

Notice of Decision of the Northern Ireland Social Care Council's Fitness to Practise Committee

Name: Caroline Bernadette Baker

SCR No: 6008013

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **26 May 2017**, made the following decision about your registration with the Northern Ireland Social Care Council:

The Committee found the facts proved;

The Committee found that your fitness to practise is impaired by reason of your conviction;

The Committee decided to make an Order for removal of your registration from the Register ('a Removal Order').

Particulars of the Allegation:

That, being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted of the following criminal offences at the Crown Court sitting in Craigavon:

1. Count 3: Defendant between the 1st day of February 2009 and the 20th day of December 2012, in the County Court Division of Craigavon, intentionally and sexually touched [Ms A] in a sexual manner involving penetration, she being unable to refuse because of or for a reason related to a mental disorder, and you knew or could reasonably be expected to have known that she had a mental disorder, and that because of it or for a reason related to it she was likely to be unable to refuse contrary to Article 43 of the Sexual Offences (Northern Ireland) Order 2008.
2. Count 4: Defendant between the 1st day of February 2009 and the 20th day of December 2012, in the County Court Division of Craigavon, intentionally and sexually touched [Ms A], she being unable to refuse because of or for a reason related to a mental disorder, and you knew or could reasonably be expected to have known that she had a mental disorder, and that because of it or for a reason related to it she was likely to be unable to refuse contrary to Article 43 of the Sexual Offences (Northern Ireland) Order 2008.
3. Count 5: Defendant between the 1st day of February 2009 and the 20th day of December 2012, in the County Court Division of Craigavon, intentionally caused or incited another person, namely, [Ms A] to engage in a sexual activity, the said person being unable to refuse because of or for a reason related to a mental disorder, and you knew or could reasonably be expected to know that she had a mental disorder,

and that because of it or for a reason related to it she was likely to be unable to refuse contrary to Article 44 of the Sexual Offences (Northern Ireland) Order 2008.

4. Count 13: Defendant That Keith Baker, between the 15th day of March 2004 and the 1st day of February 2009, in the County Court Division of Craigavon, had unlawful sexual intercourse with [Ms A], who at the time of the said intercourse did not consent to it, Keith Baker, either knowing that the said [Ms A] did not so consent or being reckless as to whether the said person so consented. And [the Registrant] did aid, abet, counsel and procure the commission of the said offence contrary to Article 18(1) Criminal Justice (Northern Ireland) Order 2003 and you did aid, abet, counsel and procure the commission of the said offence.
5. Count 14: Defendant That Keith Baker, between the 1st day of February 2009 and the 20th day of December 2012, in the County Court Division of Craigavon, intentionally penetrated with his penis the vagina of [Ms A], who did not consent to the penetration and he either knew that [Ms A] did not so consent or did not reasonably believe that the said person so consented. And [the Registrant] did aid, abet, counsel and procure the commission of the said offence contrary to Article 5(1) of the Sexual Offences (Northern Ireland) Order 2008 and you did aid, abet, counsel and procure the commission of the said offence.
6. Count 15: Defendant between the 15th day of March 2004 and the 1st day of February 2009, in the County Court Division of Craigavon, indecently assaulted a female, namely, [Ms A] contrary to Section 52 of the Offences Against the Person Act 1861.
7. Count 16: Defendant That Keith Baker, between the 1st day of February 2009 and the 20th day of December 2012, in the County Court Division of Craigavon, intentionally penetrated with his penis the mouth of [Ms A], who did not consent to the penetration and he either knew that [Ms A] did not so consent or did not reasonably believe that the said person so consented. And [the Registrant] did aid, abet, counsel and procure the commission of the said offence contrary to Article 5(1) of the Sexual Offences (Northern Ireland) Order 2008 and you did aid, abet, counsel and procure the commission of the said offence.

And, in light of the above, your fitness to practise is impaired by reason of your convictions.

Preliminary Matters

Service

The Registrant was neither present nor represented. The Council was represented by Mr Conrad Dixon, Solicitor, Tughans. In a Notice of Hearing dated 27 April 2017, sent by Special Delivery and addressed to the Registrant at her last known address, the Council notified her of the date, time and venue for this hearing. The postal package was signed as received on behalf of the Registrant on 28 April 2017.

The Committee, in all of the circumstances of the case, is satisfied that the Notice of Hearing has been served in accordance with Rule 3 of the NISCC Fitness to Practise Rules 2016 ('the Rules'), and the requirements of Paragraph 5 of Schedule 2 of the Rules.

Proceeding in the Absence of the Registrant

Mr Dixon made an application to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules, and that the Committee should hear and determine the case in her absence.

The Committee accepted the Legal Adviser's advice.

The Committee noted that, in advance of the hearing, the Registrant had completed and signed an Attendance Form sent to her by the NISCC. In that document, the Registrant indicated that she did not intend to attend the hearing and did not intend for a representative to attend on her behalf. The Registrant further indicated in that document, and in a subsequent undated letter to the NISCC received on 17 May 2017, that she wished for the matter to proceed in her absence and did not seek a postponement of the proceedings. The Committee observed that the allegation faced by the Registrant concerned convictions involving serious sexual assault on a third party. The Committee was satisfied that the Registrant was aware of the hearing and had clearly waived her right to participate in the hearing or be represented. The Committee further observed that no useful purpose would be served by an adjournment of the matter and noted the serious nature of the allegations, involving sexual assault, faced by the Registrant. The Committee concluded that the public interest outweighed the interests of the Registrant and, therefore, resolved to hear the case in her absence.

Application to Admit Hearing Bundle

The Committee heard an application from Mr Dixon under Paragraph 12 of Schedule 2 of the Rules to admit a bundle of papers into evidence. He advised the Committee that this bundle of papers had been served on the Registrant by way of Special Delivery post. On receiving advice from the Legal Adviser, the Committee was satisfied that the bundle met with the requirements of fairness and relevance and should be admitted.

Background

The Committee met to consider an allegation against the Registrant following her conviction before the Crown Court in respect of sexual offences committed by her on various dates between 15 March 2004 and 20 December 2012. The Committee was told that, following her conviction, the Registrant was sentenced on 04 April 2017 to a sentence of imprisonment for three years. The Committee was also told that the Registrant was subject to notification requirements under the Sexual Offences Act 2003, and had been placed on the Adult Barred List under the Safeguarding Vulnerable Groups (NI) Order 2007.

Evidence

The Committee received in evidence the hearing bundle (C1), which comprised the Certificate of Conviction and reports of the case from various media outlets. The Committee also received a short letter from the Registrant, which was undated but received by the NISCC on 17 May 2017 (D1).

Finding of Facts

At the outset of the proceedings, Mr Dixon referred the Committee to the Certificate of Conviction and Paragraph 12 (5) of Schedule 2 of the Rules, which addressed the proper approach to be adopted by the Committee upon considering a case in which current impairment was alleged by reason of a conviction.

The Committee was satisfied, in accordance with Paragraph 12 (5), that the Certificate of Conviction was conclusive proof of the conviction and the facts underlying it.

The Registrant is registered on Part 2 of the Register. She, along with her husband, had kept Ms A, a person with severe learning difficulties, in a room against her will, without a door handle, carpet, a lightbulb, bed clothes or curtains for a period of eight years. A third party had alerted the authorities to the conditions in which Ms A had been detained by the Registrant and her husband. Ms A was found to be emaciated and subsequent enquiries confirmed that she had been subjected to sexual abuse by the Registrant and her husband over a sustained period from 2004 until 2012.

Fitness to Practise

The Committee heard a submission from Mr Dixon that, in light of the facts found proved, the Registrant's fitness to practise was currently impaired. The Committee accepted the Legal Adviser's advice.

The Committee was in no doubt from its consideration of the hearing bundle that the Registrant's actions for which she had been convicted and imprisoned were reprehensible, and breached fundamentally the principles to which the Registrant should have adhered as a social care worker. In particular, the Committee concluded that the Registrant had breached the following provisions of the Standards of Conduct and Practice for Social Care Workers:

Standard 5: As a social care worker, you must uphold public trust and confidence in social care services. In particular you must not:

- 5.7 Put yourself or other people at unnecessary risk; and
- 5.8 Behave in a way, in work or outside work, which would call into question your suitability to work in social care services.

The Committee had no evidence upon which to conclude that the Registrant demonstrated insight into her offending behaviour, or remorse for her actions. On the contrary, the Committee noted in her undated letter referred to above that she wanted nothing further to do with the regulatory proceedings against her. In her letter, she stated 'I am currently serving my sentence and would appreciate no further correspondence'. In the absence

of evidence to demonstrate that the Registrant was remorseful, the Committee considered that she presented a risk in the future of repeating the behaviour which led to the referral.

In determining current impairment, the Committee also concluded that the Registrant, applying the principles set out in the case of Grant:

- a. Had acted in the past, and was liable in the future to act, in a manner so as to put a vulnerable person at unwarranted risk of harm; and
- b. Had acted in the past, and was liable in the future to act, in a manner which brought the social care profession into disrepute; and
- c. Had acted in the past, and was liable in the future to act, in a manner so as to breach fundamental tenets of the social care profession.

For these reasons, the Committee was satisfied that the Registrant's fitness to practise is currently impaired by reason of her convictions.

Sanction

The Committee heard a submission from Mr Dixon on the appropriate sanction to apply, having regard to the facts found proved and the Registrant's convictions. The Committee accepted the Legal Adviser's advice.

The Committee had regard to its powers under Paragraph 26 of Schedule 2 of the Rules in relation to the sanctions available to it, and also had regard to the Indicative Sanctions Guidance issued by the NISCC and, in particular, Paragraphs 5.4 and 5.5, which dealt with sexual misconduct.

The Committee first considered the mitigating factors and noted that few, if any, applied in the Registrant's favour, other than that she was previously a person with no disciplinary finding.

The Committee then considered the aggravating factors and identified, as relevant, the fact that the Registrant had committed serious sexual offences over a prolonged period against a vulnerable adult. She had grossly abused her position and had subjected Ms A to abuse and degradation of the most serious kind. The Registrant had demonstrated no insight into her actions and had not expressed any regret or empathy for the serious harm caused to Ms A over a prolonged period.

Warning – the Committee considered that it would be entirely inappropriate, having regard to its findings of fact, to conclude the matter by imposing a Warning. Such a sanction would fail to protect the public and would permit the Registrant to practise unrestricted in the future if she so desired.

Conditions of Practice Order – the Committee considered, having regard to its findings of fact, that imposing conditions on the Registrant's registration would not adequately protect the public. In addition, given the nature of the Registrant's offending, the Committee could not formulate any workable, enforceable or verifiable conditions which would prevent repetition of the behaviour which resulted in the Registrant's referral to the NISCC. The Committee was of the view that given her lack of insight and remorse for her actions, the risk of repetition of the Registrant's conduct remained.

Suspension – the Committee considered whether it would be proportionate to conclude the matter by imposing a Suspension Order. The Committee had regard to the sentencing Judge's remarks that the Registrant had been kept in 'a virtual state of marital captivity' and that she had played a secondary role to a domineering husband in respect of the mistreatment of Ms A. The Committee, however, noted that its primary purpose was to uphold and protect the public interest. The Committee observed that there had been no acknowledgement of her wrongdoing and that the Registrant had not demonstrated remorse for her actions. The Committee was satisfied that the Registrant's conduct had subjected Ms A to serious harm and was towards the highest end of the spectrum of serious misconduct.

Removal – the Committee was satisfied that the Registrant's actions, as found proved, were fundamentally incompatible with her remaining on the Social Care Register, and that the only proportionate sanction to apply was a Removal Order. The Committee had regard to, and could not improve upon, the characterisation of the actions of the Registrant and her husband made by the sentencing Judge when he said 'it is not easy to understand how these individuals have so lost their moral compass that they could subject an individual who clearly exhibited serious mental defects to mistreatment, in sexual terms depriving her of any dignity and even the most basic of living standards'.

A Removal Order, to the Committee's mind, was the only means by which the public could be protected from the Registrant, and would also send out a clear message that the Registrant's actions were deplorable and fundamentally breached the standards to be expected of a registered social care worker. The Registrant had acted in a seriously reprehensible manner and had abused her position of trust over Ms A over a prolonged period. The Registrant had also failed to bring the degrading treatment of Ms A to the attention of the authorities and had persistently lacked insight into the seriousness and consequences of her actions. The Registrant had also failed to demonstrate any empathy for the suffering which she inflicted on Ms A.

Accordingly, the Committee determined that the public interest could only be upheld and protected by making a Removal Order in this case.

Legal Advice Given To The Committee

Service

Your clerk has very helpfully shown to me the relevant materials, about which you have heard a little from Mr Dixon, and at this stage, subject of course to yourself, I am now in a position to advise you and your Committee colleagues on the issue of service.

The issue of service is dealt with in the 2016 Rules, and Rule 3 of the Rules makes provision for the service of documents and it makes it clear that unless the context otherwise specifies, any reference to the sending of a Notice to any person is a reference to it being sent, in the case of a Registrant to the Registrant's home address as it appears on the Register or, if the last known address differs from the address on the Register, then the Registrant's last known address.

In terms of the matters which must be adhered to in relation to your Committee in terms of service, that is dealt with by virtue of Paragraph 5 of Schedule 2 of the Rules, which makes clear that a Notice of Hearing, which should contain certain prescribed matters, should be sent to a Registrant not less than 28 days prior to the hearing, except with the agreement of the Registrant. In this case, I can confirm that that period has been complied with, 29 days on my estimation having been given to the Registrant of the hearing and, of course, you have also heard from Mr Dixon some evidence that the Notice of Hearing has been signed for and an Attendance Form has also been communicated by the Registrant to the Council.

So, in all of those circumstances, it would be my advice to you that, at this stage, at least, service has been effected in accordance with those Rules.

Proceeding in the Absence of the Registrant

The Committee must now consider the separate issue of whether it is fair and appropriate to proceed in the absence of this Registrant, Caroline Bernadette Baker, and it is right to say that that is a separate discretion which requires to be exercised judicially by you.

The decision to proceed with any regulatory matter, or any hearing indeed, in respect of a Registrant is a significant step where obviously the Registrant is not present and the case law has made clear that a Committee such as yours should only proceed to hear a case in the absence of a Registrant after exercising the utmost care and caution. The Courts have also provided helpful guidance in relation to those issues which bear on the question of the exercise of the discretion, and the factors identified by the relevant authorities are as follows:

The nature and circumstances of the absence and, in particular, whether the behaviour may be deliberate and voluntary and thus a waiver of the right to appear; next, whether an adjournment is likely to result in the Registrant attending the proceedings at a later date; next, the likely length of any such adjournment; next, whether the Registrant, despite being absent, wished to be represented at the hearing or whether she has waived that right; next, the extent to which any representative would be able to receive instructions from and present the case on behalf of the Registrant; next, the extent of the disadvantage to the Registrant in not being able to give evidence, having regard to the nature of the case; next, the general public interest and, in particular, the interests of any victims or witnesses that a hearing should take place within a reasonable time of the events to which it relates; and finally, where appropriate, the effective delay on the memories of witnesses.

Recent case law has also made plain that the analogy between proceedings such as yours and the criminal process should not be taken too far, and the Courts have been at pains to emphasise that the public interest should feature prominently in the decision making process in deciding whether or not to proceed in the absence of the Registrant because, obviously, this is not a case in which you will be seeking to punish this Registrant, rather this is a case in which the public interest features prominently. You must, however, balance the public interest appropriately, together with the Registrant's interests and also the interests of the regulatory body in coming to a decision. Obviously, in that regard, as well you, no doubt, will have regard to the Attendance Form submitted by the Registrant in advance of the hearing.

Application to Admit the Hearing Bundle

It is entirely proper, and in accordance with the Rules, that you should admit the hearing bundle at this stage.

Finding of Facts

You are dealing, essentially, in this case, with an allegation of impaired fitness to practise by virtue of a conviction. At this stage, you are required to consider the provision of the Rules which Mr Dixon has outlined for you, namely Paragraph 12 (5) of Schedule 2 of the Rules, in light of the hearing bundle and to establish whether the Certificate of Conviction relates to this Registrant and whether, as he asserts, it is framed in the allegation before you. If you are satisfied, and you have no evidence, for example, to suggest that it is anyone other than the Registrant, you have also no evidence to suggest that she has appealed her conviction, then you will be obliged to declare at the appropriate point that the facts in this case are proved by virtue of that conviction and you can then, only if you are so satisfied, move on to consider, in light of that, whether it can be said that the Registrant's fitness to practise is currently impaired.

Fitness to Practise

Recalling, of course, that the gateway, as it were, in respect of this particular set of proceedings, is that of conviction you have found the facts proved, by virtue of that conviction, and at the outset, you will be required to look at the behaviour or conduct underlying the conviction and, of course, in that respect, you will no doubt place reliance upon the documentary material contained in the hearing bundle and also the brief submissions which you have heard in respect of the Registrant's conduct from Mr Dixon.

Of course, no doubt, you will also look at the question of the engagement or the extent to which the Code of Conduct is engaged in this particular case.

It is important, also, to observe, at the outset, that the position is that the impairment stage of the proceedings does not require you to adhere to any particular standard of proof, the position in impairment is that you must exercise your judgement to come to a conclusion as to whether it can be said that the Registrant's fitness to practise is impaired.

It is also important to remember and to recall that the test for impairment is expressed in the present tense, that is to say fitness to practise is impaired as and of today. As the Court of Appeal noted in the case of *Meadow v General Medical Council*, the purpose of fitness to practise procedures is not to punish the practitioner for past misdoings but is rather to protect the public against the acts and omissions of those who are not fit to practise. Your Committee, therefore, looks forward and not back. However, in order to form a view as to the fitness of a person to practise today, it is evident that you will have to take account of the way in which the person concerned has acted or has failed to act in the past. Although the task for the Committee, therefore, is not to punish for past misdoings, you do need to take into account a range of past acts or omissions in determining whether it can be said that the Registrant's fitness to practise is impaired.

In relation to the factors to be taken into account in that determination, this was touched upon by the High Court

in the case of *Cohen v General Medical Council*, and the High Court reminded panels that it was critically important to appreciate the different tasks which panels such as yours undertake at each step of the adjudicative process. The critically important policy issues which must be taken into account by Committees such as yours were described by the Court in the case of *Cohen* as:

"The need to protect the individual service user ... and the need to maintain confidence in the profession, as well as declaring and upholding proper standards of conduct and behaviour which the public expect ... and that public interest includes amongst other things the protection of service users and the maintenance of public confidence in the profession."

Thus, in determining whether fitness to practise is impaired, you must take into account a range of issues which in essence comprise two elements:

First, that is to say, the personal component, that is to say the current competence, behaviour, et cetera, of the individual Registrant; and

Second, the public component, that is to say, the need to protect service users, declare and uphold proper standards of behaviour and maintain public confidence in the profession.

As the Court noted in *Cohen*, the sequential approach to considering an allegation, it means that not every finding in respect of a statutory ground, in this case a conviction, will automatically result in the Committee concluding that fitness to practise is impaired. As the Court observed, there must always be situations in which a panel can properly conclude that the act was an isolated error on the part of the practitioner and that the chance of it being repeated in the future is so remote that his or her fitness to practise has not been impaired.

The Court continued:

"It must be highly relevant in determining if ... fitness to practise is impaired that ... first the conduct which led to the charge is easily remediable, second that it has been remedied and third that it is highly unlikely to be repeated."

It is therefore important for you to recognise the need to address these critically important public policy issues identified in the case of *Cohen* and it means that you cannot adopt a simplistic view, you cannot conclude that fitness to practise is not impaired, for example, simply on the basis that since the allegation arose the Registrant has corrected matters or learned his or her lesson. As also indicated, the case of the *Brennan v Health Professions Council* makes plain that if you decide to find impairment on public interest grounds it is important for you to articulate your reasons for that.

The case of the *Council for Healthcare, Regulatory Excellence and Nursing and Midwifery Council v Grant* also provides useful guidance in relation to the proper approach to be adopted in determining whether fitness to practise can be said to be currently impaired and, in that case, Mrs Justice Cox cited, with approval, a formulation provided in the Fifth Shipman report, authored by Dame Janet Smith, in which she stated the following propositions:

"Do our findings of fact in respect of the Registrant's conviction show that her fitness to practise is impaired in the sense that she:

a) Has in the past acted and/or is liable to act in the future so as to put a patient or vulnerable service user at unwarranted risk of harm; and/or

b) Has in the past brought and/or is liable in the future to bring the social care profession into disrepute; and/or

c) Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the social care profession."

You have no other information from the Registrant, other than what you have been provided in the hearing bundle and also by virtue of exhibit D1, so there is, therefore, nothing further for me to address you on in respect of any material from the Registrant, except to remind you, of course, that you must consider this matter very carefully, including any available information from the Registrant which may sound on the question of impairment of fitness to practise and, of course, to exercise your judgement in that regard, balancing the personal and public components in a way that you see fit.

Sanction

Before you retire, at this, the third stage in the proceedings in respect of Caroline Bernadette Baker, I am obliged to give you some advice in relation to those matters which you can take into account at this stage.

Sanctions are set out for you at page 49 of the 2016 Rules and, by virtue of Paragraph 26 of Schedule 2, it makes plain your powers at this stage in the proceedings:

The Committee may warn a Registrant and direct that a record of the Warning be kept on the Registrant's entry for a specified period of up to 5 years; or make a Conditions of Practice Order for a specified period not exceeding 3 years; or make a Suspension Order for a specified period, not exceeding 2 years; or the most restrictive sanction, which is the Removal Order to remove the Registrant from the Register.

You are reminded by virtue of Paragraph 26 (2), that in deciding the sanction to impose, five matters should be taken into account, which are the seriousness of the Particulars of the Allegation found proved, the degree to which the Registrant has fallen short of the standards, protection of the public, the public interest in maintaining confidence in social care services and the issue of proportionality.

In order for you to properly approach the question of sanction, you must also have regard to the Indicative Sanctions Guidance document and, as its title indicates, the document is a guide and no more, it is for you to take into account the factors that you have determined in this case and to apply your judgement to those factors in arriving at the appropriate and proportionate sanction in this case.

To start off with, therefore, I would commend that you calibrate the seriousness of the conduct identified in this case and you may do that by looking at mitigating and aggravating factors, those are set out in a non-exhaustive list for you at Paragraph 3.2, mitigating factors and Paragraph 3.3, aggravating factors in the Indicative Sanctions Guidance document. Once you have calibrated the seriousness of the conduct, should you then look at the

available sanctions to you, and it is appropriate to say that you should commence your deliberations by considering whether the matter could be dealt with by way of a Warning. If, and only if, you are not satisfied that such a sanction would adequately protect the public should you move in ascending order up to and including, if you consider it appropriate, the most restrictive sanction which is one of removal.

As I have indicated to you previously at an earlier stage, you are not here to punish this Registrant and if you, in the exercise of your judgment, identify a sanction which you consider adequately protects the public you must stop at that point, because to move further than that would be to apply a punishment which is avowedly not the purpose of a sanction. That is the approach, which chimes with the Guidance and the Rules that you must act in a proportionate manner.

You must also, of course, take into account that the primary purpose of a sanction is to uphold and to protect the public interest, which of course encompasses maintenance of confidence in the social care profession and also encompasses declaring and upholding proper standards and proper performance.

Mr Dixon has already taken you to Paragraph 5 of the Indicative Sanctions Guidance which seems to be in play in this case, in that you have obviously found that in fact this case does involve the sexual abuse of a vulnerable person and I don't intend to say more about that than Mr Dixon has already alluded to.

You have the right to appeal this decision to the Care Tribunal. Any appeal must be lodged in writing within 28 days from the date of this Notice of Decision.

You should note that the Fitness to Practise Committee's decision takes effect from the date upon which it was made.


The effect of this decision is that your entry in the Register has been removed.

You are prohibited from working as a social care worker in any of the following positions:

- Care staff in a children's home, residential care home or nursing home.
- Manager of a residential care home, day care setting or domiciliary care agency.

It is **compulsory** for the above social care workers to be registered with the Northern Ireland Social Care Council in order to work. This is pursuant to the Northern Ireland Social Care Register (Social Care Workers Prohibition) and Fitness of Workers Regulations (Northern Ireland) 2013.

In accordance with Schedule 3, Paragraph 9 of the NISCC Fitness to Practise Rules, you may not apply to be restored to the Register within five years from the date of removal. This does not affect your right to appeal the Committee's decision to the Care Tribunal.



Committee Manager



Date