

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

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**Name:** Angela Bell

**SCR No:** 6023594

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **07 June 2018**, 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 conviction;**

**The Committee decided to issue a warning and directed that a record of the warning should be placed on your entry in the Register for a period of five years.**

**Particulars of the Allegation:**

That, on 01 December 2016, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted of the following offence at Belfast Crown Court:

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| 1. | Defendant on the 26th day of February 2016, in the County Court Division of Belfast, had in her possession a controlled drug of Class B of Schedule 2 to the Misuse of Drugs Act 1971 namely, amphetamine, with intent unlawfully to supply it to another in contravention of section 4(1) of the Misuse of Drugs Act 1971 contrary to Section 5(3) of the Misuse of Drugs Act 1971. |
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And that by reason of the matters set out above, your fitness to practise is impaired because of your conviction.

**Procedure**

The hearing was held under the fitness to practise procedure.

**Preliminary Matters**

The Registrant was in attendance and represented herself. The Council was represented by Mr Anthony Gilmore.

**Application to Admit Hearing Bundle**

The Committee received an application from Mr Gilmore to admit a bundle of papers into evidence. The Committee accepted the submission that the bundle met the requirements of fairness and relevance and

admitted the bundle into evidence as Exhibit A, pursuant to Paragraph 12 (1) (a) of the Schedule 2 of the NISCC Fitness to Practise Rules 2016.

## **Background**

Mr Gilmore provided the Committee with the background to the Council's case. The Committee heard that the Council received a referral from MPA Recruitment dated 20 October 2017. The Registrant had been working for MPA, placed in Drumcross Day Centre, since 2016 as a support worker.

Mr Gilmore stated that in February 2016, the PSNI carried out a drugs search under a warrant at the Registrant's home address. At her home, they discovered a substantial amount of amphetamine and found scales in a bag behind a door, with powder traces on the scales.

The matter was investigated and, on 23 November 2016, the Registrant was arraigned and pleaded not guilty to two offences. On 01 December 2016, she was re-arraigned and pleaded guilty to the charge of possession of a controlled drug with intent unlawfully to supply it to another. On 13 January 2017, the Registrant was sentenced to 9 months imprisonment, the sentence to be suspended for one year.

On renewal of her AccessNI Enhanced Disclosure certificate with MPA, the conviction came to light. The Registrant posted documents to MPA and NISCC regarding the conviction on 19 October 2017.

## **Finding of Fact**

In reaching a decision on the facts, the Committee gave careful consideration to all of the evidence in this case and to the submissions of Mr Gilmore. The Committee heard and accepted the advice of the Legal Adviser.

The Committee finds that the Particular of the Allegation is proved. The Committee was satisfied that the Certificate of Conviction is conclusive proof of the conviction referred to. The Committee finds that on 26 February 2016, in the County Court Division of Belfast, the Registrant was convicted of having in her possession a controlled drug of Class B of Schedule 2 to the Misuse of Drugs Act 1971, namely amphetamine, with intent unlawfully to supply it to another in contravention of section 4(1) of the Misuse of Drugs Act 1971, contrary to Section 5(3) of the Misuse of Drugs Act 1971.

## **Fitness to Practise**

The Committee received submissions from Mr Gilmore. He submitted that the Registrant's fitness to practise is impaired by reason of her conviction. Mr Gilmore stated that impairment was defined in the Rules as circumstances which call into question the suitability of a registrant to remain on the register without restriction or at all. He referred the Committee to the requirements of Paragraph 24 (3) of Schedule 2 of the Rules. Mr Gilmore submitted that, in the opinion of the Council, the following Standards of Conduct have been breached: Standard 5 (5.8), Standard 6 (6.6).

Mr Gilmore submitted that the Registrant's conviction is serious and brings into disrepute the profession of social care. He submitted that the public are entitled to have confidence in those who provide care to the most

vulnerable. The Committee heard that the Council's position is that the Registrant's suitability to remain on the Register with restriction, or at all, has been brought into question because of her conviction. Mr Gilmore accepted that there is a degree of remediation, but stated that the primary concern for the Council is the public interest rather than public protection.

The Committee heard evidence from the Registrant. She told the Committee that she has been in social care for 12 years and working in Drumross for two years. Drumross is an adult centre in Newtownabbey for clients with challenging behaviour. She told the Committee that as a support worker she provides day to day duties, supporting them shopping, giving them a good day, whilst they are in the centre. The Registrant explained that she made a mistake. She was put in a position she could not get out of, her family were at risk but she took full responsibility for her actions which is why she pleaded guilty. The Committee heard that she is good at her job and really cares for her service users. She would never harm them, or let anyone else harm them. The Registrant told the Committee that she has recently got a full time position with the Northern Health and Social Care Trust ('the Trust') as a care worker in Drumross. She is currently employed by MPA, and if she was employed by the Trust this would give her more stability. The Trust was aware of her conviction.

In response to questions from the Committee, the Registrant explained that she did not tell NISCC or her employer about her conviction earlier because she could not bring herself to tell anybody. She stated that "shame just overcame me". Her employer kept her on even when the information came to light, and it was the facility manager at Drumross who had encouraged her to apply for the permanent role with the Trust.

The Committee found the Registrant to be a credible witness. The Committee accepted that her remorse was genuine and that she was passionate about her job as a carer.

The Committee heard and accepted the advice of the Legal Adviser.

The Committee first considered whether the Registrant's fitness to practise was impaired by reason of her conviction. The Committee had no hesitation in concluding that the Registrant's fitness to practise was impaired at the time of the conviction. The Committee determined that the Registrant had breached the Standards of Conduct for Social Care Workers, and found the Registrant's actions to be in breach of the following provisions:

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

5.8 Behave in a way, in work or outside work, which would call into question your suitability to work in social care services.

**Standard 6: As a social care worker, you must be accountable for the quality of your work and take responsibility for maintaining and improving your knowledge and skills. This includes:**

6.6 Informing NISCC and any employers you work for at the first reasonable opportunity if your fitness to practise has been called into question. This includes ill-health that affects your ability to

practise, criminal convictions, disciplinary proceedings and findings of other regulatory bodies or organisations;

6.11 Being open and honest with people if things go wrong, including providing a full and prompt explanation to your employer of what has happened.

The Committee next considered whether, as result of the misconduct, the Registrant's current fitness to practise is impaired as a result of the conviction.

The Committee kept at the forefront of its mind its duty to protect the public, uphold proper standards of conduct and behaviour and maintain public confidence in the social care profession.

The Committee considered that the Registrant demonstrated remorse for her actions and some insight. The Committee concluded that the conviction was capable of remediation but as it was a serious and relatively recent conviction, it had not yet been remediated. The Committee determined that it is unlikely that there will be any repetition of the events which led to her conviction. The evidence from the Registrant was very clear that she would never act in the same way again. However, the Committee was concerned as her solicitor set out in correspondence to the Council that the Trial Judge accepted that the Registrant was "under pressure, misguided and was vulnerable to pressure". The Committee could not therefore find that there was no risk of repetition.

The Committee was not concerned that the Registrant posed any risk to service users. The Committee noted the supportive approach taken by her employer when finding out about her conviction and the positive employee feedback from Drumross.

However, the Committee found that the Registrant's actions brought the profession into disrepute and, because of the serious nature of her conviction, public confidence in the profession would be undermined if a finding of impairment were not made. Therefore, the Committee determined that the Registrant's fitness to practise is currently impaired on public interest grounds.

### **Sanction**

In reaching the decision on sanction, the Committee had careful regard to all of the evidence in the case, together with the detailed submissions from Mr Gilmore. The Committee heard and accepted the advice of the Legal Adviser.

The Committee has taken into account that any sanction imposed must be appropriate and proportionate. The Committee reminded itself that the purpose of sanction is not to be punitive, although it may have a punitive effect.

The Committee first addressed the mitigating and aggravating factors. The Committee concluded that the mitigating factors in this case outweigh the aggravating factors. In reaching this decision, the Committee took into account:

- The Registrant has no previous convictions;

- She has been working for 12 years in social care and there is no evidence of any other regulatory or disciplinary proceedings;
- The Registrant has been co-operative throughout the Council investigation and appeared before the Committee today;
- The Registrant admitted the facts, which stands in her favour;
- She has demonstrated a degree of insight and made a genuine expression of regret;
- This was an isolated incident;
- There is evidence that the Registrant was acting under some degree of pressure;
- Since the date of her conviction, the Registrant has continued to work in the social care field. Her employer, and those at Drumross Adult Centre, continued to offer her employment even when made aware of the conviction. The Registrant has produced a reference from Drumross which describes her as "an excellent member of staff"; and
- The conviction did not relate to her work as a carer.

These mitigating factors were balanced against the aggravating factors namely:

- This is a serious and relatively recent conviction in relation to drugs; and
- The Registrant did not bring her conviction to the attention of her employer or NISCC at the first opportunity.

The Committee was of the view that at the time of her conviction, the Registrant's actions fell far short of the expected standards, although this had to be balanced against the more recent positive work reference. The Committee found the Registrant was not a risk to service users or the public, but that the Registrant's actions had brought the social care profession into disrepute. Whilst the primary purpose of sanctions is to ensure that a social care worker does not have the opportunity to repeat their misconduct, the Committee accepted that the secondary function is to maintain the reputation of the social care profession. The Committee took into consideration the principle of proportionality. The Committee heard from the Registrant about her job and her family life. The Committee carefully balanced the public interest in this serious conviction against the interests of the Registrant.

**Warning** - The Committee determined that a Warning was the appropriate and proportionate sanction in all the circumstances of this case. In reaching this decision, the Committee took into consideration the evidence that the actions of the Registrant which led to her conviction would not have caused direct or indirect harm to service users. The Committee found that the Registrant had a degree of insight into her failings and a clear commitment to change her behaviour so that the same events would not occur again. The Committee noted that the Registrant had a long history of working in social care and that this was a single incident in an otherwise unblemished career. The 12 month period for the suspended sentence is now expired without a custodial sentence being enforced. The Committee is therefore satisfied that there has been no repetition of the behaviour

which led to her conviction. The Committee was persuaded that a Warning was the appropriate sanction as a result of the genuine remorse of the Registrant and the evidence that she is and has continued to work in social care and is a valued member of staff at Drumross.

Although a Warning does not directly affect the Registrant's ability to practise, the Committee was satisfied that it would meet the public interest in this case. A Warning will be disclosed if an employer enquires about the Registrant's entry on the Register.

The Committee considered the Indicative Sanctions Guidance and took into account that a period of three years should be considered as the "benchmark" for a Warning. However, the Committee determined that it would be appropriate to increase the period to reflect the seriousness of the Registrant's conviction. In view of the nature of the conviction, the Committee determined to impose a Warning for a period of five years.

The Committee would like to take this opportunity to remind the Registrant of the importance of compliance with the Standards of Conduct and Practice for Social Care Workers, and in particular Standard 6.6:

'Informing NISCC and any employers you work for at the first reasonable opportunity if your fitness to practise has been called into question. This includes ill-health that affects your ability to practise, criminal convictions, disciplinary proceedings and findings of other regulatory bodies or organisations'

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## **Legal Advice Given**

### **Finding of Facts**

Paragraph 13 of Schedule 2 of the Rules sets down that the burden of proof shall rest upon the Council and the standard of proof shall be the balance of probabilities. The Council has brought these proceedings and the Council must therefore prove its case. As defined in *Re H*, and that is a 1990 case, the 'balance of probabilities' standard means that a court is satisfied that an event occurred if it is more likely than not.

You have before you a Certificate of Conviction and paragraph 12(5) of Schedule 2 sets out that when as a Committee you are dealing with the findings of fact, the certification of any UK criminal court shall be conclusive proof of the facts in the conviction so found. You should therefore ensure that the facts as set out in the allegation accord with the facts within the Certificate of Conviction. There are limited circumstances set out in paragraph 12(7) of Schedule 2 that allow a Committee to look behind the facts of the Certificate of Conviction and those are not applicable in the current case.

### **Impairment**

You are now tasked with deciding if this Registrant's fitness to practise is impaired. The Council's solicitor has highlighted to you that Rule 4 of the Fitness to Practise Rules 2016 sets out that a Registrant's fitness to practise may be impaired by one or more of a number of reasons and in this case you are asked to consider impairment by reason of her conviction.

Now, you have received both documentary evidence in the bundle of papers and also oral evidence from the Registrant this morning, and it is often said that oral live evidence is the best type of evidence that you can receive because you have the opportunity of hearing the Registrant, what she has to say, looking at her demeanour and the way that she answered the questions that she gave to you and you have put your own questions to her today and she has addressed those. So in your deliberations it is proper for you to take those factors into account and decide what weight you would give to the evidence you received from the Registrant, as well as the documentary evidence before you.

In the case of *Cheatle v GMC* Mr Justice Cranston made it clear that when dealing with impairment a Panel such as this should engage in a two-step process. Now, this is a conviction case so the first step for you is to consider whether one of the routes or gateways to impairment set out in the Rules has been established. The second step is then to look at whether, in light of that conviction, the Registrant's fitness to practise is currently impaired. It is well established that Panels such as this considering impairment should do so in the present tense, that means you should look at the Registrant today and decide whether her fitness to practise is impaired today. I would commend you to the decision in the case of *CHRE v Grant*, which is a 2011 case, and in particular the comments of Mrs Justice Cox at paragraph 74 when she stated that:

"In determining whether a practitioner's fitness to practise is impaired by reason of misconduct ..." as it was in that case "... the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also whether ... public confidence in the profession would be undermined if a finding of impairment were not made."

So the point in that case was that it is proper for you to take into account the public interest as well as public protection issues in your deliberations. Mrs Justice Cox went on to refer to the formulation adopted by Dame Janet Smith in her Fifth Report to the Shipman Inquiry and the test she formulated as an appropriate test for panels in considering the question of impairment, you may find this helpful in your deliberations today. You should consider firstly:

Has the Registrant acted in the past and/or is she liable to act in the future so as to put any service user at risk of harm.

Has the Registrant in the past, or is she likely in the future to behave in a way to bring the profession into disrepute.

Has the Registrant in the past, or is she liable in the future, to behave in a way so as to breach one of the fundamental tenets of the social care profession.

And has the Registrant in the past, or is she liable in the future, to act dishonestly. But I should it make clear to you that within the allegation in this case there is no dishonesty pleaded so there is no finding of dishonesty relevant to this Registrant.

I also know that the Committee as an experienced Committee will be familiar with Mr Justice Silber's guidance on remediation as set out in the case of Cohen. That is, firstly, whether the conduct which led to the charge in this case is easily remediable. Secondly, whether it has indeed been remedied and, thirdly, whether it is likely to be repeated. So the issue of remediation and future risk is an important one and one that you will have to take into account. It is a matter for you as a Committee using your own independent judgment to decide whether this is the case which falls into the category of an isolated incident in an otherwise unblemished career, as envisaged by Mr Justice Silber.

You have also had directed to you by Mr Gilmore paragraph 24 of Schedule 2 of the Rules which sets out the factors which you should take into account. And you must also ensure that when you look at the Standards of Codes and Practice issued by the Council Mr Gilmore has directed you to some standards but it is a matter again for you, exercising your own independent judgment, to decide whether there are any applicable issues from the standards and codes in this particular case.

### **Sanction**

The submissions from the Council have been fair and it is correct that it is not the Council's position that they should persuade you to take one particular course, nor indeed is it for the Registrant to try and persuade you to take another course, rather the role at this stage is that you as a Committee must exercise your own independent judgment and decide what the appropriate response is to the findings that you have made so far.

I will remind you, however, that the purpose of sanction is not to be punitive, it is not a punishment, though it can sometimes have that effect, rather the primary purpose of sanction is to protect service users and the wider public interest. The public interest does include the maintenance of confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour. As Lord Justice Law said in the case of *Raschid & Fatnani v General Medical Council*, and that is a 2007 case, the Panel is centrally concerned with the reputational standing of the profession rather than the punishment of an individual doctor, and again that would equally apply to a social care worker.

Mr Gilmore has directed you to the options which are set out for you at paragraph 26 of Schedule 2 of the Rules and indeed, sir, you have already highlighted those to everyone today; so you may warn the Registrant, you may impose conditions of practice, you may suspend the Registrant or you may direct a removal order. In reaching your decision you should take into account all the evidence that is placed before you, as well as the submissions from the Council at this stage. You have to take into account both the mitigating and the aggravating factors and you should have close regard to the NISCC Indicative Sanctions Guidance.

In reaching your decision you must apply the principle of proportionality which is set out for you at paragraph 2.6 of the Indicative Sanctions Guidance and that means weighing the public interest against the interests of the Registrant.



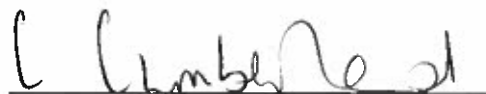
I will remind you that public interest includes protection of the public as well as the maintenance of confidence in the social care profession and the Council declaring and upholding proper standards of conduct and behaviour. You should consider each of the options that are available to you, starting with the least restrictive, and only working up the scale if the option you are considering is one that you reject. Unless I can be of any further assistance to you at this point, that would conclude my advice.

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**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 you have been warned and a record of the Warning has been placed on your entry in the Register for a period of five years (07 June 2018 – 06 June 2023). This warning does not affect your ability to practise.**



Committee Manager



Date