

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

SUSPENSION ORDER REVIEW HEARING

Name: Wendy Sue Welsh

SCR No: 6019859

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **09 December 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

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

Service

Mr Gilmore submitted that an initial letter was issued to the Registrant on 06 September 2019, reminding her that the Suspension Order was due to be reviewed and requesting that supporting documentation should be sent to the Council. This letter was received and signed for on 07 September 2019. He told the Committee that the Notice of Hearing and hearing bundle were sent via Special Delivery post to the Registrant's registered address on 07 November 2019. There was an attempt to deliver the package on 08 November 2019 and a 'something for you card' was left. The package exceeded the Royal Mail's retention period and was returned to the Council on 03 December 2019, marked 'Not called for'. The package was reissued to the Registrant's registered address via first class post on 03 December 2019. Mr Gilmore further stated that the Committee Clerk telephoned the Registrant on 06 December 2019 to confirm receipt of the package and to confirm if she would be attending today's hearing. The Registrant stated that she had not received a package and assumed that it would be there

when she got home. The Registrant stated that she did not want to attend the hearing on 09 December 2019 and was content that the hearing proceed in her absence.

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 Rules. The Committee is satisfied that the Notice of Review Hearing has been served in accordance with Rule 3 (2) of the Northern Ireland Social Care Council Fitness to Practise (Amendment) Rules 2019 ('the Rules'), and the requirements of Paragraph 33 (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. Mr Gilmore advised the Committee that in accordance with Paragraph 33 of Schedule 2 of the Rules, the Registrant was advised by way of letter dated 06 September 2019 that a review of her Suspension Order was being undertaken. There was no response from the Registrant to the requests in this correspondence. Mr Gilmore reminded the Committee that the allegations found proved against the Registrant are serious and, in addition, the Registrant has not substantially engaged with the Council to date. He advised that there has been no request for an adjournment of this review and, in any event, an adjournment would serve no useful purpose as there is nothing to suggest that the Registrant would attend at a later date.

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 satisfied itself that all reasonable efforts had been made to notify the Registrant of the hearing. The Committee heard and accepted the advice of the Legal Adviser, who referred the Committee to the cases of R v Jones 2003 1 AC and Adeogba and Visvardis v GMC 2016. The Legal Adviser 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 of the requirement to exercise its discretion to proceed with the utmost care and caution. The Committee noted that this is a mandatory review and that the Suspension Order will expire on 10 December 2019.

The Committee noted that the Registrant did not attend the hearing on 11 December 2017. The Committee also took into account that there is no suggestion from the Registrant that she seeks an adjournment or that she would be more likely to attend if the hearing was adjourned to another date. The Committee took into account the Registrant's comments to the Committee Clerk on 06 December 2019, when she indicated that she would not be attending the hearing. The Committee therefore determined that an adjournment would serve no useful purpose. The Committee has also taken into account public protection and the public interest in ensuring that the current Suspension Order is reviewed before it expires. The Committee, in all of the circumstances, is satisfied that it is appropriate to proceed with this hearing in the absence of the Registrant.

Background

Following a hearing on 11 December 2017, at which the Registrant was neither present nor represented, a Fitness to Practise Committee found the following allegations against her proved:

1.	On or about 22 April 2016 while employed as a Care Assistant by Nursing and Caring Direct Ltd, you slapped Service User "H" in his home.
2.	On or about 22 April 2016 while employed as a Care Assistant by Nursing and Caring Direct Ltd, you used foul and inappropriate language towards Service User "H" in his home.
3.	On or about 02 June 2016, you inaccurately completed a written declaration to a prospective employer, Rose Lodge Care Homes Ltd, indicating you had never been the subject of an adult or child abuse investigation which alleged you were the perpetrator of any adult or child abuse.

The Committee in December 2017 considered that the Registrant's actions amounted to misconduct and, further, that she was currently impaired by reason of misconduct. In its impairment decision, that Committee noted that the Registrant's actions had fallen far below the standards to be expected of a registered social care worker and were serious. That Committee considered that there could be no excuse for a professional social care worker to act in a way which the Registrant had acted. It was also noted that the Registrant's failure to accurately complete documentation in the pre-appointment process constituted serious misconduct.

Fitness to Practise

This is the first review of a Suspension Order made against the Registrant.

The Committee heard a submission from Mr Gilmore on the issue of impairment. He submitted that the Registrant's fitness to practise remains impaired, and referred the Committee to the lack of engagement by the Registrant as to today's review hearing and her failure to provide the Committee with any evidence that her previous conduct would not be repeated. In light of this, Mr Gilmore submitted that there is a lack of insight on the part of the Registrant, and that there is no evidence to show her willingness to take steps to remedy her misconduct. He reminded the Committee that the Registrant had not responded to the request from the Council as regards the recommendations set out by the Committee when the Suspension Order was imposed. He referred the Committee to the previous Committee's findings at the sanction stage and, in particular, its consideration of the mitigating and aggravating factors. He drew this Committee's attention to the previous Committee's findings of this case being borderline between a Suspension Order and a Removal Order. It was previously submitted that a reviewing Committee would be assisted at the end of the suspension period by the Registrant completing a reflective piece as regards the findings made against her, along with evidence of her up-to-date training. He further referred the Committee to the correspondence sent to the Registrant subsequent to the imposition of the Suspension Order, and that despite this correspondence the Registrant did not provide any

information or engage with the Council. In light of all of this, he suggested that the Committee may wish to consider the imposition of a Removal Order.

Decision on Current Fitness to Practise

In reaching its decision, the Committee heard and accepted the legal advice. The Committee was reminded that it was not required to go behind the previous decision in assessing facts, and that it was required to review any evidence provided since the hearing on 11 December 2017. The Committee was reminded that it is assessing current impairment and needed to take into account any evidence of remediation, insight and risk of repetition. The Committee was also reminded of the need to take account of the wider public interest, which includes upholding standards and maintaining confidence in the regulatory process.

The Committee first considered whether the Registrant's fitness to practise 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. In considering the matter, the Committee carried out a comprehensive review of the Suspension Order in light of the submissions which it heard and the hearing bundle provided for the review hearing. The Committee exercised its own judgement in reaching a decision.

In considering whether the Registrant's fitness to practise remains impaired, the Committee reminded itself of the requirements set out at Paragraph 33 of Schedule 2 of the Rules. In considering this, the Committee is satisfied as to the reason for the alleged impairment of fitness to practise, as set out in the decision of the original Committee on 11 December 2017. The Committee noted the previous findings that the misconduct was serious and that the Registrant's failings related to slapping a service user in their home and using foul and inappropriate language towards him. In addition, the Registrant inaccurately completed a written declaration to a prospective employer denying that she had been the subject of an adult abuse investigation. Taking into account the Standards of Conduct and Practice for Social Care Workers as set out in the previous decision, the Committee considered that the Registrant remains in breach of the same Standards.

The Committee then considered whether the impairment is capable of remediation and concluded that it was. However, there is no evidence before the Committee that the Registrant has taken any steps to remediate the impairment since the original Order was made. The Registrant has not demonstrated any insight into her failings, nor has she presented any evidence of her willingness to take steps to remedy her misconduct. In particular, the Committee noted the previous findings at the hearing on 11 December 2017 that a reviewing Committee would be assisted by the Registrant completing a reflective piece arising out of the findings of misconduct against her and evidence of up to date relevant training. The Committee today has no evidence of this nature and therefore considered the aggravating factors previously noted to be still appropriate.

Therefore, in view of the Registrant's lack of insight, lack of remediation and lack of engagement, the Committee could not be satisfied that there is no risk of repetition of the Registrant's misconduct in the future. The Committee took into account the public interest when deciding whether the Registrant's fitness to practise

remains impaired. The Committee accepted the need for the Council to uphold proper professional standards and public confidence in the social care profession. The Committee determined that public confidence would be undermined if a finding of impairment was not made in circumstances where a Registrant had been suspended but failed to engage with the Council, demonstrate insight or take any steps to remediate during the course of her suspension.

For these reasons, the Committee found that the Registrant's fitness to practise remains impaired.

Sanction

In reaching its decision on sanction, the Committee considered the submissions of Mr Gilmore and heard and accepted the advice of the Legal Adviser. She referred the Committee to the requirements set out at Paragraph 33 (8) of the Rules and reminded it that this Suspension Order expires on 10 December 2019. She referred the Committee to the Northern Ireland Social Care Council Indicative Sanctions Guidance, and that the purpose of sanction is not punitive and that regard must be had to the protection of the public, the protection of service users and maintaining confidence in the profession and upholding proper standards of conduct and behaviour.

The Committee was aware of its powers as set out at Paragraph 33 (8) of Schedule 2 of the Rules. The Committee, in addition to the powers set out in this Paragraph, may allow the Suspension Order to run its course and expire on 10 December 2019. The Committee took into account the need to act proportionately and that the purpose of sanction is not punitive. Taking into account the findings of the previous Committee as regards the Registrant's very serious misconduct and the risk of repetition identified above, the Committee does not consider it appropriate to allow this Order to expire.

The Committee noted the findings of the previous Committee on 11 December 2017 and, in particular, its recommendations.

Conditions of Practice Order – the Committee first considered whether to impose a Conditions of Practice Order to commence on the expiry of the current Suspension Order on 11 December 2019. The Committee determined that it would not be appropriate to impose a Conditions of Practice Order in all of the circumstances. The Committee has no evidence to suggest that the Registrant is currently working in the social care profession, nor that she would cooperate with conditions of practice or respond positively to re-training. The Registrant did not attend her initial hearing, and did not attend today. In addition, the Registrant has not provided any information or documentation as considered relevant by the reviewing Committee on 11 December 2017. Therefore, the Committee determined that no practicable or workable conditions could be formulated to adequately address the Registrant's failings. In addition, the Committee does not consider a Conditions of Practice Order sufficient to protect the public from the risk of repetition, nor would it meet the public interest in upholding proper professional standards and in maintaining public confidence in the Council.

Suspension – the Committee then went on to consider whether it would be appropriate to impose a further period of suspension. The Committee considered that the Registrant's misconduct and impairment was serious.

The Committee considered that the Registrant's misconduct had the potential to cause harm to vulnerable service users and that she has failed to provide evidence that her misconduct has been remedied and lessons have been learned. The Registrant failed to engage with the previous Committee and subsequently with the Council, despite correspondence requesting her to do so. The previous Committee described their decision on sanction as being borderline between a Suspension Order and a Removal Order, and reflecting the seriousness of the Registrant's misconduct imposed a Suspension Order for the maximum period available to it of two years. During this period of suspension, the Registrant failed to take note of the recommendations and the advice made by the previous Committee and persisted in her lack of engagement. In all of these circumstances, the Committee concluded that a further period of suspension would not resolve or remedy the Registrant's misconduct.

Removal – after careful deliberation, the Committee determined to revoke the Suspension Order and impose a Removal Order in accordance with Paragraph 33 (8) (g) of Schedule 2 of the Rules. The Committee concluded that removal from the Register is the only appropriate and proportionate sanction. The Committee concluded that the Registrant's misconduct, compounded by her persistent lack of insight, is fundamentally incompatible with being a registered social care worker. The Registrant's misconduct constituted a serious departure from the Standards of Conduct and Practice for Social Care Workers and involved a serious failure in the provision of appropriate care for vulnerable service users and a failure to be open and honest in completing documentation. As previously stated, there is no evidence of remorse and no evidence that the Registrant is likely to remediate her misconduct, and the Committee has noted a clear risk of repetition. Taking into account all of the evidence, the Committee is of the view that confidence in the social care profession would be undermined by allowing the Registrant to remain on the Register.

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

The Committee determined that a Removal Order was a suitable, appropriate and proportionate sanction, which will be imposed on the Registrant's registration with immediate effect.

You have the right to appeal this decision to the Care Tribunal. Any appeal must be lodged in writing within 28 days from the date of this Notice of Decision.

You should note that the Fitness to Practise Committee's decision takes effect from the date upon which it was made.

The effect of this decision is that your entry in the Register has been removed.

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

1. A member of care staff at a:
 - a.) Children's home;

- b.) Residential care home;
 - c.) Nursing home;
 - d.) Day care setting;
 - e.) Residential family centre.
2. A person who is supplied by a domiciliary care agency to provide personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
3. A manager of a:
- a.) Residential care home;
 - b.) Day care setting;
 - c.) Residential family care centre; or
 - d.) Domiciliary care agency.

It is **compulsory** for the above social care workers to be registered with the Northern Ireland Social Care Council in order to work. This is pursuant to the Northern Ireland Social Care Council (Social Care Workers Prohibition) and Fitness of Workers Regulations (Northern Ireland) 2013 and the Northern Ireland Social Care Council (Social Care Workers Prohibition) and Fitness of Workers (Amendment) Regulations (Northern Ireland) 2017.

In accordance with Schedule 3, Paragraph 9 of the 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
Regulatory Committee Manager

11.12.19
Date