



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

Name: Kevin Anthony Howard

SCR No: 2017213

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **21 January 2021**, 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 your inclusion on a list maintained by the Disclosure and Barring Service;

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):

- | | |
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| 1. | On or about 13 November 2019, you were included on the barred lists for both children and vulnerable adults, maintained by the Disclosure and Barring Service. |
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And your actions as set out above show that your fitness to practise is impaired by reason of your inclusion on a list maintained by the Disclosure and Barring Service.

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 Mr Anthony Gilmore, Solicitor, Directorate of Legal Services.

Service

Mr Gilmore told the Committee that in a Notice of Hearing dated 14 December 2020, emailed to the Registrant's registered email address as it appears on the Register, the Council notified him of the date, time and venue for the hearing. The email was delivered and a delivery receipt was received on the same date. The Notice of Hearing and hearing bundle were also sent to a known postal address for the Registrant on 16 December 2020 by International Post. The package was recorded as being delivered to the address on 18 December 2020. Due to Covid 19, no signature was available.

An addendum bundle of papers was emailed to the Registrant's registered email address on 04 January 2021, and a delivery receipt was received on the same date.

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 served.

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

Mr Gilmore 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 the Registrant's absence. He 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. The Committee noted that a number of attempts were made by the Council to put the Registrant on notice of upcoming fitness to practise hearings, none of which provoked a response from him. 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

Mr Gilmore confirmed to the Committee that the hearing bundles provided to it complied with the requirements of relevance and fairness, and that the Registrant had made no objections to their contents. The Committee accepted the bundles into evidence, and marked them as Exhibit 1 and Exhibit 2.

Evidence

Mr Gilmore told the Committee that the matter before it for consideration related to the Registrant's inclusion, by the Disclosure and Barring Service ('DBS'), on the barred list in respect of children and vulnerable adults. He referred to the letter to the Council, dated 24 January 2020, informing it that the Registrant, from 13 November 2019, had been placed on both the Children's and Adults' barred lists. He referred the Committee to the contents of the DBS letter, dated 13 November 2019, which sets out in detail the background to the Registrant being barred. The DBS confirmed that they were satisfied that the Registrant had engaged in inappropriate conduct of a sexual nature involving vulnerable adults. In a further letter dated 18 February 2020, sent by the DBS to the Council, Mr Gilmore noted that it was further confirmed that any individual will be committing an offence if they engage, seek to engage or offer to engage in regulated activity from which they are barred.

Mr Gilmore told the Committee that the Council, in their letter of 06 March 2020, wrote to the Registrant referring to the actions of the DBS, reminding him of the upcoming fitness to practise hearing, and referring to the Registrant's right to appeal the decision of the DBS. He told the Committee that the Council has not received a response to any of the correspondence with the Registrant. The DBS advised the Council on 23 December 2020 that they had not received any request for an appeal or review of their decision in relation to the Registrant.

Mr Gilmore referred the Committee to Paragraph 12 (6) and (7) of Schedule 2 of the 2019 Rules, which states that a written notification from the DBS of current barring status shall be regarded as *prima facie* evidence. He said that there has been no undermining of this evidence to suggest that the Registrant is not the individual referred to by the DBS, or that there has been a successful appeal against this decision. In all of the circumstances he submitted that, on the balance of probabilities, the facts as set out in the Particulars of the Allegation should be found proved.

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. In addition, she reminded the Committee not to draw any adverse inference in the Registrant not attending or giving evidence.

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 Mr Gilmore 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 (6) and (7) of Schedule 2 of the Rules, the Committee was satisfied that the Registrant being included on the DBS barred lists constituted *prima facie* evidence. The Committee noted that there is no evidence that the decision by the DBS has been appealed or reviewed, and there is nothing to suggest that this does not relate to the Registrant.

Taking all of this into account, the Committee finds proved, on the balance of probabilities, the facts in accordance with Rule 4 (1) (f) 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 Mr Gilmore, who advised that there were no formal admissions from the Registrant in relation to the allegation. He submitted that the Registrant's inclusion on the DBS barred lists 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. He said that in accordance with Paragraph 24 (3) of Schedule 2 of the Rules, the Committee may be satisfied that the reason for the Registrant's alleged impairment of fitness to practise is evidenced by inclusion on the DBS barred lists. He referred the Committee to the Standards of Conduct and Practice for Social Care Workers and, in particular, to the headline Standards of Conduct at 1, 2, 3 and 5, all of which he alleged had been breached by the DBS barring of the Registrant. He said that there was no evidence that the impairment is capable of remediation or had been remediated. As regards repetition, he suggested that this was not relevant as the Registrant is currently barred from working with children and vulnerable adults. He suggested that the public interest in this matter is strong, and that 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 Mr Gilmore 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 documentation and correspondence in Exhibits 1 and 2 in relation to the Registrant being included on the DBS barred lists.

The Committee considered whether the Registrant's fitness to practise is impaired by reason of his inclusion on the DBS barred lists 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 had regard to the Standards of Conduct and Practice for Social Care Workers and the Council guidance entitled '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

Standard 2: As a social care worker, you must strive to establish and maintain the trust and confidence of service users and carers.

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.

Standard 5: As a social care worker, you must uphold public trust and confidence in social care services.

The Committee considered that the Registrant being included on the DBS barred lists was serious, and noted the DBS findings as set out in their letter of 13 November 2019.

The Committee concluded that the Registrant's inclusion on the DBS barred lists brings the social care profession into disrepute, and that the public would find it totally unacceptable that a registrant barred from working with children and vulnerable adults in these circumstances remained on the Register without restriction. The Committee considered the issues of remediation and repetition, and noted that the Registrant is currently barred from working with children and vulnerable adults and, therefore, there is no risk of repetition. In addition, remediation in the circumstances is also not applicable.

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 inclusion on a list maintained by the DBS.

Sanction

In reaching its decision on sanction, the Committee considered the submissions from Mr Gilmore on behalf of the Council, and had regard to all of the evidence in this case. Mr Gilmore advised the Committee that there were no previous referrals to the Council. He said that the Council had received no references or testimonials for the Registrant. As regards the aggravating factors, he submitted that it would be a criminal offence for the Registrant, who is on the DBS barred lists, to work in regulated activities. He reminded the Committee of the grounds supporting the decision of the DBS to bar the Registrant, with the DBS being satisfied on the balance of probabilities that the Registrant had exposed himself to a service user and grabbed her breast. He said that these allegations against the Registrant strike at the heart of the provision of care, and constitute a breach of trust. He further noted that the Registrant has failed to co-operate with the Council and has actively avoided any engagement. He said that the public is entitled to expect that care workers will provide safe and effective care to the most vulnerable in society. He submitted that in view of the serious nature of the Particulars of the Allegation, it is the Council's view that the only necessary and proportionate sanction is that of removal. He said that removal would protect service users, the social care workforce and maintain confidence in the Council. He referred the Committee to the Indicative Sanctions and Use of Interim Order Guidance and, in particular, to Paragraph 5. He suggested that being on the barred lists is incompatible with registration as a social care worker, and that the only appropriate sanction is, therefore, removal.

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 ('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, 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.

The Committee considered the aggravating factors to be:

- the Committee noted that the Registrant is barred from any registered activities involving children and vulnerable adults, and to do so could amount to a criminal offence ;
- the Registrant has expressed no insight nor regret;
- the Registrant has failed to engage with the Council during the investigation; and
- the Committee has not been provided with 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 to the financial impact that this may impose.

Warning – the Committee considered the issue of a Warning in this case. The Committee considered that the Registrant's inclusion on the DBS barred lists is a very serious matter, and 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, and the Committee took into account the reasons used by the DBS in including him on the barred lists. Therefore, in these circumstances, the Committee would not be

confident that this sanction would provide adequate public protection, and would therefore be totally inappropriate.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Registrant's inclusion on the DBS barred lists precludes him from working with children and vulnerable adults. In these circumstances, the Committee did not consider that a Conditions of Practice Order would be appropriate or necessary. In addition, the Committee noted that it is a criminal offence for someone who is on the barred list to engage, seek to engage or offer to engage in regulated activity for which they are barred. The Committee, therefore, concluded that a Conditions of Practice Order would not be applicable.

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 the Standards of Conduct and Practice for Social Care Workers. The Committee took into account the circumstances which led to the Registrant being included on the DBS barred lists, and the very serious nature of the allegations raised against the Registrant.

The Committee noted that in light of the Registrant being included on the barred lists, the Registrant is unable to work as a social care worker. However, the Committee has no evidence that the Registrant has expressed any insight or remorse. The Committee has not heard from the Registrant, nor has he engaged with the Council. The Committee considered the public interest in this matter. The Committee considered that the public would perceive the Registrant being placed on the barred lists by the DBS 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 of this matter.

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 Particulars of the Allegation against the Registrant, necessitating his inclusion on the DBS barred lists for children and vulnerable adults, and his lack of insight and engagement, a Removal Order is the only sanction appropriate to protect the public. This would also maintain public confidence in the social care profession and the Council as its regulator. 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 inclusion on the DBS barred lists. 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 included on the DBS barred list, and who failed to show inappropriate insight or remorse, 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 01 March 2021. 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.

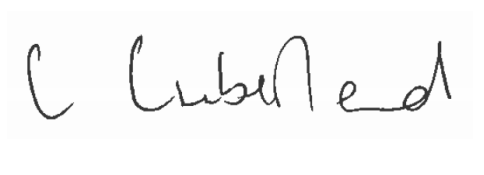
The effect of this decision is that your entry in the Register has been removed.

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 NISCC 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.



Regulatory Committee Manager

25 January 2021

Date