that Paragraph 11 of Schedule 2 of the Rules permits the admission of evidence whether or not it would be admissible in a Court of Law, subject to advice from the Legal Adviser, the requirements of a fair hearing and of relevance. The Registrant agreed to the bundle being before the committee.

Vulnerable Witnesses

The Legal Adviser advised the committee that in accordance with Paragraph 20 (1) (e) of the Rules any witness where the Formal Allegation against the Registrant is of a sexual nature and the witness was the alleged victim shall be treated as a vulnerable witness and further Paragraph 20 (2) of Schedule 2 of the Rules permits the committee to adopt such measures as it considers necessary to enable it to receive evidence from a vulnerable witnesses. In the circumstances of this case such a measure would include the use of screens.

Paragraph 20 (4) of the Rules prohibit the Registrant from cross-examining the Complainant in person. In those circumstances the Legal Adviser shall undertake any questioning of the complainant.

Admissions

Paragraph 18 of Schedule 2 of the General Social Care (Conduct) Rules 2003, hereinafter The Rules governs admissions. Where any facts are admitted by the Registrant the Chair shall announce that such facts have been found proved.

The Legal Adviser reminded the Committee of the following provisions:

1. The burden of proof rests on the Council. The standard of proof is on the balance of probabilities: Paragraph 12(1) and (2) of Schedule 2 of the Rules.
2. The Committee can attach such weight as it believes appropriate to the evidence it has heard.
3. The Committee should not speculate. The Committee is, however, entitled to draw inferences from the evidence it has heard. That is to say the Committee may come to common sense conclusions from the evidence put before it and draw proper inferences from that evidence.
4. The Committee does not have to find every particular proved.

STAGE 2: MISCONDUCT – 21 July 2010

The Committee found Misconduct proved.

On the basis of the facts found by the Committee and with regard to the Codes of Practice, the Committee found Misconduct proved having particular regard to the breaches of the Codes of Practice 5.3, 5.4 & 5.8.

Advice from the Legal Adviser:

1. Misconduct is defined in Part 1, Rule 2 of the Rules 2008 as conduct which calls into question the suitability of a Registrant to remain on the Register. The burden of proof in relation to misconduct rests upon the GSCC. The standard of proof required is the balance of probability. The issue of misconduct is an assessment by the Committee on the basis of the facts found proven. In accordance with Schedule 2, paragraph 23 of the Rules.

2. The issue of misconduct the Committee should have regard to the Codes of Practice issued by the Council.

STAGE 3: MITIGATION AND SANCTION – 21 July 2010

The Committee has decided to suspend the Registrant for a period of 1 year.

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

The Committee considered the misconduct to be serious as it was of a sexual nature. In considering the sanctions from the least serious the Committee found the Formal Allegation and the facts found to be far too serious for there to be no sanction or any admonishment. In considering the Indicative Sanctions Guidance the Committee recognised the Registrant acknowledged he was at fault; in doing so he seemed overanxious about the position of the Complainant and insisted that he did not want her to have to give evidence because of the potential stress it would cause her. The facts found relate to misconduct that was confined to one evening over a short period of time. The Registrant had been a Social Care Worker for thirty years and was spoken well of by his managers. He had a heavy caseload that he was discharging well. The Misconduct, albeit serious, was isolated and occurred three years ago. The Committee was satisfied that the behaviour is unlikely to be repeated. There were a number of mitigating factors which the Council acknowledged. That delay had had a significant impact on the Registrant's ability to work as a Social Care Worker. In considering the Misconduct as a whole the Committee decided that suspension was a proportionate sanction and that the appropriate period would be one of 12 months.

The Council had requested the Registrant be removed from the Register. Having decided that the appropriate and proportionate sanction was suspension the Committee considered the criteria applicable for removal and did not think that that sanction was proportionate to the facts as found.

Advice from the Legal Adviser

The Committee had discretion as to whether to impose any sanction upon the Registrant. In deciding what sanction is to be imposed, the Committee should have regard to Schedule 2, paragraph 25 of the Rules and, in particular, the Committee must take into account:

- a) The seriousness of the Registrant's misconduct;
- b) The protection of the public;
- c) The public interest in maintaining public confidence in social care services; and
- d) The issue of proportionality.

The Committee was advised that it should take into account the guidance and criteria set out in the Indicative Sanctions Guide for Conduct Committees 2008.

The Committee shall announce its decision on sanctions in public and give reasons for its decision.

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 of the Conduct Committee

Dated.....

Signed.....

Clerk to the Conduct Committee

Dated.....