

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

Name: Philip Paine

SCR No: 6006320

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **05 November 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 Conviction;

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 24 July 2019, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted of the following offence at Magherafelt Magistrate's Court:

1. Defendant on the 12th day of May 2018, being an officer on the staff of or otherwise employed in a nursing home, namely, Magherafelt Manor Care Home, ill-treated Service User A, a patient for the time being receiving treatment for mental disorder as an in-patient in the said Manor Care Home, contrary to Article 121(1) of the Mental Health (Northern Ireland) Order 1986.
2. Defendant on the 12th day of May 2018, unlawfully assaulted Service User A, 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 not in attendance and the Council was represented by Helen Bergin, Solicitor, Directorate of Legal Services.

Service

In a Notice of Hearing dated 23 September 2019, 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 the hearing. The package was delivered and signed for on 24 September 2019.

The Committee received legal advice from the Legal Adviser, and she referred the Committee to the requirements as set out in the Northern Ireland Social Care Council's ('the Council') Fitness to Practise (Amendment) Rules 2019 ('the Rules') and, in particular, Rule 3 which states that proof of service shall be treated as being effected on the day after it was properly posted.

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

Miss Bergin made an application to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules, and submitted that the Committee should hear and determine the case in his absence. She 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 the 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, 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 the Council 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 Allegation and striking a careful balance between fairness to the Registrant and the wider public interest. The Committee, in all of the circumstances, considered 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

Miss Bergin requested that the Hearing Bundle be admitted into evidence. The Committee accepted the bundle into evidence and marked it as Exhibit 1.

Background

Miss Bergin told the Committee that at the time of the Allegation, the Registrant was employed as a care assistant, with Runwood Homes, working at Magherafelt Manor Care Home. He commenced employment with them on 22 November 2012. An Employer Referral Form was received by the Council, on 18 May 2019, indicating that the Registrant had been suspended from his employment due to an allegation of assault against a service user. Subsequent to this, a PSNI investigation was commenced. The allegation against the Registrant was that he had grabbed Service User A by the arms, pushed her down and trailed her across her bed.

Evidence

Miss Bergin referred the Committee to the Certificates of Conviction in the bundle of papers, dated 29 July 2019. These Certificates of Conviction indicated that on 24 July 2019, the Registrant was convicted of unlawful assault and ill treatment of Service User A at Magherafelt Manor Care Home ('the Home') on 12 May 2018.

Miss Bergin 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. She referred the Committee to the Certificates of Conviction within the bundle of papers, along with the Employer Referral Form from Runwood Homes, the PSNI case summary, the police statements from the Registrant's co-worker and staff nurse, who were both working on the date of the incident and the police interview with the Registrant on 12 June 2018. She told the Committee that the Registrant denied the allegations made against him and on 19 September 2018 pleaded 'Not Guilty' to the criminal charges. The Registrant was found guilty on 24 July 2019 and a sentence of four months imprisonment was imposed, suspended for one year, to run concurrent on each charge. Miss Bergin told the Committee that the Registrant is still within his period of suspension.

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 2019 Rules as detailed by Miss Bergin. In addition, she reminded the Committee not to draw any adverse inference in the 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 Miss Bergin 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 of the Allegation 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 Certificates of Conviction against the Registrant relate to offences of unlawful assault and ill treatment of a vulnerable service user. The background to the convictions is set out in the Employer Referral Form and the case summary provided by the police. It was reported that on 12 May 2018, the Registrant was working with another care assistant, providing personal care to Service User A, who was aged 94 and had a diagnosis of dementia, COPD and breast cancer. It was alleged that Service User A was agitated and that the Registrant grabbed Service User A by the arms, causing the service user to say "stop you are hurting me". After this it is alleged that the Registrant pushed Service User A and roughly trailed her across the bed. The Service User was described as being distressed and struggling to get a breath at this time. The Registrant then left Service User A's room saying he could take no more and had to leave. The Registrant's colleague described herself as being terrified about what had happened and the matter was reported to the nurse on duty at the time. The Committee took into account the details contained in the police statements from the co-worker of the Registrant and the staff nurse on duty in the Home on this date. The Committee also gave attention to the contents of the Registrants recorded police interview, when he denied the allegations.

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 Miss Bergin, who advised that there were no formal admissions from the Registrant in relation to the Allegation. She submitted that the Registrant's convictions called into question his ability to work in social care services and to remain on the Register without restriction or to be registered at all. She referred the Committee to the Standards of Conduct and Practice for Social Care Workers, and she submitted the Registrant's criminal convictions breached the following standards: 1 – 1.2; 2 – 2.1, 3 – 3.3 and 3.7, 5 – 5.1, 5.7 and 5.8; 6 – 6.1.

She told the Committee that the Registrant's actions fell far below the minimum standard expected of a registered social care worker, and called into question his fitness to practise. She submitted that the Registrant's actions constituted an abuse of his position of trust. Miss Bergin said that the Registrant had displayed no evidence of insight into his actions, nor acceptance of wrongdoing. She reminded the Committee that at the time

of the incident; during the police investigation; and before the Court, the Registrant denied the allegations against him. She said that his actions brought the social care profession into disrepute and suggested that his ill treatment and assault of Service User A were not capable of remediation. She said that the serious nature of the Registrant's criminal convictions along with his failure to engage with the Council or appear before the Committee today evidence a risk of repetition. She told the Committee that Service User A was a vulnerable elderly resident who suffered from breast cancer. She said the Registrant's actions were entirely unacceptable and there was no evidence before the Committee that his behaviour would not be repeated in the future. Miss Bergin 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 Miss Bergin 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 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. She also referred the Committee to the cases of GMC v Meadows 2006 and CHRE v NMC & Grant 2011.

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 noted that the Registrant's convictions for ill treatment and unlawfully assaulting Service User A were serious and involved a vulnerable service user aged 94 with serious health conditions. The Committee considered that the Registrant was in a position of trust and had abused that trust when he assaulted Service

User A whilst providing care for her. The Committee noted that the Registrant received a custodial sentence of 4 months, suspended for 1 year, to run concurrent on each charge.

The Committee had regard to the Standards of Conduct and Practice for Social Care Workers and the Council guidance titled '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 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.

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:

2.1 Being honest and trustworthy;

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:

3.3 Following practice and procedures designed to keep you and other people safe from violent and abusive behaviour at work;

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;

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 has no information or evidence from the Registrant as regards any action which he has taken to remediate his behaviour. The Committee considered that the Registrant's actions were serious amounting to unlawful assault and ill treatment of a vulnerable service user. This service user was an elderly lady suffering from breast cancer and the Registrant's actions placed her at serious risk of harm and also caused his co-worker to be very upset by what she had observed. The Committee considered that such conduct is not easily remediable. However, in view of the Registrant's lack of engagement to date and non-acceptance of the allegations against him, the Committee has no basis on which it can be satisfied that the Registrant has full

insight into his offending, or that he would not repeat his actions in the future. In all of the circumstances, the Committee therefore considered there to be a continued risk of repetition of his behaviour.

The Committee concluded that the Registrant's convictions for ill treatment of a service user and unlawful assault brings 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 Miss Bergin on behalf of the Council, and had regard to all of the evidence in this case. Ms Bergin referred the Committee to the issue of mitigating matters and said that there were no previous referrals to the Council and that he was first registered on 27 March 2013 and commenced work at the Home on 22 November 2012. She said the Council had received no references or testimonials for the Registrant. As regards to aggravating factors, she submitted that the public are entitled to expect that care workers will provide safe and effective care to the most vulnerable in society, and suggested that the Registrant's behaviour in assaulting a vulnerable service user could not be considered to be at the lower end of the spectrum of behaviour. She submitted that not imposing a sanction would not satisfy the concerns raised against the Registrant. She said that the sanction of a Warning would be inadequate and not provide suitable public protection as the Registrant's actions were serious and not at the lower end of the spectrum. She further stated that a Conditions of Practice Order would not be appropriate, particularly as the Registrant has not engaged with the process. She submitted that the consideration of a Suspension Order must take into account whether the Registrant's actions were capable of remedy and this was something for the Committee to consider. She suggested that the Registrant's actions were fundamentally incompatible with remaining on the Register and that therefore the sanction of a Removal Order should be considered. She said this was particularly relevant as the service user was elderly, in a care home and that the Registrant is still subject to a suspended sentence of imprisonment.

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, and reminded the Committee to consider the question of sanction in ascending order of severity, paying particular attention to the issue of proportionality.

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) impose no sanction; or
- (b) 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
- (c) make a Conditions of Practice Order for a specified period not exceeding 3 years; or
- (d) make an Order suspending the Registrant's registration for a specified period not exceeding 2 years (a 'Suspension Order'); or
- (e) make an Order for removal of the Registrant's registration from the Register ('a Removal Order').

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 judgement.

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 considered the mitigating factors to be:

- there were no previous concerns raised with the Council and no issues raised during his previous work history;

The Committee considered the aggravating factors to be:

- the Registrant's criminal convictions for ill treatment and unlawful assault on an elderly vulnerable service user constituted a serious breach of trust, taking place whilst the Registrant was providing care to the service

user, and presented a significant risk of harm. The Registrant's actions also had a serious impact on his co-worker.

- the Registrant's actions showed a serious disregard for the standards of care expected of social care workers;
- the Registrant expressed no insight and no regret for his actions;
- the Registrant has failed to engage with the Council during the investigation;
- the Committee has no evidence of remediation or rehabilitation, nor has the Registrant provided any references or testimonials.

Having balanced the aggravating and mitigating factors, and taking into account the interests of public protection and public interest, the Committee considered that a sanction was appropriate and proceeded to consider which sanction to apply in this case. The Committee had no information with regards the financial impact that this may impose, nor were there testimonials or references provided.

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 members of the public. The Committee considered that the Registrant's criminal convictions demonstrated 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. The circumstances are not such that the Committee would be confident that this sanction would provide adequate public protection as far as the Registrant's suitability to work in social care is concerned, bearing in mind that a Warning would entitle the Registrant to work as a social care worker. The Registrant has not provided any evidence of insight into the harm which his behaviour could have caused the service user, nor the impact of his actions on his co-worker. In addition, the Committee has no evidence of rehabilitative steps taken by the Registrant, nor has he provided references or testimonials.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Registrant's convictions related to unlawful assault and ill treatment of a vulnerable service user, whilst he was providing care, for the service user in the Home. As the Registrant did not attend the hearing, the Committee has no evidence as to his current employment circumstances, or whether he would agree to any conditions if imposed. Furthermore, the Committee does not consider conditions of practice would protect the public from the risk of repetition as identified above.

The Committee, therefore, concluded 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 as an individual with consideration, respect and compassion, along with respecting and maintaining their dignity. In particular, the Committee noted that the Registrant maintained a denial in relation to these allegations and was found guilty on 24 July 2019 when he received a suspended custodial sentence for both charges.

The Committee had no evidence before it of remediation by the Registrant, nor had it any information to indicate that the Registrant is unlikely to repeat his criminal behaviour in the future. The Committee considered that the Registrant has failed to express any insight or remorse, particularly in relation to the seriousness of his criminal convictions and the risk of harm which his behaviour presented to the service user. The Committee had no evidence from the Registrant, nor did he engage with the Council. The Committee considered the public interest in this matter. The Committee considered that the public would perceive the Registrant's criminal behaviour as falling far short of what would be expected of a registered social care worker. In all of the circumstances, the Committee concluded that a Suspension Order would not be sufficient to mark the seriousness and unacceptability of the Registrant's criminal conviction.

Removal – the Committee then considered a Removal Order. In considering this, the Committee took into account the Guidance at 4.26 – 4.28. It concluded that given the seriousness of the Registrant's criminal convictions and his lack of insight 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 considered the Registrant's actions constituted a serious departure from the professional standards as set out in the Standards of Conduct and Practice for Social Care Workers. The Registrant's criminal behaviour involved unlawful assault and ill treatment of a vulnerable service user with serious health issues, and constituted an abuse of his position of trust as a social care worker, and brought the social care profession into disrepute. The Registrant has shown no insight or 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 concluded 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 considered 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 unlawful assault and ill treatment of a service user, and who failed to show appropriate insight or 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.

Having found the above the Committee was advised that the Registrant was the subject of an Interim Suspension Order due to expire on 08 November 2019. The Interim Order is hereby revoked.

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 Northern Ireland Social Care Council 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.

P.P. Kennedy
Committee Manager

11.11.19
Date