

Notice of Decision

Registrant	Daniel Smyth
	6041561
Part of Register	Part 2 – Adult Social Care Worker
Sanction	Undertakings
Date of Effect	5 August 2020

This is a notice of decision of the Northern Ireland Social Care Council (the Council).

Decision

The Council has decided:

1. that there is evidence that your Fitness to Practise is impaired by reason of misconduct, as defined in Part 1, Rule 4 (1) of the NISCC Fitness to Practise (Amendment) Rules 2019.
2. to agree undertakings with you.

Impairment

The Northern Ireland Social Care Council (Social Care Council) has considered the information it has obtained during the course of its investigation into the allegations against you.

1. Impaired Fitness to Practise

The Council has decided that the information received constitutes an allegation of impaired fitness to practise as per Part 1 Rule 4(1) of the NISCC Fitness to Practise (Amendment) Rules 2019. This refers to circumstances which call into question your suitability to remain on the social care register.

The Council has decided that there is a real prospect that a Fitness to Practise Committee would find your fitness to practise impaired by reason of misconduct as follows:

Whilst employed as Support Worker, by Mencap Northern Ireland [REDACTED]

- a. On the 4 July 2019 and also on 13 July 2019, you failed to follow the support plans and risk assessment for a vulnerable service user. Also on 4 July 2019 and 13 July 2019, you failed to adhere to the Positive Behaviour Management training you had received from Mencap.
- b. You carried out an assisted removal of the service user from his kitchen into his hallway on 4 July 2019, when the service user became escalated. The technique you used was only permitted to be used by two people.
- c. Whilst on shift on 13 July 2019, you grabbed a service user by the shoulder and said-“how do you like to be grabbed”. You then removed the service user from his utility room out into his kitchen,

again using a Positive Behaviour Management (PBM) assisted removal technique that should only be used by 2 people.

- d. You stated that you did not see the point of following the service user's schedule (Teacch) which is the service user's anchor and the only way of keeping himself regulated.
- e. Whilst no physical harm was caused to the service user on the above dates, the staff in Mencap had to undertake a considerable amount of work to regain the service user's trust in staff and in his schedule.
- f. As a result of your actions, you were not confirmed in your probation at a meeting with Mencap on 24 July 2019, your employment was terminated and the above allegations were then subject to a Joint Protocol investigation.

Reasons

The reasons that this is considered to constitute impaired fitness to practise are as follows:

- Service users have the right to expect that the care and support they receive from social care workers, in whom they place their trust, will protect them from harm. Any failure to follow care plans and risk assessments in place, and failure to follow specific training provided, places service users at risk of harm. You therefore failed in your duty of care and placed the service user at risk of harm on two occasions. Your failure to follow your training and the service user's schedule (Teacch), necessitated staff having to rebuild trust with the vulnerable service user concerned.
- You have displayed a lack of competence when delivering care and support to the service user concerned, together with a failure to adhere to Mencap values and a serious disregard for the Social Care Council Standards of Conduct and Practice.

NISCC Standards of Conduct and Practice for Social Care Workers

The Standards of Conduct for Social Care Workers that your actions have breached are as follows:

Standard of Conduct 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 of Conduct 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:

3.7 Recognising and using responsibly with service users and carers, the power that comes from your role.

Standard of Conduct 4

As a social care worker, you must respect the rights of service users while seeking to ensure that their behaviour does not harm themselves or other people.

This includes:

4.2 Following risk assessment policies and procedures to assess whether the behaviour of service users or others presents a risk of harm to themselves or other people.

Standard of Conduct 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;

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 of Conduct 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 Standards of Practice that your actions have breached are as follows:

Standard of Practice 3

As a social care worker, you must deliver person centred care and support which is safe and effective.

This includes:

3.1 Promoting and applying person-centred values in your day to day work with service users and carers;

3.2 Delivering care in line with assessed needs and service user and carer preferences;

3.8 Contributing to the implementation of care or support plans and risk management plans;

3.10 Supporting service users in their daily living.

Standard of Practice 5

As a social care worker, you must maintain health and safety at work.

This includes:

5.3 Applying your organisation's policies and procedures in relation to moving and handling service users.

Standard of Practice 6

As a social care worker, you must develop yourself as a social care worker.

This includes:

6.3 Reflecting on your practice to continuously improve the quality of service provided.

Sanction

Having regard to the document '*Indicative Sanctions for Consensual Disposal*' the Council decided that the appropriate course of action was to agree undertakings with you. An undertaking is an agreement between you and the Council, setting out limits within which you must practise.

Agreed Undertakings:

1. That within 6 months of entering a role in social care which requires registration with the Northern Ireland Social Care Council (the Social Care Council) you will:
 - i Provide a report from your Line Manager addressing the standard of your performance. In particular, confirming that you have complied with your employer's policies and procedures and that you have undertaken all duties required of you. This is to include confirmation of your adherence to service users' care plans/risk assessments.
2. That after 12 months of entering a social care role as above, you will:
 - i Submit a further report from your line manager addressing the standard of your performance.
3. Submit evidence, verified by your employer that you have availed of all relevant training and specify the training undertaken.
4. That you will access the Social Care Council's Learning Zone and undertake the following modules:
 - i. Working in social care
 - ii Values, Behaviours and Person Centred Practice
 - iii Towards safe, effective and compassionate care.

That upon completion of the learning activities above, you will submit a reflective account to the Social Care Council within 6 months of the date of this Notice of Decision, setting out clearly what you have learned from the allegations raised against you and how your future practice will differ.

5. That you will inform the Social Care Council of any professional investigation started against you, and/or any professional disciplinary proceedings taken against you within 7 days of you receiving notice of them.

6. That you will inform the following parties that you are subject to an undertaking under the Social Care Council's fitness to practise procedures, and disclose the undertakings listed above, to them:

- i. Any organisation or person employing, contracting with, or using you to undertake social care work
- ii. Any agency you are registered with or apply to be registered with (at the time of application)
- iii. Any prospective employer (at the time of application)
- iv. Any educational establishment at which you are undertaking a course of study connected with social care work, or any such establishment to which you apply to take such a course (at the time of application)
- v. You are also required to notify Council within 7 days of accepting any post or employment requiring registration with the Social Care Council and provide the name and contact details of the organisation offering you the post.

Having considered the factors set out in the '*Consensual Disposal Indicative Sanctions*' the Council considers the above proposed undertakings to be appropriate for the following reasons:

- Your actions had the potential to place service users at risk of harm.
- Your actions took place while you were at work, and in a position of responsibility as a Support Worker.
- There have been two occasions reported to the Social Care Council in relation to the standard of your work when carrying out moving and handling with a vulnerable service user at Mencap and you have failed to follow your employer's policies and procedures in regard to this important area of practice.
- You demonstrated inappropriate verbal communication with a vulnerable service user.
- You failed to fulfil the responsibilities placed on you as a NISCC registered member of staff.

However;

- You have co-operated with the Social Care Council's investigation and engaged courteously throughout by email, telephone and by attending a meeting at the Council offices at your request.
- You have demonstrated some insight regarding your actions, you have admitted the allegations raised by your former employer and apologised for your actions.
- You have stated that your remark to the service user was made in jest and you did not appear to intend harm by your actions.
- The service user concerned is known to present with behaviours that can be very challenging.
- No prosecution resulted in regard to the Joint Protocol investigation
- You have not been subject to any previous referral to the Social Care Council.

Reasons for the Sanction

When reaching its decision the Council considered the following factors:

- Your actions had the potential to place service users at risk of harm.
- Your actions took place while you were at work, and in a position of responsibility as a Support Worker for a vulnerable service user.

Agreement

Having been advised of the consequences, and having been recommended to take independent advice, you agreed to the 6 undertakings detailed above. A record of the undertakings has been placed on your entry in the Register. Other than the restrictions detailed in the undertakings, your ability to practise is not affected.

Duration of undertakings

The undertakings will continue indefinitely. However, under Rule 13 (12) you can apply to be released from an undertaking, and the Council will consider your request at that time.

Consequences of non-compliance with an undertaking

Under Rule 13 (13), if the Council receives information that you have not complied with an undertaking, or you fail to provide information to confirm compliance when requested, the Council may:

- (a) Refer the original allegations to the Preliminary Proceedings Committee; and
- (b) Treat the failure to comply with an undertaking as a separate allegation of impaired fitness to practise and refer this allegation to the Preliminary Proceedings Committee.

Date of Effect

The undertakings come into effect on 5 August 2020



5 August 2020

Helen McVicker
Head of Fitness to Practise

Date