

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

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**Name:** Sinead Donaghey

**SCR No:** 6025768

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **18 February 2020**, 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, being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), and whilst working as a Social Care Worker for Owen Mor Care Centre (employer) you were convicted of the following offence:-

1. On 03 December 2017 at Owen Mor Care Centre, Culmore Road, Londonderry ill-treated or wilfully neglected a patient, referred to as "Service User A", who was for the time being subject to your guardianship under The Mental Health (Northern Ireland) Order 1986 or was otherwise in your custody or care, contrary to Article 121(2) of The Mental Health (Northern Ireland) Order 1986.

And that by reason of the matter set out above, your fitness to practise is impaired by reason of your Conviction in the United Kingdom for criminal offence.

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

## **Service**

In a Notice of Hearing dated 10 January 2020, sent by Special Delivery post and addressed to the Registrant at her address as it appears on the Register, the Council notified her of the date, time and venue for this hearing. The package was received and signed for by the Registrant on 14 January 2020. 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, was 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 that the Committee should hear and determine the case in her absence. She advised that there was no evidence to suggest that the Registrant was seeking a postponement of this matter, nor did she provide any reason for her 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 Adeogba v GMC. 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 her own behalf. She reminded the Committee that it must consider not only fairness to the Registrant but fairness to the regulator in exercising its discretion. She said that the Committee should consider whether the Registrant was voluntarily absent and whether an adjournment would secure her 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 her 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.

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 herself from today's hearing, and that there is no information to the Committee to suggest that an adjournment would secure her 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.

## **Background**

Miss Bergin told the Committee that the Registrant had been employed as a care assistant at Owen Mor Care Centre until her resignation in January 2018.

Miss Bergin directed the Committee to the Employer Referral Form contained within the bundle of documents and to the disclosure received by the Council on 26 January 2018, from the PSNI, that the Registrant had been interviewed in relation to an allegation of Common Assault and Ill Treating or Neglecting a Patient on 03 December 2017. The Committee heard that the Council became aware through correspondence from the Registrant's solicitor that the Registrant had pleaded guilty to wilful neglect of a patient.

## **Evidence**

Miss Bergin referred the Committee to the Certificate of Conviction in the bundle of papers, dated 09 July 2019. This Certificate of Conviction discloses that on 27 March 2019, the Registrant pleaded guilty to ill-treating or wilfully neglecting a patient who was subject to her guardianship under the Mental Health (Northern Ireland) Order 1986 or was otherwise in her custody or care, contrary to Article 121(2) of the Mental Health (Northern Ireland) Order 1986. Miss 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 on the Certificate of Conviction 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.

The Committee, having considered the submissions and having taken into account the legal advice, concluded that the Certificate of Conviction is conclusive proof of the facts.

### **Fitness to Practise**

The Committee considered the submissions from Miss 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 it is being asked to determine whether the Registrant's fitness to practise is impaired by reason of her 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 Committee considered whether the Registrant's fitness to practise is impaired by reason of her 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 noted that the Registrant has been convicted of ill-treatment or wilfully neglecting a service user in her care. The Committee had no hesitation in concluding that the Registrant was impaired at the time of her conviction.

The Committee had regard to the Standards of Conduct and Practice for Social Care Workers and found that the Registrant was in breach of:

**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:**

2:6 Being reliable and dependable.

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

5:1 Abuse, neglect or harm service users, carers or colleagues;

5:7 Put yourself or other people at unnecessary risk; or

5:8 Behave in a way, in work or outside work, which would call into question your suitability to work in social care services.

The Committee determined that the Registrant's actions had fallen far below what would be expected of a registered social care worker.

The Committee gave careful consideration as to whether the conduct which led to the Registrant's conviction is capable of remediation. On balance, the Committee concluded that in the circumstances where there was insight, an acceptance of what had gone wrong and a willingness to change, remediation could take place.

However, the Committee had no evidence that remediation had taken place. The Committee noted that the Registrant had made admissions during the course of her Police interview and had pleaded guilty to the offence at Court. The Committee also took into consideration the correspondence from John Fahy & Company Solicitors (on behalf of the Registrant) dated 15 November 2019, advising that the Registrant had completed a 12 week medical programme. The Committee determined that this was not sufficient to constitute full remediation. The Committee concluded that during the Police interview, the Registrant had demonstrated some insight but that this was limited and that there was nothing further from her. The Committee had no evidence of remorse, no apology from the Registrant to the service user involved, to their families or to the Social Care Council. The Committee had no evidence from the Registrant to be satisfied that she accepted responsibility for her own actions or how she would act differently in the future.

The Committee concluded that the conviction in this case was serious and with no evidence of insight, remorse or remediation, the Committee concluded that there continues to be a risk that the Registrant could repeat this behaviour in the future. Therefore the Committee concluded that there is a real risk of repetition.

The Committee considered the public interest and concluded that public confidence in the profession and the Social Care Council as a regulator would be undermined if a finding of impairment was not made. The Committee considered there to be a high public interest in the consideration of this case. The Committee was of the view that a fully informed member of the public would be seriously concerned by the Registrant's conviction, which occurred when she was providing care to a vulnerable service user. The public interest is heightened because of the vulnerability of the service user. Therefore, the Committee determined that a finding of current 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 had careful regard to all of the evidence in the case, as well as the submissions from Miss 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').

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 offence to be serious. The Committee considered both mitigating and aggravating factors.

The Committee considered the mitigating factors to be:

- the Registrant has a previous good work history;
- the harm to the service user appears to be an isolated incident;
- the Registrant pleaded guilty to the criminal offence and made admissions during her Police interview;
- the solicitor's letter, dated 19 June 2019, suggests that she was having a difficult time in her personal life which impacted on her ability to do her job;
- the Registrant has taken some steps to obtain treatment.

Aggravating factors were determined as follows:

- the Registrant has been convicted of ill-treatment or wilfully neglecting a vulnerable service user in her care;
- the offence was committed at work and constituted an abuse of her trusted position;
- the Registrant admitted to being under the influence of alcohol while at work;
- the Registrant's suspended sentence is still live;
- the Registrant's actions caused actual harm to a service user;
- the Registrant demonstrated no remorse or regret for her actions;
- there is a real risk that the Registrant could repeat her actions;
- the Registrant has demonstrated a serious disregard for the Council's Standards of Conduct and Practice;
- the Registrant has engaged on a limited basis with the Council's investigation and hearing.

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

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

**No Sanction** - the Committee was in no doubt that it would be entirely inappropriate to apply no sanction in this serious case.

**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 vulnerable service users, in particular, would be placed at risk if the Registrant was permitted to practise on an unrestricted basis.

**Conditions of Practice Order** – the Committee reminded itself of the serious criminal conviction made in this case. The Registrant did not attend the hearing to demonstrate remorse or persuade the Committee that her actions would not be repeated in the future. In addition, the Committee had no evidence of the Registrant's current employment status. 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 next considered a Suspension Order. The Committee had very limited evidence of remediation by the Registrant. The Committee had no evidence of any insight or remorse from the Registrant. The Committee did not have any evidence that the Registrant would be able to resolve or remedy the cause of her behaviour during a period of suspension. In light of all the above, the Committee concluded that a Suspension Order would not be sufficient to mark the seriousness of the Registrant's conduct nor meet the public interest.

**Removal** – the Committee then considered a Removal Order. The Committee has already found that the Registrant's actions were serious and that there is a real risk of repetition. The Committee was most concerned that the Registrant had caused serious harm to a service user. The Committee also concluded that the Registrant had demonstrated a blatant disregard for the system of registration, which is designed to safeguard the interests of service users, the public and the reputation and standards of the social care profession. These factors, when considered in conjunction with the Registrant's failure to demonstrate insight or remorse, caused the Committee to conclude that her behaviour is fundamentally incompatible with being a social care worker.

In all of the circumstances, the Committee concluded that a Removal Order is the only sanction available to it that would protect the public and meet the public interest. The Committee considered that a Removal Order is necessary to mark the importance of maintaining public confidence in the social care profession, and to send to the public and the profession a clear message about the standards of behaviour required of a registered social care worker. The Committee carefully considered the potential impact which this Order could have on the Registrant. The Committee noted that the Registrant's solicitor, on 19 June 2019, had submitted that it was the Registrant's intention not to practise in social care again in the future. The Committee did not know if this remains the Registrant's position. In any event, the Committee concluded that because of the seriousness of her conviction, any consequences for the Registrant are outweighed by the need to protect the public and maintain public confidence in the social care profession. The Committee determined that a Removal Order is the most suitable, appropriate and proportionate sanction which will be imposed on the Registrant's registration with immediate effect. The Committee ordered that the Interim Suspension Order in place in respect of the Registrant's registration be revoked with immediate effect and replaced with the Removal Order.

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**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.

C. C. C. C.

Committee Manager

26.02.20

Date