

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

SUSPENSION ORDER REVIEW HEARING

Name: Jennifer Victoria Porter

SCR No: 2041834

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **20 September 2019**, made the following decision about your registration with the Northern Ireland Social Care Council ('the Council'):

The Committee found that your fitness to practise remains impaired;

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

Procedure

The hearing was held under the fitness to practise procedure.

Preliminary Matters

Service

Mr Dixon advised the Committee that a Notice of Review Hearing, dated 15 August 2019, was sent by Special Delivery post to the Registrant at her address as it appears on the Register, which notified her of the date, time and venue for this hearing. The Committee was advised that the package was delivered and signed for on 16 August 2019.

Accordingly, the Committee is satisfied that reasonable efforts have been made to notify the Registrant of this matter and that the Notice of Review has been served in accordance with Rule 3 and Paragraph 33 (5) of Schedule 2 of the Northern Ireland Social Care Council Fitness to Practise (Amendment) Rules 2019 (the Rules').

Proceeding in the Absence of the Registrant

Mr Dixon invited the Committee to proceed to deal with the Suspension Order Review hearing in the Registrant's absence. Mr Dixon submitted that there had been no engagement by the Registrant with the Council in relation to these proceedings. Mr Dixon submitted that as the Registrant has not engaged at any stage, an adjournment would not secure her attendance on some future date.

The Committee heard and accepted the advice of the Legal Adviser, who reminded the Committee that the decision to proceed in the absence of the Registrant should be exercised with the utmost care and caution. The Committee was satisfied that the Registrant had been served with the Notice of Review Hearing, which notified her of the date, time and venue for this hearing, details of the Allegation and her right to attend the hearing.

The Committee took into consideration the detail in the Notice of Review Hearing and the correspondence sent to the Registrant dated 11 July 2019, and determined that the Registrant had been provided with sufficient information about the nature of the hearing today, the importance of attending, the type of information she could submit to the Committee and her ability to seek a postponement if required.

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 an adjournment has been made by the Registrant;
- the Registrant has not engaged with the Council and has not responded to any of the letters sent to her by the Council about this matter;
- there is no reason to suppose that adjourning would secure her attendance at some future date;
- the current Order is due to expire on 02 October 2019;
- there is a strong public interest in the expeditious disposal of the case.

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.

Background and Submissions on behalf of the Council

The Committee heard that this is the first review of a Suspension Order imposed by a Fitness to Practise Committee on 02 and 03 April 2019, and that the current Order is due to expire on 02 October 2019.

Following the Fitness to Practise hearing on 02 and 03 April 2019, the following Particulars of the Allegation were found proved:

1. Sometime between 09 May 2013 and 16 March 2016 you used inappropriate and / or derogatory language in relation to service user(s).
2. Sometime between 09 May 2013 and 16 March 2016 you used an inappropriate sexual gesture in relation to a kinship carer.

Mr Dixon told today's Committee that the original Committee heard evidence relating to serious allegations which took place when the Registrant was a social worker at the Southern Health & Social Care Trust ('SHSCT') Looked After Children's Team ('LAC'). The original Committee found that the Registrant had used inappropriate and derogatory language and used an inappropriate sexual gesture in relation to a kinship carer. Mr Dixon

advised that this decision was made after hearing from four witnesses, and that the original Committee found their evidence to be credible.

Mr Dixon submitted that at the initial hearing a finding was made that the Registrant's fitness to practise was impaired by reason of her misconduct, and noted that the original Committee found that seven Standards of Conduct and Practice had been breached. He submitted that the original Committee had provided clear guidance to the Registrant that a period of suspension would allow her the opportunity to present evidence of the steps which she had taken to remediate her misconduct. Despite this, he advised the Committee that the Registrant has not engaged and has provided no evidence of remediation.

Mr Dixon submitted that in these circumstances, the Committee should revoke the current Suspension Order and impose a Removal Order, as this is an appropriate and proportionate sanction to protect the public and is in the public interest.

The following is an excerpt from the determination of the Fitness to Practise Committee on 02 and 03 April 2019:

Fitness to Practise

The Committee moved on to consider if the Registrant's fitness to practise is impaired. The Committee heard submissions from Mr Dixon. He submitted that the Registrant's fitness to practise is impaired by reason of misconduct. Mr Dixon submitted that in the opinion of the Council the following standards have been breached: Standard 1: 1.1, 1.2, 1.8, 1.9 and 1.10, Standard 2: 2.2, Standard 3: 3.7, Standard 5: 5.8, Standard 6: 6.3, 6.12, 6.13.

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. She also referred the Committee to the cases of GMC v Roylance and CHRE v Grant.

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 first considered whether the facts found proved amount to misconduct. The Committee determined that the facts found proved involved repeatedly using inappropriate and derogatory language about a range of very vulnerable service users and vulgar sexual gestures in relation to a kinship carer. This conduct occurred in the work place and the Committee determined that it was serious. In reaching this decision the

Committee took into account the evidence that the use of derogatory language was deliberate and prolonged. It was not a mistake or error of judgement on one occasion. Although there was no evidence that the Registrant used this type of language or gestures in front of service users. The Committee was satisfied that behaving in this way in front of other members of the team, some of whom were more junior, was serious misconduct. The Committee heard evidence that the Registrant's use of inappropriate sexual gestures made other members of the team feel uncomfortable and the Committee was in no doubt that the general public would consider her actions deplorable.

The Committee had regard to the Standards of Conduct for Social Workers and found the Registrant's actions to be in breach of the following provisions:

Standard 1: As a social 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;
- 1.8 Respecting and maintaining the dignity and privacy of service users;
- 1.9 Treating service users and carers fairly and promoting equal opportunities.

Standard 2: As a social 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 5: As a social worker, you must uphold public trust and confidence in social work 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 worker, you must be accountable for the quality of your work and take responsibility for maintaining and improving your knowledge and skills. This includes:

- 6.3 Being personally accountable for your actions and able to explain and account for your actions and decisions;
- 6.12 Co-operating with any investigation or formal inquiry into your conduct, the conduct of others, or the care or services provided to a service user where appropriate.

The Committee determined that the facts found proved involved serious and repeated departures over a prolonged period of time, of the standards of conduct expected of a registered social worker.

The Committee next considered whether as a result of the misconduct found proved, the Registrant's fitness to practise is impaired. The Committee kept at the forefront of its mind when reaching this decision, the duty to protect the public, uphold proper standards of conduct and behaviour and maintain public confidence in the social work profession.

In the Committee's judgement, the Registrant's inappropriate use of sexual gestures and the derogatory language used about vulnerable service users would undoubtedly have brought the social work profession into disrepute. The Committee determined that respect and compassion are fundamental tenets of the social work profession and the Registrant has breached both of these.

With regard to future risk, the Committee concluded that the Registrant's misconduct is capable of remediation. The Committee considered that the Registrant's misconduct could be remediated if she demonstrated insight into her failings. However, the Committee determined that it has not yet been remedied. The Committee found there to be a concerning lack of insight on the part of the Registrant. The Registrant resigned before the Trust investigation concluded and did not engage with the Council investigation or hearing. As a result, there was no evidence before the Committee that the Registrant acknowledged her conduct was inappropriate or had taken any steps to remediate.

In the absence of remediation, the Committee was very concerned about the risk of repetition. The Registrant has failed to explain to the Committee any steps she would take to ensure that she did not use similar inappropriate or derogatory language in relation to service users or inappropriate sexual gestures in the future. The Committee therefore determined that a risk of repetition remains.

The Committee considered the public interest and concluded that the public interest is engaged in this case. The Committee was of the view that a fully informed member of the public would be seriously concerned, in particular, by the way that the Registrant spoke about vulnerable service users. Social Workers are in a trusted position, which is a position of privilege. As a result, they are expected at all times to be professional, to maintain professional boundaries and refrain from making judgemental, derogatory, personal comments about vulnerable service users. The Committee also determined 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 was concerned that if a finding of impairment were not made, other social workers may consider the Registrant's actions to be acceptable. The Committee received evidence that the Registrant's language and behaviour made her colleagues feel uncomfortable and the Committee was in no doubt that it was unacceptable. Therefore, the Committee determined that a finding of impairment on public interest grounds was also required.

Accordingly, the Committee determined that the Registrant's fitness to practise is currently impaired.

Sanction

In reaching its decision on sanction the Committee considered the submissions of Mr Dixon 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 recognised 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 a good work history and good character;*
- *there have been no previous concerns raised with the Council;*
- *the Committee has seen no evidence of repetition of these events since concerns were raised with the Council in 2016;*
- *the Registrant's actions did not cause direct or indirect harm to service users;*
- *her actions were confined to the office, not in front of service users;*
- *the Committee heard evidence that this type of behaviour was condoned and participated in by her line manager. The Committee determined there was a culture of this type of behaviour in some parts of the team at that time.*

The Committee considered the aggravating factors to be:

- *the actions of the Registrant demonstrated a serious lack of respect and compassion for service users;*
- *the Registrant demonstrated a lack of insight;*
- *the Registrant has not expressed any remorse or regret;*
- *the Registrant resigned before the Trust investigation concluded and did not participate in the Council investigation or attend the hearing;*
- *her actions were repeated on more than one occasion;*
- *she has demonstrated a serious disregard for NISCC's Standards of Conduct and Practice.*

Having balanced the aggravating and mitigating factors, 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. In the view of the Committee, if no sanction were imposed this would not mark the seriousness of the misconduct or meet the public interest in this case.*

Warning- *the Committee considered a Warning. The Committee found that the Registrant had not caused any harm, either direct or indirect to service users. The Committee determined that a warning would send a clear message to the Registrant that this behaviour was not acceptable and must not happen again. The Committee was satisfied that a warning would be recorded against the Registrant's entry on the register and would ensure*

any future employer would be aware that the Committee found her actions to be unacceptable. However, without evidence of any insight or remediation the Committee remained very concerned about the risk of repetition.

Conditions of Practice Order- the Committee next considered a Conditions of Practice Order. The Committee had already determined that the Registrant's misconduct could be remediated. However, the Registrant has not engaged in the process and is not present today. The Committee has no evidence as to the Registrant's current employment circumstances, or whether she would agree to any conditions imposed. A Conditions of Practice Order in these circumstances, would therefore be unworkable and inappropriate.

Suspension- the Committee next considered a Suspension Order. Although the Committee considered that the Registrant's misconduct and impairment is serious, it does not consider it so serious as to justify removal from the Register. In particular, her actions did not cause harm to service users. The Committee did not accept the submission of Mr Dixon that there was evidence of deep seeded attitudinal problems on the part of the Registrant. The Committee heard evidence of a culture of this type of behaviour in certain parts of the Registrant's team, including her line manager. In the view of the Committee, this does not remove the Registrant's individual and professional responsibilities to exercise respect and compassion in relation to vulnerable service users, but it would make a removal order disproportionate. The Committee determined that the Registrant's behaviour is not fundamentally incompatible with continuing to be a registered social worker in the long term. Suspension will give a clear message to the Registrant, the public and the profession that the Registrant's conduct was not appropriate for a social worker. The Registrant has a good work history and no other complaints have been raised with the Council in respect of her professional practice. The Committee noted that a Suspension Order would be reviewed at the conclusion of the period of suspension and that the Registrant would have the opportunity to present evidence of the steps she had taken to remediate her misconduct. This would address the risk of repetition identified. A review committee may be assisted by engagement with the Council by the Registrant and in particular provision of evidence of remediation. The public would be sufficiently protected in the meantime by a period of suspension.

The Committee carefully considered the potential impact a Suspension Order could have on the Registrant. However, it concluded that any consequences for the Registrant are outweighed by the need to protect the public and maintain public confidence in the social work profession.

The Committee determined that suspension for a period of six months would be proportionate to the seriousness of the facts found and would provide an adequate opportunity for the Registrant to demonstrate remediation.

Removal- the Committee did consider a removal order. Whilst acknowledging that some of the factors listed in the Indicative Sanctions Guidance were engaged, the Committee concluded that a Removal Order would be disproportionate, in particular as the Registrant did not cause harm to service users. On balance the Committee was persuaded that a Removal Order at this stage would not be appropriate.

The Committee concluded that a Suspension Order for a period of six months was the most suitable, appropriate and proportionate sanction to be imposed on the Registrant's registration with immediate effect.

Decision on Current Fitness to Practise

This is the first mandatory review of a six-month Suspension Order.

The Committee heard and accepted the legal advice from the Legal Adviser. She referred the Committee to cases of Cohen and Grant. She referred the Committee to Rule 33 of Schedule 2 and Rule 33 (8). She reminded the Committee that it was not to review the original findings but was to conduct a review on the evidence today, and to exercise its independent judgement as to whether the Registrant remains currently impaired. She advised the Committee that it should consider any evidence or information that has demonstrated remediation, insight or level of risk of repetition in reaching its decision. In relation to sanction, she advised the Committee that it should consider the Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('Guidance'). She reminded the Committee that the purpose of sanction is not to be punitive, though it may have a punitive effect.

The Committee gave careful consideration to the submissions and the documentary evidence. The Committee first considered whether the Registrant's practice remains impaired. The Committee reminded itself that impaired fitness to practise describes those circumstances which call into question the suitability of a Registrant to remain on the Register without restriction or to be registered at all. The Committee exercised its own judgement in reaching its decision. The Committee was mindful of the need to protect the public, to maintain public confidence in the social care profession and to declare and uphold proper standards and conduct in the profession.

The Committee was of the view that this is a serious matter. The facts found proved related to unprofessional conduct which the Committee found to be shocking. The Committee concluded that the previous Committee had provided clear guidance to the Registrant on what was required and that despite this, there is no new evidence and no information from the Registrant about her insight or any remedial action taken by her since the Suspension Order was imposed. The Committee noted that the Council wrote to the Registrant on 11 July 2019, inviting her to provide information but that she did not respond.

The Committee concluded that the complete lack of engagement from the Registrant demonstrated a further lack of insight. There is nothing before the Committee to give it any confidence that the Registrant has resolved or remedied the cause of her misconduct during the period of her suspension. The Committee noted that the Registrant had not engaged with the Council at all and was concerned that the Registrant, still at this late stage, had not apologised for her actions. The Committee was therefore of the view that there remains a risk of repetition of her previous misconduct, and that a finding of continued impairment was required on public interest grounds.

The Committee had regard to the Standards of Conduct of Practice for Social Care workers and found the Registrant to be in breach of the following Standards:

Standard 1: As a social 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;
- 1.8 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 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 5: As a social worker, you must uphold public trust and confidence in social work 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 worker, you must be accountable for the quality of your work and take responsibility for maintaining and improving your knowledge and skills. This includes:

- 6.3 Being personally accountable for your actions and able to explain and account for your actions and decisions; and
- 6.12 Co-operating with any investigation or formal inquiry into your conduct, the conduct of others, or the care or services provided to a service user where appropriate.

The Committee is satisfied that the Registrant remains currently impaired and that she continues to pose a risk to the public if she is permitted to practise unrestricted and to bring the profession into disrepute.

Sanction

Having found that the Registrant's fitness to practise is currently impaired, the Committee then considered what sanction, if any, it should impose. The Committee noted the powers as set out in Paragraph 33 (8) of Schedule 2 of the Rules and took into consideration the Indicative Sanctions Guidance.

Allow the Current Order to Expire - the Committee first considered whether to take no action and allow the current Order to expire. The Committee concluded that this would be inappropriate in view of the risk of repetition identified and the seriousness of the matter.

Conditions of Practice Order - the Committee noted that the Registrant had failed to engage in a meaningful way with her regulator and has shown no insight into her failings. The Committee also has no evidence that she would be willing to comply with a Conditions of Practice Order. As the Committee has no evidence about her current employment, the Committee is unable to determine whether conditions would be workable. On balance, the Committee concluded that there are no proportionate, workable or measurable conditions which would sufficiently protect the public and meet the public interest.

Suspension Order - the Committee next considered imposing a further Suspension Order. The Committee was of the view that the misconduct found proved at the previous hearing, although serious, remains capable of being remediated. However, the Registrant has not engaged, has not provided evidence of any increased insight or steps which she has taken to resolve the cause of her misconduct during the course of her suspension. The period of suspension provided the Registrant with the opportunity to reflect on the cause of her misconduct, to learn from her past mistakes and ensure it would not be repeated in the future. She has provided no evidence to the Committee that she has taken this opportunity to reflect and to change, or indeed that she accepts that what she did was wrong. After a full and careful consideration of all of the evidence before the Committee today, the Committee concluded that there is nothing to suggest that the Registrant would take any action to resolve or remedy the cause of misconduct during a further period of suspension.

Removal Order - the Committee determined that the appropriate and proportionate sanction was to revoke the Suspension Order and impose a Removal Order. The Committee concluded that the Registrant's misconduct, compounded by her lack of insight, is fundamentally incompatible with her being a registered social worker. The Committee concluded that the Registrant's failure to resolve the cause of her misconduct during the period of her suspension, and the ongoing risk of repetition, could only be met by removal. The Committee considered that public confidence in the Council and the reputation of the profession would be undermined if the Registrant was allowed to remain on the Register after a period of suspension despite failing to say sorry, accept her wrongdoing or take any action to change her ways.

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

The Committee determined that a Removal Order was the only suitable, appropriate and proportionate sanction, to be imposed 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.

It is compulsory for all qualified social workers to be registered with the Northern Ireland Social Care Council in order to work. If you practise as a qualified social worker, you will be guilty of an offence pursuant to Article 8 of the Health and Personal Social Services Act (Northern Ireland) 2001. Article 8 states that if a person who is not registered as a social worker in any relevant Register takes or uses the title of social worker or any description implying that s/he is registered as a social worker, or in any way holds him/herself out as registered, s/he is guilty of an offence.

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 work role until a successful application for restoration onto the Register has been made to the Council.

EU Directive

EU Directive 2013 / 55 / EU requires regulatory bodies to provide notification to all EU counterparts regarding regulatory decisions about social work registrants. An alert containing this decision (i.e. Removal Order), as well as your name, date of birth, place of birth (if known) and registration number will therefore be sent out to all EU regulatory counterparts. No further details will be contained in the alert. More information about the IMI Alert system can be found on their website: http://ec.europa.eu/internal_market/imi-net/about/index_en.htm.

RP Kennedy

Regulatory Committee Manager

25.09.19.

Date