

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

Name: Tracey Diane Ballantine

SCR No: 6032556

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council ('the Council'), at its meeting on **05 June 2019**, 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 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 the dates or during the time periods set out below, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), and whilst employed as a Support Worker by Manor Healthcare Limited at Broadacres Residential Unit, Templepatrick, you committed, and were subsequently convicted of the following offences:

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| 1. | Defendant on a date unknown between 31st December 2016 and 1st February 2017 at Broadacres Residential Unit, Templepatrick, ill-treated or wilfully neglected a patient, namely [redacted - 'Aggrieved Party 3'], who was for the time being subject to your guardianship under The Mental Health (Northern Ireland) Order 1986 or was otherwise in your custody or care, contrary to Article 121(2) of The Mental Health (Northern Ireland) Order 1986 |
| 2. | Defendant on a date unknown between 28th February 2017 and 1st day of April 2017 at Broadacres Residential Unit, Templepatrick, ill-treated or wilfully neglected a patient, namely [redacted - 'Aggrieved Party 1'], who was for the time being subject to your guardianship under The Mental Health (Northern Ireland) Order 1986 or was otherwise in your custody or care, contrary to Article 121(2) of The Mental |

	Health (Northern Ireland) Order 1986.
3.	Defendant on 16th day of May 2017 at Broadacres Residential Unit, Templepatrick, ill-treated or wilfully neglected a patient, namely [redacted – 'Aggrieved Party 2'], who was for the time being subject to your guardianship under The Mental Health (Northern Ireland) Order 1986 or was otherwise in your custody or care, contrary to Article 121(2) of The Mental Health (Northern Ireland) Order 1986.
4.	Defendant on 22nd day of May 2017 at Broadacres Residential Unit, Templepatrick, ill-treated or wilfully neglected a patient, namely [redacted – 'Aggrieved Party 3'], who was for the time being subject to your guardianship under The Mental Health (Northern Ireland) Order 1986 or was otherwise in your custody or care, contrary to Article 121(2) of The Mental Health (Northern Ireland) Order 1986.
5.	Defendant on 22nd day of May 2017 at Broadacres Residential Unit, Templepatrick, otherwise than cited at 4 above, ill-treated or wilfully neglected a patient, namely [redacted – 'Aggrieved Party 3'], who was for the time being subject to your guardianship under The Mental Health (Northern Ireland) Order 1986 or was otherwise in your custody or care, contrary to Article 121(2) of The Mental Health (Northern Ireland) Order 1986
6.	Defendant on 22nd day of May 2017 at Broadacres Residential Unit, Templepatrick, otherwise than cited at 4 and 5 above ill-treated or wilfully neglected a patient, namely [redacted – 'Service User 1'], who was for the time being subject to your guardianship under The Mental Health (Northern Ireland) Order 1986 or was otherwise in your custody or care, contrary to Article 121(2) of The Mental Health (Northern Ireland) Order 1986.
7.	Defendant on 22nd day of May 2017 unlawfully assaulted [redacted – 'Service User 1'], contrary to section 42 of the Offences Against the Person Act 1861.
And your actions as set out above show that your fitness to practise is impaired by reason of your convictions.	

Procedure:

The hearing was held under the Fitness to Practise procedure.

Preliminary Matters

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

Service

In a Notice of Hearing dated 29 April 2019, sent by Special Delivery post 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. There was an attempt to deliver the package on 30 April 2019, and the package was returned to the Council on

01 May 2019 marked as 'Recipient not at address'. The Notice of Hearing and Hearing Bundle were sent via an encrypted email to a known email address for the Registrant on 01 May 2019. The Registrant replied to the email and stated that she would not be attending the hearing as she was recovering from surgery. A further email was issued to the Registrant on 01 May 2019, asking the Registrant if she would like to postpone the hearing to another date that suited for her to attend. The Registrant replied to the email on 21 May 2019, stating that she did not want a postponement and was content that the hearing proceed in her absence, and that she would not be represented.

The Committee heard and accepted the advice from the Legal Adviser. She referred the Committee to Rule 3 of Part 1 of the Rules and Paragraph 5 (2) of Schedule 2 of the NISCC Fitness to Practise (Amendment) Rules 2019 ('the Rules').

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 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 her absence. He advised that the Registrant had given a reason for her non-attendance and confirmed that she did not seek to postpone the hearing and was content with the hearing proceeding in her absence.

The Committee heard and accepted the advice from the Legal Adviser, who referred it to the need to exercise its discretion with the utmost care and caution. She referred the Committee to the principles identified in the cases of R v Jones and Adeogba v GMC. She reminded the Committee that the Registrant is entitled to a fair hearing, to attend, to be represented, to test the Council's case and to present evidence on her own behalf. She reminded the Committee that it must consider not only fairness to the Registrant but fairness to the Regulator in exercising its discretion.

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. The Committee reminded itself that fairness to the Registrant should be a prime consideration, but that fairness to the regulatory body should also be taken into account.

The Committee decided to proceed in the absence of the Registrant. In reaching this decision, the Committee had particular regard to the factors set out in the decision of R v Jones and to the overall interests of justice and fairness to all parties. It noted that:

- no application for a postponement or adjournment has been made by the Registrant;
- the Registrant has confirmed with the Council that she does not intend to attend the hearing and that she will not be represented;

- there is no reason to suppose that an adjournment would secure her attendance at some future date;
- the charge relates to events that occurred in 2017;
- there is a strong public interest in the expeditious disposal of the case.

The Committee accepted that there is some disadvantage to the Registrant in proceeding in her absence. The Registrant will not be able to give evidence on her own behalf and will not have the opportunity to test the Council's case. However, the Committee determined that this disadvantage can be mitigated. The Committee can make allowances for the fact that the Council's evidence will not be tested by the Registrant and can, of its own volition, explore any inconsistencies in the evidence which it identifies.

In these circumstances, the Committee decided that it is fair, appropriate and proportionate to proceed in the absence of the Registrant. The Committee will draw no adverse inference from the Registrant's absence in its findings of fact.

Application to Admit Hearing Bundle

Mr Gilmore requested that the Hearing Bundle be admitted into evidence. The Committee accepted the bundle into evidence and marked it as Exhibit 1. The Committee also received into evidence an email from the Registrant dated 01 May 2019, and marked it as Exhibit 2.

Background

Mr Gilmore told the Committee that the Registrant is registered at Part 2 of the Register as a social care worker. During the period of the Allegation, she was employed as a support worker at Broadacres Residential Unit. She commenced employment there on 09 June 2015 and was employed to work with vulnerable adults. She was employed in a residential unit that has four residents, all with severe learning difficulties and mental health difficulties. The four residents living there have round the clock care from support staff who work on a shift pattern.

On Friday 26 May 2017, one of the care workers in the unit contacted the manager to arrange a meeting to report bad practice and mistreatment of the service users by the Registrant. On 27 May 2017, a meeting was held and statements were taken. The Registrant was suspended on 27 May 2017, and an Employer Referral Form was received by the Council notifying them of the allegations on 30 May 2017.

Mr Gilmore told the Committee that there was a police investigation, and that the Registrant was convicted of seven offences at the Magistrates' Court on 29 May 2018.

Evidence

The Committee was referred to the Certificates of Conviction in the bundle of evidence dated 11 January 2019. These Certificates of Conviction recorded that the Registrant pleaded not guilty to the charges on 28 November 2017. According to the Certificates of Conviction, the Registrant was sentenced to six months' imprisonment on each charge but, on that date, she sought bail pending appeal. Thereafter, the matters were appealed and the

case was heard by the County Court on 08 January 2019. The County Court judge upheld each conviction but varied the sentence. Rather than an immediate custodial sentence, the judge imposed a combination order of Community Service for 100 hours, along with a Probation Order for 3 years, and compensation was also ordered. Mr Gilmore applied under Paragraph 12 (5) of Schedule 2 of the Rules that the Committee should find the Certificates of Conviction be conclusive proof of the facts or convictions therein.

Finding of Facts

The Committee heard and accepted the advice of the Legal Adviser. She reminded the Committee that the standard of proof is the balance of probabilities. She referred the Committee to Schedule 2, Paragraph 12 (5) of the Rules. She advised the Committee that some of the documents within the bundle may contain hearsay evidence, requiring careful assessment and the application of the 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 considered the submissions from Mr Gilmore on behalf of the Council, and had regard to all of the documentary evidence submitted. The Committee determined that, on the balance of probabilities, the facts contained within the Particulars of the Allegation have been proved. The Committee had careful regard to the Certificates of Conviction and the requirements of Paragraph 12 (5) of the Rules, and concluded that the Certificates of Conviction proved the facts therein. The Certificates of Conviction relate to seven offences and three separate service users. The Committee noted that the Registrant was convicted of six offences of ill treatment or wilful neglect of a patient under the Mental Health (Northern Ireland) Order 1986, and one conviction for common assault contrary to the Offences Against the Person Act 1861.

Fitness to Practise

The Committee next considered if the Registrant's fitness to practise is impaired. The Committee heard submissions from Mr Gilmore, who advised the Committee that there had been no formal admission from the Registrant in relation to impairment. Mr Gilmore submitted that the Registrant's convictions called into question her ability to work in social care services and to remain on the register without restriction or at all. He directed the Committee to the Standards of Conduct and Practice for Social Care Workers. He submitted that the following Standards of Conduct had been breached: Standard 1 - 1.1, 1.2, 1.3, 1.8 and 1.9, Standard 2 - 2.2, Standard 3 - 3.1, 3.3 and 3.7, Standard 4 - 4.1, Standard 5 - 5.1, 5.7, 5.8 and Standard 6 - 6.1 and the following Standards of Practice have been breached: Standard 2 - 2.1 and 2.3, Standard 3 - 3.1, 3.2, 3.12 and 3.13.

The Committee heard and accepted the advice of the Legal Adviser. She referred the Committee to Paragraph 24 of Schedule 2 of the rules and the requirements as set out in the case of GMC v Cohen. She directed the

Committee to the findings of Dame Janet Smith in her 5th report to the Shipman Inquiry and her guidance on the causes of impairment.

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 the Committee shall 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 was satisfied that the Registrant's convictions were the reason for the alleged impairment of fitness to practise. The Committee noted that there are seven convictions as a result of a pattern of ill treatment or wilful neglect of several service users over the course of some months, and a further conviction of assault on a service user, and concluded that this was a serious matter.

The Committee next considered the Standards of Conduct and Practice for Social Care Workers and determined that the Registrant's actions were in breach of the following Standards of Conduct:

Standard 1: As a social care worker, you must protect the rights and promote the interests and wellbeing of service users and carers. This includes:

- 1.2 Treating people with consideration, respect and compassion;
- 1.3 Empowering service users and carers to communicate their views, needs and preferences, taking account of their preferred language and form of communication;
- 1.4 Respecting and, where appropriate, representing the individual views and wishes of both service users and carers;
- 1.8 Respecting and maintaining the dignity and privacy of service users; and
- 1.9 Treating service users and carers fairly and promoting equal opportunities.

Standard 2: As a social care worker, you must strive to establish and maintain the trust and confidence of service users and carers. This includes:

- 2.2 Communicating in an appropriate, open, accurate and straightforward way.

Standard 3: As a social care worker, you must promote the autonomy of service users while safeguarding them as far as possible from danger or harm. This includes:

- 3.1 Promoting service users' independence and empowering them to understand and exercise their rights;

- 3.3 Following practice and procedures designed to keep you and other people safe from violent and abusive behaviour at work; and
- 3.7 Recognising and using responsibly with service users and carers, the power that comes from your work role.

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;
- 5.7 Put yourself or other people at unnecessary risk; or
- 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:

- 6.1 Meeting relevant standards of practice and working in a lawful, safe and effective way.

The Committee found that the Registrant's actions were in breach of the following Standards of Practice:

Standard 2: As a social care worker, you must be able to communicate effectively. This includes:

- 2.1 Developing effective relationships with service users and carers; and
- 2.3 Using a range of communication methods and styles to meet a service user's communication needs, wishes and preferences.

Standard 3: As a social care worker, you must deliver person-centered care and support which is safe and effective. This includes:

- 3.1 Promoting and applying person-centred values in your day to day work with service users and carers;
- 3.2 Delivering care in line with assessed needs and service user and carer preferences
- 3.10 Supporting service users in their daily living;
- 3.12 Contributing to the physical and emotional well-being of service users and carers; and
- 3.13 Enabling service users and carers to make informed choices about their lives and to actively participate in decision-making processes.

The Committee gave careful consideration to whether the conduct which led to the Registrant's convictions could be remediated. The Committee was concerned that the nature of the convictions, and the range of offences over a prolonged period of time, demonstrated a risk that the Registrant's actions could not be remediated. However, on balance, the Committee concluded that in circumstances where there was insight, an acceptance of what had gone wrong and a willingness to change, remediation could take place.

In respect of remediation, the Committee has no information or evidence from the Registrant to demonstrate that her actions have been remediated. The Committee has no evidence of remorse, no apology from the Registrant to the service users involved, to their families or to the Council. Despite the Certificates of Conviction, the Registrant had emailed the Council to say that she did "not admit any wrongdoing". As a result, the Committee found that the Registrant demonstrated a concerning lack of insight. The Committee noted that during her Police interview in July 2017, the Registrant tried to justify some of her actions and did not accept any responsibility for her actions.

The convictions in this case are extremely serious and with no evidence of insight, remorse or remediation the Committee concluded that there continues to be a risk that the Registrant could repeat this behaviour in the future. This was not an isolated incident, involving a single service user. The Registrant was convicted in respect of conduct impacting on a range of service users over a prolonged period of time. The Committee concluded that there is a real risk of repetition.

The Committee considered the public interest, and concluded that public confidence in the profession and the Council as a regulator would be undermined if a finding of impairment were not made. The Committee considered there to be a high public interest in the consideration of this case. The Committee was of the view that a fully informed member of the public would be seriously concerned by the Registrant's convictions, which occurred when she was providing care to vulnerable service users. The public interest is heightened because of the vulnerability of the service users. The Registrant remains on probation. Therefore, the Committee determined that a finding of impairment on public interest grounds was also required.

Therefore, the Committee determined that the Registrant's fitness to practise is currently impaired by reason of her convictions.

Sanction

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

The Committee accepted the advice of the Legal Adviser. She referred the Committee to the Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('Indicative Sanctions Guidance').

In deciding which sanction to impose, the Committee took 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 recognises that the purpose of sanction is not to be punitive, although sanction may have a punitive effect. The Committee first considered the mitigating and aggravating factors in this case, and found the mitigating factors to be:

- the Registrant has co-operated to a limited extent with the Council investigation; and
- the Registrant has a previous good work history and previous good character.

The Committee considered the aggravating factors to be:

- the Registrant has been convicted of ill treatment or wilful neglect and assault involving vulnerable service users in her care;
- her offences were committed at work;
- her actions were deliberate;
- this was not an isolated incident, her offences occurred over a prolonged period of some months;
- her actions caused actual harm to service users;
- the Registrant has demonstrated a concerning lack of insight;
- the Registrant demonstrated no regret for her actions;
- there is a real risk that she could repeat her actions;
- the Registrant has demonstrated a serious disregard for the Council's Standards of Conduct and Practice.

The Committee received no mitigation from the Registrant. The Committee did not have the benefit of any references, testimonials or expressions of regret or apology.

The Committee proceeded to consider the appropriate sanction to apply in this case:

No Sanction - the Committee had no hesitation in concluding that it would neither be appropriate or proportionate if no sanction were imposed in this case. This is a serious conviction case. The Committee has already identified a risk of repetition. To impose no sanction would not prevent the Registrant from repeating her conduct and would not meet the public interest in this case.

Warning - the Committee considered a Warning, but was satisfied that a Warning was not the appropriate sanction. The Committee determined that the seriousness and number of convictions meant that a Warning was not proportionate. In light of the Registrant's lack of insight, lack of remorse and lack of regret, the Committee concluded that a Warning was not sufficient to meet the fitness to practise concerns identified.

Conditions of Practice Order - the Committee next considered a Conditions of Practice Order. The Committee concluded that a Conditions of Practice Order could not be determined to address the Registrant's criminal conduct and 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.

Suspension - the Committee next considered a Suspension Order. The Committee has no evidence of remediation by the Registrant, nor has it any information to indicate that the Registrant is unlikely to repeat the same behaviour if she finds herself in similar circumstances in the future, even after a period of suspension. The Committee had no evidence of any insight or remorse from the Registrant. The Committee did not have any evidence that the Registrant would be able to resolve or remedy the cause of her behaviour during a period of suspension. In light of all the above, the Committee concluded that a Suspension Order would not be sufficient to mark the seriousness of the Registrant's conduct, nor meet the public interest.

Removal - the Committee then considered a Removal Order. The Committee has already found that the Registrant's actions were serious and that there is a real risk of repetition. The Committee accepted the submission on behalf the Council. The Committee considered that the Registrant's failure to demonstrate insight or remorse caused the Committee to conclude that her behaviour is fundamentally incompatible with being a social care worker.

The Committee considered the factors set out a paragraph 4.27 of the NISCC Indicative Sanctions Guidance and concluded that:

- the Registrant was convicted of ill treatment or wilful neglect and assault in respect of the vulnerable service users in her care;
- the Registrant abused her position of trust;
- the Registrant has persistently demonstrated no insight into the seriousness of her actions and the consequences of her action; and
- the Registrant's actions constitute a serious departure from the relevant professional standards set out in the Standards of Conduct and Practice for Social Care Workers. In the view of the Committee, the Registrant has brought the profession into disrepute.

The Committee accepted the Council's submission that the Registrant's conduct demonstrates that she is fundamentally incompatible with professional social care registration. In the view of the Committee, there was evidence of serious and persistent contempt for the safety, rights and dignity of the service users in her care, resulting in criminal convictions.

In all of the circumstances, the Committee concluded that a Removal Order is the only sanction available to it that would protect the public and meet the public interest. The Committee considered that a Removal Order is necessary to mark the importance of maintaining public confidence in the social care profession, and to send to the public and the profession a clear message about the standards of behaviour required of a registered social care worker.

The Committee carefully considered the potential impact which this Order could have on the Registrant. However it concluded, because of the seriousness of the convictions, that any consequences for the Registrant are outweighed by the need to protect the public and maintain public confidence in the social care profession.

The Committee determined that a Removal Order is the 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:

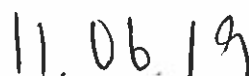
1. A member of care staff at a:
 - a.) Children's home;
 - b.) Residential care home;
 - c.) Nursing home;
 - d.) Day care setting;
 - e.) Residential family centre.
2. A person who is supplied by a domiciliary care agency to provide personal care in their own homes for persons who by reason of illness, 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. You are prohibited from working in a social care role until a successful application for restoration onto the Register has been made to the Council.



Committee Manager



Date