

STRICTLY PRIVATE AND CONFIDENTIAL

CORU

SANCTION HEARING UNDER PART 6
OF THE HEALTH AND SOCIAL CARE PROFESSIONALS ACT 2005,
AS AMENDED

RE: ANNA MARIE STACK RIVAS

HELD AT THE OFFICES OF CORU, FLOOR 2
INFINITY BUILDING, GEORGE'S COURT
GEORGE'S LANE, SMITHFIELD, DUBLIN 7
ON MONDAY, 23RD MARCH 2026

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ATTENDANCES

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(CHAIRPERSON)
MS. ISIBEAL McCOY
MR. JOE O'SULLIVAN

LEGAL ASSESSOR:

MR. TOM HOGAN SC

FOR THE REGISTRAR:

MR. EOGHAN O'SULLIVAN BL

INSTRUCTED BY:

MS. HANNAH UNGER
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FOR THE REGISTRANT:

NO APPEARANCE

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1 THE HEARING RESUMED ON MONDAY, 23RD MARCH 2026 AS
2 FOLLOWS:

3
4 **CHAIRPERSON:** Good afternoon all.

5 **MR. O'SULLIVAN:** Good afternoon, Chair. 14:16

6 **CHAIRPERSON:** This is a continuation of the Inquiry
7 pursuant to Part 6 of the Social Care Professionals Act
8 2005 in the matter of Anna Marie Stack Rivas. The
9 Committee delivered its findings on the last occasion
10 and we've now reconvened to hear submissions on 14:17
11 sanction.

12 **MR. O'SULLIVAN:** Thank you very much, Chair, Eoghan
13 O'Sullivan on behalf of the Registrar instructed by Ms.
14 Unger. You'll see that Ms. Stack Rivas is not here and
15 so I might just deal with the issue of notification in 14:17
16 the first instance, Chair.

17 **CHAIRPERSON:** Please.

18 **MR. O'SULLIVAN:** So I can hand in a bundle of emails
19 and if I could make those Sanction Hearing Exhibit 1
20 perhaps for housekeeping purposes. And you'll see the 14:17
21 first page is an email from Mr. McDowell in Fieldfisher
22 of 10th February 2026, which, as you know, is the day
23 after you delivered your findings and you'll see that
24 Mr. McDowell sends the transcript of the hearing on 9th
25 February 2026 to Ms. Stack Rivas. The email address 14:18
26 you'll see there, [REDACTED] is the
27 email that has been used throughout and that Ms. Stack
28 Rivas has used to correspond with CORU.
29

1 Page 2 confirms that delivery was complete, although a
2 delivery notification was not sent by the destination
3 server.

4
5 The third page you'll see indicates that Ms. Stack 14:18
6 Rivas did not download the link. So the only people,
7 who viewed the link, are Mr. McDowell himself and Ms.
8 Unger.

9
10 And then at internal page 4, you've an email from Ms. 14:18
11 Unger, also dated 10th February '26 to the same email
12 address that Ms. Stack Rivas has been using. You'll
13 see she refers to the fact that findings have been made
14 and therefore, the Committee would have to consider the
15 issue of sanction. 14:19

16
17 And you'll see she was told that you would be
18 considering sanction today at 2.00pm in this building.

19
20 She was told she could attend in-person, she could 14:19
21 participate remotely and you'll see she was provided
22 with the link.

23
24 And she was told that alternatively she could provide
25 written submissions in relation to the issue of 14:19
26 sanction.

27
28 And finally, she was told that, if she didn't attend,
29 the matter could proceed in her absence.

1 And then, finally, you'll see at page 5, that that
2 email was delivered to her, albeit there's no delivery
3 notification sent by the destination server.

4 So, Chair, I suggest that, consistent with the
5 approach --

14:19

6 CHAIRPERSON: Okay. So the entirety of the
7 correspondence and email chain to Ms. Stack Rivas is of
8 10th February?

9 MR. O'SULLIVAN: Precisely and she has not replied to
10 either of the emails, nor has she contacted
11 Fieldfisher, nor has she contacted CORU directly and so
12 in my submission, consistent with the approach she has
13 taken throughout, she is not intent clearly on engaging
14 in this process. And so, in my submission, she is on
15 notice. She has chosen not to participate and the
16 matter can proceed safely in her absence.

14:20

17 CHAIRPERSON: I've no further questions in relation to
18 the correspondence that has issued to Ms. Stack Rivas.
19 Can I just ask my fellow Committee members whether
20 they've any queries in relation to that? No. Thank
21 you. And are you satisfied to proceed in the absence of
22 the Registrant today?

14:20

23 MR. O'SULLIVAN: Yeah.

24 CHAIRPERSON: The Committee, having considered the
25 matter, are satisfied as to the communication that has
26 issued to the email address on file for Ms. Stack Rivas
27 and are satisfied to proceed, that she's on notice of
28 the matter for today's date and are satisfied to
29 proceed to hear your submissions in relation to

14:20

1 sanction.

2
3 SUBMISSIONS BY MR. O'SULLIVAN:
4

5 MR. O'SULLIVAN: Thank you very much, Chair. As we sit 14:21
6 here in 2026, the Covid pandemic seems like a distant
7 memory and that perhaps speaks to the human nature and
8 ability to put adversity behind us and look forward.
9 But when it comes to assessing where on the spectrum of
10 seriousness the findings of professional misconduct in 14:21
11 this case fall, and that is something that you'll need
12 to assess, you have to bring yourself back to the world
13 as it was when Ms. Stack Rivas said the things that she
14 said.

15 14:21
16 And you will recall that what I was referring to
17 throughout as Notice of Inquiry 2, the Notice of
18 Inquiry in relation to Complaint 408, resulted in
19 findings being made arising from comments made by Ms.
20 Stack Rivas on 31st July 2021. 14:22

21
22 And in what was referred to during the Inquiry by me as
23 Notice of Inquiry 1, which is the Notice of Inquiry in
24 relation to Complaint 366, there were two separate
25 findings of professional misconduct made. The first 14:22
26 related to things said by Ms. Stack Rivas on 5th
27 February 2022 and the other two comments made on 24th
28 July 2022.
29

1 So you are dealing with public comments and statements
2 made by Ms. Stack Rivas between the middle of 2021 and
3 the middle of 2022.

4
5 And you heard during the evidence a brief history of 14:22
6 the onset of the pandemic and the steps that were taken
7 to battle the pandemic and the various public health
8 measures that were put in place. [REDACTED] dealt
9 with that in her evidence and also in her report.

10 14:23
11 And you'll remember that there were not only lockdowns
12 and Level 5 restrictions in 2020, the year that the
13 pandemic began, but also in 2021 and that there were
14 significant restrictions, and we'll all remember this,
15 in place in 2022, albeit that gradually restrictions 14:23
16 were being relaxed during 2022 as the vaccine rollout
17 took its course.

18
19 But it has to be emphasised I suggest, that the
20 evidence that was given, and again, you all will have 14:23
21 your own recollection of this, was that the vaccines
22 became available in late 2020 and the rollout of
23 vaccines in this jurisdiction began in early 2021. And
24 as you know, the vaccines were initially provided to
25 healthcare workers and those who were particularly in 14:24
26 need, the elderly and those, who were
27 immunocompromised. And thereafter, they were rolled
28 out to members of the public generally, beginning with
29 those, who were more elderly and then gradually working

1 through the various decades until we got to those, who
2 were in their teens.

3
4 And it took quite some time you'll all remember for the
5 vaccines to be rolled out. Some of the vaccines
6 required a number of doses and there had to be a
7 particular period of time between the doses, and
8 indeed, there were then boosters that were provided
9 subsequent to that.

14:24

10
11 So the period of mid 2021, running through the
12 remainder of 2021, into 2022, was a very significant
13 infection point in the battle against the virus because
14 initially a set of very onerous restrictions had to be
15 put in place to seek to prevent the spread of this
16 virus for the benefit of the public and society.

14:25

14:25

17
18 As vaccines became available we were able to increase
19 immunity and gradually to reopen society to allow
20 people to get back to a semblance of normality,
21 ultimately to normality.

14:25

22
23 And it was in that period as society was gradually
24 re-opening, because people were receiving vaccines and
25 second doses of vaccines and boosters of vaccines, that
26 Ms. Stack Rivas spread the disinformation that she
27 spread.

14:26

28
29 And it goes without saying, Chair, that for a

1 healthcare professional to spread disinformation in
2 relation to scientific matters, in relation to
3 healthcare matters is in and of itself extremely
4 serious because the public and, in particular, the
5 members of the public, who don't possess an expertise 14:26
6 in relation to science; in relation to viruses; in
7 relation to vaccines; in relation to public health
8 measures; are much more likely to attach weight to
9 comments made, or statements made by somebody, who does
10 possess that expertise, than they are to attach weight 14:27
11 to similar comments that might be made by a person, who
12 doesn't possess that expertise. And because there's a
13 risk of people taking on board what is being said by a
14 healthcare worker, particularly a healthcare worker,
15 who identifies themselves as such when making the 14:27
16 comments and because people's behaviour might be
17 affected by what that healthcare worker is saying, the
18 healthcare community needed to be careful when it came
19 to their public commentary in relation to these
20 matters. 14:27

21
22 And you have found that, on a number of different
23 occasions, in various different respects, Ms. Stack
24 Rivas spread disinformation in relation to these highly
25 relevant matters, not least the issue of the efficacy 14:28
26 and safety of vaccines and that's a very serious matter
27 in and of itself. But it's all the more serious in
28 this case because the comments were made at a time
29 when, not just nationally but internationally there was

1 a pandemic and the healthcare community and the broader
2 public sector, and ultimately the Government, were
3 seeking to battle this virus to prevent the spread of
4 the virus, to protect members of the community, who
5 were vulnerable to the adverse effects of the virus and 14:28
6 ultimately to bring about a situation where society
7 could reopen for the benefit of all. And as I've said,
8 it was in that specific context, while vaccines were
9 being rolled out that Ms. Stack Rivas said what she
10 said and that's a very significant aggravating factor 14:29
11 when it comes to how serious the professional
12 misconduct at issue here was.

13
14 There are a number of other factors I suggest, which
15 are aggravating factors when it comes to your 14:29
16 consideration of Ms. Stack Rivas's conduct. The first
17 is that this was not conduct that occurred on an
18 isolated occasion. You have made findings in relation
19 to three separate instances whereby Ms. Stack Rivas
20 said things that were not correct and were intended to, 14:29
21 or designed to, or may have undermined the measures
22 that were in place, that were there to seek to address
23 the public health situation as it was at the time. So
24 you're not dealing with a one-off incident, a person
25 speaking loosely on one occasion, you are dealing with 14:30
26 somebody, who was doing this over an extended period of
27 time in the middle of 2021, into the middle of 2022
28 repeatedly.

1 You're also not dealing with a situation where comments
2 were made only at the early stage of the rollout of the
3 vaccine when you might say that there might be a cause
4 for some concern, or skepticism, in relation to
5 vaccines being rolled out at an early stage. This is 14:30
6 commentary that continued approximately 18 months after
7 the rollout and still, at that stage, Ms. Stack Rivas
8 was saying the things that she was saying, which were
9 not based on the science, which were not based on the
10 evidence, which were incorrect and untrue. 14:31

11
12 And the seriousness of this, and the aggravation of the
13 conduct in terms of its seriousness, is further
14 underscored by, or extenuated by the fact that Ms.
15 Stack Rivas, when she said the things that she said, 14:31
16 was already the subject of a complaint to CORU arising
17 from similar comments and not only had a complaint
18 being made to CORU arising from similar comments, that
19 complaint had been considered by the PPC and had been
20 referred forward to inquiry. 14:31

21
22 So Ms. Stack Rivas was very well aware, when she said
23 what she said, of the concerns that existed. The
24 findings had not been made, but she was aware of the
25 concerns that existed that had prompted a complaint to 14:31
26 her regulator, which complaint had been considered by
27 the PPC and referred forward to inquiry on the basis
28 that it merited further investigation by way of a sworn
29 oral Inquiry. So you're not dealing with a person, who

1 was operating under a misapprehension as to the
2 boundaries of her professional obligations, or who was
3 mistaken in relation to the obligations imposed upon
4 her as a member of a regulated profession. You're
5 dealing with a person, who chose deliberately and
6 consciously, in the teeth of an existing complaint,
7 which had been referred to inquiry, to speak in the
8 terms that she was speaking, as described in the
9 findings that you have made.

14:32

10
11 And the findings that are made, and the sanction that
12 is necessary, I suggest are further rendered all the
13 more serious by two further factors. Firstly, Ms.
14 Stack Rivas has demonstrated no insight into the issues
15 of concern that led to this Committee making findings
16 of professional misconduct against her. In fact, her
17 correspondence, you will recall, and indeed, the
18 comments that were made by her on some of the videos
19 that you saw, demonstrated that she was perfectly well
20 aware of the position of CORU and the position of the
21 profession more generally in relation to the views that
22 she holds and the views that she has expressed. She
23 said on one occasion, at least, that her registration
24 was on the line arising from what she was saying. So
25 she's perfectly well aware of the issues of concern
26 that arise and she has demonstrated precisely zero
27 insight into why spreading this type of information
28 without any basis in science, certainly that runs
29 counter to the prevailing view of the healthcare

14:32

14:33

14:33

14:33

1 community, is so serious.

2
3 And that's a particularly important consideration for
4 you when it comes to sanction because one of the things
5 that you have to have regard to, as you well know, is 14:34
6 whether the professional has demonstrated insight,
7 whether they have learned from what occurred, whether
8 they are likely to engage in similar conduct in the
9 future. And you cannot be reassured that Ms. Stack
10 Rivas will not engage in similar conduct in the future 14:34
11 precisely because she has no insight into how serious
12 her conduct is.

13
14 And the other factor that I say is an aggravating
15 factor when it comes to the sanction to be imposed in 14:34
16 this case is the fact that Ms. Stack Rivas has a
17 relevant disciplinary history and that disciplinary
18 history arises from the complaint that was made to CORU
19 that I've already referred to. Now findings had not
20 been made when she said what she said relevant to this 14:35
21 Inquiry, but nevertheless, when it comes to your
22 consideration of sanction, it is relevant to note that
23 she has previously had findings of professional
24 misconduct made against her for spreading just this
25 type of misinformation publically. 14:35

26
27 As you will know, there are three objectives of
28 sanction in the regulatory context. The first and
29 paramount consideration is the need to protect the

1 public from the risk of harm and I suggest to you that
2 is a principle, or an objective that is engaged in this
3 case because, as I have said, there is a risk that
4 members of the public will be influenced by comments
5 made by members of a regulated healthcare profession. 14:36
6 And there is, therefore, a risk that members of
7 healthcare professions, here a physiotherapist, can and
8 will influence the behaviour of others when spreading
9 misinformation. Now there is no evidence that this
10 occurred in this case, but it is a risk that arises 14:36
11 where somebody spreads the type of untruths that were
12 spread by Ms. Stack Rivas in this case. So you need to
13 arrive at a sanction that adequately protects the
14 public from the risk of harm. And when you come to
15 consider the sanctions that are available, you're going 14:36
16 to have to have to the forefront of your mind how the
17 sanction that you recommend because ultimately, as we
18 all know, it's a matter for Council to impose sanction,
19 how you can adequately protect the public from the risk
20 of harm. 14:36

21
22 Secondly, you need to be conscious of the need to send
23 a message to Ms. Stack Rivas, but also to the
24 profession more broadly as to the serious view taken of
25 the type of conduct at issue in this Inquiry. And the 14:37
26 object there, in simple terms, is to deter Ms. Stack
27 Rivas from engaging in similar conduct in the future
28 and more broadly, to deter other members of this
29 profession, or possibly the other healthcare

1 professions, from engaging in this type of conduct in
2 the future. The idea being that Ms. Stack Rivas, or
3 another member of the profession, on learning of the
4 sanction imposed in this case will, because of that
5 sanction, pause before ever engaging in this type of 14:37
6 conduct in the future and choose one would hope not to
7 go down that road in the future because they would know
8 what the likely outcome would be and they would be
9 deterred from engaging in similar conduct in the
10 future. So your sanction must seek to send an 14:38
11 appropriate message, not only to Ms. Stack Rivas, but
12 to the profession more broadly to seek to deter from
13 further conduct, or conduct in the future of a similar
14 nature to this.

15
16 And thirdly, you need to send a message to the public 14:38
17 to reassure the public that the profession of
18 physiotherapy is a well regulated profession so that
19 the public can be confident, when they engage with
20 members of the profession, that they are dealing with 14:38
21 people, who are appropriately regulated, who are dealt
22 with appropriately where they engage in conduct that
23 amounts to professional misconduct, or where they're
24 guilty of serious indiscretions in the professional
25 context. 14:39
26

27 And I know Mr. Hogan will advise you, but you also have
28 to seek to arrive at a sanction in terms of your
29 recommendation that is proportionate and there are two

1 sides to the proportionality coin. It is often said
2 that a sanction should be no more severe than is
3 necessary, or you should afford as much leniency as you
4 can to the registered person and that, of course, is
5 true.

14:39

6
7 But the other side of the proportionality coin is that
8 where the conduct at issue is extremely serious, is at
9 the upper end of the spectrum of seriousness, then the
10 most serious sanctions are engaged.

14:39

11
12 And the CEO or the Registrar is not advocating for a
13 specific sanction in this case. It's a matter for you
14 to consider what you believe to be appropriate. But
15 what I do wish to emphasise on behalf of the Registrar
16 is that the Registrar's position is that this
17 misconduct is at the upper end of the spectrum of
18 professional misconduct for the reasons that I have
19 already outlined and I won't repeat them.

14:40

20
21 There are numerous aggravating factors and again, I
22 have touched upon those. They include the disciplinary
23 history. They include the existing complaint when the
24 comments were made.

14:40

25
26 And perhaps, most importantly, they include the public
27 health situation as it was when these comments were
28 made and that is not something that should be
29 forgotten, even though there's a lot of water under the

14:40

1 bridge since 2022 and 2021.

2
3 And they're further aggravated by the lack of insight
4 on the part of Ms. Stack Rivas.

5
6 You'll be very familiar with the range of sanctions
7 that are available to you and again, I know Mr. Hogan
8 will advise you on this, but it's generally suggested
9 that the appropriate approach is to begin by
10 considering the least serious sanction, ask yourselves 14:41
11 whether, if we were to recommend that sanction, we
12 would adequately protect the public from the risk of
13 harm? And we would send an appropriate message in
14 terms of deterrents? We would promote and foster
15 public confidence in the profession? If the answer to 14:41
16 all of those questions is yes, then that is the
17 sanction to recommend.

18
19 If the answer to those questions is no, then you must
20 move on to the next most serious form of sanction and 14:41
21 perform the same exercise until you arrive at a
22 sanction that satisfies you that it would protect the
23 public, send an appropriate message to Ms. Stack Rivas
24 but the profession more broadly and promote and foster
25 public confidence in the profession. 14:42

26
27 That's the Registrar's position, Chair.

28 CHAIRPERSON: In the absence of the Registrant, I would
29 normally ask for her submissions in relation to

1 sanction and to reply in relation to the submissions
2 made by you, but in her absence I'm not in a position
3 to do so, so instead, I will ask my fellow Committee
4 members whether they've any questions in relation to
5 the submissions by Mr. O'Sullivan?

14:42

6 MS. MCCOY: No.

7 MR. O'SULLIVAN: No.

8 CHAIRPERSON: And nor do I have questions for Mr.
9 O'Sullivan. So I'll move next to asking Mr. Hogan to
10 advise the Committee as to what matters they should
11 appropriately take into account when recommending
12 sanction in this matter to Council and also to advise
13 the Committee in relation to any issues in relation to
14 sanction that Ms. Stack Rivas would have been in a
15 position to make, if she were present.

14:42

14:42

16 MR. HOGAN: Thank you, Chair. Good afternoon, Mr.
17 O'Sullivan. Could I just clarify a couple of things
18 with you. I think it's fair to say you would agree
19 that there has been no evidence put before the
20 Committee of actual harm having been caused, in other
21 words, that any person actually acted upon the
22 statements that were made by Ms. Stack Rivas and the
23 CEO is pointing to the risk of persons, who were
24 present at these public events, having taken on board
25 the statements that were made?

14:43

14:43

26 MR. O'SULLIVAN: Yes, and the risk of people taking on
27 board comments such as this, if they were to be made in
28 the future, because public protection is a forward
29 facing consideration.

1 MR. HOGAN: Obviously there has been no evidence put
2 before the Committee of any other statements having
3 been, similar statements having been made, isn't that
4 correct, since these events?

5 MR. O'SULLIVAN: Yes.

14:44

6 MR. HOGAN: In relation to the previous disciplinary
7 history -- sorry, before I get to that, obviously at
8 the time of the matters giving rise to these findings,
9 there was already a complaint extant, which had been
10 referred by the PPC for inquiry, but would you confirm
11 that that was a complaint that was made by the same
12 Complainant?

14:44

13 MR. O'SULLIVAN: Yes, it was.

14 MR. HOGAN: As the complaints, the subject of this
15 Inquiry?

14:44

16 MR. O'SULLIVAN: Yeah.

17 MR. HOGAN: And could you confirm, was the nature of
18 that, of the statements, or the nature, excuse me, of
19 the allegations, the subject of that complaint, was
20 that similar?

14:44

21 MR. O'SULLIVAN: Yes, broadly similar.

22 MR. HOGAN: And, I think in your opening you explained
23 the procedural background, that it was hoped that all
24 complaints would actually be heard, the four
25 complaints, if you like, would be heard at that same
26 time, but for procedural reasons that ultimately wasn't
27 possible, isn't that right?

14:45

28 MR. O'SULLIVAN: The Complainant had anticipated that
29 the first Inquiry would have dealt with all of his

1 concerns, which spanned all of the different incidents,
2 if I can put it like that, but the issues you're
3 dealing with now hadn't formed part of that first
4 complaint, so they couldn't be dealt with as part of
5 that Inquiry.

14:45

6 MR. HOGAN: Obviously you've identified that there were
7 no findings made against the Registrant at the time of
8 the facts giving rise to these findings. But
9 ultimately findings were made in relation, and could
10 you just confirm that that is just in relation to the
11 first complaint, if you like, if I could call it that?

14:46

12 MR. O'SULLIVAN: Yes.

13 MR. HOGAN: And what was the nature of the sanction
14 that was imposed in relation to those?

15 MR. O'SULLIVAN: Censure and conditions.

14:46

16 MR. HOGAN: Could I ask you to address one issue that
17 just strikes me as perhaps important for the Committee,
18 and that is that an undertaking was given by the
19 Registrant that she wouldn't make these kind of
20 statements and hold herself out as a physiotherapist
21 and ultimately she didn't make -- she held herself out
22 as a healthcare worker rather than a physiotherapist.
23 And obviously findings have been made on the basis of
24 breaches of the code in terms of the obligations on
25 healthcare workers. But is there anything you want to
26 say in relation to that distinction that, in other
27 words, if the CEO had wanted to stop the Registrant
28 making any similar statements, that the net, the
29 undertaking should have been wider, it should have been

14:46

14:47

1 whether holding herself out as a physiotherapist or a
2 healthcare worker?

3 MR. O'SULLIVAN: Yeah, with the benefit of hindsight
4 the language of the undertaking was unfortunately
5 narrow. There's no allegation that Ms. Stack Rivas
6 breached that undertaking in relation to the findings
7 you've made because, as you have said, she described
8 herself as a healthcare worker, not a physiotherapist.

14:47

9
10 In my submission, she didn't comply with the spirit of
11 that undertaking when saying what she said as reflected
12 in your findings, but she didn't, strictly speaking,
13 breach the undertaking because of that specific use of
14 language and that was perhaps an unfortunate use of
15 language in hindsight.

14:47

14:48

16 MR. HOGAN: And just finally, Mr. O'Sullivan, I think
17 the evidence, and again, so there has just been a bit
18 of time since the Inquiry, but, I think the evidence
19 from the expert was that there was no suggestion by
20 anybody of the Registrant's abilities as a
21 physiotherapist?

14:48

22 MR. O'SULLIVAN: No.

23 MR. HOGAN: Or nobody was calling into question her
24 work as a physiotherapist in any way?

25 MR. O'SULLIVAN: Absolutely, that is absolutely the
26 case.

14:48

LEGAL ADVICE BY MR. HOGAN:

MR. HOGAN: Okay. Thank you, Mr. O'Sullivan. So members of the Committee, you are near the conclusion of this Inquiry, and you have made findings, and you are meeting today to consider the issue of sanction.

14:48

When you have deliberated on sanction, you are required under Section 63 of the Act to prepare a report of your findings for Council.

14:49

And in that report you must specify, firstly, the nature of the complaint that has resulted in this Inquiry.

Secondly, the evidence presented to you.

14:49

And, thirdly, the findings that you have made as to whether any complaint has been substantiated or not.

Under subsection (3) of Section 63 you may include such additional matters as you consider appropriate. It is common practice to make a recommendation to Council as to the appropriate sanction in all the circumstances. The sanctions that are available to you in any recommendation that you might make to Council are those set out in Section 66(1) (a) to (e) and they are set out in ascending order of seriousness.

14:49

14:49

1 Firstly, you can impose an admonishment or a censure.

2
3 Secondly, the attachment of conditions to registration,
4 including restrictions on the practice of the
5 designated profession by the registrant.

14:50

6
7 Thirdly, the imposition of suspension on registration
8 for a specified period of time.

9
10 Fourthly, cancellation of registration.

14:50

11
12 And fifthly, a prohibition from applying for a
13 specified period for restoration to the register upon
14 cancellation.

15
16 Ultimately the obligation to impose a sanction rests
17 with Council and Council will not be bound in any way
18 by any recommendation that you may make to them in your
19 report on the basis of the findings that you have made.

14:50

20
21 I would remind you of the purpose of sanction. The
22 primary purpose of sanction is to protect the public,
23 but also to maintain the standards of the profession
24 and to maintain public confidence in the profession and
25 the regulatory process itself. Sanction is not
26 intended as a punishment of the registrant, although it
27 may have a punitive element or effect.

14:50

14:51

28
29 As has been identified to you by Mr. O'Sullivan, it is

1 important that you have regard to the principle of
2 proportionality in considering any recommendation on
3 sanction. You must weigh, on the one hand, the
4 interests of the public, that is the interest in
5 protecting the public against those of the registrant 14:51
6 such as the right to a professional reputation, or the
7 right to earn a livelihood in an appropriate case. You
8 must consider what sanction in any particular case will
9 achieve that balance in protecting the public, on the
10 one hand, but having regard to the interests of the 14:52
11 registrant on the other.

12
13 Again, as identified by Mr. O'Sullivan, allied to the
14 principle of proportionality is the principle of
15 leniency, that is you must afford the registrant with 14:52
16 as much leniency as possible in the circumstances, but
17 while also ensuring that the public is protected.

18
19 Again I agree with Mr. O'Sullivan, and this is the
20 common practice, is that you take a stepwise approach. 14:52
21 That is that you start with the so-called minor
22 sanctions and you work your way up until you stop at a
23 sanction that you feel is appropriate and proportionate
24 in all the circumstances.

25 14:52
26 And when you are finalising your consideration in
27 relation to sanction and what you might recommend, you
28 can still stand back and say, ask yourselves could we
29 be more lenient in this case?

1 Ultimately in considering the sanction you should have
2 regard to all of the circumstances of the case and the
3 nature and seriousness of the findings that you have
4 made.

5
14:53
6 You may consider whether any, what the consequences of
7 the conduct were, that is whether any harm was actually
8 caused to members of the public. In this case it is
9 conceded that no harm, there was no evidence of actual
10 harm. However, it is submitted to you that there was a 14:53
11 risk that persons, who may have heard the statements
12 made by the Registrant, may have acted upon them to
13 their detriment, but there is no evidence of any actual
14 harm having been caused.

15
14:53
16 You should have regard to the submissions of the
17 parties in relation to sanction. Obviously the
18 Registrant has chosen not to make submissions to you,
19 but you should have regard to the submissions of the
20 CEO. 14:54

21
22 You may also have regard to the position being adopted
23 by the CEO, that is a somewhat neutral position in
24 relation to sanction, that is that it's not being
25 suggested that any particular sanction be recommended. 14:54
26 But notwithstanding that, it is submitted to you and
27 urged upon you that this is a serious case that
28 requires a sanction at the upper end of the scale.
29

1 In considering sanction you should have regard to the
2 Council Guidance Notes that have been published in
3 relation to sanction.
4

5 In considering the circumstances of the case, you
6 should have regard to any mitigating or aggravating
7 factors that are present. Ultimately the weight that
8 you give to any particular mitigating or aggravating
9 factor is a matter for you, having regard to the nature
10 of the findings that you have made.
11

14:54

14:55

12 Examples of mitigating factors would be insight on the
13 part of the Registrant into the complaint and his or
14 her failings, for example, evidence of an understanding
15 of the problem, which led to the complaint; evidence of
16 attempts to address the problem to prevent
17 reoccurrence; to address any deficiencies; to
18 apologise, if appropriate.
19

14:55

20 On the other hand, a lack of insight may be an
21 aggravating factor and that is what is being urged upon
22 you on behalf of the CEO. Lack of insight may be
23 evidenced by a refusal to accept mistakes, for example,
24 promising to remediate but failing to take appropriate
25 steps to do so; failing to demonstrate any timely
26 development of insight.
27

14:55

14:55

28 You may also take into account previous findings that
29 have been made against the Registrant as an aggravating

1 factor and it is urged upon you to do so in this case.

2
3 As I've said, ultimately the weight that you give to
4 any particular mitigating or aggravating factor is a
5 matter for you.

14:56

6
7 I would also remind you that obviously, in terms of
8 insight and demonstration of insight, it's difficult
9 for the Registrant, having not participated either in
10 the Inquiry, or today before you at this sanction
11 hearing, it is difficult to consider the issue of
12 insight. But I would respectfully suggest that you
13 should be cautious about inferring anything as a result
14 of a failure, on the part of the Registrant, to engage.
15 Ultimately the onus was on the CEO to prove the case,
16 the subject of the Inquiry and not a matter of disproof
17 by the Registrant. But obviously it's more difficult
18 for a Registrant to not engage in the process and still
19 hope that some insight be found on their part.

14:56

14:57

20
21 As Mr. O'Sullivan has identified, the sanction that you
22 ultimately recommend must be only that as will
23 sufficiently protect the public, including reducing the
24 risk of harm and maintaining public confidence in the
25 profession and its regulation.

14:57

14:57

26
27 You should give reasons for your recommendation in
28 relation to sanction. As always, you're not obliged to
29 follow my legal advice, but should you depart from it,

1 you should give clear and cogent reasons for doing so.
2 Those are my advices.

3 CHAIRPERSON: Thank you very much. I'll ask my fellow
4 Committee members, firstly, whether they have any
5 questions for Mr. Hogan in relation to the advices
6 tendered to the Committee, Mr. O'Sullivan?

14:58

7 MR. O'SULLIVAN: No.

8 CHAIRPERSON: Ms. McCoy?

9 MS. McCOY: No.

10 CHAIRPERSON: Mr. O'Sullivan, do you wish to make any
11 submissions on the legal advice tendered to the
12 Committee?

14:58

13 MR. O'SULLIVAN: I agree with Mr. Hogan's advice,
14 Chair. Thank you.

15 CHAIRPERSON: well, in those circumstances, the
16 Committee will rise and consider the issue of sanction
17 that they will recommend to the Council in this matter
18 and we'll communicate those recommended sanctions to
19 Council in due course.

14:58

20 MR. O'SULLIVAN: Thank you very much.

21 CHAIRPERSON: That concludes matters. Thank you very
22 much.

23
24 THE HEARING THEN CONCLUDED.

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