

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

SUSPENSION ORDER REVIEW HEARING

Name: Valerie Parkinson

SCR No: 6001057

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **18 August 2017**, made the following decision about your registration with the Northern Ireland Social Care Council:

The Committee found that your fitness to practise remains impaired;

The Committee decided to revoke the Suspension Order and impose a Removal Order on your registration.

Preliminary Matters

The Registrant was neither present nor represented. The Council was represented by Mr Anthony Gilmore, Solicitor, Directorate of Legal Services, Business Services Organisation.

Service

In a Notice of Review Hearing dated 20 July 2017, sent by Special Delivery and addressed to the Registrant at her address as it appears on the Register, the Council notified her of the date, time and venue for this hearing. The Notice was received and signed for on 21 July 2017. A hearing bundle was also sent by Special Delivery to the Registrant on 03 August 2017, and signed for on 04 August 2017.

The Committee is satisfied that the Notice of Review Hearing has been served in accordance with Rule 3 of the NISCC Fitness to Practise Rules 2016 ('the Rules') and the requirements of Paragraph 33 (5) of Schedule 2 of the Rules.

Proceeding in the Absence of the Registrant

Mr Gilmore made an application to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules. Mr Gilmore advised the Committee that in accordance with Paragraph 33 of Schedule 2 of the Rules, the Registrant was advised by way of letter dated 22 June 2017, that a review of her Suspension Order was being undertaken. In response to this correspondence, the Registrant wrote to the NISCC where she advised that she had not worked in the profession from 14 August 2014 and had no intention of seeking employment in the profession again. Mr Gilmore noted that the Registrant further indicated she did not intend

seeking registration again and was fully retired. In her Notification of Attendance Form dated 05 August 2017, the Registrant confirmed she did not intend attending the hearing, nor would she be represented. Mr Gilmore submitted that the Registrant had waived her right to attend, she had not sought a postponement or an adjournment or provided any medical evidence that she was unable to attend.

The Committee was mindful that the discretion to proceed in the absence of the Registrant should only be exercised with the utmost care and caution. The Committee heard and accepted the advice of the Legal Adviser.

The Committee noted that the Registrant did not attend the hearing in August / September 2016. The Committee also took into account that there is no suggestion from the Registrant that she seeks an adjournment or that she would be more likely to attend if the hearing were adjourned to another date. The Committee is satisfied that the Registrant has voluntarily decided not to attend and that no useful purpose would be served by an adjournment. The Committee has also taken into account public protection and the public interest in ensuring that the current Suspension Order is reviewed before it expires. The Committee, in all the circumstances, is satisfied that it is appropriate to proceed with this hearing in the absence of the Registrant.

Application for a Joint Hearing

Mr Gilmore applied to the Committee under Paragraph 4 of Schedule 2 of the Rules for the review hearings against both Registrants to be dealt with together. He advised that the original hearings were joined and that there would be no unfairness or injustice caused if these matters were joined today.

The Committee considered the application and noted the joint hearing when the original Committee dealt with the allegations against both Registrants. Taking into account all the circumstances, the Committee is satisfied that a joint review hearing would not prevent a fair and just hearing taking place.

Background

The Fitness to Practise Committee of the Northern Ireland Social Care Council at its meeting on 08 August 2016, 09 August 2016 and 12 September 2016 made an Order suspending the Registrant's registration for a period of 12 months, following a finding of impaired fitness to practise by reason of misconduct. The Fitness to Practise Committee found the following allegations against her proved:

1. On or about the nightshift on 14th–15th August 2014, you were found sleeping whilst on duty when you were employed to provide care and supervision of residents.
2. On or about the nightshift on 14th–15th August 2014, you failed to keep proper and contemporaneous notes in relation to the care of the residents.
3. On or about the nightshift on 14th–15th August 2014, you failed to comply with basic good practice in relation to the health and safety of the residents in terms of infection control and / or fire safety.

In its decision, the Committee found that the Registrant's actions posed a risk to service users. The Committee found that by sleeping on duty, the Registrant was unable to respond to the potential needs of service users and

to ensure their health, safety and welfare. The Committee considered that there were risks to service users and colleagues from the failure to comply with infection control and fire safety policies. In its decision, the Committee noted that it had no evidence that the Registrant had remediated her misconduct and considered there to be a risk of repetition. The Committee found the Registrant's engagement and insight to be limited. The Committee found that the Registrant's actions brought the profession into disrepute and that public confidence in the profession was undermined in all the circumstances.

The original Committee, in considering an appropriate and proportionate sanction, considered the Registrant's actions showed a serious disregard for the NISCC Standards of Conduct and Practice and constituted an abuse of trust.

In imposing a Suspension Order for 12 months, the Committee suggested that a review hearing would provide the Registrant with the opportunity to present evidence of her willingness to take steps to remedy her misconduct.

Fitness to Practise

The Committee heard a submission from Mr Gilmore on the issue of impairment. He submitted that the Registrant's fitness to practise remains impaired and referred the Committee to the lack of engagement by the Registrant as to today's review hearing and her failure to provide the Committee with any evidence that her previous conduct would not be repeated. In light of this, Mr Gilmore submitted there is a lack of insight on the part of the Registrant and that there is no evidence to show her willingness to take steps to remedy her misconduct.

The Committee accepted the advice of the Legal Adviser.

This is the first mandatory review of a 12 month Suspension Order. In considering whether the Registrant's fitness to practise remains impaired, the Committee reminded itself of the requirements set out at Paragraph 33 of Schedule 2 of the Rules. In considering this, the Committee is satisfied as to the reason for the alleged impairment of fitness to practise, as set out in the decision of the original Committee. The Committee noted the previous finding that the misconduct was serious and that the Registrant's failings involved sleeping at work, failures in record keeping and failures in complying with infection control and fire safety policies. Taking into account the Standards of Conduct and Practise for Social Care Workers as set out in the previous decision, the Committee considered the Registrant remains in breach of the same Standards.

The Committee then considered whether the impairment is capable of remediation and concluded that it was. However, there is no evidence before the Committee that the Registrant has taken any steps to remediate the impairment since the original Order was made. The Registrant has not demonstrated any insight into her failings, nor has she presented any evidence of her willingness to take steps to remedy her misconduct. In her letter received by the NISCC on 26 June 2017, the Registrant clearly states that she has fully retired and is not in a position to provide the NISCC with documentation, nor would she be seeking registration again.

Therefore, in view of the Registrant's lack of insight, lack of remediation and lack of engagement, the Committee could not be satisfied that there is no risk of repetition of the Registrant's misconduct in the future. In considering this, the Committee took into account the recommendation of Dame Janet Smith in her fifth Shipman report.

The Committee took into account the public interest when deciding whether the Registrant's fitness to practise remains impaired. The Committee accepted the need for the NISCC to uphold proper professional standards and public confidence in the social care profession. The Committee determined that public confidence would be undermined if a finding of impairment was not made in circumstances where a Registrant had been suspended but failed to engage with the NISCC, demonstrate insight or take any steps to remediate during the course of her suspension.

For these reasons, the Committee finds the Registrant's fitness to practise remains currently impaired.

Sanction

In reaching its decision on sanction, the Committee considered the submissions of Mr Gilmore and heard and accepted the advice of the Legal Adviser. The Committee took into consideration the NISCC Indicative Sanctions Guidance (June 2017), bearing in mind that the decision on sanction is one for the Committee's own independent judgement.

The Committee was aware of its powers as set out at Paragraph 33 (8) of Schedule 2 of the Rules. The Committee, in addition to the powers set out in this Paragraph, may allow the Suspension Order to run its course and expire on 11 September 2017. The Committee took into account the need to act proportionately and that the purpose of sanctions is not punitive.

The Committee noted the mitigating and aggravating factors as set out previously in the original Committee's decision. Aside from the Registrant's letter of 26 June 2017, the Committee has no further evidence from her.

Conditions of Practice Order – the Committee first considered whether to impose a Conditions of Practice Order to commence on the expiry of the current Suspension Order on 11 September 2017. The Committee determined that it would not be appropriate to impose a Conditions of Practice Order in all the circumstances. The Committee has no evidence to suggest the Registrant was currently working in the social care profession, nor that she would cooperate with conditions of practice or respond positively to re-training. The Registrant did not attend her initial hearing and was not present today. The Committee determined that no practicable or workable conditions could be formulated to adequately address the Registrant's failings. In addition, the Committee does not consider a Conditions of Practice Order sufficient to protect the public from the risk of repetition, nor would it meet the public interest in upholding proper professional standards and in maintaining public confidence in the NISCC.

Suspension – the Committee then went on to consider whether it would be appropriate to impose a further period of suspension. The Committee considered that the Registrant's misconduct and impairment was serious. The Committee considered the Registrant's misconduct had the potential to cause harm to vulnerable service

users and that she has failed to provide evidence that her misconduct has been remedied and lessons have been learned. The Committee noted the Registrant's submission that she has now "fully retired" and has no intention of seeking further employment in the profession. In all these circumstances, the Committee concluded that a further period of suspension would not resolve or remedy the Registrant's misconduct.

Removal – after careful deliberation, the Committee determined to revoke the Suspension Order and impose a Removal Order in accordance with Paragraph 33 (8) (g) of Schedule 2 of the Rules. The Committee concluded that removal from the Register is the only appropriate and proportionate sanction. The Committee concluded that the Registrant's misconduct, compounded by her lack of insight, is fundamentally incompatible with being a registered social care worker. There is no evidence of remorse and no evidence that the Registrant is likely to remediate her misconduct. The Registrant has clearly stated her intention not to seek employment in the social care profession in the future, nor seek a renewal of registration. She has further affirmed she is now fully retired. However, the Committee whilst taking into account the Registrant's retirement as a relevant factor when considering future risk, does not accept that this mitigates against the public interest in protecting service users and upholding public confidence in the profession. Taking into account all of the evidence, the Committee is of the view that confidence in the social care profession would be undermined by allowing the Registrant to remain on the Register.

The Committee considered the potential devastating impact of a Removal Order on the Registrant, but concluded that the public safety and the public interest outweighed the impact on the Registrant.

The Committee determined that a Removal Order was a suitable, appropriate and proportionate sanction, which will be imposed on the Registrant's registration with immediate effect.

Legal Advice Given

Service

I will proceed to give you advice on the issue of service at this stage, and I think the documentation is available for any of the Committee to consider in relation to the Notice to both of the Registrants. I am just taking an opportunity to confirm that. Just to confirm for the record that I have had an opportunity to consider the documents that Mr Gilmore has referred to in his opening submission and the dates that he has indicated are in fact correct. Generally, you will be aware that under Paragraph 33 (5) of Schedule 2 of the Rules, it specifies that no later than 28 days before a review hearing the Notice of Review must be sent to the Registrant. Therefore, the first question you must consider is whether this Notice has been properly served and whether the Registrant has received fair notice of this hearing today. I have had an opportunity to consider the documentation and in relation to both Registrants I can confirm that the matters were forwarded to them by way of Notice dated 20 July 2017, and this is in accordance with the Rules and in accordance with the time scale at 28 days' notice.

Rule 3 of the Fitness to Practise Rules deals with service of those documents and these documents have been

properly sent by Special Delivery, and again there are signatures to confirm the acceptance of those documents and, therefore, it would be my advice that it would be safe for you to consider that both the Notices have been served properly in accordance with the Rules.

In addition, the hearing bundles were sent to both parties, again on the same date, and you have confirmation from both parties that those have been signed for and it would be safe for you to accept that those documents have been accepted and properly served on the Registrant in each case.

Proceeding in the Absence of the Registrant

This is a matter now where you have been satisfied that the Notice of Hearing in relation to both Registrants have been duly served and you will be aware that you may now either hear and determine both matters in the absence of the Registrants or adjourn and give directions, and this is a matter of discretion for you. Mr Gilmore has referred you to the Rules in relation to this and I would refer you to the well-known case of *R v Jones [2003]*, with which you are familiar, and which is a starting point when considering proceeding in absence. This is a criminal matter but in that case Lord Bingham stated that 'the discretion to commence a trial in the absence of a Registrant should be exercised with the utmost care and caution'. In the recent cases of *Adeogba and Visvardis v GMC [2016]*, Sir Brian Leveson warned that in respect of *R v Jones*, which was a criminal matter, it is important to acknowledge the difference between criminal prosecution and regulatory matters. In criminal matters steps can be taken to enforce the attendance of a defendant and this is not open to you. In addition, there is an obligation on the Registrants to engage with their regulators.

In considering whether an adjournment may result in either of these Registrants attending the proceedings at a later date, I would ask you to look at the time involved in such an adjournment and the extent of the disadvantage to either of these Registrants in not being able to present their response to the review today. You should consider the seriousness of the matters before you today, the general public interest in these matters being dealt with, along with the interest of any service users. The Registrants are entitled to fair hearings, to attend, to be represented, to test the Council's case and present evidence on their own behalf. However, if either of these Registrants have the knowledge or means of knowledge of today's proceedings, you may conclude that either of them have voluntarily absented themselves and proceed in their absence. In considering this, you should look at what information you have today that indicated the Registrant had sufficient information to appreciate the importance of attending today.

In relation to Ms Parkinson, Mr Gilmore has referred you to information included in the returned attendance form and also you have correspondence on file in the bundles of papers and I would ask you to take that into account in your considerations.

The principle of fairness in relation to proceeding in absence also applies to the presentation of the Council's case. Therefore, in exercising your discretion, I would ask you to balance the rights of the Registrants on one hand against the wider public interest in the expeditious disposal of the matter. If you consider that these matters should proceed in the absence of the Registrants, you must avoid reaching any improper conclusion about their

absence and must not treat their absence as an admission in any way.

Application for a Joint Hearing

This is, as you have heard, an application from the Council that these matters may be joined and, in essence, heard together. You have heard that the previous hearing of this was an application that was made and accepted by the Committee at that stage. You are guided by Paragraph 4 of Schedule 2 of the Rules which specify that 'where allegations against two or more Registrants have been transferred to a Fitness to Practise Committee, and the allegations arise out of the same circumstances, a Committee may consider and decide the allegations against two or more persons at the same hearing subject to the requirements of a fair hearing'. Of course this is a decision for yourselves, you have had sight of the bundle of papers and you will be aware that there was no objection raised by either of the Registrants at the time in relation to this matter proceeding, although you have also heard there was no attendance at the hearing. So your considerations today relate to whether it is fair to proceed with these matters on a similar basis.

Impairment

Mr Gilmore has very fairly set out the Council's position in relation to the review today and he has referred you to the relevant Paragraphs and Rules. Under Paragraph 33 of Schedule 2, the Council must invite the Registrant to provide documents or information towards the end of a suspension period as to whether their fitness to practise remains impaired, and this has been done and you have the correspondence that was sent to each of the Registrants dated 22 June 2017, and you have within your bundles limited responses from the Registrants but nothing specifically in relation to that invitation. Paragraph 33 (3) (b) indicates that if there is a failure to comply with that reasonable request the matter is then referred to the Fitness to Practise Committee and this is a matter which you are hearing today. Paragraph 33 (4) indicates that a newly constituted Committee shall deliberate and determine:

Firstly, whether the Registrant has failed to comply with the Conditions of Practice Order, which is not relevant in this matter because this is a Suspension Order, and whether the Registrant's fitness to practise can be considered to no longer be impaired.

You have heard that the Registrants have had the required notice period to consider their positions in relation to this matter and that the focus of your review today must be upon the current fitness of each of these Registrants since the date of suspension. Therefore, you as a Review Committee will note the particular concern set out by the original Committee in their decision and seek to consider what steps, if any, both of these Registrants have taken to allay the concerns that were raised by the previous Committee during the period of suspension. The original Committee did find the Registrants' fitness to practise was impaired, and you must now ask yourselves does each of these Registrants' fitness to practise remain impaired.

Sanction

You have received and you have heard the very detailed submissions from Mr Gilmore and I would ask you to

take those into account. But I would also remind you that your decision as a Committee on this issue of sanction is one for you to make exercising your own common sense and judgement and considering all the factors in this case.

Mr Gilmore has quite rightly referred you to Paragraph 33 (8) of the 2016 Rules and he has laid out the options that you may take at this stage. You will be aware that the Suspension Order expires on 11 September 2017 and you have a number of options as set out at Paragraph 33 (8) which you may take, I emphasise the word 'may' for your consideration. He indicated and quite correctly referred you to your option of imposing a further Suspension Order in relation to both Registrants to commence on the expiry of the existing Suspension Order for a period no longer than two years. You may also consider imposing a Conditions of Practice Order, again to commence on the expiry of the Suspension Order for a period of no longer than three years in relation to the Conditions of Practice Order, or in relation to the Suspension Order that is currently in force against both Registrants you may consider revoking that and imposing a Removal Order, and these are all matters for your consideration.

In those considerations, I would also recommend to you, you are an experienced Panel, the Northern Ireland Social Care Council Indicative Sanctions Guidance. You will be aware and very conscious that the purpose of sanctions is not punitive but you must have at the forefront of your mind the protection of the public, looking at the protection of service users, maintaining confidence in the profession and upholding proper standards of conduct and behaviour. You must also act proportionately, balancing the interests of the Registrants against this overarching duty to protect the public. Again, I would ask you to look at sanctions in ascending order of severity, although you are confined in your considerations by Paragraph 33 (8).

I would also remind you that any limitation of the right to practise one's profession should be no more than is necessary in the circumstances and therefore you have a duty to act fairly. Now, unfortunately you have nothing before you from the Registrants to allow you to consider the impact of any continuing Order you may wish to look at.

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.

M. Stewart

Clerk to the Fitness to Practise Committee

22 August 2017

Date