

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

Name: Neil Jon Dilworth

SCR No: 6025372

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

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

Particulars of the Allegation:

That on 12 April 2018, whilst being registered as a social care worker under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted of the following offences at the Magistrates' Court:

- | | |
|----|--|
| 1. | Defendant on dates between the 30th day of June 2017 and the 13th day of August 2017 in contravention of Article 3 of the Protection from Harassment (Northern Ireland) Order 1997 pursued a course of conduct which amounted to harassment of [Injured Party 1] and which you knew or ought to have known amounted to harassment, contrary to Article 4(1) of the Protection from Harassment (Northern Ireland) Order 1997. |
| 2. | Defendant between the 31st day of March 2017 and the 22nd day of September 2017 in contravention of Article 3 of the Protection from Harassment (Northern Ireland) Order 1997 pursued a course of conduct which amounted to harassment of [Injured Party 2] and which you knew or ought to have known amounted to harassment, contrary to Article 4(1) of the Protection from Harassment (Northern Ireland) Order 1997. |

And that by reason of the matters set out above, your fitness to practise is impaired because of your convictions.

Procedure

The hearing was held under the fitness to practise procedure.

Legal Advice Given

Advice given to the Committee by the Legal Adviser is contained within the body of this Decision.

Preliminary Matters

Service

In a Notice of Hearing dated 02 October 2018, sent by Special Delivery post and addressed to the Registrant at his address as it appears on the Register, the Council notified him of the date, time and venue for this hearing. The Notice was signed for on 03 October 2018.

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 Gilmore 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 his absence. Mr Gilmore advised the Committee that the Registrant has not responded in any way to the Notice of Hearing, nor the Disclosure bundle of evidence and Hearing bundle. He invited the Committee to conclude that the Registrant's absence was voluntary, and to proceed with the hearing having regard to the public interest in this matter.

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. In considering the application, the Committee sought to satisfy itself that all reasonable efforts had been made to notify the Registrant of the hearing, and accepted the advice of the Legal Adviser. She referred the Committee to the cases of *R v Jones* 2003 1 AC and *Adeogba and Visvardis v GMC* 2016. She reminded the Committee that in exercising its discretion to proceed in the Registrant's absence, it must have regard to all of the circumstances with fairness to the Registrant being of prime consideration, although fairness to NISCC and the public interest must also be taken into account. She reminded the Committee to avoid reaching any improper conclusion about the Registrant's absence and not to accept it as an admission in any way.

The Committee reminded itself that fairness to the Registrant should be a prime consideration. The Committee bore in mind the public interest in the expeditious disposal of the hearing, and that there was no evidence to indicate that the Registrant would be more likely to attend a future hearing if the matter was adjourned. Therefore, after careful consideration of all of the issues, the Committee decided to exercise its discretion to proceed in the absence of the Registrant, taking into account the nature of the allegations and striking a careful balance between fairness to the Registrant and the wider public interest. The Committee, in all of the circumstances, considers that the Registrant has voluntarily absented himself from today's hearing. However, the Committee reminded itself that it must avoid reaching any improper conclusion about the Registrant's absence, nor treat the absence as an admission of guilt.

Application to Admit Hearing Bundle

The Committee heard an application from Mr Gilmore under Paragraph 12 of Schedule 2 of the Rules to admit a bundle of papers into evidence. The Committee heard and accepted the advice of the Legal Adviser. She reminded the Committee that it is allowed to admit evidence, either oral, documentary or other, whether or not it would be admissible in a Court of Law, subject to the requirements of relevance and fairness. She also reminded the Committee that some documents may contain hearsay evidence, and that it will be for the Committee's judgement as regards the weight to give such evidence.

The Committee was satisfied that the bundle met with the requirements of relevance and fairness and admitted the bundle (Exhibit 1).

Background

Mr Gilmore told the Committee that the Registrant is registered at Part 2 of the Register as a social care worker, being first registered on 13 December 2016. He said that the Registrant commenced employment with First Choice Selection, a social care employment agency, from 25 September 2015. He advised that the Registrant had no previous referrals to NISCC and that, up to the time of these allegations, there were no employment difficulties. The allegations relate to the Registrant's harassment of another First Choice co-worker and a Trust employee, by way of nuisance calls. He referred the Committee to an employer referral form received from First Choice Selection, dated 13 October 2017, which confirmed that they had been contacted by the PSNI to advise that the Registrant was under investigation. The Registrant, at this stage, is noted within the form as confirming that he had been interviewed by the Police as regards the making of nuisance telephone calls, and that the content of the calls were obscene and of a sexual nature. Subsequent to this, the Registrant was noted as being 'uncontactable'.

Evidence

Mr Gilmore referred the Committee to the two certificates of conviction in the bundle of papers, each dated 19 April 2018. As regards the first Particular of the Allegation, the Registrant pleaded guilty on 08 March 2018 to harassment of Injured Party 1 between the dates of 30 June 2017 and 13 August 2017. The Registrant was sentenced on 12 April 2018, with a Probation Order for one year being imposed. In addition, the Registrant was made the subject of a Restraining Order – Protection from Harassment against this Party, with his consent, to last to 12 April 2020. As regards the second Particular of the Allegation, the Registrant pleaded guilty on 13 March 2018 to harassment of Injured Party 2 between the dates of 31 March 2017 and 22 September 2017. The Registrant was sentenced on 12 April 2018 with a Probation Order for one year being imposed. The Registrant was made the subject of a Restraining Order – Protection from Harassment against this Party, with his consent, to last to 12 April 2020.

Mr Gilmore confirmed that the Registrant did not appeal these convictions, and he referred the Committee to the 'Record of Interview' when the PSNI interviewed the Registrant on 08 October 2017. During this interview, the

Registrant admitted to making nuisance calls to Injured Party 1 and 2, and provided details of the nature and content of the harassing telephone calls with each of the injured parties. In relation to Injured Party 1, the Registrant admitted to making frequent calls over an extended period of time and that these calls were of an obscene nature. He admitted knowing Injured Party 1 through work and denied any sexual gratification in making the calls. He said that he was sometimes intoxicated when making the calls, and understood the impact of his behaviour on Injured Party 1. During this interview, he further confirmed making similar calls to the second injured party, and expressed remorse for his actions.

Mr Gilmore further referred the Committee to the two Police witness statements from Injured Party 1. In particular, he asked the Committee to note that she was extremely distressed as a result of these calls, and feared for her safety. She told the Police that the caller sounded coherent and sober during the calls. She further provided details of the personal impact of these calls upon her and her family.

Mr Gilmore applied under Paragraph 12 (5) of Schedule 2 of the Rules for the findings of fact, as set out in the certificates of conviction, to constitute conclusive proof of the convictions therein.

Finding of Facts

The Committee heard and accepted the advice of the Legal Adviser. She reminded the Committee that it must apply the standard of proof as applicable in civil proceedings, which is the balance of probabilities. She further referred the Committee to Schedule 2, Paragraph 12 (5) of the 2016 Rules as detailed by Mr Gilmore. In addition, she reminded the Committee not to draw any adverse inference in this Registrant not attending or giving evidence. She reminded the Committee that some of the documents within the bundle may contain hearsay evidence, requiring careful assessment and the application of appropriate weight.

The Committee reminded itself that the burden is on the Council to prove the facts as set out in the Particulars of the Allegation, and that to find the facts proved the Committee must be satisfied on the balance of probabilities. This means that for any fact to be found proved, the Committee must be satisfied that it is more likely than not to have occurred.

The Committee took into account the submissions from Mr Gilmore on behalf of the Council, and had careful regard to all of the documentary evidence submitted. The Committee finds that, on the balance of probabilities, the facts contained in the Particulars have been established. Taking into account Paragraph 12 (5) of Schedule 2 of the Rules, the Committee was satisfied that the certificates of conviction against the Registrant proved the facts therein. The two certificates of conviction against the Registrant relate to his making harassing telephone calls to two parties during a period from 31 March 2017 to 22 September 2017. The Registrant pleaded guilty to the charges of harassment, and a sentence by way of one year of probation was imposed along with a Restraining Order in relation to both injured parties, which will be in effect until 12 April 2020.

Taking all of this into account, the Committee finds proved on the balance of probabilities the facts in accordance with Rule 4 (1) (d) of the Rules.

Fitness to Practise

The Committee proceeded to consider if the Registrant's fitness to practise is impaired. The Committee heard submissions from Mr Gilmore, who advised that there were no formal admissions from the Registrant in relation to the allegations. He submitted that the Registrant's convictions call into question his ability to work in social care services, such as to bring into question his suitability to remain on the Register without restriction or to be registered at all. He referred the Committee to the Standards of Conduct and Practice for Social Care Workers, which he submitted that the Registrant's criminal convictions breach as follows: 5 – 5.1, 5.2, 5.7, 5.8 and 5.9. In addition, he submitted that the Registrant was in breach of Standards of Practice at 4.4.

He told the Committee that the Registrant's convictions and conduct fell far below the minimum standard expected of a registered social care worker, and called into question his fitness to practise. He reminded the Committee that the offences took place in a relatively recent time period, and that the Registrant remains subject to a Probation Order to April 2019 and two Restraining Orders until April 2020. In considering remediation, he said that the Committee has no evidence of insight by the Registrant into understanding the impact of his criminal behaviour on his colleagues. He accepted that during his Police interview, and in his submissions to NISCC, the Registrant expressed shame and remorse. However, in failing to attend the hearing, he has not provided clear evidence as to the motivation behind his behaviour, nor what he has learned and would do differently in the future. As regards the Registrant's statement to NISCC, dated 10 July 2018, Mr Gilmore suggested that in referring to the criminal convictions as being 'minor in the larger scheme of things', he demonstrated a lack of insight, particularly when he is currently under a Probation Order and two Restraining Orders. Mr Gilmore further submitted that there remains a risk of repetition in this matter. He said that there is no evidence from the Registrant that he has remediated his behaviour and, in view of the pattern of frequent harassment as detailed in the criminal convictions, there is a real risk of repetition in the future. Mr Gilmore further submitted that the public interest, and confidence in the social care profession, would be undermined if a finding of current impairment was not made in these particular circumstances.

The Committee considered the submissions from Mr Gilmore on behalf of the Council, and had regard to all of the evidence in the case. The Committee accepted the advice of the Legal Adviser. She referred the Committee to the Standards of Conduct and Practice for Social Care Workers, and advised it to adopt a sequential approach when considering the application. In particular, she asked it to take into account the nature and content of the criminal convictions against the Registrant, and reminded the Committee that it is being asked to determine whether the Registrant's fitness to practise is impaired because of these convictions. She referred the Committee to Paragraph 24 Schedule 2 of the Rules, and the requirements as set out in the case of the GMC v Cohen, looking at the current competence and behaviour of the Registrant along with the need to protect service users, members of the public, the upholding of proper standards of behaviour and the maintaining of public confidence in the social care profession. She further referred the Committee to the findings of Dame Janet Smith in the 5th Shipman Report as regards the potential causes of impairment, and also the contents of the Registrant's statement to NISCC, dated 10 July 2018.

The Committee considered whether the Registrant's fitness to practise is impaired by reason of his convictions as set out in the Particulars of the Allegation.

The Committee, in considering the issue of impairment of fitness to practise, took account of Paragraph 24 (3) of Schedule 2 of the Rules which states that it should have regard to:

- (a) whether it is satisfied as to the reason for the alleged impairment of fitness to practise;
- (b) the Standards of Conduct and Practice issued by the Council under Section 9 of the Act;
- (c) whether the impairment is capable of remediation;
- (d) whether the impairment has been remediated;
- (e) the risk of repetition; and
- (f) the public interest.

The Committee notes that the Registrant's two convictions for harassment of two injured parties took place over a period commencing on 31 March 2017 to 22 September 2017. The Committee considers these to be serious convictions, involving harassment by way of telephone calls to the Registrant's colleagues. He admitted making frequent telephone calls which he described as 'obscene' in nature, although he denied these as being for sexual gratification. The seriousness of the criminal convictions is reflected in the sentence imposed upon the Registrant, and the Committee is therefore satisfied as to the Particulars of the Allegation supporting impaired fitness to practise.

The Committee had regard to the Standards of Conduct and Practice for Social Care Workers and the Council guidance entitled 'Making a Determination of Impaired Fitness to Practise: Guidance for Committees on Remediation'. The Committee is satisfied that the Registrant's actions were in breach of the following Standards of Conduct:

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

- 5.1 Abuse, neglect or harm service users, carers or colleagues;
- 5.2 Exploit service users, carers or colleagues in any way;
- 5.7 Put yourself or other people at unnecessary risk;
- 5.8 Behave in a way, in work or outside work, which would call into question your suitability to work in social care services; or
- 5.9 Use social media or social networking sites or other forms of electronic communication in a way that contravenes professional boundaries, organisational guidelines or NISCC standards.

The Committee has no information or evidence from the Registrant as regards any action which he has taken to remediate his behaviour. In his statement to NISCC of 10 July 2018, he refers to attending Cruse Bereavement Counselling and awaiting enrolment in the Recovery College. However, the Committee has no evidence

confirming this information, and is therefore unable to consider whether this would be of assistance when considering remediation.

When considering the risk of repetition, the Committee took into account the comments made by the Registrant, both in his Police interview and in his statements to NISCC. In his Police interview, the Registrant said that he was 'really sorry' for his behaviour and, in his submission to NISCC, he expressed that he was deeply ashamed of what had happened and that he was extremely remorseful. He further stated that he recognised that he had caused hurt and trauma, and genuinely wished that it hadn't happened. However, the Committee notes that the Registrant failed to notify his employer or NISCC when he was the subject of a criminal investigation, and that he appears to consider the sentence imposed by the Court as not being severe and the convictions to be 'minor'. The Committee notes with concern that the Registrant does not consider that his convictions will have an impact on his ability to work as part of a team, particularly when he was convicted of harassing two colleagues and is still the subject of a Probation Order and two Restraining Orders. The Committee, therefore, considers there to be limited insight by the Registrant, taking into account the considerable impact on Injured Party 1. She described the huge impact which the Registrant's harassment had on her professional and personal circumstances. In the circumstances, the Committee considers there to be a continued risk of repetition by the Registrant of his behaviour.

The Committee concluded that the Registrant's convictions for harassment of two colleagues bring the social care profession into disrepute, and that the public would find it totally unacceptable that a Registrant convicted in these circumstances remained on the Register without restriction.

In all of the circumstances, the Committee concluded that a finding of impaired fitness to practise is, therefore, necessary for the maintenance of public confidence in the social care profession and the Council as its regulator, and that public confidence in the social care profession would be undermined if a finding of impaired fitness to practise was not made.

Therefore, the Committee concluded that the Registrant's fitness to practise is currently impaired by reason of his criminal convictions.

Sanction

In reaching its decision on sanction, the Committee considered the submissions of Mr Gilmore on behalf of the Council, and had regard to all of the evidence in this case.

The Committee accepted the advice of the Legal Adviser. She referred the Committee to Paragraph 26 of Schedule 2 of the Rules which provides that, upon a finding of impairment of fitness to practise, the Committee may:

- (a) warn the Registrant and direct that a record of the warning should be placed on the Registrant's entry in the Register for a specified period of up to 5 years; or
- (b) make a Conditions of Practice Order for a specified period not exceeding 3 years; or

- (c) make an Order suspending the Registrant's registration for a specified period not exceeding 2 years (a 'Suspension Order'); or
- (d) make an Order for removal of the Registrant's registration from the Register ('a Removal Order');
- (e) ...

She further reminded the Committee that in deciding which sanction to impose, the Committee should take into account:

- (a) the seriousness of the Particulars of the Allegation;
- (b) the degree to which the Registrant has fallen short of any expected standards;
- (c) the protection of the public;
- (d) the public interest in maintaining confidence in social care services; and
- (e) the issue of proportionality.

The Committee has applied the principles of fairness, reasonableness and proportionality, weighing the public interest with the Registrant's interests, and taking into account any aggravating and mitigating factors in the case. The public interest includes the protection of members of the public including service users, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour within the profession. The Committee took into account 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 Council's Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance'), bearing in mind that the decision on sanction is one for its own independent judgment.

The Committee recognises that the purpose of sanction is not to be punitive, although a sanction may have a punitive effect. The Committee considered the aggravating and mitigating factors in this case.

The Committee considers the aggravating factors to be:

- the Registrant's criminal convictions relate to harassment of two individual parties who were the Registrant's work colleagues, and this harassment took place over a prolonged period of time from 31 March 2017 to 22 September 2017;
- the harassing calls made by the Registrant were of a sexual and obscene nature;
- the calls were of a frequent nature, and sometime multiple calls were made during one night;
- the Registrant's calls were to two colleagues, and caused extreme distress and fear. Injured Party 1 suffered physical and mental exhaustion as a result of the harassment, and this had a severe impact on all aspects of her life;
- the Registrant abused his position as a work colleague in accessing private work details of colleagues;
- the Committee has no evidence of remediation or rehabilitation, nor has the Registrant provided any references or testimonials.

The Committee considered the mitigating factors to be:

- there were no previous concerns raised with the Council;
- the Registrant had worked as a social care worker for a period of five years without issue;
- during his Police interview and in his submissions to NISCC, the Registrant expressed an element of remorse for his actions;
- the Registrant made an admission to the criminal charges and pleaded guilty.

Having balanced the aggravating and mitigating factors, the Committee proceeded to consider which sanction to apply in this case.

Warning – the Committee considered the issue of a Warning in this case. It bore in mind that the imposition of a Warning for a period of time would not protect the public from the risk of repetition and consequent risk of serious harm to colleagues or members of the public. The Committee considers that the Registrant's criminal convictions demonstrate a serious disregard for the Standards of Conduct and Practice for Social Care Workers. The Registrant's impairment of fitness to practise is not at the lower end of the spectrum, nor are the circumstances such that the Committee would be confident that this sanction would provide adequate public protection as far as the Registrant's suitability is concerned, bearing in mind that a Warning would entitle the Registrant to work as a social care worker.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Registrant has demonstrated limited insight into his actions, and he has not expressed a desire to remediate his criminal behaviour. The Committee notes that as a result of the Registrant's criminal convictions, he remains the subject of a Probation Order and also two Restraining Orders as regards his two former colleagues. The Committee, therefore, concludes that a Conditions of Practice Order would not be sufficient to meet the public interest in this matter, given the seriousness of the Registrant's departure from the standards expected of a registered social care worker. In these circumstances, the Committee could not formulate workable, enforceable or verifiable conditions which would address the Registrant's criminal behaviour and adequately protect the public.

Suspension – the Committee next considered a Suspension Order. The Committee noted that it had made findings at the fact and impairment stage of the proceedings which were of a very serious nature, and related to the Registrant's breaching of fundamental tenets of the social care profession. The Standards of Conduct and Practice for Social Care Workers require a social care worker to treat each person, including his colleagues, as an individual with consideration, respect and compassion, along with respecting and maintaining their dignity. In particular, the Registrant in this matter was found guilty of harassing two former female colleagues, and placing them at risk of harm. As regards Injured Party 1, the Registrant's harassment caused her distress and left her terrified to go out socially. She described being afraid to be on her own at home, and felt vulnerable in work with her physical and mental exhaustion impacting on her ability to provide care to service users. The Committee has no evidence before it of remediation by the Registrant, nor has it any information to indicate that the Registrant is

unlikely to repeat his criminal behaviour in the future. The Committee considers the Registrant's remorse and insight to be limited, particularly in relation to the seriousness of his criminal convictions. The Committee considered the public interest in this matter. The Committee considers that the public would perceive the Registrant's criminal behaviour as falling short of what would be expected of a registered social care worker. In all of the circumstances, the Committee concludes that a Suspension Order would not be sufficient to mark the seriousness and unacceptability of the Registrant's criminal convictions.

Removal – the Committee then considered a Removal Order. In considering this, the Committee took into account the Guidance at 4.26 – 4.28. It concludes that given the seriousness of the Registrant's criminal convictions and his lack of sufficient insight into and remediation of his failings, a Removal Order is the only sanction appropriate to protect the public and to maintain public confidence in the social care profession and the Council as its regulator. The Committee considers the Registrant's actions to constitute a serious departure from the professional standards as set out in the Standards of Conduct and Practice for Social Care Workers and were deplorable in nature. The Registrant's criminal behaviour involved the harassment of work colleagues and constituted an abuse of his position as a social care worker, and brought the social care profession into disrepute. The Registrant has shown limited insight and remorse, has taken no remedial action and has failed to engage with the Committee in relation to today's hearing. In all of the circumstances, the Committee concludes that a Removal Order is the only sanction available to it that would protect the public and meet the public interest in upholding confidence in the social care profession and its regulator, by marking the seriousness and unacceptability of the Registrant's actions. The Committee considers that public confidence in the social care profession, and the Council as its regulator, would be undermined if a social care worker who was criminally convicted of harassment of his colleagues, and who failed to show sufficient insight or appropriate remediation, was allowed to remain on the Register. The Committee considered a Removal Order to be a suitable, appropriate and proportionate sanction which will be imposed on the Registrant's registration with immediate effect.

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.

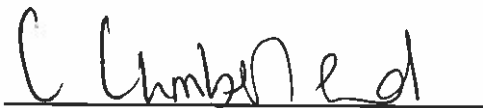
You are prohibited from working as a social care worker in any of the following positions:

1. A member of care staff at a:
 - a.) Children's home;
 - b.) Residential care home;
 - c.) Nursing home;
 - d.) Day care setting;

- e.) Residential family centre.
- 2. A person who is supplied by a domiciliary care agency to provide personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
- 3. A manager of a:
 - a.) Residential care home;
 - b.) Day care setting;
 - c.) Residential family care centre; or
 - d.) 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 Council (Social Care Workers Prohibition) and Fitness of Workers Regulations (Northern Ireland) 2013 and the Northern Ireland Social Care Council (Social Care Workers Prohibition) and Fitness of Workers (Amendment) Regulations (Northern Ireland) 2017.

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