NISCC/5/18

In the Care Tribunal

DM (appellant)

and

Northern Ireland Social Care Council (respondent)

DECISION ON A PRELIMINARY ISSUE

Venue: Tribunal Hearing Centre

Royal courts of Justice,
Chichester Street,
Belfast

Date: 5th September 2019

In attendance:

Tribunal Panel: Chairman Diane Drennan
Lay Members: Maureen Ferris and Patrick McAteer

Legal Representation: Ms O Sheils of Donnelly & Kinder Solicitors (appellant) Mr A Gilmore of DLS (Respondent)

The Appeal

1. The Appellant appeals under section 15 of the Health & Personal Social Services Act (Northern Ireland) 2001 (as amended by Section 5 of the Health and Personal Social Services (Amendment) Act (NI) against the decision of the Council's Fitness to Practise Committee ('the Committee') of 20th September 2018 not to adjourn the proceedings and to proceed with the case in the absence of the appellant. The appellant also appeals against the findings of fact, misconduct, impairment and sanction. This decision only determines, with the agreement of the parties, whether the Committee's decision to refuse the appellant's application to adjourn proceedings and to proceed in her absence was unfair to her, as set out in paragraph 4 of the appellant's submissions: ("*The basis of the Appellant's appeal is that her application to the Committee not to adjourn proceedings and to proceed in her absence was refused and this decision was unfair to her*").

2. The decision of the Care Tribunal is issued pursuant to direction 4 of the Chairman's Directions dated 18th June 2019: "*The parties are each to prepare legal submissions in relation to the decision of the Council's Fitness to Practice Committee of 20th September 2018 not to adjourn the proceedings and to proceed with the case in the absence of the appellant*". Submissions were lodged by the parties, with an accompanying Tribunal bundle containing a list of 17 legal authorities. A medical report dated 30th August 2018, together with a portion of the transcript of proceedings of the Northern Ireland Social Care Council dated 5th September 2018 and a letter of 6th September 2019 from the respondent Council's legal representative were also placed before the Tribunal.

3. After the Tribunal had examined the documents, the legal representatives attended to deal with issues arising out of their submissions. The respondent's representative agreed to supply the transcript portion referred to above and also agreed to furnish details of NISCC involvement in the PSNI investigation raised by the appellant.

4. The Tribunal Panel has carefully considered all the submissions, authorities and accompanying material in reaching its conclusions and decision, even if specific reference is not made to all of them.

The Law

5. Section 15(2) of the Health & Personal Social Services Act (Northern Ireland) 2001 (as amended by Section 5 of the Health and Personal Social Services (Amendment) Act (Northern Ireland) 2016 states:

'*On the appeal, the Care Tribunal may -*

(a)confirm the decision,
(b)set aside the decision, or
(c)substitute for the decision appealed against any other decision that could have been made'.

6. The Committee presently exercises its functions under the NISCC Fitness to Practise Rules 2019. At the time of the decision not to adjourn and to proceed in the absence of the appellant, the applicable rules were the NISCC Fitness to Practise Rules 2016.
The relevant rules are contained in paragraphs 14 and 15 of Schedule 2.
Paragraph 14(1): '*Subject to the requirements of a fair hearing, and after hearing representations from the Parties, the Committee may, at any stage of hearing, adjourn the proceedings'.*
Paragraph 15(2): '*Where the Committee is satisfied that the Notice of Hearing has been duly served on the Registrant, it may:*
a) *hear and determine the case in the absence of the Registrant, or*
b) *adjourn the hearing and give directions'.*

Background

7. The appellant was employed as a bank social care worker at B Care Home from 3rd March 2014 until 5th July 2017 and was registered on Part 2 of the Register of Social Care workers from 14th January 2010. Allegations of misconduct were made against her and employer referrals were received by the Council in relation to alleged events in July 2016, and March and June 2017.

8. The allegations were investigated by the respondent Council and the appellant engaged with the Council at the Preliminary Proceedings Committee which met on 26th April 2018 and subsequent prehearing review meetings, attending with her then trade union representative, Mr JMC.

9. On 14th August 2018, the Council's head of fitness to practise Ms HV met with Ms CW and a retired trade union representative, Mr PM, who was also representing the appellant. The meeting was convened at PM's request to discuss concerns at B home. During the meeting, PM stated that the PSNI were currently undertaking an investigation into B home.

10. Dates for a hearing before the Council's Fitness to Practise Committee were fixed for 7 days from the 5th to the 14th September 2018. The Committee heard the case on the 5th, 6th, 7th, 10th, 11th, 13th and 14th September 2018 and its decision was issued to the Appellant on 20th September 2018. By this decision, the Committee decided not to adjourn the proceedings and to proceed in the absence of the appellant and found the appellant's fitness to practice was impaired by reason of misconduct and made an Order suspending her registration for 6 months.

11. The appellant lodged an appeal dated 15th October 2018 with the Care Tribunal.

12. At a Suspension Order review hearing on 1st March 2019, a suspension Order for a further period of 6 months was made from 14th March to 13th September 2019. On 17th September 2019, the respondent's representative forwarded a copy of the NISCC Social Care Register which had been amended to note that the appellant's period of suspension had expired and she was now registered as a domiciliary care worker.

Submissions

Appellant's submissions

13. The appellant's submissions, dated 3rd July 2019, can be summarised as follows. They relate to alleged failure to properly consider the medical evidence set out in her GP's letter of 30th August 2018, "*and the submissions made by Mr M in relation to her ill-health and inability to participate in the proceedings brought against her, wrongly forming the view that her absence was deliberate and a voluntary election from proceedings*" (paragraph 5(1)). The submissions stated that as the appellant "*was not*

represented by a legally qualified person, she did not know what was expected of her in terms of submitting medical evidence to the Committee and the consequences of not providing full details of her condition in terms of a diagnosis and prognosis. Any shortcomings in the medical evidence were not deliberate on her part" (paragraph 5(1)). The submissions also dealt with failure to consider what further medical evidence could have been obtained, either by telephone or through further reports, by the Committee.

14. Regarding a PSNI investigation, failure on the part of the Committee "*to properly consider the fact that Mr M had immediately drawn its attention to the fact that an investigation into the Care Home was being carried out by the PSNI*" (paragraph 5(3)) Failure to consider making further enquiries of the PSNI, "*.... to establish further information which would have allowed it to better understand the situation and determine whether or not the PSNI investigation into the care home had any relevance to the fitness to practice proceedings against the registrant*" (paragraph 5(4)).

15. The submissions also noted the Committee's alleged failure to acknowledge the appellant's prior commitment to proceedings, engagement and cooperation throughout, the difference an adjournment would have made to her, the public perception of a decision to adjourn, the appropriate weight attached to witness attendance and the disadvantage to and consequences for the appellant in not granting the adjournment and proceeding in her absence. A final submission stated that the Committee had failed to consider obtaining an undertaking from the appellant as to her future employment in the care sector. A large body of case law was referenced as part of the appellant's submissions, in particular the cases of **GMC v Adeogba (2016) EWCA CIV 162, GMC V Hayat (2018) EWCA CIV 2796, R v Jones (Anthony) (2003) 1 AC 1HL,** as well as **Teinaz v Wandsworth Borough Council (2012) EWCA Civ 1040.**

Respondent's submissions

16. The respondent lodged submissions dated 3rd July 2019 and further submissions following the appellant's submissions. The respondent (referencing the Committee's decision) referred to the Committee's compliance with the Rules (as set out in paragraph 6), confirming acceptance by the Committee of the Legal Advisor's advice. The balancing exercise undertaken, in deciding not to adjourn the proceedings and to proceed in the absence of the registrant, taking into account all the information and documentary evidence, was referenced. The submissions stated that the Committee had given the matter the upmost care and had considered all the relevant issues, with no irrelevant issues being considered. Submissions referenced the issue of overall fairness of proceedings, mentioning the 10 witnesses called on behalf of the regulator and the public interest in expeditious hearings.

17. Regarding the medical evidence produced by the appellant, the respondent, drawing, *inter alia*, on the decisions of **GMC v Hayat [2018], GMC v Adeogba [2016]** and **Levy v Carr [2012] EWHC 63,** submitted that this was insufficient, pointing to the need for a

reasoned prognosis and highlighting that the scrutiny of adjournment requests on medical grounds is to be rigorous. The submissions, for example, referred to the registrant being fit for and attending work that day and the lack of explanation in the medical report as to why her condition prevented her participation in the hearing,

18. The respondent, in dealing with the issue of further enquiries raised by the appellant, referred to the discretion on a Tribunal to conduct further enquiries and to case law, particularly the cases of **Teinaz v Wandworth London Borough Council [2012] EWCA Civ 1040** and the case of **Simou v Saliss & Another [2017] EWCA Civ 312**. It was contended that the Tribunal has a discretion, not a duty, and that further enquiries had to be relevant and likely to have led to a different decision i.e. the alleged failure had to be material.

19. The respondent's submissions also stressed that the position adopted by the registrant was that she would not be attending until the conclusion of the police investigation and that any adjournment or delay would have been for an unknown but possibly lengthy duration. The submissions questioned the relevance of the police investigation into the allegations against the appellant, mentioning the failure of the Appellant's representative to disclose any substantial detail of the police investigation. The respondent submitted that the decision of the Committee not to adjourn and to proceed was entirely just, fair, rational and lawful.

20. The respondent's submissions attached documentation regarding PM's prehearing application for a postponement on behalf of the appellant. In an email addressed to Rachel Kelso (RK), the solicitor then acting for the Council and dated 29th August 2018, PM stated in the context of "*prevailing ongoings at (B), it would be incorrect to proceed with the matter listed 5th -14 September concerning (DM) - Fitness to Practise. "Subjudicy is an issue as the PSNI requested I refrain from anything that may interfere with their investigation*". PM then requested a postponement of the hearing. A response to PM's request from RK dated 30th August, was also attached to the submissions, in which she set out the reasons why the Council would object to a postponement, such as the need for expedition and the likely consequences of the proposed adjournment. The respondent's submission also attached a copy of the written decision on the postponement application dated 31st August 2018. This decision was taken by the Chair of the Fitness to Practise Committee, who later heard the case against the appellant DM.

21. Further submissions commented on the balance between the interests of both parties, the alleged insufficiency of the medical evidence, the PSNI investigation, issues as to the role played by the appellant's representative, and whether the Council should have contacted the PSNI itself. The submissions dealt with the public interest in expeditious hearings and public concern as to the length of any adjournment, as well as the scope for the exercise of the Committee's discretion to refuse to adjourn and/or proceed in the absence of the appellant, such discretion considered in the context of recent case law.

The respondent stated finally: "*the most important issue is that regardless of any illness, the Appellant did not intend to attend the hearing, on the basis that she would not do so until the police investigation was complete*".

Conclusions and reasons

22. This is a case where the appellant did not attend the hearing of the Committee when they met on several days in September 2018, as noted in paragraph 10. She was represented on the first day of the hearing by PM, a retired trade union representative, who made a lengthy and impassioned submission on her behalf, asking for an adjournment of the hearing on 2 grounds. First, that the appellant was unable to attend the hearing as she was unfit medically. Second, there was an ongoing PSNI investigation into her former employers, B Care home. In his submission before the Committee, PM also referred to RQIA and Social Services having been informed of the situation in B Care home by the PSNI, However, the second ground of the adjournment application specifically referred to the alleged PSNI investigation.

23. Paragraph 14(1) of the Rules governing the Committee gave it discretion to adjourn the proceedings at any stage: '*Subject to the requirements of a fair hearing, and after hearing representations from the Parties, the Committee may, at any stage of hearing, adjourn the proceedings'*. If the Registrant did not appear and had received the Notice of Hearing, by Paragraph 15(2) the Committee had a discretion to a) *hear and determine the case in the absence of the Registrant, or b) adjourn the hearing and give directions'*. The Committee heard the parties' submissions and decided to exercise its discretion not to adjourn the hearing and to proceed in the absence of the appellant.

24. The Tribunal is agreed that this particular case presented an unusual and difficult dilemma for the Committee. The appellant's representative attended the first morning of the hearing to make an application to adjourn on the grounds that his client was a) unable to attend the hearing because of illness and b) because of an ongoing PSNI hearing, as well as associated RQIA and Social services investigations. The appellant was not present at the hearing on the instructions of her advisor, who then left the hearing at the end of the first morning. There were also 10 witnesses on behalf of the respondent present to give evidence. Seven days had been set aside for the hearing. The key question is whether the Committee, in exercising their discretion under paragraphs 14 and 15 of the Rules, were unfair to the appellant. At page 4 of their decision, the Committee stated that "*the discretion to proceed in the absence of a registrant is one which should be exercised with the upmost care and caution*", echoing the words of Lord Bingham in the 2003 House of Lords case of **R v Jones [2002] UKHL 6**.

25. The Committee referred to the seriousness of the allegations against the appellant, the effect of the passage of time on the memory of witnesses and the public interest in expeditious disposal when considering whether or not to adjourn the proceedings (page

3: decision). In deciding whether or not to proceed in the absence of the registrant, the Committee also "*considered the allegations to be of a serious nature*" (p.4: decision) However, in the case of **R v Hayward, R v Jones , R v Purvis QB 862 (2001) EWCA Crim** 168, which was referred to and approved by Sir Brian Leveson in the **Adeogba** case, guidance in respect of proceeding in the absence of an individual was set out by the Court of Appeal as follows:

"3. The trial judge has a discretion as to whether a trial should take place or continue in the absence of a defendant and/or his legal representatives.

4. That discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.

5. In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:

(i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;

(ii) whether an adjournment might result in the defendant being caught or attending voluntarily and/or not disrupting the proceedings;

(iii) the likely length of such an adjournment;

(iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;

(v) whether an absent defendant's legal representatives are able to receive instructions from him during the trial and the extent to which they are able to present his defence;

vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;

(vii) the risk of the jury reaching an improper conclusion about the absence of the defendant;

(viii) the seriousness of the offence, which affects defendant, victim and public;

(ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;

(x) the effect of delay on the memories of witnesses;

(xi) where there is more than one defendant and not all have absconded, the undesirability of separate trials, and the prospects of a fair trial for the defendants who are present."

26. The second of the three cases then considered by the court was the subject of further appeal to the House of Lords (***R v Jones*** **[2002] UKHL 5**; where Lord Bingham approved the guidance set out above (with the specific exception of the reference to '*the seriousness of the offence*' contained in (viii) and emphasized, at [6], that the

discretion to continue in the absence of a defendant should be *"exercised with great caution and with close regard to the overall fairness of the proceedings"*. Lord Bingham observed that if attributable to involuntary illness or incapacity it would very rarely "*if ever*" be right to exercise discretion in favour of commencing the trial unless the defendant is represented and asks that the trial should begin. Lord Bingham also made it clear (at [14]):

"I do not think that "the seriousness of the offence, which affects defendant, victim and public"... is a matter which should be considered. The judge's overriding concern will be to ensure that the trial, if conducted in the absence of the defendant, will be as fair as circumstances permit and lead to a just outcome. These objects are equally important, whether the offence charged be serious or relatively minor."

27. The Tribunal accepts that the cases dealt with by the Court of Appeal in **Hayward** and by the House of Lords in **Jones** were criminal matters with different fact scenarios and considerations to those relating to civil cases. However, it considers that Lord Bingham's statement that "*The Judge's overriding concern will be to ensure that the trial, if conducted in the absence of the defendant, will be as fair as circumstances permit and lead to a just outcome*" is relevant to this case before the Fitness to Practise Committee.

28. In their submissions, both the appellant and respondent have referred to the recent cases of **GMC v Adeogba (2016) EWCA CIV 162** and **GMC V Hayat (2018) EWCA CIV 2796.** Although these cases are instructive as to their analysis of the principles involved in relation to cases where there is a refusal to adjourn by a regulatory body and where the case then proceeds in the absence of the practitioner, the facts differ considerably from those in this case.

29. The Tribunal notes jn the case of **GMC V Hayat (2018) EWCA CIV 2796,** that Lord Justice Coulson approves the Judgment given by Sir Brian Leveson in **GMC v Adeogba** at paragraphs 17 -20 of that decision. Sir Brian accepts the guidance (quoted at paragraph 25 above) as "*a useful starting point for any direction that a legal assessor provides and any direction that a Panel makes....*", while pointing out the differences between continuing a criminal trial in the absence of a defendant and continuing with a disciplinary hearing and stating that "*the fair, economical, expeditious and efficient disposal of allegations made against medical practitioners is of very real importance*" (paragraph 17).

30. It is to be noted that Sir Brian places the requirement of fairness first when discussing how allegations should be dealt with. He continues that theme of fairness in the next paragraph, stating "*it goes without saying that fairness fully encompasses fairness to the affected medical practitioner (a feature of prime importance) but it also involves fairness to the GMC...*" and points out that "*it is important that the analogy between criminal prosecution and regulatory proceedings is not taken too far*" (referring to the

enforcement of the attendance of the defendant.). However, in the present case, we do not have an unwilling defendant in a criminal case or even a practitioner refusing to engage with the regulatory process.

31. In **Abeogba**, where a main issue turned on the service of documents, Dr Abeogba did not engage with the GMC; Sir Brian Leveson in giving the Judgment commented on his "*...egregious failure to comply with his regulatory obligations. Dr Adeogba knew that disciplinary investigations were in place, knew his suspension would expire after 18 months and knew about the only means ..the GMC had to communicate with him. He made no effort at all to contact them or to ensure that he could be apprised of what was going on*" (paragraph 58). This failure to engage contrasts strongly with the behaviour of the appellant who engaged with the regulator throughout the process until shortly before the hearing and whose representative made a strongly argued application to adjourn on her behalf on the first morning of the hearing.

32. In paragraph 19 of his judgment, Sir Brian stated: "*It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed*". The appellant DM did not "*frustrate the process*", nor did she deliberately refuse to engage.

33. In the case of **GMC v Visvardis** (joined with **Adeogba**), Dr Visvardis had not engaged in the regulatory process, refusing to disclose documents on which he intended to rely and embarking "*on a collateral attack of the process*". Again, this attitude differs entirely from that of the appellant, whose attendance at all hearings before September 2018 and whose cooperation with the Council was acknowledged by the respondent's legal representative (p.21 transcript, p.20 decision).

34. In **GMC v Hayat**, Dr Hayat made unsuccessful attempts to adjourn disciplinary proceedings on 3 occasions and when the 3rd application (on medical grounds) was refused he presented as unconscious at the Tribunal, reviving when a paramedic attempted to pass a tube through his nose. The appellant, by contrast. engaged with the regulatory process, until faced with the circumstances described in the grounds of appeal, set out in the submissions lodged by her representative PM on her behalf (see paragraph 22 above).

35. Looking in detail at the appellant's medical evidence, the Tribunal accepts that the Committee, in deciding whether to adjourn the hearing and proceed in the absence of the appellant, carefully examined the medical report, and listened to the detailed information given by PM as to the appellant's condition. The Committee, in their

decision (at p.4), took into account the medical report, "*along with the information that the appellant was fit to attend work today*". However, in the transcript, the Committee Chair is clearly informed by PM that work is "*kind of occupational therapy for her*" (p.16) (referenced in page 2 of the decision). The committee refers to hearing and accepting the advice of the legal advisor, which stated (p.24) that ..."*a panel....should undertake a balancing exercise which takes into account all the circumstances and in particular, the potential for prejudice to the Registrant or disciplined person in going ahead*".

36. The Panel has concluded that '*taking into account all the circumstances*" should have included the Appellant's reasons for continuing to work set out on her behalf by PM. a desire to go to work to improve her own condition. The Appellant's attitude towards employment, in continuing to work, despite being "*currently unwell, recovering from a serious blood infection*", according to her GP, is regarded by the Panel as positive and commendable.

37. PM was a representative who, while, undoubtedly extremely diligent in putting forward his client's application for an adjournment and experienced in many ways, was not used to the conduct of regulatory proceedings. He therefore was unaware of the test for the sufficiency of medical evidence contained in **Levy v Ellis Carr [2012] EWHC 63,** set out by Norris J in paragraph 36 of the Judgment.
"*Such evidence should identify the medical attendant and give details of his familiarity with the party's medical condition (detailing all recent consultations), should identify with particularity what the patient's medical condition is and the features of that condition which (in the medical attendant's opinion) prevent participation in the trial process, should provide a reasoned prognosis and should give the court some confidence that what is being expressed is an independent opinion after a proper examination*". The above test was approved by the Court of Appeal in the case of **Forrester Ketley v Brent & Another [2012] EWCA 324** (paragraph 26).

38. Although the medical report submitted from the appellant's GP did identify the appellant's medical condition as a "*serious blood infection*", leaving her "*physically and emotionally drained*", which, in the GP's opinion, rendered her unable to travel to Belfast, (a journey referred to in the appellant's submissions as constituting a daily return trip of "*approximately 4 hours*" (paragraph 29)), it did not contain details of the blood infection, nor did it contain "*a reasoned prognosis*", as set out in the authorities above. However, in the particular circumstances of this case, the Tribunal would agree with the appellant's submission in Paragraph 5(1), that the appellant, unrepresented by a legally qualified person, could not have been expected to know what constituted sufficient medical evidence. It also accepts, as referenced in paragraph 5(2), that further enquiries could have been made by asking the appellant's representative, who attended the whole of the morning of the 5th September, to have his client's GP clarify, with her authority, a more detailed diagnosis, her long term prognosis and when she would be fit to attend a hearing in Belfast.

39. In paragraph 9 of the submissions lodged by the respondent, it is stated *"...that this was the first time that the registrant's health matters had been raised"*. However, in the final paragraph of the letter dated 6th September 2019 from the respondent's representative, it states "*On 30th August 2018, shortly before the hearing, the Registrant was in contact with (Ms HV) and indicated she had a medical issue and was advised to send any report to the Committee.*" Although the Panel accepts that a medical report from the appellant's GP was not formally placed before the Committee until 5th September, it also concludes that the appellant's contact with Ms HV, the respondent Council's head of fitness to practise, amounted to raising the issue of her health with the Council before the date of the hearing beginning on 5th September 2018.

40. Second, regarding the alleged PSNI investigation, the Committee in its decision not to adjourn stated that PM had provided "*no direct evidence as regards this unconfirmed investigation*". "*The Committee further notes that the Council is unaware of this investigation, nor have they been notified of it by the PSNI*". The Committee also noted that PM would not be sharing any details in his possession about the matter. The Tribunal Panel have carefully read the transcript and the letter from DLS to the Tribunal Secretary dated 6th September 2019. The transcript details a submission from PM which lasted for most of the morning of the 5th September 2018. It has also examined the attached documentation regarding PM's application to postpone, the response to same and the Committee Chair's decision dated 31st August 2018 (see paragraph 20 above) The Tribunal, although they understand the difficult decision the Committee had to make, nonetheless are unanimously of the opinion that, on the authority of **Teinaz v Wandsworth Borough Council (2012) EWCA Civ 1040** (paragraphs 22 and 39), the case should have been adjourned for a short period of time to enable further enquiries to be made. While the Panel understands that the discretion to make such enquiries is a discretion, not a duty, it considers that an exercise "*of the upmost care and caution*" in this case could and should have encompassed making further enquiries.

41. The Tribunal also concludes that the Committee placed too much weight on the fact that there were 10 witnesses attending for the hearing in the context of conducting a fair hearing for the Appellant. It does not accept that the memories of the witnesses would have been affected by a short adjournment. The Tribunal accepts that regulatory bodies have a duty to proceed with hearings as efficiently and quickly as possible, but this would not have been inconsistent with focussed and brief enquiries in the particular circumstances of this case. The Appellant was represented by someone, who, while presenting his client's case to the best of his ability, was not legally qualified. There were many important issues raised during the submissions made by PM which needed to be investigated by the Committee without delay.

42. Paragraph 32 above refers to Sir Brian Leveson's statement in the Adeogba case : "*Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed*". The Tribunal concludes that, for

the reasons set out above, there was good reason not to proceed and the case should have been adjourned.

Decision

43. The Tribunal unanimously concludes that the Committee's decision not to adjourn and to proceed in her absence set out in the decision dated 20th September 2018 was unfair to her in all the circumstances, as set out above. Her appeal in relation to this preliminary part of her appeal is allowed. However, the substantive matters raised in her appeal in relation to the findings of misconduct noted in the decision will be dealt with by the Tribunal at a full rehearing on dates to be listed.

Original decision signed 18th October 2019

Decision varied and amended by certificate signed below by the Chairman in accordance with Regulation 27(1)(a) of the Care Tribunal Regulations 2005 (as amended) in accordance with the Decision following review of 25th November 2019 .

I certify that the amendments noted in Paragraph 11 (i) and (ii) of the Decision following review of 25th November 2019 have been made in this Decision.

Signed Diane Drennan

Chairman

Date 5th December 2019