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FINAL

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*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: 05/09/08

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

GARY LEE McCOLLAM

Appellant;

and

THE NURSING AND MIDWIFERY COUNCIL

Respondent.

STEPHENS J

Introduction

[1] The appellant, Gary Lee McCollam, 46 (date of birth 22 April 1962) a nurse, appeals to the High Court against decisions taken on 28 February 2008 by the Conduct and Competence Committee of the Nursing and Midwifery Council ("the Council").

[2] Mr Wolfe appeared on behalf of the appellant and Mr Shields appeared on behalf of the respondent. I am grateful to counsel for the assistance that I derived from their carefully prepared and well reasoned oral and written submissions.

The Council and disciplinary proceedings

[3] The Council is a body corporate (see Article 3(1)) of the Nursing and Midwifery Order 2001 ("the 2001 Order"). The principle functions of the Council include establishing from time to time standards of conduct and performance for nurses and to ensure the maintenance of those standards. The main objective of the Council in exercising all of its functions is to safeguard the health and wellbeing of persons using or needing the services of members of the profession of nursing or midwifery who have been admitted to the register ("registrants"). The Council is also directed by Article 21 of the 2001 Order "to establish and keep under review the standards of conduct, performance and ethics expected of registrants ... and to

establish and keep under review effective arrangements to protect the public from persons whose fitness to practice is impaired.” There are four committees of the Council and those include the Investigating Committee and the Conduct and Competence Committee (see Article 3(9) of the 2001 Order).

[4] The allegations of misconduct against the appellant came before a Conduct and Competence Committee pursuant to Article 27 of the 2001 Order. That Committee has power under Article 29 to make a Striking Off Order. Such an order was made against the appellant on 28 February 2008. The appellant was informed of the decisions of the Conduct and Competence Committee by letter dated 11 March 2008. He served a Notice of Appeal pursuant to Article 38 of the 2001 Order. The appeal in Northern Ireland is to the High Court of Justice (Article 38(4)(b) of the 2001 Order) and must be brought in accordance with Part II of Order 55 of the Rules of the Supreme Court (Northern Ireland) 1980. Under Article 38(3) of the 2001 Order the court may:-

- “(a) Dismiss the appeal;
- (b) Allow the appeal and quash the decision appealed against;
- (c) Substitute for the decision appealed against any other decision the Practice Committee concerned or the Council, as the case may be, could have made; or
- (d) Remit the case to the Practice Committee concerned or Council as the case may be, to be disposed of in accordance with the directions of the court ...”.

Sequence of events

[5] I set out a sequence of events in relation to the appellant’s employment and personal history and the facts leading to the allegations of misconduct against him.

[6] The appellant started his training as a nurse in October 1981. He then worked in a number of hospitals including the Waveney Hospital, Braid Valley Hospital, Greenisland Hospital and Massereene Hospital. From 1 August 1994 to 31 August 2000 the appellant was a Charge Nurse at Antrim Area Hospital. In 2000 the appellant developed problems with depression. He started to misuse alcohol in April 2000. He was unable to sleep and was using alcohol to help alleviate his insomnia. He was downgraded to a Staff Nurse in 2000 following an investigation into an inappropriate sexual

relationship with another member of staff. He was given a written warning in relation to that matter. He started to abuse Co-codomal and in January 2001 he openly used Halothane gas at work on two occasions resulting in loss of consciousness. He was admitted to the Psychiatric In-patient Unit in Holywell hospital on 6 March 2001 and remained there until 13 March 2001. At this stage it is recorded that the appellant was abusing Co-codomal 16 a day, alcohol up to 13 pints of Guinness and 2 bottles of wine daily. Dr Russell was of the opinion that he had suffered a severe depressive illness following significant life events from April 2000. He was diagnosed as having an adjustment disorder together with a secondary diagnosis of multiple substance misuse. On 30 April 2001 he was dismissed from his employment in Antrim Area Hospital following the incidents in which he had inhaled anaesthetic gases resulting in loss of consciousness. He gained employment in May 2001 in a private nursing home and stayed in the private sector until 23 June 2003.

[7] The appellant attended the Community Addiction Service. He also regularly attended his general practitioner. Following the incidents at Antrim Area Hospital he was referred to the Health Committee of the Council but a decision was made in July 2002 not to proceed with that case. In 2002 the appellant's mother died. By 6 May 2003 the plaintiff's General Practitioner felt that the appellant was professionally able and capable of doing his job as a nurse. By this stage the appellant wished to move from nursing in the private sector back into nursing in the National Health Service.

[8] On 23 June 2003 the appellant was appointed to Green Park Healthcare Trust as an E grade Staff Nurse. Subsequently in August 2003 the appellant separated from his wife. The breakdown of his marriage has, in the opinion of Dr Mangan, caused the appellant to suffer a further psychological adjustment disorder. The appellant reported feelings of low self-esteem, self-worth and generalised anxiety so that during the year 2005 he had problems with his concentration. His sleep pattern was poor and his appetite erratic. The appellant said he would wake up in the middle of the night. He was pre-occupied with the break-up of his marriage. Some 1½ years after his appointment to Green Park Healthcare Trust as an E grade staff nurse and on Tuesday 4 January 2005 the appellant was caught shoplifting from a Tesco store in Antrim. On the same day he received a caution known as an "informed warning" from the Police Service of Northern Ireland. An informed warning is not a criminal conviction. There are two types of caution that can be directed by the Public Prosecution Service and administered by the Police Service. Both involve a finding and also an acceptance by the person who is to be cautioned, that a criminal offence has been committed. The first form of caution is an informed warning. If a person who has been given an informed warning commits a subsequent criminal offence within one year then the warning is taken into account by the court which sentences the accused for the subsequent criminal offence. The second form of caution

is a caution. In respect of a caution the consequence is that it will be taken into account if a subsequent criminal offence is committed but the relevant period is 5 years and not one year. Neither an informed warning nor a caution is a criminal conviction.

[9] The appellant did not disclose to his employer that he had committed the offence of shoplifting nor did he disclose the fact that he had received an informed warning. Ten days later on 14 January 2005 the appellant completed a Green Park Healthcare Trust application form seeking promotion to the position of Acting Ward Manager Grade G. The application form inquired as to whether the appellant had any criminal convictions. He replied "no". His application was successful and on 21 February 2008 some 48 days after he had received an informed warning for shoplifting he was seconded for 3 months as a G Grade Ward Manager in Rheumatology. In effect he had applied for and obtained promotion, albeit on a temporary basis.

[10] In February 2005 and as a Ward Manager the appellant attended a training session conducted by Patricia O'Callaghan, Director of Nursing and Clinical Effectiveness at Musgrave Park Hospital part of the Green Park Healthcare Trust. Mrs O'Callaghan's evidence was that the appellant would have been aware of his obligation as a nurse from that training session and a subsequent training session in September 2005 as to what should be declared in terms of character to his employers. Mrs O'Callaghan particularly remembered their being some discussion about information being declared during the course of the training session. She considered that the appellant should have known from this the importance of a nurse informing an employer about any matter relating to a nurse's conduct. This evidence was not particular but served to emphasise in a general way the importance placed on professional obligations.

[11] Approximately 2 months after the February 2001 training session and on 4 May 2005 the appellant completed a further Green Park Healthcare Trust application form. On this occasion his application was for promotion to the permanent position of Ward Manager Grade G. Again the application form inquired as to whether the appellant had any criminal convictions and again he replied "no". His application was successful and he took up his permanent appointment as Ward Manager on 1 June 2005.

[12] In September 2005 the appellant attended a further training session. The evidence of Patricia O'Callaghan being that from this and the previous training session the appellant should have known the importance of a nurse informing an employer about any matter relating to the nurse's conduct. Again her evidence was not particular but served to emphasise in a general way the importance placed on professional obligations.

[13] On 24 September 2005, some 3½ months after the appellant's permanent appointment as a Ward Manager in Rheumatology he was caught shoplifting in Sainsburys, Ballymena. On 1 October 2005 the appellant was charged with Theft and was summoned to attend Ballymena Magistrate's Court on Thursday 20 October 2005.

[14] The appellant's manager was Mrs Colhoun, Clinical Services Manager, Medical and Rehabilitation Director, Musgrave Park Hospital. The appellant met Mrs Colhoun on 5 October 2005 and also on 6 October 2005 in relation to other matters and made no mention of the fact that he had been charged with theft on 1 October 2005. The appellant states that 10 days later on 11 October 2005 he spoke to Mrs Colhoun's secretary in order to contact Mrs Colhoun with a view to informing her as to the fact that he had been charged with theft. He states however that he was unsuccessful in establishing contact. Mrs Colhoun states that she had not received any message to speak to the appellant and would normally receive such a message if someone was trying to contact her. The appellant then contacted Mr D Lowry, Regional Officer of the Royal College of Nursing. He informed him of the charge of theft in respect of the incident that had occurred on 24 September 2005. Mr Lowry in turn at 9.50 pm on 11 October 2005 informed Mrs Colhoun. There was no disclosure of the earlier incident that had occurred on 4 January 2005.

[15] The appellant was due to travel to Dublin on 12 October 2005 for a 2 day conference. Mr Lowry advised him not to go but to meet with the Trust's officers.

[16] At 11.10 am on 12 October 2005 a meeting was held in the office of Miss Patricia O'Callaghan. Also present were the appellant, his representative Mr Lowry and Mrs Colhoun. At that meeting the appellant did not make any disclosure in relation to the incident which occurred on 4 January 2005. He maintained his innocence in respect of the incident that had occurred on 24 September 2005. He explained at length that he had left the store to collect money with the intention of returning and paying for the goods. The appellant was visibly distressed. He elicited sympathy. He was referred to Occupational Health.

[17] A short while after that meeting Mrs Colhoun received a telephone call from one of the appellant's relatives informing her that the appellant had been in trouble for shoplifting before. Mrs Colhoun made inquiries and she was informed by Mr Lowry that the appellant had received an informed warning for shoplifting on 4 January 2005.

[18] On 13 October 2005 the appellant took sick leave. On 20 October 2005 the appellant was suspended from his employment. On 29 November 2005 a disciplinary hearing was held by his employers. On 9 June 2006 the appellant was dismissed from his employment with the Green Park Healthcare Trust.

He has not worked as a nurse since that time but is anxious to return to nursing in the future. He presently works as a taxi driver.

[19] On 20 October 2005 the hearing before Ballymena Magistrate's Court was adjourned. The appellant continued to maintain his innocence in respect of the incident which had occurred on 24 September 2005 as is demonstrated by the fact that on 24 February 2006 Mr Lowry, writing on his behalf, stated that the appellant intended to maintain a plea of not guilty. However in the event on 25 May 2006 the appellant received a police caution in relation to that offence and the prosecution was withdrawn. By accepting a caution he accepted his guilt.

The allegations of misconduct

[20] The appellant faced 4 allegations of misconduct before the Conduct and Competence Committee.

[21] The first was that whilst employed by Green Park Healthcare Trust on or about 4 January 2005 he stole goods from a Tesco store in Antrim.

[22] The second related to the appellant's failure to inform the Trust of the informed warning that he had received on 4 January 2005 from the Police Service of Northern Ireland in respect of the theft of goods from the Tesco store on that date. In particular it alleged that he did not declare the informed warning when applying for the position of Ward Manager Grade G, acting/secondment and when applying for the position of Ward Manager Grade G.

[23] The third was as follows:-

"Having been charged with theft on or around 1 October 2005 you failed to advise the Trust you have been charged with this offence the Trust having received this information from your union representative on or around 11 October 2005."

This allegation of misconduct is somewhat ambiguous but for reasons that I will set out I consider that in effect it is an allegation that the appellant *delayed* informing the Trust between 1 October 2005, the date that he was charged with the offence of theft and 11 October 2005 the date upon which his representative Mr Lowry, informed Mrs Colhoun.

[24] The fourth was that:-

“On 25 May 2006 you received a police caution for shoplifting goods from a Sainsburys store in Ballymena on 1 October 2005.”

This allegation of misconduct is expressed in different terms than the first but the purport of it is the same namely that he stole goods from a store.

The appellant's response to the allegations of misconduct

[25] The allegations of misconduct were set out in a letter dated 12 February 2008. In respect of allegations 1 and 4 the appellant's solicitors by letter dated 14 February 2008 to the Council admitted the facts, admitted that those facts amounted to misconduct and that the appellant in committing the offences had impaired his fitness to practice. The appellant's solicitors referred to a number of matters in mitigation of sanction including the appellant's personal circumstances which concentrated inter alia on his health. In that respect medical reports from the appellant's general practitioner and from Dr Mangan, a Consultant Psychiatrist, were enclosed with the appellant's solicitors' letter.

[26] In respect of the second allegation of misconduct the appellant's solicitors maintained that there was no obligation on the appellant to inform his employers of the informed warning dated 4 January 2005. Further that the application forms dated 14 January 2005 and 3 May 2005 only sought details of any convictions. Accordingly that as an informed warning was not a conviction there was no obligation to disclose it. The appellant maintained that the second allegation was unsustainable.

[27] In respect of the third allegation of misconduct precise definition was not brought to the appellant's response in the letter dated 14 February 2008 but by reference to the contentions in respect of the second allegation it was contended that the third was also unsustainable.

The decision of the Conduct and Competence Committee

[28] The Conduct and Competence Committee met on 28 February 2008 and it decided that the facts were proved in relation to all 4 allegations of misconduct, that the allegations were well founded and that the appellant's fitness to practice was impaired.

[29] The Conduct and Competence Committee then considered the appropriate sanction. The range of orders is set out in Article 29(5) of the 2001 Order as follows:-

- “(a) make an order directing the Registrar to strike the person concerned off the register (a “striking-off order”);
- (b) make an order directing the Registrar to suspend the registration of the person concerned for a specified period which shall not exceed one year (a “suspension order”);
- (c) make an order imposing conditions with which the person concerned must comply for a specified period which shall not exceed three years (a “conditions of practice order”); or
- (d) caution the person concerned and make an order directing the Registrar to annotate the register accordingly for a specified period which shall be not less than one year and not more than five years (a “caution order”).”

The Conduct and Competence Committee considered each of these orders in turn commencing with a caution order and progressing to the most severe, a striking-off order. It decided to make a striking-off order. The reasoning of the Conduct and Competence Committee was as follows:-

“The panel went on to consider whether a caution would be appropriate. The misconduct is serious and the registrant has shown no sign of insight, regret or remorse. There was no early admission and the failure to inform was a deliberate omission. Again because of the serious nature of the misconduct the panel considered this would not be appropriate nor sufficient sanction.

There is no evidence that the registrant was willing to comply with, or any employer was willing to support a conditions of practise order, therefore a conditions of practise order could not be complied with, was not practical and was not sufficient.

The panel went on to consider whether an order of suspension should be made and they decided that because of the serious nature of the misconduct that this would not be an appropriate sanction.

The panel therefore decided that the only appropriate sanction to maintain the public’s trust

and confidence in the profession and the NMC is a striking off order. This order will ensure that the registrant may not apply for restoration to the register for a period of 5 years. The behaviour was a serious departure from the relevant standards set out in the code. This behaviour has brought the profession into disrepute and is fundamentally incompatible with being a registered nurse.”

[30] If this appeal is unsuccessful then Article 33(2) of the 2001 Order prevents the appellant from applying to be restored to the register within a period of 5 years beginning with the date on which the striking-off order took effect.

The grounds of appeal

[31] The appellant contends that the second and third allegations should have been dismissed by the Conduct and Competence Committee. In respect of the second allegation he contends that there was no obligation to disclose the informed warning to his employers. In respect of the third, in addition to contending that there was no obligation to disclose the fact that he had been charged with a criminal offence, he contended that a delay of 10 days in disclosing the matter to his employers was insignificant. The appellant also contends that the sanction that was imposed was manifestly excessive.

The approach to this appeal

[32] In the present case the procedure adopted by the Conduct and Competence Committee was that it received written evidence and submissions which were considered by it at its meeting on 28 February 2008. There was no oral hearing. This appeal was conducted on the same written material which had been considered by the Conduct and Competence Committee together with written and oral submissions.

[33] The Court of Appeal in *Ruscillo v The Council for the Regulation of Healthcare Professional and the General Medical Council and Anor* [2004] EWCA Civ 1356 set out a general approach to appeals by the Council. This approach was considered by Weatherup J in the *Council for the Regulation of Healthcare Professionals v The Nursing and Midwifery Council and Anor* [2005] NIQB 69. All the parties agreed that the approach I should adopt in this case is summarised by Weatherup J at paragraph [17] of his judgment.

The second allegation of misconduct

[34] The second allegation of misconduct is based on the proposition that the appellant had an obligation to inform his employers that on 4 January

2005 he had received an informed warning for shoplifting and a particular obligation to do so on each occasion that he completed applications forms for promotion. I consider that the most serious allegation, and therefore the essence of the second allegation of misconduct, is that the appellant applied for promotion to the position of Ward Manager without making disclosure.

[35] An obligation to make disclosure might be imposed on the appellant by the terms of his contract of employment, by the questions on the application form or by his professional obligations. When considering allegations of professional misconduct one considers the imposition of a duty to disclose by reference to professional obligations. Breach of a contractual obligation or a failure to correctly answer a question on an application form might also amount to the breach of a professional obligation. However the essence of the enquiry is and remains what are the professional obligations. Mr Shields, who appeared on behalf of the Council, accepted that as between the appellant and his employer there was no contractual obligation for the appellant to inform his employers of the informed warning. He also accepted that the question in the promotion application form was insufficient to require the appellant to disclose the informed warning. That question was restricted to criminal convictions. There was no question asking him to disclose cautions or charges. There was no general question asking the appellant to disclose anything that impaired his fitness to practice. Accordingly the issue between the parties is whether the appellant had a professional obligation to disclose the informed warning either as soon as he received it or in particular when he applied for promotion.

[36] To determine what are the professional obligations on the appellant one turns to the Council's Code of Professional Conduct. Codes inform nurses and midwives of the standard of professional conduct required of them and inform the public, other professions and employers of the standard of professional conduct that they can expect of a registered practitioner.

[37] The present code published by the Council in respect of standards of conduct, performance and ethics for nurses and midwives came into operation on 1 May 2008. At page 9 under the heading "Act with Integrity" the code states:-

"You must inform the (Council) if you have been cautioned, charged or found guilty of a criminal offence".

If that code had been in operation at the time then it would have been clear that the appellant ought to have informed the Council that he had received an informed warning from the Police Service of Northern Ireland on 4 January 2005.

[38] The relevant code that was applicable at the time did not contain an express requirement that a nurse or midwife was required to inform the Council if that nurse or midwife had been cautioned. However the applicable code contained a number of relevant provisions as follows:-

“1.2. As a registered nurse, ..., you must:-

Act in such a way that justifies the trust and confidence the public have in you.

Uphold and enhance the good reputation of the profession.”

Paragraph 1.5 of the applicable code continues as follows:-

“You must adhere to the laws of the country in which you are practising.”

Finally at paragraph 7.1 under the heading “As a Registered Nurse, Midwife or Specialist Community Public Health Nurse, you must be trustworthy.” Paragraph 7.1 states:-

“You must behave in a way that upholds the reputation of the professions. Behaviour that compromises this reputation may call your registration into question even if it is not directly connected to your professional practice.”

[39] Mr Wolfe, on behalf of the appellant, initially contended that, as there was no express requirement to disclose a caution in the applicable code, then there was no requirement to do so. However he accepted that, by virtue of these provisions, a nurse or midwife, if *charged* with an obviously serious criminal offence, would have an obligation to make disclosure. It was a question of degree depending on the seriousness of the offence with which the nurse or midwife was charged, taking into account his or her particular circumstances. For instance he contended that under the applicable code, as far as the vast majority of nurses were concerned, there would be no obligation to disclose a charge in respect of the most minor road traffic offence. I consider that was an appropriate concession to make. I hold that there were professional obligations to make disclosure depending on the seriousness of the offence with which the individual nurse or midwife had been charged or cautioned taking into account his or her particular circumstances. I would add that the professional obligation to make disclosure extends not only to cautions, charges and convictions but can also extend to the commencement of police *investigations*. Furthermore that the period of time within which disclosure is to be made depends on the

seriousness of the criminal or suspected criminal activity in the context of the registrants particular circumstances. Thus there are some criminal investigations which are in respect of such serious crimes that the commencement of an investigation should be disclosed immediately. In addition there has been confusion in this appeal as to whether the disclosure should be to the employer or to the Council. It has in effect been the Council's contention that disclosure to the employer is the same as the disclosure to the Council. I hold that disclosure should be to the Council. However in the particular circumstances of this case I consider that it should also have been to the employer.

[40] The most significant particular circumstance in respect of the appellant was that he was applying to hold a position of considerable responsibility as a Ward Manager. Mr Wolfe termed the shoplifting offence as "petty pilfering" and contended that there was no professional obligation to disclose the informed warning when applying for promotion to the position of Ward Manager. The primary object of the professional rules is to protect the public and the reputation of the profession. I approach the question as to whether the appellant had an obligation to disclose the informed warning when applying for promotion to the position of Ward Manager from the perspective of both protecting the public and the reputation of the profession.

[41] In respect of the first allegation of misconduct the appellant now "readily accepts" that the offence he committed on 4 January 2004 impaired his fitness to practice as a nurse. Dr Mangan, the Consultant Psychiatrist retained on the appellant's behalf, states that the appellant was in 2005 suffering a psychological adjustment disorder as a result of the breakdown of his marriage and that this mental health problem had a significant impact on his offending behaviour in January 2005. In effect that his mental health difficulties had a causative impact on his offence of dishonesty in January 2005. The professional obligation contained in paragraph 1.2 of the Council's Code of Professional Conduct, Performance and Ethics was to act in such a way that justifies the trust and confidence the public have in the appellant and to uphold and enhance the good reputation of the profession. For the appellant to complete an application form for promotion to the position of Ward Manager and therefore to put himself forward as a person suited to the responsibilities of a Ward Manager, where, as here, the appellant had committed an offence of dishonesty which he now "readily accepts" impaired his fitness to practice is not acting in such a way that justifies the trust and confidence which the public have nor does it uphold and enhance the good reputation of the profession. That is so quite apart from the appellant's mental health problems but it is particularly so given those problems. If he had disclosed the informed warning those problems would also have become apparent.

[42] I hold that the Conduct and Competence Committee was entirely correct in finding that there was an obligation on the appellant to make disclosure when applying for promotion to the position of Ward Manager. I also hold that the obligation to disclose was a continuing obligation in view of the fact that the appellant was successful in securing promotion. Accordingly I uphold the finding that the second allegation of misconduct has been established against the appellant and also that his fitness to practice is impaired.

[43] I do not consider it necessary in these circumstances to consider whether irrespective of the appellant's application for promotion there was an obligation on him to make disclosure. The core allegation in respect of the second allegation of misconduct is that the appellant, knowing that he had just accepted that he had committed theft and having just been cautioned for it by the police, applied for promotion to a senior position without informing his employers. I have dismissed the appellant's appeal in relation to that core allegation.

The third allegation of misconduct

[44] The way in which the third allegation of misconduct is framed is somewhat ambiguous. The essence of the allegation could be that the appellant did not make the necessary disclosure himself as opposed to through his union representative. Alternatively that there was a delay in making disclosure between 1 October 2005 and 11 October 2005. The decision of the Conduct and Competence Committee was that the appellant "*never directly* informed his employer of ..." the fact that he had been charged with theft on 1 October 2005 (emphasis added). Accordingly it appears that the Conduct and Competence Committee might have considered that the allegation was that the appellant should have informed his employer directly himself rather than indirectly via Mr Lowry. If the allegation was established on that basis then I consider that the finding was incorrect. It matters not whether the employers were informed directly or indirectly if it was at the instigation of the appellant.

[45] I consider that the proper construction of the third allegation of misconduct is that there was a delay in making disclosure which covered a period of some 10 days. I have held that there was a continuing professional obligation on the appellant to make disclosure of the informed warning given to him on 4 January 2005. Accordingly where, as here, there is a continuing professional obligation on the appellant to disclose offence "A" of theft and the caution that he received in respect of it, to his employer and he is then charged with offence "B" of theft and where his employment situation has not changed, then not only does this add to his professional obligation to disclose offence "A" and the caution in respect of it, but gives rise to a separate and distinct professional obligation to disclose to his employer the charge in

respect of offence "B". Accordingly I hold that the appellant, who was then a Ward Manager, was under an obligation to make disclosure of the fact that on 1 October 2005 he had been charged with theft. In the circumstances of this case in order for the appellant to act in a way which justified the trust and confidence the public had in him the obligation to disclose should have been discharged at the latest by the date that the appellant met his manager on 5 October 2005. Accordingly I hold that there was a delay in making disclosure covering a very short period of a few days but less than the period of 10 days which is contained in the allegation of misconduct. I dismiss the appellant's appeal in respect of the third allegation of misconduct.

Sanction

[46] It is urged on behalf of the appellant that he has insight into his conduct and that he has expressed regret and remorse for that conduct. The assessment of whether there is any insight on the part of the appellant and if so the degree of it is a difficult task. There is no doubt regret on his behalf for the position in which he now finds himself. His actions in applying for promotion and in not disclosing the incident of 4 January 2005 during the course of his interview on 12 October 2005 do not suggest that he had any significant insight into what he now "readily accepts" were matters which affected his fitness to practice. He went to some lengths during the interview on 12 October 2005 to explain why he was innocent of the charge of theft in respect of the incident on 24 September 2005. He maintained his innocence for a period of some 7 months until he acknowledged his culpability by accepting a caution on 26 May 2006. The Conduct and Competence Committee noted that when the code of conduct was mentioned to the appellant at a disciplinary meeting on 29 November 2005 he was dismissive saying "I don't carry it around in my back pocket." The Conduct and Competence Committee concluded that this did not reflect a proper appreciation of the code by a registered nurse particularly in relation to matters of honesty and integrity. I agree. I do not accept insight on the appellant's behalf. There was no expression of regret or remorse by him on 12 October 2005 but rather an attempt, in the event successful, to elicit sympathy for his predicament. The appellant now "readily accepts" that the events of 4 January 2005 impaired his fitness to practice. I have considered in detail his personal circumstances in 2005 and hold that this impairment of his fitness to practice would have been apparent to him at the time and that the decision not to disclose the informed warning 10 days later when applying for promotion to the position of ward manager was deliberate.

[47] I have taken into account the appellant's health problems both generally and their impact on his offending behaviour. I have also taken into account the loss of the appellant's job.

[48] The essence of the allegations of misconduct against the appellant is that he committed theft on two occasions within a 9 month period and that during that period he successfully applied for promotion to the position of Ward Manager. In all the circumstances of his case I do not consider that the sanction imposed by the disciplinary committee is manifestly excessive.

Conclusion

[49] I dismiss the appeal.