CO/574/2015

Neutral Citation Number: [2015] EWHC 2420 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 10 July 2015

B e f o r e:

MR JUSTICE BLAKE

Between:
PROFESSIONAL STANDARDS AUTHORITY

Appellant

v

(1) HEALTH AND CARE PROFESSIONS COUNCIL
(2) GEMMA WILLIAMSON

Respondent

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
(Official Shorthand Writers to the Court)

Mr David Bradly (instructed by Field Fisher Waterhouse) appeared on behalf of the **Appellant**

Ms Jennifer Richards QC (instructed by Bircham Dyson Bell) appeared on behalf of the **First Respondent**

The Second Respondent did not attend and was not represented

J U D G M E N T
(Approved)

MR JUSTICE BLAKE:

Introduction

1. This is an appeal by the Professional Standards Authority for Health and Social Care made pursuant to section 29(4) of the National Health Service Reform and Health Care Professions Act 2002. The appeal is from a decision of a Panel of the Committee of the Health and Care Professions Council that considered a disciplinary matter on 1 and 2 December 2014. The Committee is the first respondent to this appeal.

2. The second respondent is Gemma Williamson, who is a registered social worker, who faced allegations of misconduct that were described in the following terms:

> "Whilst registered as a Social Worker you:
>
> 1. Applied for a position at Sunderland Social Services, where you:
>
> (a) provided misleading information to an employment agency who prepared and submitted a curriculum vitae on your behalf which stated that you were on a career break between August and October 2013 when you in fact were working at South Tyneside Council from approximately 30 August to 7 October 2013;
>
> (b) misled Sunderland Social Services as to the fact of your employment with South Tyneside Council.
>
> 2. Your actions at paragraphs 1(a) and 1(b) were dishonest.
>
> 3. The matters described in paragraphs 1-2 constitute misconduct.
>
> 4. By reason of that misconduct your fitness to practise is impaired."

3. I will refer to the second respondent hereafter as "the registrant" and the first respondent as "the Committee".

4. The Committee found the allegations proved, found that by reason of misconduct the registrant's fitness to practise was impaired, and then went on to consider sanctions. Under the relevant regime, if it decided that the impairment was such that a formal sanction were necessary, there were four sanctions in ascending order of seriousness: the first is a caution; the second is attaching conditions of practice to a registrant; the third is suspension of the registrant from practice for a limited period; and the fourth is striking off the register. The Committee decided that a sanction was needed and that, in the light of the conduct that gave rise to the impairment, dishonest misrepresentations, conditions of practice were not appropriate, but it concluded that in all the circumstances a caution on the registration of this registrant for a period of two years sufficed.

5. The Committee reached its conclusions without the benefit of the participation of the registrant in the proceedings before it. She had not engaged with the process since 5 September 2014 when she sent an email saying, "I do not intend calling any witnesses and I will not be attending the hearing myself due to financial reasons". Earlier in the process she had sent two responses: one received on 22 April and a further communication on 21 May 2014. Likewise she has made no appearance before this court, and has apparently sent an email explaining that again, financial reasons prevent her from travelling to this court. It is not known whether today she is practising as a social worker. She produced no testimonials or other written evidence before the Committee, but in the response of 21 May did produce an updated curriculum vitae (CV) suggesting that she had been working in the field of social work since the incident with which this appeal is concerned, namely from 23 January 2014 onwards, with two different county councils in the North East of England.

The facts

6. The case as opened to the Committee and that they found proved may be summarised as follows:

(i) The registrant started working as a registered social worker in 2002.

(ii) She subsequently worked for Durham County Council as a social worker between January and August 2013. She obtained that position through a recruitment agency.

(iii) On 30 August 2013 she started employment with South Tyneside Council as an agency working with the contact and referral team making preliminary assessments on children. She obtained that position through the recruitment agency Badenoch and Clark.

(iv) On 6 October 2013 there was an incident in her private life with her former partner, as a result of which the police were called and spoke to her former partner and subsequently to her. The partner had made some allegations both about why the police were called in the course of the dispute between them and other matters that the police noted. The police recorded that the registrant was a social worker and that was a notifiable occupation.

(v) On 7 October 2013 she informed her then current employers, South Tyneside Council, that the police had been called and would be referring information to them.

(vi) On 8 October, having spoken to the police, the South Tyneside Council terminated her employment forthwith.

(vii) On 10 October she received a text message from another recruitment agency, called 4SocialWork, advertising a child protection position with Sunderland Council. It seems that she had been registered with 4SocialWork since January 2013, and to join that

agency the applicant had to submit a CV.

(viii) On the same day, in response to that text, she telephoned a Sam Ozturk, a recruitment advisor, who asked her for her current CV. She explained to him that her laptop was broken. He had access to her previous CV and he offered to update it for her over the phone. He subsequently made a witness statement in which he says that the registrant made no mention of employment at South Tyneside Council during that telephone conversation.

(ix) Attached to Mr Ozturk's witness statement were printouts from his computer that record him at 10.14 on 10 October having been given details of the registrant's role to create a CV for her. There was other electronic evidence that he had updated the CV for her by 10.32, and there was computer record that he then sent this to "Rosemary" at 11.05, and he explained that this was Rosemary Pickering of Sunderland Council Social Services.

(x) On 14 October 2013, Mr Ozturk sent a copy of the amended CV to the registrant to a computer that by then she was able to use. It is common ground that she was able to access the amended CV and made some amendments of her own to it, but they did not include any amendment to the statement that between the end of her employment with Durham County Council in August 2013 and the present date she was on a career break. She did not insert into the amended CV any details of her employment at South Tyneside Council between 30 August and 7 October.

(xi) On 16 October the registrant attended an interview with Sunderland Council at which Rosemary Pickering was present. There was a conversation about her career history. Subsequently, Ms Pickering attended before the Committee and gave oral evidence to the effect that during that conversation there was no mention of the registrant's employment

with South Tyneside Council but there was mention of her being on a career break during that period. Accordingly, the impression was conveyed to her putative employer at the interviewer that the last employer was Durham County Council, from whom, therefore, a reference was sought, rather than from South Tyneside Council. At the conclusion of the interview she was offered employment subject to this reference.

(xii) The true position as to who had last employed her came to light as Mr Ozturk was making enquiries about why a reference had not been forthcoming from Durham County Council. He spoke to a consultant at Badenoch and Clark, and then became aware of the employment at South Tyneside Council.

(xiii) An investigation was started in October 2013 and it is that investigation that culminated in the disciplinary hearing in December 2014. It should be noted for completeness that there was an amendment to one of the allegations in 1(b), of which notice was given to the registrant on 8 October 2014 to which she did not respond, but the amendment does not affect the substance of the issues in this case.

(xiv) The Committee heard from Rosemary Pickering of Sunderland Social Services and also Helen Ferguson of South Tyneside Council. It did not hear from Mr Ozturk as he was unwilling to attend the hearing and had refused to do so even though he had been summonsed. The Committee received his witness statement made on 2 September 2014, considered the questions it should ask before doing so, and concluded that it could rely upon it, as his evidence in the statement was supported by the logs of his computer activity. It concluded that it was therefore an accurate and reliable version of events.

(xv) The Committee had before it the two responses made by the registrant in writing, albeit not supported by any evidence that she was giving to the Committee in December.

(xvi) Summarising what she was saying in her April 2014 written representation, she

essentially says that she did give the information about her current employment to Mr Ozturk but he had failed to record it in the amended CV that he had forwarded. She also asserts that she informed Sunderland during her interview about the fact that she had worked for South Tyneside. She says that any misunderstanding was as a result of a mistake by the agency in submitting the old CV to Sunderland. She corrected that mistake in interview, although she agreed that she did not explain in interview precisely why South Tyneside had terminated her contract, but this was not due to trying to conceal the information, it was due to personal embarrassment and humiliation about the situation that she was in when the police had been called as a result of a dispute between her and her partner. She disputes that she was dishonest either in respect of the agency or Sunderland, and stresses in the bullet points that she makes:

> "... in fact I was honest that I had worked for South Tyneside and that the contract had ended during interview, and informed them that they had an old CV ... I provided Sam Ozturk with an updated CV however he had also sent the old one to Sunderland."

She explained that she was no longer in a relationship with her partner but the events caused her a lot of anxiety and stress which impacted upon her ability to work.

(xvi) In the second communication on 21 May she said:

> "I would like the panel to know that I have never been deliberately deceitful or dishonest, and did inform Sunderland during interview that they had an old CV and that my last place of employment was South Tyneside."

She further said that she has now updated her CV. She attached an updated CV to show that she had included the employment at South Tyneside Council and she invited the

Committee to take notice of the fact that she loves her job as a social worker and has, after 12 years, a passion for the job and she believed she is good at what she is doing. She invited the concluded that representation with these words:

> "I have learnt from this situation and have since informed professionals that my contract ended in South Tyneside for personal reasons although I admit I still find it difficult and embarrassing to disclose full details however I am growing more confident in sharing fully the reasons.
>
> I hope the panel appreciated that my career is very important to me and I would be devastated if I was unable to practise as a social worker any longer due to actions from an abusive and violent relationship which I am no longer in."

7. On the central issue as to whether the allegations were proved, the Committee accepted the evidence of Ms Pickering and Mr Ozturk, and it must accordingly have rejected a number of the contentions advanced in those emails, namely that she had told Mr Ozturk about employment, that she had mentioned this employment to Ms Pickering, and that her actions were not dishonest but merely due to embarrassment about the fallout with her former partner. It must follow that the registrant was not being frank with the Committee in those representations about her conduct.

8. The Health and Care Professions Council has what is known as an Indicative Sanctions Policy. This is guidance for the benefit of all interested in the task of disciplinary review as to how sanctions should be applied by Practice Committee Panels in fitness to practise cases. Such guidance is a common feature of professional disciplinary proceedings across the health and social welfare spectrum, although each relevant body produces its own guidance. The guidance of course is not law. It has not been suggested that there is a statutory obligation to follow it: it is guidance. The last occasion in which the guidance

was issued was October 2014, and that was the guidance that was considered by this Panel of the Committee. It seems that at the time of the conduct there was earlier guidance, but so far as can be assessed there is no material difference between the two sets of guidance and no issue arises as to the guidance that should be applied in this case:

> "2. The decision as to what sanction, if any, should be imposed on a registrant whose fitness to practise has been found to be impaired is properly a matter for the Panel which heard the case. Practice Committee Panels operate at 'arm's length' from the Council and it would be inappropriate for the Council to set a fixed 'tariff' of sanctions. This policy is only guidance and Panels must apply it as such. Panels must decide each case on its merits, and that includes deciding what, if any, sanction to impose.
>
> ...
>
> 5. It is important for Panels to remember that a sanction may only be imposed in relation to the facts which a Panel has found to be true or which are admitted by the registrant. Equally, it is important that any sanction addresses all of the relevant facts which have led to a finding of impairment.
>
> 6. The primary function of any sanction is to address public safety from the perspective of the risk which the registrant concerned may pose to those who use or need his or her services. However, in reaching their decisions, Panels must also give appropriate weight to the wider public interest, which includes:
>
> • The deterrent effect to other registrants;
> • The reputation of the profession concerned; and
> • Public confidence in the regulatory process.
>
> ...
>
> 9. In deciding what, if any, sanction to impose, Panels should apply the principle of proportionality, considering the following questions in order to balance the interests of the public with those of the registrant:
>
> • Is the sanction an appropriate exercise of the Panel's powers?
> • Is it a suitable means of attaining the degree of public protection identified by the Panel?
> • Does it take account of wider public interest issues, such as maintaining public confidence in the profession?
> • Is it the least restrictive means of attaining that degree of public

protection?
• Is it proportionate in the strict sense, striking a proper balance between the protection of the public and the rights of the registrant?

...

11. The primary purpose of fitness to practise proceedings is to identify and secure a proportionate measure of public protection rather than to punish. A key factor in many cases will be the extent to which a registrant recognises his or her failings and is willing to address them.

12. In taking account of any insight, explanation, apology or remorse offered by a registrant, Panels are reminded that there may be cultural differences in the way that these may be expressed - both verbally and non-verbally – and especially where the registrant may not be using his or her first language.

13. There is a significant difference between insight and remorse. In deciding what, if any, sanction is required, the issues which the Panel need to consider are whether the registrant has genuinely recognised his or her failings, has taken or is taking any appropriate remedial action to address them and whether there is a risk of repetition. Those issues should be addressed by consideration of the evidence on those issues rather than focusing on the exact manner or form in which they may be explained or expressed.

14. Registrants are expected to be open and honest with service users and, generally, Panels should regard registrants' candid explanations, expressions of empathy and apologies as positive steps. Importantly, they will rarely amount to an admission of liability by the registrant concerned and, in the absence of evidence to the contrary, should not treated as such by Panels."

9. There then follows particular guidance about each of the sanctions available if the process reaches that stage. Under the heading "Caution order" there is at paragraph 20:

"20. A caution order may be the appropriate sanction for slightly more serious cases, where the lapse is isolated or of a minor nature, there is a low risk of recurrence, the registrant has shown insight and taken remedial action. A caution order should also be considered in cases where the nature of the allegation (e.g. dishonesty) means that meaningful practice restrictions cannot be imposed but where the risk of repetition is low and thus suspension from practice would be disproportionate. A caution order is unlikely to be appropriate in cases where the registrant lacks insight and, in that event, conditions of practice or suspension should be considered."

10. Under the heading "Suspension order" paragraph 30 reads:

> "Suspension should be considered where the Panel considers that a caution or conditions of practice are insufficient or inappropriate to protect the public or where the allegation is of a serious nature but there is a realistic prospect that repetition will not occur and, thus, that striking off is not merited."

11. Under the heading "Striking off order" paragraph 39 reads:

> "Striking off is a sanction of last resort for serious, deliberate or reckless acts involving abuse of trust such as sexual abuse, dishonesty or persistent failure. Striking off should be used where there i s no other way to protect the public, for example, where there is a lack of insight, continuing problems or denial. An inability or unwillingness to resolve matters will suggest that a lower sanction may not be appropriate."

12. The task of this court in any appeal by the appellant in this case is informed by the authority of Ruscillo v the Council for the Regulation of Health Care Professionals & Ors [2004] EWCA Civ 1356, a decision of the Court of Appeal with the Master of the Rolls (Lord Phillips) presiding. In the course of the judgment, under the heading "The approach of the High Court to a reference" from the PSA, the authority of the appellant in this case, the following appears:

> "73. What are the criteria to be applied by the Court when deciding whether a relevant decision was 'wrong'? The task of the disciplinary tribunal is to consider whether the relevant facts demonstrate that the practitioner has been guilty of the defined professional misconduct that gives rise to the right or duty to impose a penalty and, where they do, to impose the penalty that is appropriate, having regard to the safety of the public and the reputation of the profession. The role of the Court when a case is referred is to consider whether the disciplinary tribunal has properly performed that task so as to reach a correct decision as to the imposition of a penalty. Is that any different from the role of the Council in considering whether a relevant decision has been 'unduly lenient'? We do not consider that it is. The test of undue leniency in this context must, we think, involve considering whether, having regard to the material facts, the decision reached has due regard for the safety

of the public and the reputation of the profession."

13. Various references are then made in paragraphs 74 to 76 about other cases where other judges have sought to encapsulate the test. At paragraph 77 these words appear:

> "In any particular case under section 29 the issue is likely to be whether the disciplinary tribunal has reached a decision as to penalty that is manifestly inappropriate having regard to the practitioner's conduct and the interests of the public.
>
> 78. The question was raised in argument as to the extent to which the Council and the Court should defer to the expertise of the disciplinary tribunal. That expertise is one of the most cogent arguments for self-regulation. At the same time Part 2 of the Act has been introduced because of concern as to the reliability of self-regulation. Where all material evidence has been placed before the disciplinary tribunal and it has given due consideration to the relevant factors, the Council and the Court should place weight on the expertise brought to bear in evaluating how best the needs of the public and the profession should be protected. Where, however, there has been a failure of process, or evidence is taken into account on appeal that was not placed before the disciplinary tribunal, the decision reached by that tribunal will inevitably need to be reassessed."

14. I have also been referred to other decisions, mostly of first instance, applying that general guidance in a variety of circumstances. In summary, I conclude that the approach on which the Court of Appeal has given guidance may be encapsulated in the following three propositions:

(i) The question on an appeal to this court is whether the decision of the Committee on sanctions is wrong, but whether it is wrong depends on whether it is unduly lenient.

(ii) Whether it is unduly lenient turns on whether it is manifestly inappropriate or outside the range of reasonable responses open to the Committee on the factual finding that it made, assuming there has been no procedural irregularity in making it.

(iii) In making that assessment, the court should give weight to the institutional

competence and the expertise of the Committee and all the advantages it has as the body hearing the evidence and making the prime judgment on sanction, but the extent of the weight to be given depends on whether due consideration has been given to all the relevant factors in the light of all the material evidence.

The Committee's decision

15. Dealing with the findings as to the primary conduct and the finding of dishonesty, the Committee said as follows:

> "31. The Panel was of the view that her [the registrant's] actions were deliberate and designed to conceal the fact of her employment at [South Tyneside Council].
>
> ...
>
> 35. The Panel finds that the Registrant failed to comply with standards 13 and 3.1 [of the Health and Care Professions Council's standards of conduct that deals with honesty, integrity and the need to maintain high standards of personal and professional conduct]. The Panel is satisfied that particulars 1a, 1b and 2 constitute misconduct because it is very important for a social worker to be open and honest when applying for work. The Registrant deliberately misled a recruitment agency and a potential employer. Checks on previous employment are carried out to ensure that social workers are suitable to work with vulnerable service users. Her behaviour was in breach of the above standards and fell far short of what might be expected of her in the circumstances..."

16. Under the heading "Impairment", and noting the representations made by the registrant, the Panel concluded at paragraph 40 in the following terms:

> "40. The Panel are of the view that, because the Registrant has shown no recognition of her misconduct, she has not demonstrated insight.
>
> 41. The Registrant has explained her personal circumstances and the reasons behind her leaving her employment at STC and the Panel accept that at the time she was experiencing a very difficult period in her personal life.

> However this is not an excuse for her continuing dishonesty. According to the CV provided by the Registrant in May, she has worked as a social worker since the events at STC. However, she has provided no employer references or character testimonials. The Panel are of the view that it may be possible for the Registrant to demonstrate that she has remedied her misconduct. However, she has provided no evidence of any remediation, and the Panel cannot be reassured that the misconduct will not be repeated.
>
> 42. There is no evidence of any harm being caused to service users by the Registrant's dishonesty. However, the Panel is of the view that not to make a finding of current impairment would damage the public confidence in the profession of social work and the HCPC as regulator. The Panel is also aware of its important role in declaring and upholding proper standards. Attempting to subvert proper employment processes and checks is not the behaviour expected of a social worker."

17. The Committee then concluded that it was necessary to impose the sanction due to the dishonesty and lack of insight involved in this case. It considered that mediation was inappropriate, noted that a caution must be for a specified period of between 1 and 5 years, and that a caution appears on the register although it does not restrict a registrant's ability to practise but may be taken into account if a further allegation is made against the registrant.

18. The Committee was required under the processes set out in the regulations and the general law and the guidance to start in reverse order with the least serious formal sanction and to work upwards applying the principle of proportionality. The Committee said this:

> "The Policy states that a caution order may be the appropriate sanction for cases of dishonesty if there is a low risk of recurrence and therefore suspension would be disproportionate."

19. It is relevant here to note that it did not go on to consider the last sentence of paragraph 20 of the policy to which reference is being made in this paragraph, namely:

> "A caution order is unlikely to be appropriate in cases where the registrant lacks insight and, in that event, conditions of practice or suspension should be considered."

20. It then went on to reach its conclusion on sanction at paragraph 50:

> "50. The Panel finds a caution order is appropriate in this case because these proceedings arise from an isolated episode of dishonesty, in October 2013. This is the least restrictive means of protecting the public and marks the disapproval of the Panel and the wider public for her behaviour but acknowledges the change in her circumstances since October 2013. The Panel finds that the Registrant has reflected to some extent on the circumstances leading to the misconduct. She described very difficult personal circumstances at the time which she says have since changed. The Registrant in her email of 21 May 2013 stated that she has since informed professionals that her contract ended at STC for personal reasons. She attached what she described as an up to date CV which includes her employment at STC.
>
> 51. The Panel concludes that a Caution order for two years is the appropriate and proportionate sanction in this case.
>
> 52. The Panel did consider whether a conditions of practice order was more appropriate, but decided that no workable or realistic conditions could be framed to address the issue of dishonesty and there is no information from the Registrant to confirm her current employment. There are no public protection issues requiring a restriction upon her practice."

<u>The appeal</u>

21. The appellant submits that the Committee's decision on sanction was wrong: it was unduly lenient and was not one that a committee, properly directing itself on the evidence, could have reached. A caution was outside the range of responses appropriate to those findings having regard to the purpose of these proceedings, the importance of the protection of the public interest and the guidance given in the indicative sanctions policy.

22. Those submissions have been sustained in the grounds of appeal, the written and oral arguments developed today by Mr Bradly on behalf of the appellant authority. I identify the central features of those submissions as follows:

(i) The Committee had found proved an allegation of dishonesty made in the context of seeking employment with a new employer by suppressing the fact of her last previous employment.

(ii) On a proper analysis this was not a single act of dishonesty committed only on one occasion, but at least two acts in October with two different people being deceived, and the dishonesty continues when the registrant invites the Committee to deal with her on a version of events set out in April and May 2014 that were found to be false.

(iii) The registrant had shown no insight into the nature of her conduct. The Committee recognised this in its decision on impairment, but made no reference to this in its decision on sanction. The registrant had not given evidence before the Committee or called any external evidence by way of testimonials in support of her case and the claim to have reflected on her conduct was made at the same time as other assertions which the Committee did not accept.

(iv) The lack of reference to paragraph 20 of the indicative sanctions policy as to a caution being unlikely to be appropriate where there remains a lack of insight is significant in the overall context of this case.

23. Ms Richards QC, for the Committee, resists the appeal on the basis of the following broad submissions:

(i) The Committee was aware of the public interest and the nature of its task to balance the interests of the public in maintaining the reputation and integrity of the social work

profession and the interests of the registrant because it referred to that elsewhere in its findings.

(ii) This court should read the decision as a whole, and the references made in one part of the decision indicate that the Committee would be aware of those factors when it comes to the question of sanction. It is not necessary for the Committee to repeat them in the context of sanction. Reading the decision as a whole makes sense as to what factors it took into account.

(iii) The Committee was aware of the indicative sanctions policy but it was not obliged to quote it in full. It was not bound by it. It is general guidance; it is not dispositive of sanctions in particular cases.

(iv)In any event, whether under the terms of the policy or the general law, it is not the case that any finding of dishonesty precludes a caution even where evidence of insight may be lacking or unsatisfactory.

(v) A caution is not a trivial sanction: it involves a formal entry on the register, it involves publicity which is available to future employers for periods of time indicated in the caution, and it therefore can of itself be a sufficient measure to mark out disapproval of the conduct.

(vi)The weight to be attached to any factor in the evidence which the Committee accepts is a matter for the Committee to decide, rather than for this court on appeal. This court should not lightly interfere with the Committee's own assessment of this case.

(vii) Finally, there is no mismatch or internal inconsistency between the part of the reasoning dealing with impairment to practise and sanction because the Committee was addressing two different issues. In the end it concluded that the misconduct, although involving dishonesty and although serious, was not sufficiently serious to require

suspension or any other more serious sanction of striking off the register. It is common ground that conditions of practice were not appropriate in a case of this sort when it was not the technical functioning as a social worker that was the issue dishonesty taking place in the context of her employment.

Conclusions

24. The law is not in dispute and, although I have been referred in the skeleton arguments and oral submissions to citation of first instance decisions of this court where the significance of dishonest conduct and the implications for the reputation of a particular profession has been noted each case turns upon its own facts.

25. I accept Ms Richards' submission that considerable weight must be given to the assessment of the Committee as to what the appropriate sanction is, having regard to their institutional competence and experience. It has the primary role of determining what the requirements of proportionality are and what is the appropriate sanction to safeguard the interests of the profession.

26. I am nevertheless driven to accept the appellant's submissions that, on the facts found by the Committee and on the information before it, the sanction of a caution in this case was unduly lenient and not within the ranges of responses open to it. It is markedly different from the guidance offered by the indicative sanctions policy. It gives no indication of any explanation as to why such a difference was appropriate. It does not identify any factor that would justify a caution being appropriate in this case.

27. The background facts indicate that there was no evidence from the registrant, and her credibility and reliability was very much in issue. They were still in issue having regard to the submissions that she made that were found by the Committee to be false. She not only disputed dishonesty, she shifted responsibility for the failure to declare her employment onto Mr Ozturk and persisted in claiming that she had raised them in interview when the Committee were clear in accepting the evidence of the witness that she had not. This could hardly be either a matter of a mistake or a matter of embarrassment about the fact that the police were called when she had an incident with her partner. What required explanation in these proceedings was not why she had a falling-out with her partner or why the police were called, but why she had excised the most recent employment from her employment history to avoid having to address the issue why she was sacked with future employers.

28. I recognise that the Committee is not bound by the terms of paragraph 20 of the indicative sanctions policy, and is not restricted to issue a caution only where there is insight. But, in my judgment, the policy guidance accurately reflects the general principles repeated in many cases for many years as to the primary need to uphold the reputation of the profession as well as the protection of the public from dishonest and incompetent practitioners. The seriousness of the conduct here is not merely dishonesty but dishonesty in the context of important system of checks on social workers when seeking further employment with children. The indication of the guidance of the unlikelihood that a caution will be sufficient in the absence of evidence of insight is pertinent. That piece of guidance was not referred to in the decision; it is the most

relevant piece of guidance in the whole of the decision as to sanctions. The rest of the decision on sanctions referred to earlier in this judgment does seem to not reflect the extent of the seriousness of the misconduct that had led to the earlier stages of impairment and being found.

29. Moreover, it is difficult to see how the Committee could have given any weight to the assurance that the registrant has learnt some lessons given the context of the submissions of April and May 2014. She was not really focussing upon the important issue, which was her dishonesty in making the representations she did rather than the embarrassing circumstances which led the police to be called in the dispute with her partner.

30. Of course, there are always special circumstances that will enable the Committee to reach its own conclusion, properly applying the proportionality principle and the difficult balance that it has to make in any individual appeal. In my judgment, apart from the reflection of the fact that the registrant had now put in the details into her current CV that she had omitted deliberately in October 2013, there was no material before the Committee that could amount to any special circumstance. On analysis, the fact that she was not going to repeat the same misconduct that she had been guilty of in October is hardly evidence of insight or awareness or learning: it is simply an avoidance of committing yet further disciplinary measures by misleading future employers as to her employment history.

31. The fact that she continued to deny dishonesty and put nothing forward from anyone outside her own experience as to what her current level of insight and functioning was is

something which had to be noted by the Committee, and in the assessment of whether a caution was sufficient was a factor to which it was required to give some weight.

32. Accordingly, I conclude that the Committee did not give the due consideration to all the material circumstances (see Ruscillo at paragraph 78) and the decision is at odds with what one would have expected from the earlier findings in the decision and the assistance that is given, albeit in a non-binding way, by the indicative sanctions policy. I conclude, therefore, that this was unduly lenient, this was not a sanction that was open to the Committee within the reasonable range of responses, and there were defects in their reasoning explaining its decision. This appeal is accordingly allowed.

33. The skeleton argument of the appellant points out that under the legislation there are a number of options now available to this court in the light of that finding: I could impose the sanction that I consider to be suitable, more severe than caution, which is either suspension or striking off the register; or I could remit the matter to the first respondent for a fresh hearing on sanctions by the Committee. One of the difficulties in this case is that I am not persuaded that the only possible sanction that was appropriate was striking off.

34. There is also the fact that this court has not heard from the registrant. That is her own choice, and normally little weight can be attached to the fact that she has not chosen to participate. However, in all the circumstances, I conclude that the appropriate remedy is to remit the issue of sanctions to the Committee to re-determine. It will be free to reach its own conclusions as to what sanction it considers is appropriate in the light of this

judgment and anything else that may emerge in the sanctions hearing.

35. If this judgment does come to the attention of the registrant, she may note that representations as tp sanctions made without a willingness to give evidence about them or to support them with objectively reliable evidence is likely to carry very little weight. Very much more weight may be possible if she is able to give an account of what she is presently doing and address the issues of insight in the way suggested by the policy. Whether she wishes to participate in the future is, of course, entirely a matter for her, but she should be under no illusions that a future failure to participate may have adverse consequences when this matter is reconsidered.

36. Finally, there is the question as to whether this should be heard by any special form of the Committee. In my judgment, this is not a case where it is positively inappropriate for the Panel who previously heard this appeal to be sitting. I do not direct that it be heard by the same Panel since there are reasons of practicality why that may cause delay or practical difficulties. But if it turns out that it is convenient for the same Panel chair to sit on this Panel, I see no objection to that. In any event, the body who next considers this case will do so on the basis of the primary factual findings made by the previous Panel in respect of the allegations being proved, the seriousness of them and impairment. It is simply a question of revisiting the final part of the process: what is the proportionate and appropriate sanction in all the circumstances of the case as they will then appear to be having regard to any further information which might become available.

37. MR BRADLY: My Lord, the appeal has been allowed and in those circumstances I ask your Lordship to direct that the first respondent pay the appellant's costs
38. MR JUSTICE BLAKE: Yes. Thank you.
39. MS RICHARDS: My Lord, there is no opposition in principle, obviously, to the costs order being made. I have two observations upon the schedule of costs if what is sought is a summary assessment.
40. MR JUSTICE BLAKE: Yes.
41. MR BRADLY: My Lord, I think I am obliged to seek a summary assessment given the fact this is a one-day case.
42. MR JUSTICE BLAKE: Yes.
43. MR BRADLY: In those circumstances, I ought to hand your Lordship a copy of the costs schedule, unless there is a copy in your Lordship's papers.
44. MR JUSTICE BLAKE: I think I have been handed one. I think the last one is 7 July 2015.
45. MR BRADLY: I have the 9th.
46. MS RICHARDS: The one I have is dated the 7th
47. MR BRADLY: I am sorry, that is my fault. We are on the 7th.
48. MR JUSTICE BLAKE: I think I have seen the figure there. Yes, well, if there is no issue as to principle then I will propose to make an award of costs against the first respondent and summarily assess those costs
49. MS RICHARDS: Yes, and so there are only two matters in relation to the schedule of costs that I raise. The first is, if my Lord looks down the bottom of the first page of the schedule, it identifies some 6 hours of attendances in the form of letters or emails on opponents. (Inaudible) it is the nature summary assessment, but there has been very

little by way of correspondence between the parties other than "Here is the bundle, what is your position?" and so on. We are at a loss to see how that period of time can be accounted for. Then secondly, if my Lord looks at the schedule of work done on documents, it is appended at the end, at least in the copy that I have.

50. MR JUSTICE BLAKE: Yes.

51. MS RICHARDS: If my Lord looks down, item 3, appellant's skeleton argument. It appears to identify in excess of 9 hours' work done by the solicitors on the skeleton argument in circumstances where it is a document drafted, as one would expect, by counsel. We fail to see why, there being an extremely comprehensive and well-drafted skeleton argument from counsel, the appellant's solicitor is required to spend that period of time on documents. In relation to the other figures I am not asked to make any observations.

52. MR JUSTICE BLAKE: Summary assessment is an invidious task and I appreciate that the nature of these proceedings is that private members of the profession are instructed and deal with this important work. By comparison with some other items of business in the Administrative Court this appears to me a touch on the high side for a one-day hearing, and it is not a particularly complicated case, grateful as we are. With those discouraging words, what would you like to say?

53. MR BRADLY: Well, my Lord, as to the overall figure, I may be allowed to say that it is not an unusual figure for me to see on the statement in these particular types of hearings. Your Lordship's experience will be far wider in the Administrative Court.

54. MR JUSTICE BLAKE: Quite. I somehow feel that in this area that costs may be getting a little out of line and may need to be yanked back.

55. MR BRADLY: Your Lordship may feel that and it is difficult for me to address that.

All I can say is that these appeals do involve a lot of work, and perhaps more work than is necessarily reflected directly by –

56. MR JUSTICE BLAKE: The swan glides across the pond without seeing the working parts beneath.
57. MR BRADLY: And they run very well.
58. MR JUSTICE BLAKE: I am extremely grateful to you and your instructing solicitor for the help, and efficient presentation of documents is indeed a help.
59. MR BRADLY: May I just add this in terms of looking at overall from where your Lordship is at the moment. It is of course for the appellant to do a fair amount of –
60. MR JUSTICE BLAKE: You have the carriage.
61. MR BRADLY: We have the carriage and there is more contact with both respondents than is necessarily reflected in actual letters because the appellant is seeking to find out what position they are taking and one may not get an immediate response.
62. MR JUSTICE BLAKE: I am conscious of all that.
63. MR BRADLY: That really deals with the letter, the correspondence at the bottom of the first page. When a skeleton argument is produced by counsel in proceedings such as these, it inevitably and expectedly, I would submit, goes through a process, and so I do not just draw it up and file it.
64. MR JUSTICE BLAKE: No, I am sure you do not, but we have to consider the proportionality of this.
65. MR BRADLY: My Lord, we do.
66. MR JUSTICE BLAKE: Of course in certain circumstances presumably does the registrant ever end up paying the bill -- although perhaps not if they do not appear.
67. MR BRADLY: Yes.

68. MR JUSTICE BLAKE: Well, I have the thrust of that. I am going to make a modest reduction on the figure before VAT.

69. MR BRADLY: Yes. One way of approaching it for your Lordship would be to confine yourself to my learned friend's specific points.

70. MR JUSTICE BLAKE: That is one way of approaching it; that is not the approach I was minded to take.

71. MR BRADLY: My Lord, I do not think I can assist further.

72. MR JUSTICE BLAKE: Thank you very much.

I am going to award the appellant the costs to be paid by the first respondent. I summarily assess those costs in the figure of £18,000 plus VAT.

73. MR BRADLY: I am grateful.

74. MR JUSTICE BLAKE: You do not need a time for paying or anything like that?

75. MR BRADLY: No.

76. MR JUSTICE BLAKE: Thank you very much to you both for very well-presented evidence.