

NOTICE OF DECISION OF THE CONDUCT COMMITTEE

To:

Name: **Philip Julian Davies**

Address:

Registration No: **1074771**

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 6 December 2010 to 8 December 2010 to consider the following Allegation against you "the Registrant" as follows:

1. Without authority, and in breach of the relevant financial management regulations, between 20th May 2008 and 30th October 2009, you:

- (a) removed personal papers and effects from service users Mr and Mrs Z's home;
 - (b) kept personal papers and effects belonging to Mr and Mrs Z in your possession;
 - (c) purported to manage the financial affairs of Mr and Mrs Z in your disposal of the £60 cash which you removed from their home, without there being in place any agreed arrangements for you to do the same.
2. Without authority, between 20th May 2008 and 30th October 2009, you:
- (a) took custody and control of a house key to service users Mr and Mrs Z's property and kept it in your possession (in further breach of the financial regulations);
 - (b) entered the property of service users Mr and Mrs Z without a colleague present;
 - (c) entered the property of service users Mr and Mrs Z on a number of occasions and involved subordinate staff in doing so, including:
 - (i) on an occasion in September 2009, you entered the property of service users Mr and Mrs Z and involved a member of Support Team staff in cleaning part of the property, including dealing with a maggot infestation.
3. On or around 2nd June 2009, you provided X Care Home with your own money to be used as personal allowance money for service user Mrs Z.
4. Without authority, on or around 18th July 2008, you requested service user Mrs Z to sign financial papers after she had been diagnosed by a consultant psychiatrist as having a lack of mental capacity.
5. Between 20th May 2008 and 30th October 2009, you failed to ensure that an application for a Court of Protection order in respect of a service user Mr Z, was made expeditiously, or at all.

6. Between 1st April 2008 and 30th October 2009 you did not keep adequate and accurate records in respect of service users Mr and Mrs Z.

and in relation to the above, you have committed misconduct.

STAGE 1: PRELIMINARIES – 6 December 2010

1. Attendance at the Hearing

Advice from the Legal Adviser:

The case is properly brought under the health procedure. By rule 28 6) the committee can consider whether or not the alleged Misconduct may not have been caused, or substantially contributed to by the Registrant's physical or mental ill health, the committee may cease to consider the allegation following the Health Procedure and instead follow the Conduct Procedure.

Here the Committee should consider the report of Dr Oxlade, the Occupational Health report of Mrs Chapman, the advice of Dr Fletcher and representations of the Registrant.

If the Committee decides that there is no evidence to justify the the Health Procedure, then the medical evidence should be kept under review throughout the entire hearing.

Advice from the Medical Adviser:

The Registrant had had a history of depressive episodes in the past but had not been under the care of a psychiatrist and at the time of the assessment by Dr Oxlade he was not found to have any clinical evidence of significant mental health problems.

The Registrant had during the period of the alleged allegations of misconduct been able to work but suffered from occasional tiredness and sleep disturbances. There was no significant physical or mental health problems and nothing that would have contributed substantially to or caused the alleged misconduct.

Committee's Decision:

The Committee considered the medical evidence from Dr Oxlade, the report of Mrs Chapman and the advice of Dr Fletcher, together with representations made by the Registrant and concluded that there was no evidence to support proceeding under the Health Procedure.

2. The Bundle

Advice from the Legal Adviser:

The bundle should be admitted in evidence in this case as it had been served upon the Registrant in advance and no objection had been made.

Committee's Decision:

The Committee decided to admit the bundle into evidence.

3. Application to hear evidence in public or private

The Registrant made an application for the hearing to be held in private.

Advice from the Legal Adviser:

The hearing will ordinarily be heard in public, unless the Registrant can show that he would suffer prejudice. The Council agreed that there were medical reports but any further medical evidence was unlikely to be heard. The Registrant therefore agreed that the hearing should be held in public.

4. Application to amend the Formal Allegation

The Council made an application to amend the date in allegations 1 and 2 to 'from 20th May 2008 to 30th October 2008' to '1st May 2008 to 30th October 2008'.

The Council also made an application to remove allegation 2b.

Advice from the Legal Adviser:

The proposed amendments would not cause prejudice to the Registrant.

Committees' Decision:

The Proposed amendments were allowed.

5. Further Application to amend the Formal Allegation

The Council made an application to amend allegation 1 to read 'Without authority, **and/or** in breach of the relevant'

Advice from the Legal Adviser:

This amendment came late in the day and might cause prejudice to the Registrant who is unrepresented.

Committee's Decision:

The Committee decided that this proposed amendment would be prejudicial to the Registrant and disallowed the application.

STAGE 1: FINDINGS OF FACT – 7 December 2010

Advice from the Legal Adviser:

Burden of proof is always on the council to prove their case. The standard of proof is on the civil standard, i.e. to the balance of probabilities. Registrant gave evidence. You should judge his evidence by the same standard that you apply to other witnesses.

The facts are for the Committee to decide. You must do so on the evidence. You can draw inferences from evidence which are common sense conclusions, but you must not speculate. There will be no more evidence.

Hearsay: this type of evidence is allowed to be given in these Conduct hearings. But, care must be taken. The Committee should look for supporting evidence when considering hearsay evidence. There is an example which is the entry in the Running Records at page 165.

In particular you have heard about the findings of Alison Millett's investigation on behalf of the Somerset County Council into this case. It is important to recognise that, as Mrs Millett said, she was merely summarising the judgements made by other people, and in any event, the Committee is not bound in any way by this report and should form its own conclusion on the facts.

For allegations 1, 2 and 4, you need to decide as a matter of law whether or not the Registrant acted without authority. The panel should consider the National Assistance Act that has been referred to by the Registrant and also the evidence of John Godwin.

The Committee's decision is as follows:

The Committee found all parts of the Formal Allegation proved.

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

At the outset of the Hearing, the Registrant admitted certain facts. The Registrant gave evidence, and made certain admissions during his evidence

both in chief and in cross examination. The Committee has taken these admissions into account in its findings below.

The Committee has found the following parts of the allegation proved.

Part 1 of the Allegation:

1. The Registrant admitted Parts 1(a) and 1(c) prior to the Hearing and 1(b) during his evidence.
2. The Committee considered the issue of 'authority' with great care. Evidence was given by Mr Jon Goodwin, who was employed by the Somerset County Council as a team manager, who was the manager responsible for the Registrant. The Committee also considered the National Assistance Act 1948 and evidence from Lynn Thurston, who was an Adult Social Care Worker employed within Chard's Adult Social Care Team.
3. The Committee decided that part 1 was proved in that the Registrant acted without authority and in breach of the relevant financial management regulations.

Part 2 of the allegation:

4. The Registrant admitted Part 2(a) during his evidence.
5. The Committee decided that Part 2 was proved in respect of 2(a), 2(c) and 2(c) (i).
6. It was acknowledged by the Committee that the Registrant had not coerced other staff to take part in the visits to Mr and Mrs Z's property and had acted in a manner which had Mr and Mrs Z's interests in mind.

Part 3 of the allegation:

7. This was admitted by the Registrant prior to the Hearing.

Part 4 of the allegation:

8. This was admitted by the Registrant during his evidence.

Part 5 of the allegation:

9. The Registrant admitted prior to the Hearing that he had failed to ensure that an application for a Court of Protection Order in respect of service user Mr Z was made expeditiously. Evidence was given in respect of this issue by Mr Goodwin and the Registrant. An entry on page 164 of the Running Record was also considered. The Committee rejected the Registrant's account of his submission of this application.

10. The Committee found that part 5 of the allegation was proved as the application for a Court of Protection Order was not submitted on the balance of probabilities.

Part 6 of the allegation:

11. This part of the allegation was admitted by the Registrant during his evidence. The Committee therefore found that this part of the allegation was proved.

STAGE 2: MISCONDUCT – 8 December 2010

Submissions by the parties:

The Counsel for the GSCC submitted that there were numerous breaches of The Codes of Practice for Social Care Workers and Employers (The Code).

The Registrant indicated that he had never disputed that certain of his actions amounted to misconduct.

Advice from the Legal Adviser:

Misconduct means conduct which calls into question the suitability of a Registrant to remain on the register.

By Rule 23 the Committee shall have regard to the Code of Practice issued by the Council under Section 62 of the Act.

Some parts of the allegation are more serious than others. The Committee have been invited to consider the cumulative effect of the findings. That would be a proper approach to take.

The Committee's decision is as follows:

The Committee has found Misconduct proved.

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

The Committee decided that the parts of the allegation fell into three categories.

a) Those parts of the allegation that did not call into question the suitability of the Registrant to remain on the register.

The Committee found that parts 1 (a), (b) and (c), 2 (c), 2 (c) (i) and 3 of the allegation did not amount to misconduct.

b) Those parts of the allegation that amounted to examples of lax practice and therefore constituted such misconduct as called into question the suitability of the registrant to remain on the register.

The Committee found that parts 2 (a) and 6 amounted to examples of lax practice.

c) Those parts of the allegation that amounted to serious misconduct that called into question the suitability of the Registrant to remain on the register.

The Committee found that parts 4 and 5 amounted to serious misconduct.

Whilst recognising that part 6 was an allegation of lax practice, the Committee also found that this amounted to serious misconduct.

The various parts of the allegation demonstrated a course of conduct which gave rise to a pattern of risky practice and the potential for harm to himself, his employer and the service users through his actions and omissions.

The Committee considered that the parts of the allegation as set out in (b) and (c) above amounted to misconduct and were breaches of the following paragraphs of The Code: 2.4, 3.4, 3.8, 5.7, 6.1, 6.2 and 6.4.

STAGE 3: MITIGATION AND SANCTION – 8 December 2010

Advice from the Legal Adviser:

The Committee should bear in mind representations by both the Council and the Registrant. In particular the Committee should give full consideration to the matters set out in the Indicative Sanctions Guide for Conduct Committees 2008 and pay regard to protection of the public, proportionality and the degree of seriousness of the matters found proved. The Committee should begin its considerations with the least serious sanction.

The Committee's decision is as follows:

The Committee has decided to suspend the Registrant and direct that a record of the suspension be placed on the Registrant's entry on the Register for a period of 12 months.

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

The parts of the allegation 4, 5 and 6 gave rise to serious matters of misconduct which had potential consequences for service users, his employers and the Registrant himself. Although the Registrant recognised that he had let down the relative of a service user, he had failed to acknowledge the full impact of the risk that arose from his lack of actions and omissions. The Committee recognised that protection of the public, the public interest in maintaining confidence in social care services and the issue of proportionality were the guiding principles in deciding sanction.

The Registrant indicated that he would address future risk in a number of ways. However the Committee were not persuaded that he fully appreciated the limits of his authority and aspects of his professional judgment. The Committee were concerned that the Registrant did not fully understand the possible impact that his actions might have on service users and his employers.

There were however a number of mitigating factors that the Committee took in mind in reaching their decision. The registrant had apologised at the outset for some of his conduct, had acted in many respects in the best interests of the service users and agreed that he had been "flailing about" due to his personal circumstances at the time.

The Committee recognised the report of Dr Oxlade and the Registrant's assertions that he was constantly tired, felt overloaded and had difficulty concentrating on the full range of his duties. The Committee also paid due regard to the effect of the ill health of the Registrant's wife.

The Registrant made submissions about the culture at his place of work. Whilst recognising that there may have been something in these observations, the Committee found that they did not assist in consideration of the main findings of serious misconduct.

Sanction:

The Committee considered **no sanction** and considered that this was not appropriate.

The Committee then considered **admonishment**. This was a case where there was a potential to cause harm. Whilst the allegations relate to only one case, there was a pattern of actions over a considerable period of time.

Although the Committee had received some references from work colleagues which endorsed his abilities as an effective and honest team worker, they did not deal with the specific issues that lay at the heart of the findings of serious misconduct. As admonishment is appropriate for allegations at the lower end of the spectrum, the Committee considered that this was not an appropriate sanction in this case.

The Committee then considered **suspension**. Although the Committee found that the Registrant had a degree of insight, they were concerned that there was a lack of evidence in this respect. The Registrant had apologised for his

actions, recognised specific weaknesses in his performance and indicated to the Committee that he will undertake work to improve upon his performance and authority issues.

The Committee found that suspension would be a proportionate sanction in all of the circumstances of the case.

Although this Committee has no power under the Rules to impose any conditions on a Registrant's registration, the Committee hopes and strongly recommends that the Registrant uses the period of suspension to reflect on how he can improve on his practice. The Committee considers that the Registrant should avail himself of any training opportunities or guidance to strengthen those areas of his working practice that have been identified and acknowledged by him as weaknesses.

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.....

As witnessed by the Clerk to the Conduct Committee

Dated.....