

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

---

**Name:** Caleb Lee Ewart

**SCR No:** 6024127

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **05 December 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, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), and whilst employed as a support worker by Fairways Cloonavin Ltd, you committed, and were subsequently convicted of, the following offence:

1. Defendant on 17/11/2018 unlawfully assaulted [Injured Party], 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 conviction.

**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 Ms Helen Bergin, Solicitor, Directorate of Legal Services.

**Service**

In a Notice of Hearing dated 29 October 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 this hearing.

The package was received and signed for on 05 November 2019. 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 Northern Ireland Social Care Council 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**

Ms Bergin made an application to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules, that the Committee should hear and determine the case in his absence. She advised that there was no evidence to suggest that the Registrant was seeking a postponement of this matter, nor did he provide any reason for his non-attendance at today's hearing.

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 GMC v Adeogba. She reminded the Committee that the Registrant is entitled to a fair hearing, to attend, be represented, to test the Council's case and present evidence on his 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. She said that the Committee should consider whether the Registrant was voluntarily absent and whether an adjournment would secure his attendance at a later date. She advised the Committee that it should not draw any adverse inference from the Registrant's absence, and to consider any disadvantage to the Registrant if the Committee decided to proceed in his absence. The Committee should also consider the general public interest in progressing the case in an expeditious manner. She advised the Committee that it should strike a careful balance between the competing interests in reaching its decision and retire to consider its decision.

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 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. The Committee, in all of the circumstances, considered that the Registrant has voluntarily absented himself from today's hearing, and that there is no information to the Committee to suggest that an adjournment would secure his attendance at a later date. The Committee reminded itself that it must avoid reaching any improper conclusion about the Registrant's absence. 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, the regulator and the wider public interest.

### **Application to Admit Hearing Bundle**

Ms Bergin requested that the Hearing Bundle be admitted into evidence. The Committee heard and accepted the advice of the Legal Adviser. The Committee noted that the Registrant had been served with a copy of the bundle and that the accompanying letter informed the Registrant of his right to raise an objection to the contents of the bundle. The Registrant was also informed of the timeline in providing any documents on his behalf. The Committee heard and accepted the legal advice in relation to the admission of the hearing bundle. It noted that there was no objection to the bundle being admitted into evidence and, having considered the relevance of the documents and fairness to the Registrant and to the regulator, accepted the bundle into evidence and marked it as Exhibit 1.

### **Background**

Ms Bergin informed the Committee that this matter came to the Council's attention following a referral from a member of the public, which was received on 29 November 2018. Ms Bergin said that the Registrant was employed as a Support Worker at Fairways Cloonavin during the time of the incident. She said that this is a supported living unit for adults with learning disabilities and that the Registrant had been employed since July 2016.

The referrer stated that he was the father of a 16 year old girl who was assaulted by the Registrant on 17 November 2018. Ms Bergin submitted that the Registrant was arrested and charged with an assault on 18 November 2018 and that he was subject to bail conditions. The Registrant sent an email on 04 December 2018 to the Council, and confirmed that he had been arrested on 18 November 2018 in relation to an allegation of 'common assault'.

### **Evidence**

Ms Bergin referred the Committee to the Certificate of Conviction in the bundle of papers, dated 19 April 2019. The Certificate of Conviction discloses that on 18 February 2019, the Registrant pleaded guilty to Unlawful Assault. Ms Bergin applied under Paragraph 12 (5) of Schedule 2 of the Rules for the findings of fact, as set out in the Certificate of Conviction, to constitute conclusive proof of the convictions therein.

### **Finding of Facts**

The Committee took into account the submissions made on behalf of the Council, the Certificate of Conviction and the legal advice from the Legal Adviser. The Legal Adviser reminded the Committee that under Paragraph 12 (5) Schedule 2 of the Rules, a Certificate of Conviction issued in any UK criminal Court "*shall be conclusive proof of the facts of convictions so found*". She advised the Committee that the Registrant may challenge a Certificate of Conviction if it does not refer to the Registrant or has been challenged successfully on appeal. She

informed the Committee that the Certificate of Conviction was issued before a competent Court of jurisdiction and, in the absence of any other evidence, the Committee is entitled to rely upon it to establish conclusively that the Registrant was convicted of the offence. She advised the Committee that it is also able to rely on the Certificate to establish conclusively the facts so found.

The Committee, having considered the submissions and having taken and accepted the legal advice, concluded that the Certificate of Conviction is conclusive proof of the facts set out in the Certificate, and therefore the Committee finds the facts proven.

### **Fitness to Practise**

The Committee moved to consider if the Registrant's fitness to practise is currently impaired. The Committee heard submissions from Ms Bergin on the question of the Registrant's current impairment. Ms Bergin submitted that the Registrant's conviction calls into question his ability to work in social care services. She referred the Committee to the Standards of Conduct and Practice for Social Care Workers and submitted that the Registrant's conviction breaches the following standards: Standard 5 – 5.7 and 5.8.

Ms Bergin told the Committee that the Registrant's behaviour leading to the conviction fell far below the minimum standard to be expected of a registered social care worker, and called into question his fitness to practise. She noted that the Registrant denied his actions when interviewed by the police, but subsequently pleaded guilty at the Magistrates' Court on 18 February 2019. He was sentenced to a Combination Order, consisting of a 'Community Service Order for 100 hours; a Probation Order for one year and he was required to engage with the Respectful Relationships Intervention Programme, to gain insight into his abusive behaviours and develop more appropriate conflict management skills, in accordance with his level of risk'. Ms Bergin submitted that the Council remained concerned about the risk of repetition and lack of remediation. Ms Bergin referred the Committee to the legal principles identified in Cohen and CHRE v Grant to assist the Committee in its assessment of impairment.

The Committee considered the submissions from Ms Bergin on behalf of the Council and had careful regard to all of the evidence in the case. The Committee accepted the advice of the Legal Adviser. She reminded the Committee that whether the Registrant's fitness to practise is currently impaired was a matter for the Committee exercising its professional judgement. She advised that the Committee was being asked to determine whether the Registrant's fitness to practise is currently impaired by reason of his conviction. She referred the Committee to Paragraph 24 of Schedule 2 of the Rules and to the cases of GMC v Meadows 2006 and CHRE v Grant 2011. The Legal Adviser also referred the Committee to its obligation to consider both the personal and public components of impairment. In assessing fitness to practise, the Committee should consider whether the conduct which led to the conviction was easily remediable, had been remediated and whether it was likely to be repeated. The Committee should also consider whether failure to find impairment in the circumstances of this case would lead to public confidence in the regulatory process and the profession being undermined.

The Committee considered whether the Registrant's fitness to practise is impaired by reason of his conviction as set out in the Particulars of the Allegation. The Committee, in considering the issue of impairment of fitness to practise, took into account Paragraph 24 (3) of the Rules which states that the Committee shall have regard to:

- a) whether it is satisfied as to the reasons 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 had regard to the Standards of Conduct and Practice for Social Care Workers. The Committee found that the Registrant was in breach of:

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

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.

The Committee determined that the Registrant had brought the social care profession into disrepute. He had breached one of the fundamental tenets of the social care profession by being convicted of assaulting a young person. The Committee concluded that the Registrant was impaired at the time of the conviction. The Committee then considered whether the Registrant is currently impaired. In reaching its decision as to current impairment, the Committee considered whether an offence of this kind could be remediated and concluded that it was capable of remediation. The Committee noted that the Registrant has been convicted of assault of a young person. The Committee has not been provided with any information from the Registrant as to remediation, insight, remorse or risk of repetition. The Committee noted that the Registrant has not engaged in the regulatory process. In these circumstances and in the absence of any evidence as to the risk of repetition, the Committee determined that the Registrant's fitness to practise is currently impaired on both the personal and public components.

### **Sanction**

Prior to making submissions in relation to sanction, Ms Bergin applied for permission to submit a record of a previous Warning issued to the Registrant by the Council on 31 October 2018. Ms Bergin submitted that the Registrant had been provided with a copy of the Warning as part of the Disclosure bundle prior to the hearing. She submitted that no objection had been received and the contents were relevant to the assessment of sanction. The Committee, having heard and accepted the legal advice in relation to admissibility, determined that it was appropriate to admit the document on grounds of relevance and fairness.

In reaching its decision on sanction, the Committee had careful regard to all of the evidence in the case as well as the submissions from Ms Bergin. The Committee heard and accepted the advice of the Legal Adviser. She advised that the purpose of sanction was not to be punitive but may have a punitive effect. The Committee was reminded that it should exercise its professional judgement in reaching a decision on sanction, and should keep at the forefront of its decision making the need to protect the public, the wider public interest and the principles of fairness and proportionality. The Committee was reminded that it should take into account the Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees 2017 ('the Guidance'), and consider the range of sanctions as set out in Paragraph 26 Schedule 2. The Committee was reminded that if it decided on a Conditions of Practice Order, that it should be specific, measurable, appropriate, relevant and time bound.

In reaching its decision, the Committee considered that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The Committee considered the conviction, dated 18 April 2019, to be serious and took place 17 days after he received a Warning from the Social Care Council in respect of a previous conviction for Assault Occasioning Actual Bodily Harm, Possession of an Offensive Weapon and Criminal Damage. This conviction, dated 31 August 2018, referred to an incident in November 2017.

The Committee considered both mitigating and aggravating factors. The aggravating factors were determined as follows:

- The assault was on a young person;
- The assault took place 17 days after he had been the subject of a Warning from the Council;
- No evidence has been provided as to insight or his attempts to change his behaviour; and there has been no engagement with the regulatory process on this occasion.

The Committee considered that there were no relevant mitigating factors in this instance.

The Committee is of the view that the Registrant's actions were serious and that the public is entitled to have confidence in registrants who are in a position of trust. The Committee has not been provided with any evidence as to the Registrant's current financial or employment position, but understands that he resigned from his position from Fairways Cloonavin Ltd. on 16 February 2019.

**Warning** – the Committee considered that none of the factors that would justify the imposition of a Warning were present in this case. The Committee was also of the view that a Warning would be insufficient to mark the seriousness of the Registrant's offence and that the public in general, and vulnerable service users in particular, would be placed at risk if the Registrant was permitted to practise on an unrestricted basis. The Committee noted that the Registrant is already subject to a Warning as a result of his conviction in respect of a previous assault committed in 2017. The Committee noted that the Warning was issued on 31 October 2018 for a period

of four years. In these circumstances, a Warning would not provide the level of public protection required or protect the wider public interest.

**Conditions of Practice Order** – the Committee reminded itself of the serious nature of the conviction that the Registrant received in the Magistrates' Court on 18 April 2019. The Registrant was convicted of an assault on a young person. The Registrant has not attended the hearing to persuade the Committee that his actions would not be repeated in the future. In addition, the Committee has no evidence from the Registrant as to his current employment status but noted that the Registrant resigned from his social care post on 16 February 2019. Given these factors, the Committee determined that no workable, enforceable or verifiable conditions could be identified that could be attached to the Registrant's registration that would adequately protect the public and provide public confidence in the regulatory process.

**Suspension** – the Committee then considered whether it would be proportionate to apply a Suspension Order. The factors as set out in the Guidance were examined closely by the Committee. The Committee noted that the Registrant has not attended today to persuade the Committee that he has remediated his actions or that there is no risk of repetition in the future. The Committee has not been provided with any evidence of insight or remediation, and in these circumstances a Suspension Order would not provide the level of protection of the public required or protect the wider public interest. The Committee has noted the evidence in relation to a similar type of offence in respect of which he received a Warning 17 days before he carried out the second offence. In these circumstances, the Committee considered that his behaviour is incompatible with remaining on the Register.

**Removal** – the Committee considered that removal from the Register is both fair and proportionate in the circumstances of this case, and will provide both public protection and uphold the wider public interest. The Committee revokes the existing Interim Suspension Order with immediate effect and imposes a Removal Order.

---

**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

11.12.19  
Date