SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT DUNDEE

REDACTED

INTERLOCUTOR OF

SHERIFF DEREK O'CARROLL

in the appeal by the Pursuer under section 51 of the Regulation of Care (Scotland) Act 2001 against a decision of the Defender to remove the Pursuer from the register of social workers

AB , residing at REDACTED

PURSUER

against

SCOTTISH SOCIAL SERVICES COUNCIL, having its head office at Compass House, 11 Riverside Drive, Dundee DD1 4NY

DEFENDER

DUNDEE 19 July 2012

Act: Creally QC, Advocate
Alt: Carr, Solicitor Advocate

The Sheriff, having resumed consideration of the cause; Refuses the appeal; Reserves meantime the question of expenses.

Sheriff O'Carroll

NOTE

Introduction

1. This is an appeal by the Pursuer under section 51 of the Regulation of Care (Scotland) Act 2001 ("the Act") against a decision of the Defender dated 13 August 2010, and confirmed by letter dated 20 August 2010 ("the decision") to remove the Pursuer from the register for social workers maintained by the Defender under section 44(1)(c) of the Act. The decision was made by a conduct sub-committee ("the committee") which is authorised to make such decisions on behalf of the Defender. The effect of the decision is that the Pursuer is prohibited from practising as a social worker unless and until that decision is reversed by the Court or the Defender reinstates the Pursuer to the register.
2. This is only the second such appeal to have reached the Sheriff Court for decision. I heard the parties at a hearing at Dundee Sheriff Court on 27 March 2012, 12 and 13 June 2012 and then made avizandum.

Statutory background

3. Before dealing further with the background, it is as well to sketch out the statutory provisions, and the material produced by the Defender in terms of that legislation, which form the background to the decision. The Defender is a body established by section 43 of the Act having the functions prescribed by the Act and having a general duty to promote high standards of conduct and practice among social workers and social service workers, including those studying or training to be social workers and social service workers. The distinction between those latter two

categories is immaterial for present purposes and I shall use the term social worker to encompass all these categories.

4. One of the functions of the Defender is to establish and maintain a register of social workers: section 44. Unless a person is registered, that person may not practise as a social worker. Section 46 provides that the Defender may grant or refuse an application for registration and if granting the application, impose such conditions as it thinks fit. Unconditional registration requires *inter alia* that the applicant be of "good character" and that the applicant satisfies requirements as to competence or conduct as the Defender may by rules impose. Section 49 obliges the Defender to make rules determining the circumstances in which, and the means by which, a person may be removed from the register. Section 53 obliges the Defender to prepare Codes of Practice setting out standards to be expected of social workers. Section 57 provides for extensive rule making powers by the Defender in relation *inter alia* to registration requirements.

5. The relevant conduct rules are the Scottish Social Services Council (Conduct) Rules 2009B ("the conduct rules"). In terms of those rules, allegations of misconduct are dealt with by the committee. The relevant rules as to registration are the Scottish Social Services Council (Registration) Rules 2009B. The relevant Code of Practice was first published in 2002 (and the parties agree that the Pursuer was bound by it). By section 59, the Defender is obliged to exercise its functions in accordance *inter alia* with the principle that the safety and welfare of all persons who use or are eligible to use care services are to be protected and enhanced.

Background to the decision

6. I now set out the background to the decision of the Defender, so far as is relevant to this appeal.

7. Following a pre-hearing review of the committee on 28 June 2010, by letter of 14 July 2010 the Defender intimated to the Pursuer a Notice of Hearing of the committee to take place in Dundee on 12 and 13 August. That Notice contained the charge against the Pursuer. It was as follows:

"A. You failed to disclose your previous history as a social work student with Robert Gordon University and your employment as a trainee social worker with REDACTED in your application for registration with the Scottish Social Services Council on the part of the Register for social work students dated 25 July 2008 and in doing so, you acted dishonestly.

B. You failed to disclose to your practice teacher, REDACTED, your tutor at the university of Dundee, REDACTED, or on the University of Dundee's forms in respect of practice Learning 1 and Practice Learning 2 placements that you had participated on the MSC/PG DIP at Robert Gordon University and that you had been employed as a trainee social worker with REDACTED and that as such you had previously gained experience of practice and that your studies on a previous social work course were discontinued by Robert Gordon University and in doing so, you acted dishonestly.

The Council considers that this behaviour constitutes misconduct as defined in Rule 2(1) of the [conduct rules] and breaches paragraphs 2.1, 2.2 and 2.4 of the [Code of Practice]."

8. I pause to give content to certain references made in that letter. Rule 2.1 of the conduct rules defines misconduct as follows: "misconduct means conduct, whether by act or omission, which falls short of the standard of conduct to be expected of a person registered with [the Defender] having particular regard to the [Code of Practice] and the [registration rules]".

9. Section 2 of the Code of Practice provides *inter alia* as follows: "As a social service worker you must strive to establish and maintain the trust and confidence of service users and carers. This includes: 2.1 Being honest and trustworthy; 2.2

Communicating in an appropriate, open, accurate and straightforward way;…2.4 Being reliable and dependable…"

10. The Notice of Hearing gave detailed information to the Pursuer as to procedure (including the right of representation) and the powers of the committee (including the power to remove the Pursuer from the Register).
11. *Factual background to the decision.* Prior to the hearing, the Pursuer and Defender entered into a "joint statement of admissions". That statement, taken together with the two charges, goes some way to explaining the nature of the factual background leading to the charges and the basis for the charges being brought. Essentially, the parties agreed the factual background as follows.
12. The Pursuer was first registered by the Defender in the part of the register for social work students on 18 February 2005. To obtain registration, the Pursuer completed the usual application form provided by the Defender. This was the first application form. At that time, she was a student at Robert Gordon University in Aberdeen. The course was a degree course intended to lead to a MSc/PG Dip in social work. That is a professional qualification. The course started around 22 September 2004 and ended on 15 June 2006 being the last day of the Pursuer's assessed practice placement. (She did not complete the course: however she was quite sometime later given a post-graduate certificate in social studies as an exit award by the University). At the same time that she was undertaking the degree course, she was employed by REDACTED on a scheme known as the "fast track scheme". She was employed as a trainee social worker by that Council. Her employment began on 12 July 2004 and ended on 10 July 2006 when she resigned. Because the Pursuer had left the university course, her name was removed from the Defender's

register on 27 February 2007 since she was no longer qualified for registration in that part of the register.

13. The Pursuer then successfully applied for a place on a social work degree course, which would lead to an MSc in social work at the University of Dundee. The offer of a place on the course was made around 1 August 2007. The Pursuer took up her place on that course around 15 September 2008.

14. Prior to commencing the course at the University of Dundee, the Pursuer made her second application for registration with the Defender by way of an application form dated 25 July 2008. She was registered without conditions on 1 October 2008.

15. However, in that second application, the Pursuer did not reveal that she had previously been employed as a trainee social worker by REDACTED REDACTED . Neither did she reveal that she had undertaken two previous practice learning placements while employed as a trainee social worker. Neither did she reveal those pieces of information during her course on forms provided by the University of Dundee, relating to two "Practice Learning Placements". Furthermore, the Pursuer did not tell her practice teacher, REDACTED , about that experience as a trainee social worker or her studies at Robert Gordon University.

16. When applying to the University of Dundee, the Pursuer disclosed that she had a postgraduate certificate qualification and that she had undertaken some assessed practice during the postgraduate certificate.

17. The Pursuer was suspended from her practice learning placement at REDACTED REDACTED around 20 April 2009 after the University of Dundee learned of the Defender's ongoing investigations concerning the matters referred to in the previous paragraphs.

18. I pause to note that it is therefore apparent that as between the Pursuer and Defender, much of the essential facts are agreed. In short, as regards part A of the charge, while there is agreement that the second application for registration was made, there is no clear admission that she failed to disclose her previous employment as a trainee social worker or her history as a social work student with Robert Gordon University. Neither is there any admission that she was dishonest. As regards part B of the charge, it is agreed between the parties that there was a failure to disclose at least some of the information in the manner alleged, but not the issue of dishonesty It was therefore clear to both parties prior to the hearing which matters were in dispute and in particular that the issue of dishonesty was in the foreground.
19. The conduct hearing took place as scheduled. The Pursuer chose to be unrepresented. The committee comprised three persons, appointed in terms of the conduct rules including a suitably qualified social work member. The hearing took one and a half days to complete including hearing the evidence, submissions for the parties, the handing down of the decision of the committee as to its findings and sanction and its reasons. During the hearing, the committee took evidence from the Pursuer and REDACTED from the University of Dundee. The committee was assisted by a legal adviser and the Defender was represented by a solicitor.

The decision of the committee

20. In short, the committee found that both parts of the charge were proved. The sanction decided upon by the committee was removal from the register, which is the most severe sanction. That decision as regards the charges and the sanction were given verbally by the committee on 13

August 2010 which was then confirmed in writing by letter dated 20 August 2010. There is no significant disparity between the terms of that letter and the terms of the decision and reasons given orally and no claim to that effect was made before me. The relevant parts of the terms of the decision and reasons are as follows.

21. The committee made *inter alia* the following findings in fact:

> "10. You did not disclose your employment as a Fast Track trainee social worker with REDACTED on your application form to the SSSC dated 25 July 2008. In doing so, you acted dishonestly.
> 11. You did not disclose your period of study at RGU on your application form to the SSSC dated 25 July 2008. In failing to do so you acted dishonestly.
> …..
> 13. You did not include on the forms in respect of the University of Dundee's MSc Practice Learning 1 and Practice Learning 2 placements that you had previously been employed as a trainee social worker by REDACTED
> and that you had undertaken two previous practice learning placements while employed as a trainee social worker. In failing to include this information you acted dishonestly.
> 14. You failed to ensure that REDACTED , your tutor and programme director at the university of Dundee, was aware of your previous experience as a Fast Track trainee social worker, your previous practice learning and that your RGU studies had been discontinued. In failing to do so you acted dishonestly.
> 15. You did not make [your] practice teacher, REDACTED , aware that you had previously been employed as a trainee social worker by REDACTED
> or that you had studied towards the MSC/PG DIP at RGU until 20 April 2009. In failing to do so you acted dishonestly."

22. As regards the charges of misconduct, the committee held that on the facts found, the Pursuer had committed misconduct as defined by rule 2(1) of the conduct rules. The reasons given for that finding were as follows:

> 1 The facts found proved established that you had acted dishonestly and were untrustworthy. This amounted to a breach of section 2.1 of the Code of Practice for social workers.
> 2 The facts found established that you had not communicated with the Scottish Social Services Council or Dundee University in an open, accurate and straightforward way. This amounted to a breach of section 2.2 of the Code of Practice for Social Service Workers.

3 The facts found proved established that you were neither reliable nor dependable. This amounted to a breach of section 2.4 of the Code of Practice for Social Service Workers."

23. As regards the sanction to be imposed, standing the findings on the charges, the reasons given for the order for removal from the register were as follows:

1. The subcommittee had regard to the factors set out in paragraph 26(3) to the Scottish Social Services Council (Conduct) Rules 2009B. The subcommittee also considered carefully each of the sanctions available to it.
2. The subcommittee was satisfied that the misconduct by you was of a serious nature. You had been dishonest in your dealings with your professional regulator, Dundee University, your tutor and your practice teacher. Your dishonesty had been calculated. You had been consistently dishonest over an extended period. You had failed to disclose material information regarding your suitability to assess and work with vulnerable service users.
3. The subcommittee accepted that dishonesty was a value that was fundamentally incompatible with social work. You gave no indication that you accepted you had acted dishonestly. You expressed no remorse. You demonstrated a lack of understanding and insight as to the nature of your actings. The subcommittee was not satisfied that you would not act dishonestly in the future. The subcommittee concluded that there was a genuine risk to the public (including service users) if you were to be allowed to act as a social worker.
4. The subcommittee was satisfied that the public interest in maintaining confidence in social services would be undermined if you were permitted to remain on the register. The relationship between a social worker and a service user is one that relies to a high degree on the honesty of the social worker. The public is entitled to expect that social workers will be honest at all times. The subcommittee was not satisfied that you could be relied upon to be honest in the future.
5. The subcommittee noted that you had not previously come to the adverse attention of the SSSC. It noted that you had been involved in caring roles at various times over the past eight years. It further noted that you wished to complete your course at Dundee University and thereafter pursue a career in social work. You are presently in temporary employment as a sales assistant. You hinted that your failure to complete your course at Robert Gordon University was health related. You did not however place before the subcommittee any detailed material to support that.
6. The subcommittee considered that a warning was not an appropriate sanction given the serious nature of the misconduct and the apparent lack of insight on your part as to the nature and effect of your misconduct.
7. The subcommittee considered that the imposition of conditions was inappropriate. Honesty is a core value that is expected in all social workers. You had demonstrated a lack of honesty. You had also demonstrated a lack of insight into your behaviour. In the circumstances the subcommittee could not envisage any conditions that would properly address your behaviour.

8. The subcommittee did not consider that suspension would address the seriousness of the misconduct. The subcommittee was not satisfied that you would not repeat the misconduct in future. Suspension would not provide the necessary protection of the public nor satisfy the public interest in maintaining confidence in social services.
9. Having considered all of the relevant submissions made by the council and the registrant, the subcommittee determined that removal was both appropriate and a proportionate sanction. Any prejudice caused to you by ordering removal from the register was outweighed by the overall seriousness of the misconduct, the need to maintain public confidence in social services and the need to protect the public."

The appeal and grounds

24. It is against that background that this appeal is made to the Sheriff in terms of section 51 of the Act. The grounds of appeal as originally advanced, following extensive amendment of the pleadings, were many and various including challenges on human rights grounds, procedural grounds and substance. Those drafting the pleadings had the advantage of having sight of a verbatim transcript of the entire proceedings of the sub-committee which was provided to the Pursuer by the Defender at the request of the Pursuer without charge. However, at the hearing of the appeal, I was advised by senior counsel for the Pursuer that he would rely only on two of the grounds originally advanced. They are as follows. First, the committee did not give adequate reasons for its findings in fact and its findings on misconduct, in contrast to its approach as regards the question of sanctions. Second in all the circumstances, the decision of the committee to remove the Pursuer from the register, being the most severe sanction, was excessive. At most, the committee ought to have imposed a period of suspension of up to 2 years. If I was with the Pursuer on the first ground of appeal, I was invited to set aside the decision of the committee and remit to a freshly constituted committee for rehearing. If I

was with the Pursuer only on the second ground of appeal, I was invited to substitute the alternative sanction.

Law on adequacy of reasons and sanctions concerning professional disciplinary bodies

25. Before proceeding to examine the basis for the two grounds of appeal, it is suitable at this point to briefly survey the law relating to adequacy of reasons, particularly in the context of reasons advanced by professional disciplinary bodies. I was referred to a very large number of authorities relating to adequacy of reasons and sanctions applied by professionals disciplinary bodies. The parties were agreed that the approach taken by the courts when examining the adequacy of reasons given by professional disciplinary bodies, including those of the General Medical Council, applied equally to the Defender notwithstanding the difference in legislative background. Although I was referred to a large number of authorities, some in considerable detail, in my view, grateful though I am to have been supplied with the fruits of such industry, it is not necessary to refer to all of them for the purposes of my decision. I begin first with authorities on the question of the approach to be taken by a court in such appeals such as this and then I will deal authorities on adequacy of reasons.

26. *Approach to be taken by Courts concerning appeals to them from professional bodies.* As regards the approach to be taken in appeals to the courts from the decision of professional disciplinary bodies, there are a plethora of decisions. The Scottish decision in *Gray v Nursing and Midwifery Council* [2009] CSIH 68, provides a useful analysis taking account as it does of both Scottish and English senior court decisions. In *Gray*, a case involving allegations of professional misconduct by a nurse, the Court, in considering its approach to cases of this kind, and the proper approach

when questions arise as to the penalty imposed by the professional body, said:

"[12] In *Gupta* v *General Medical Council* [2002] 1 WLR 1691, a Privy Council decision, Lord Rodger of Earlsferry, in delivering the judgment of the Board, referred at paragraph 8 to the cases of *Ghosh* v *General Medical Council* [2001] 1 WLR 1915 and *Preiss* v *General Dental Council* [2001] 1 WLR 1926 in support of the proposition that the Board's jurisdiction was appellate rather than merely supervisory. He continued, at paragraph 10, to discuss the approach to findings of fact:

> "The decisions in *Ghosh* and *Priess* are a reminder of the scope of the jurisdiction of this Board in appeals from professional conduct committees. They do indeed emphasise that the Board's role is truly appellate, but they also draw attention to the obvious fact that the appeals are conducted on the basis of the transcript of the hearing and that, unless exceptionally, witnesses are not recalled. In this respect these appeals are similar to many other appeals in both civil and criminal cases from a judge, jury or other body who has seen and heard the witnesses. In all such cases the appeal court readily acknowledges that the first instance body enjoys an advantage which the appeal court does not have, precisely because that body is in a better position to judge the credibility and reliability of the evidence given by the witnesses. In some appeals that advantage may not be significant since the witnesses' credibility and reliability are not in issue. But in many cases the advantage is very significant and the appeal court recognises that it should accordingly be slow to interfere with the decisions on matters of fact taken by the first instance body. This reluctance to interfere is not due to any lack of jurisdiction to do so. Rather, in exercising its full jurisdiction, the appeal court acknowledges that, if the first instance body has observed the witnesses and weighed their evidence, its decision on such matters is more likely to be correct than any decision of a court which cannot deploy those factors when assessing the position. In considering appeals on matters of fact from the various professional conduct committees, the Board must inevitably follow the same general approach. Which means that, where acute issues arise as to the credibility or reliability of the evidence given before such a committee, the Board, duly exercising its appellate function, will tend to be unable properly to differ from the decisions as to fact reached by the committee except in the kinds of situation described by Lord Thankerton in the well known passage in *Watt or Thomas* v *Thomas* [1947] AC 484, 487-488 [reported *sub nom*. *Thomas* v *Thomas* 1948 SC (HL) 1, 54-55]."

[13] In *Mallon* v *General Medical Council* 2007 SC 426 the Second Division of this court had to consider *inter alia* the question of the entitlement of the Fitness to Practise Panel of the General Medical Council to make a finding that the appellant was guilty of serious professional misconduct. In delivering the opinion of the court, Lord Justice-Clerk Gill said:

> "**Serious professional misconduct**
>
> [18] ... In view of the infinite varieties of professional misconduct, and the infinite range of circumstances in which it can occur, it is better, in our opinion, not to pursue a definitional chimera. The decision in every case as to whether the misconduct is serious has to be made by the panel in the exercise of its own skilled judgment on the facts and circumstances and in the light of the evidence (*Roylance* v *General Medical Council (No. 2)* [2001] 1 AC 311, Lord Clyde, p.330f; *Preiss* v *General Medical Council*, Lord Cooke of Thorndon, para 28). Misconduct that the panel might otherwise consider to be serious may be held not to be in the special circumstances of the case (*R (Campbell)* v *General Medical Council* [2005] 1 WLR 3488, Judge L.J. para 19).
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> **Powers of the Appellate Court**
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> [19] Counsel agree that we have to apply the test set out in *McMahon* v *Council of the Law Society of Scotland* 2002 SC 475, (paras [13]-[16]; that is to say, we should look at the decision of the panel in the light of the whole circumstances of the case, always having due respect for the expertise of the panel and giving to its decision such weight as

> we should think appropriate. However, as the court observed in that case (para [16]), in following this approach it is good sense to keep in view the obvious reasons that have been repeated over the years for according respect to the views of specialist tribunals in appeals of this kind. When invited to disturb a finding of serious professional misconduct, we have to defer to the judgment of the panel to whatever extent is appropriate in the circumstances (*Meadow* v *General Medical Council* [2006] EWCA Civ 1390, Auld LJ, para [197]). In applying this agreed test we are entitled to substitute our own judgment on the facts for that of the panel; but whether such interference on our part is justified will often depend, in our view, on the nature of the misconduct. We have to take a similar approach to the question of penalty. As was conceded by the respondent in *Ghosh v General Medical Council*, it is open to the court on that question to consider all the matters raised by the appellant, to decide whether the sanction imposed was appropriate and necessary in the public interest or was excessive and disproportionate, and in the latter case either to substitute some other penalty or to remit the case to the panel for reconsideration (para 34).
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> [20] The spectrum of serious professional misconduct can range from conduct that is entirely non-clinical, such as defrauding the National Health Service or sexually harassing an employee or colleague, to conduct in the course of clinical practice, such as the carrying out of a reckless surgical procedure. In a case of the former kind, a court might conclude that there was little to inhibit it from substituting its own judgment for that of the panel if it should have cause to differ from it. In a case of the latter kind, which involves a technical question of medical malpractice, the court is, we think, at a serious disadvantage to the panel whose decision is impugned."

[14] Finally, on the question of sanction, reference may be made to a recent decision of an Extra Division of this court, *Graham* v *Nursing and Midwifery Council* 2008 SC 659, in which the same statutory provisions were applicable as they are in the present case. At paragraphs 11 to 14 Lord Wheatley, in delivering the opinion of the court, said:

> "[11] ... [I]n particular it is clear from the terms of sec.12 [of the 1997 Act] that the appellant's right of appeal is unrestricted, and is not confined to supposed errors of law on the part of the committee, but in effect can amount to a rehearing before the appellate court. In practice, the options on disposal available to the committee in the present case were to make no order, to issue the appellant with a caution, or to remove the appellant's name from the Nursing Register, with or without specification of time.
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> [12] The starting point, in considering an appeal of this kind, is to recognise that the appellate court will generally be reluctant to interfere with a decision made by a professional conduct committee. That reluctance will be particularly marked when the subject of the appeal is restricted to the question of the sanction imposed. It has long been accepted that a professional conduct committee will possess particular qualities of relevant experience and expertise and will normally be in a position to determine what is the appropriate disposal. To such experience proper regard should be paid, and also to the professional conduct committee's view as to what is required in the way of the protection of the public and the reputation of the profession. Accordingly, the appeal court should not interfere with the decision of a professional conduct committee if it comes to the view that another disposal might in the circumstances have been preferable, or that, given a free hand, it would have imposed a different penalty. It is well settled that the appropriate test which must be applied in an appeal of this kind if the disposal is to be set aside is that the penalty imposed can properly be described as excessive and disproportionate in all the circumstances of the case (see *Ghosh* v *General Medical Council*, para 34).
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> [13] Against that background it is necessary to consider the purposes of disposal, following a determination by a professional conduct committee, particularly in the case of health care professionals. These purposes will in broad terms include consideration of matters such as the punishment of the practitioner, the protection of the public, and protection of the reputation of the profession (see *Gupta* v *General Medical Council*, per Lord Rodger of Earlsferry, para 21). It is clear from that passage, following the opinion of Sir Thomas Bingham M.R. (as he then was) in *Bolton* v *Law Society* [1994] 1 WLR 512, pp 517-519), that the principal purposes of the disposal in a case before a

> professional conduct committee are concerned with the protection of the public, and the protection of the reputation of the profession. The need to impose punishment on the individual practitioner is, comparatively, of lesser importance. One consequence of this is that matters personal to the practitioner which would normally be prayed in aid in mitigation of sanction have less significance than in other forms of disposal.
> [14] The question which arises before us in this appeal therefore is whether, having regard to the overarching need to protect the public and the reputation of the nursing profession, and to a much lesser extent the need to impose some appropriate measure of punishment on the offender, the disposal selected by the committee in the present case can in all the circumstances be described as excessive and disproportionate ..."

27. I gratefully adopt in full the analysis and the approach of the Inner House in *Gray* including its adoption of English senior court authority and apply it in the circumstances of this case. I think that it is unnecessary to rehearse further the authorities on the question of the proper approach to be taken by a court in a case of this kind. There was no significant dispute between the parties as to the law on this aspect. I think that the approach of this Court to the determination of this appeal is quite clear from the terms of *Gray* that I have quoted. It is also evident from this case and *Graham* that on the question of suitability of sanctions, this Court may substitute its own decision or remit to the Defender to reconsider if satisfied that the sanction was excessive and disproportionate. Section 51(2),(3) of the Act provides the necessary wide powers to the Sheriff to dispose of cases in a variety of ways in this type of appeal.

28. *Duty to give reasons.* As regards the circumstances in which a decision making body is under a duty to give reasons, it is unnecessary to explore the authorities on this point since by schedule 3, paragraph 24(5) of the conduct rules: "save in exceptional circumstances, the sub-committee shall not be required to give detailed reasons for its findings on the facts. However, the subcommittee shall give reasons for its findings on the issue of misconduct.". As regards reasons for sanctions, paragraph 25(7) of the conduct rules provides that "The sub-committee shall announce its decision on sanctions in public

and shall give reasons for its decision". By paragraph 27(2), the Notice of Decision shall "give reasons for the sub-committee's decisions".

29. *Adequacy of reasons.* As regards adequacy of reasons, the classic starting point, at least in Scottish cases, is the well-known case of *Wordie Property Limited v Secretary of State for Scotland* 1984 SLT 435 where, in the context of a planning decision made by a Minister, the statutory duty to provide a decision and reasons entailed a duty "to give proper and adequate reasons for his decision which deal with the substantial questions in issue in an intelligible way. The decision must, in short, leave the informed reader and the court in no real and substantial doubt as to what the reasons for it were and what were the material considerations which were taken into account in reaching it". *Wordie Property* has been applied by the Scottish courts in a wide variety of cases, not just planning or administrative law. In my view, it is important to understand that the decision in *Wordie Property* emphasises that the standpoint is that of the *informed* reader (and the court), that is, a reader who is fully cognisant with all the relevant facts and circumstances and who understands the relevant law. The viewpoint is not that of the reader who comes cold to the expression of the reasons. It is important also to understand that the reasons must deal with the *substantial* questions, that is, the decision maker is under no duty to give reasons for each and every aspect of the decision making process so long as the decision maker deals with the substance of the questions before it. That aspect is emphasised by the requirement that the informed reader must be left in no real and substantial doubt as to the reasons: the emphasis being on the substance of the decision rather than secondary or technical questions. While the decision must leave the informed reader in no real and substantial doubt as to the material considerations taken into account, there is no

requirement to give reasons for the decision to take account of any given material consideration, nor to set out the decision maker's findings on non-material considerations.

30. In *Gupta* v *General Medical Council* [2002] 1 WLR 1691, a decision of the Privy Council, the allegation against the doctor was one of professional misconduct which involved *inter alia* the GMC disciplinary committee resolving various questions of disputed fact. The Privy Council refused to accept a submission that the committee ought to explain in its reasons which witness's evidence it had preferred and which it rejected. Lord Rodger of Earlsferry, after noting that the Appellant, in considering the reasons for the decision of the committee, will have had the detailed charges, the findings as to which charges are proved and the transcript of the hearing said:

> "13. To go further and to insist that in virtually all cases raising issues of credibility and reliability the committee should formally indicate which witnesses it accepted and which it rejected would be to require it to perform an essentially sterile exercise. For the reasons that their Lordships have already given, it would not in practice advance the appeal on the matters of fact which the committee had found proved on the basis of its assessment of the witnesses. …They are accordingly satisfied that there is no general duty on the committee to give reasons for its decisions on matters of fact and, more particularly, that there is no duty to do so in a case like the present where, as the appellant's solicitor was at pains to emphasise to the committee, its decision depended essentially on resolving questions of the credibility of the witnesses led before it. The committee's decision on the individual heads of the charge, when considered in the light of the transcript of the evidence, reveals sufficiently clearly the reasons for its decision. Nothing more was required in this case. It so happens, however, that a further indication of the committee's reasons could be found in its indication to the appellant in person that it had found her evidence to be untruthful in many respects. That made the position even clearer.
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> 14 Their Lordships would add this. They have rejected the submission that there is a general duty to give reasons in cases where the essential issue is one of the credibility or reliability of the evidence in the case. None the less, while bearing in mind the potential pitfalls highlighted by Lord Mustill, the committee can always give reasons, if it considers it appropriate to do so in a particular case. Their Lordships would go further: there may indeed be cases where the principle of fairness may require the committee to give reasons for their decision even on matters of fact…..In the present case Mr Shaw, who appeared for the respondent council, accepted that in certain circumstances—which he said would be exceptional—there could indeed be a duty on the committee to give reasons for its

> decision on matters of fact. He gave examples of situations in which, he believed, such a duty might arise. He urged the Board to provide guidance to the committee on this matter. Their Lordships are satisfied that no duty to give reasons arose in this case. That being so, they prefer to leave the questions of the existence of any such exceptional duty to give reasons, and of its scope, to be determined in a case where the point is live.

31. Thus, it appears that a professional disciplinary body has no duty to give reasons as to its findings on matters of fact except in exceptional cases. That is equally true where the essential issue is one involving assessment of the credibility and reliability of the evidence. Further, I note that in that case, the Judicial Committee held that nothing more by way of reasons was required in law than a decision on the heads of the charge considered in the light of the transcript of evidence, without even the need for an explicit finding that the disciplinary body found the Appellant untruthful. However, Lord Rodger does also observe that any such committee may, if it wishes, provide such additional reasons even if it is not obliged to do so.

32. In *South Bucks District Council and Anr v Porter* [2004] 1 WLR 1953, another planning decision dispute decided in the House of Lords, Lord Brown said, specifically referring to reasons in a planning context, as follows:

> "[35] It may perhaps help at this point to attempt some broad summary of the authorities governing the proper approach to a reasons challenge in the planning context. Clearly what follows cannot be regarded as definitive or exhaustive nor, I fear, will it avoid all need for future citation of authority. It should, however, serve to focus the reader's attention on the main considerations to have in mind when contemplating a reasons challenge and if generally its tendency is to discourage such challenges I for one would count that a benefit.
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> [36] The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative

> development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision"

33. I note that while this case was concerned with a planning case (as was Wordie) the parties before me accepted that the dicta thus expressed applied equally in the context of a decision such as the one in the present case. Further, it seems to me that the substance of this part of Lord Brown's speech is in essence quite consistent with the dicta in *Wordie Property* and usefully expands it.

34. I note also Lord Brown's reference to the need to demonstrate prejudice, which appears contrary to what was held in *Brabazon-Drenning v United Kingdom Central Council for Nursing, Midwifery and Health Visiting* [2001] HRLR 6 where the Divisional Court held at paragraph 29 that where there is a duty to give reasons and that duty is breached, it is irrelevant that the appellant has suffered no prejudice. However, although a passing reference was made to that case in the Defender's written submissions and by senior counsel for the Pursuer, that authority was not put before me and I heard no argument on it. If I had been of the view that the issue of prejudice had been important to my decision, I would have put this appeal out for further argument. However, in the circumstances of this case, nothing in my view turns on that question and I say nothing more about it.

35. Although it appears from the case law that in cases of this type reasons may be brief, as Lord Rodger said in *Gupta* there may be situations where detailed reasons are required on findings of fact. Rule 24(5) of the conduct rules of the SSSC (noted above), perhaps consciously reflecting that

finding, itself acknowledges that. A rare example of a situation where the Courts have found that detailed reasons on findings in fact were required is the decision of the Court of Appeal in *Southhall v General Medical Council* [2010] EWCA Civ 484. The facts in that case were exceptional and somewhat notorious: the allegation against Dr Southhall being (in short) that he accused the mother of a dead boy of murder. Although the allegation against Dr Southall appeared at first sight to resolve around simple disputes of fact concerning a conversation between him and the mother of the dead boy, that appearance was deceptive and a large number of other issues arose for consideration. There were at least 18 charges against Dr Southall, some of which had sub-headings. The evidence concerning the conversation alone took 5 days and the whole GMC hearing much longer than that. Lord Justice Levenson said:

> 55 For my part, I have no difficulty in concluding that, in straightforward cases, setting out the facts to be proved (as is the present practice of the GMC) and finding them proved or not proved will generally be sufficient both to demonstrate to the parties why they won or lost and to explain to any appellate tribunal the facts found. In most cases, particularly those concerned with comparatively simple conflicts of factual evidence, it will be obvious whose evidence has been rejected and why. In that regard, I echo and respectfully endorse the observations of Sir Mark Potter [in the case of *Phipps v The General Medical Council 2006 EWCA Civ 397]*
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> 36. Those observations were (at paragraph [106] of *Phipps*) "…the so-called "duty to give reasons", is essentially a duty which rests upon judicial and quasi-judicial tribunals to state their decisions in a form which is sufficient to make clear to the losing party why it is that he has lost. This requirement will be satisfied if, having regard to the issues as stated and decided and to the nature and content of the evidence in support, the reasons for the decision are plain, whether because they are set out in terms, or because they are implicit i.e. readily to be inferred from the overall form and content of the decision. I do not think that there is any real difference or substantial inconsistency, other than one of emphasis, between that principle and what was stated in *Gupta*, namely that there is no general duty on the PCC of the GMC to give reasons for its decisions on matters of fact, in particular where the essential issue is one of credibility or reliability of the evidence in the case, whilst at the same time recognising that there are cases where the principle of fairness requires reasons to be given "even on matters of fact": see paragraph 14 of *Gupta*. It seems to me that such cases are those where, without such reasons, it will not be clear to the losing party why he has lost. It is not a necessary

ingredient of the requisite clarity that the reasons should be expressly stated when they are otherwise plain or obvious."

37. Returning to the *Southall* case, Lord Justice Levenson continued:

> 56 When, however, the case is not straightforward and can properly be described as exceptional, the position is and will be different. Thus, although it is said that this case is no more than a simple issue of fact (namely, did Dr Southall use the words set out in the charge?), the true picture is far more complex…. I am not suggesting that a lengthy judgment was required but, in the circumstances of this case, a few sentences dealing with the salient issues was essential: this was an exceptional case and, I have no doubt, perceived to be so by the GMC, Dr Southall and the panel.

38. This case serves as an illustration of the type of case that the senior courts consider is exceptional, requiring from the decision making body reasons for findings in fact. It is noteworthy that even in such a case as this, all that Lord Justice Levenson said was required in addition to what was explained by the GMC was "a few sentences dealing with the salient issues": even in a case such as this, not much more was required than had already been done.

39. *The meaning of dishonesty.* Finally, I turn briefly to the law on dishonesty and its meaning in the context of decisions such as the one under examination in cases such as this. While the helpful and detailed written submissions of the Defender explore in some detail the meaning of dishonesty in this context, as explained in the case law, and while they engage in an interesting analysis of the differing approaches to this question as between Scotland and England, it is unnecessary for me to explore these differing approaches. That is because it was ultimately no part of the Pursuer's case that the committee had misunderstood the meaning of dishonesty, nor that the committee ought to have applied the two-stage test as explained in the English cases of *Twinsectra Ltd v Yardley & Ors* [2002] UKHL 12 and applied in English professional disciplinary cases such as, for example, *Shamsian v GMC* [2011] EWHC 2885 (Admin). While the committee did not in this case set out its understanding of the

meaning of dishonesty or the test that it applied when considering the facts (in contrast with its application of the definition of misconduct in rule 2(1)), no point is taken by the Pursuer on that matter. Neither was it argued by the Pursuer that on the facts, the committee were not entitled to conclude, whatever the proper test might be, that the Pursuer's conduct was dishonest. It seems to me that in these circumstances, a more detailed exploration of the meaning of dishonesty, particularly with reference to the apparently differing approaches of the Scottish and English courts on this question in the context of professional disciplinary proceedings, will have to wait for another day. Instead, in the context of this case, I will assume that the committee applied the ordinary everyday meaning of the word, which is a term in common usage, and which I find that it was quite entitled to do. The meaning of the word is obvious. Its meaning includes lack of probity and a disposition to deceive: see *Stewart v Commercial Union Assurance Company Plc* 1993 SC 1, 12F. It is unnecessary to further define or explain this term in these circumstances.

Discussion on the adequacy of reasons

40. So far as part A of the charge was concerned, as I have noted above, the matters of fact that the committee required to resolve were considerably narrowed by the terms of the joint minute, which I have referred to in detail above. Thus, there was no dispute, for example, that the Pursuer completed an application form for registration with the Defender dated 25 July 2008. That application form was placed before the committee and this court. Its terms were plain for all to see. It is clear from that form that there is no explicit reference to the Pursuer having been a social work student at RGU or any explicit reference to the Pursuer having been a trainee social worker with REDACTED . That form may be

contrasted with the first application form for registration, completed while the Pursuer was employed with REDACTED and studying at RGU, in which the Pursuer did make explicit reference to being employed as a trainee social worker and studying at RGU. The Committee also had before it certain other material referred to in the transcript, such as an email showing the way in which, when at REDACTED REDACTED the Pursuer signed herself off ("Social worker in training"), the letter dated 6 July 2006 from that Council acknowledging the Pursuer's resignation from the post of "Trainee Social Worker (Fast Track Scheme)", a letter dated 6 May 2009 from the Council confirming the Pursuer's employment as "Fast Track Trainee Social Worker" and dates of employment, another dated 28 July 2009 from that Council setting out the Pursuer's duties at the time of employment, job description and person specification. The Committee also had material from Robert Gordon University dated 15 September 2006 showing that after considering the Pursuer's performance on placement, the placement was declared "null and void", the appeal against that decision being rejected by the RGU on 11 January 2007, the course being formally discontinued on 24 January 2008. It also had oral evidence from REDACTED to the effect that the term "support worker" is not an acceptable alternative for the term trainee social worker.

41. The terms of those documents were clear on their face. What was truly in issue at the appeal before the Committee was what it was to make of the explanation by the Pursuer for the lack of an explicit reference to the REDACTED employment and the RGU course and whether, considering that explanation, together with the other material before it, it

was satisfied that there was a failure to disclose that information and if so, whether that failure was dishonest.

42. The Pursuer was given ample opportunity to explain her position in giving evidence to the committee. She had ample opportunity to cross-examine the witnesses called by the Defender. She had ample opportunity to explain her position in summation. Her explanations as regards the omissions are fully set out in the transcript of the hearing. In summary, she denied that the second application form was misleading and inaccurate. She maintained that her description of what she was doing in 2006 and 2007 was a reasonable and accurate way of describing what she was engaged in at that time, notwithstanding the absence of explicit reference to the university or the Council. She maintained further that she had not completed the application form in that way with any intention to deceive the Defender, stating that she believed that the Defender would already have known about that experience from her first registration and because she had been enlisting a different arm of the Defender in connection with her appeal against the RGU decisions. The clear difference between the way she referred to her REDACTED employment and the course at RGU in the second application form, as compared to the first (where the exact nature of her involvement was clearly stated), was simply a different way of expressing the same thing and reflected the fact that the application forms were not completed at the same time. Further, the fact that she was engaged in an appeal process against the RGU decision was another reason explaining and justifying the stance that she took.

43. So far as part B of the charge was concerned, once again, the terms of the joint minute substantially narrowed the exercise of fact finding that was

the task of the Committee. Thus, it was agreed that the Pursuer did not tell REDACTED about the REDACTED trainee social worker employment and degree course started, but not completed at RGU. It was agreed that she did not mention it on the two Dundee university forms.: see the joint minute paragraphs 14 and 15. The Committee had evidence from REDACTED about the importance of the forms in relation to accurate assessment of the student's training needs taking account of the student's previous employment and education and that failure to accurately complete those forms meant that the University would be unable to make an accurate assessment of placement and training needs. Further, if he had known about the previous termination of the course at RGU, he would have been very keen to follow that up to find out the circumstances.

44. Here, the issue before the committee was even narrower than as regards the first charge being solely whether those admitted failures amounted to dishonesty, considering the Pursuer's explanations. Again the Pursuer was given a full opportunity to explain her failures to inform and declare in evidence, by way of cross-examination of REDACTED and in submissions. In answer to questions, the Pursuer implied that the reason why she deliberately withheld the information from the forms was to avoid the circumstances of her leaving the RGU course and REDACTED REDACTED from becoming known to the tutor and others on the course and that she had had medical issues (which were not explained further). Nothing further of substance was said by her in explanation as regards charge 2.

45. The Committee in its decision letter of 20 August 2010, set out its findings in fact. They are clear. A number of them reflect the joint minute. The

contentious findings in fact are 10 and 11 (which one can see by cross-referencing them to the original charge relates to part A of the charge) and 12 to 15 (which one can see by cross-referencing them to the original charge relates to part B of the charge). It is clear from the findings in fact that the Committee finds the charges proved and in particular, that the Pursuer acted dishonestly in failing to disclose the information as regards her REDACTED experience. The Committee then clearly goes on to find that the Pursuer was guilty of misconduct, as defined.

46. When one turns to the reasons for the finding of misconduct, the first thing that can be seen is that neither the finding of misconduct nor the reasons differentiate between the two parts of the single charge. The Committee has placed the two parts of the charge, A and B at this stage into a single charge of misconduct with a single set of reasons for that conclusion. Nothing turns on that. Secondly, the focus of each of the three stated reasons is only, in effect, to translate the findings of fact, taken as a whole, into specified breaches of three paragraphs of the code of practice: sections 2.1, 2.2 and 2.3. When one compares the terms of the original charge from the part "The Council considers…" to the end with the finding of misconduct and three reasons, one can see that the reasons are really simply just a close reflection of that part of the charge. The reasons thus do little more than to explain to the reader that in the view of the committee, the findings of fact (taken as a whole) amount to breaches of three specified sections of the code of practice.

47. The reasons do not, for example, state in terms that the Committee did not accept the Pursuer's explanation as to why she completed the second application form the way that she did. Still less do they go to provide any detail as to why the various aspects of her explanation on that subject are

rejected. Neither do the reasons explain what the Committee made of the Pursuer's reasons for not providing the information on the Dundee University practice placement forms. Nor do the reasons explain in terms why it concluded that the failure to disclose by the Pursuer was dishonest as opposed to, say, naïve or misguided.

48. The absence of explicit reasoning is thrown into relief when one considers the terms of the extremely helpful and detailed written submissions lodged on behalf of the Defender by their agents in the course of the appeal hearing. In that document, one sees a very detailed submission as to the reasons why, on the evidence before it, the Committee was entitled to come to the conclusions that it did: see pages 38, 39, 42, 43, 44, 45. These are of course not the reasons advanced by the Committee for its decision. Neither can they substitute for the reasons actually given by the Committee to the Pursuer. Nor could one expect or require any Committee in its position to produce a set of reasons in anything like the detail submitted on behalf of the Defender. Nonetheless, what they do clearly show, (in so far as this part of the submissions might plausibly reflect what might have been the fuller reasons of the committee), is that more, perhaps much more, could have been said by the Committee to explain its reasons for the finding of misconduct than it actually did.

49. If the committee had chosen to take a more expansive route, the reasons for its decision would have been clearer to one and all and may have avoided the necessity of employing a constructive and deductive approach to an understanding of its reasons. Furthermore, I do rather wonder, given that the committee is a public statutory body exercising statutory powers which bear on the right of a person to exercise a profession, at a time when there are particularly strong currents in society

favouring openness, candour and transparency, whether a clear and definitive account of reasons would be more appropriate. It would have cost nothing to do so, and may even have saved scarce public money.

50. However, all that the committee is obliged to do is act lawfully and no more. I must apply the law as I understand it to the decision of the Committee. I have set out the law as regards adequacy of reasons in some detail above at paragraphs 29 to 38. The question as regards the adequacy of reasons is not whether more explicit reasons could have been given or whether that would have been desirable. Neither can the question of adequacy of reasons be answered by looking simply at the part of the decision letter described as the reasons. The tests for adequacy are quite clear from the authorities.

51. In this case, I accept the Defender's contention that this was not an exceptional case, in the *Southall* sense. The matters that the Committee required to consider were fairly clear, especially considering the terms of the joint minute. Essentially, the Committee had to take a view as to whether the various explanations given by the Pursuer for the apparent failures to provide information to the Defender and Dundee University were satisfactory, and to the extent that they were not, whether the true reason for those failures was dishonesty, rather than some other reason. The way that the Committee choose to express their conclusions on these matters is to make a number of express and clear findings in fact, which tie in closely with the original charge, then conclude that misconduct has thereby been found proved (a nigh inevitable finding following the findings of dishonesty) and then say that the facts proved translate into breaches of three sections of the code of practice. The informed reader had before him or her not only this expression of the Committee's conclusions,

but also importantly, all the productions produced before the Committee and the full transcript of the hearing. The informed reader will know what the issues were before the Committee. The informed reader, will be able to deduce from the transcript, findings in fact and the conclusion of misconduct that the Committee must have considered and rejected the explanations given by the Pursuer for the failures to inform, every one of them. That reader would also be able to deduce, again taking account all of that material, that the Committee, giving rejected all the Pursuer's explanations, must have concluded that the true explanation for the omissions was deliberate and further that it was done with an intention to deceive, was therefore dishonest, the motive being to hide from the Defender and the University the truth about the Pursuer's time in Aberdeen. Finally, that reader would then readily understand how such findings translated into the specific breaches of the code of conduct, dishonesty being inimical to the standards of conduct referred to in sections 2.1, 2.2 and 2.4 of the code of practice. The informed reader would thereby be left in no reasonable or real doubt as to the conclusions of the Committee on the substantial issues: it did not believe the Pursuer's accounts and decided that the Pursuer deliberately withheld information with an intention to deceive.

52. I find therefore, that while the reasons could have been rather more explicit, direct and clear, there was no requirement in law on the committee to go further than it did, in the circumstances of this case. In particular, there is clear law that the committee was under no obligation to give reasons for its findings in fact. I therefore reject the first ground of appeal.

Discussion on sanctions question

53. As regards the sanctions question, there was no attack by the Pursuer on the adequacy of the reasoning of the Committee on the sanctions issue. That I can well understand since the reasoning of the Committee on this issue (in contrast to its reasoning on the misconduct issue) is I consider reasonably detailed and quite clear. The Committee considers in turn each of the sanctions available to it and why the lesser sanctions are unsuitable. The reasons given are in my view soundly expressed and deal with factors and considerations which fall squarely within the province of this Committee, having regard to its statutory basis and the statutory duties upon the committee and the SSSC itself. I cannot see any fault in the reasoning on the face of it. Furthermore, as the case law makes clear, see above, this Court is required to give appropriate deference to the decisions on sanctions of such professional disciplinary bodies. It is true that the penalty decided upon by the committee is severe: there is no more severe penalty. However, I cannot say it is harsh in the circumstances and neither am I entitled to interfere with the decision on penalty without quite sound reason. This I cannot find. I according reject the second ground of appeal.

54. There being no other basis for the appeal, it follows that I must refuse the appeal in terms of section 51 of the Act.

Expenses

55. Finally, I was not addressed on the question of expenses. I expect that the Defender will be unlikely to seek expenses. If that is so, confirmation should be passed to my clerk and I will arrange to issue the necessary interlocutor making a finding of no expenses due to or by without the

need for a further hearing. However, should either party wish to be heard on the question of expenses, the Court should be informed so that the necessary arrangements can be made.

Sheriff O'Carroll
Dundee
19 July 2012