

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

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**Name:** Martin George Thompson

**SCR No:** 6009318

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at a hearing on **18 June 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 a conviction in the United Kingdom for a criminal offence;**

**The Committee decided to make an Order for removal of your registration from the Register ('a Removal Order').**

**Particulars of the Allegation:**

That on the 06 January 2021, whilst being registered as a social care worker, under the Health and Personal Social Services Act (Northern Ireland) 2001(as amended), you were convicted of the following offence at the Magistrates' Court:

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| 1. | Defendant on 30 <sup>th</sup> day of October 2019, unlawfully assaulted (Service User A), contrary to section 42 of the Offences Against the Person Act 1861. |
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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 not in attendance and the Council was represented by Mr Peter Carson, Solicitor, Directorate of Legal Services.

**Service**

Mr Carson told the Committee that the Notice of Hearing and hearing bundle were sent to the Registrant's registered email address on 12 May 2021 and a delivery receipt was received on the same date. An amended

hearing bundle was sent to the Registrant's registered email address on 09 June 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 sent.

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**

Mr Carson 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 his absence. He invited the Committee to conclude that the Registrant's absence was a voluntary waiver of his right to attend. Mr Carson told the Committee that the Committee Clerk telephoned the Registrant on 14 June 2021, to confirm his attendance at the Fitness to Practise Hearing. The Registrant stated that he would not be in attendance but understood that the Committee could proceed in his absence. Mr Carson further suggested that it was in the public interest for there to be an expeditious disposal of the hearing.

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. The Committee noted the telephone call between the Committee Clerk and the Registrant on 14 June 2021, in which the Registrant confirmed that he would not be in attendance and understood that the Committee could proceed in his absence. The Committee noted that the Registrant had not asked for an adjournment in any communication with the Council. 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 serious 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 had 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.

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

Mr Carson requested that the hearing bundle be admitted into evidence. The Committee accepted the bundle into evidence and marked it as Exhibit 1.

### **Background**

Mr Carson referred the Committee to the background of the case, as set out in Exhibit 1. He said that the Registrant was first registered on 23 December 2013, on Part 2 of the Register, as a social care worker. The Registrant commenced employment as a support worker on 21 July 2014 with Praxis Care in Pond Park Supported Living Service in Lisburn.

The matter came to the Council's attention by way of an Employer Referral Form (ERF), dated 20 November 2019. The ERF made reference to an allegation that the Registrant had 'used excessive force and threatening behaviour towards a service user'. Mr Carson told the Committee that the Registrant was suspended from his role on 31 October 2019.

### **Evidence**

Mr Carson referred the Committee to the Certificate of Conviction in Exhibit 1. He advised that the conviction against the Registrant related to unlawful assault of a service user, which took place on 30 October 2019. Mr Carson told the Committee that the Registrant pleaded guilty on 24 November 2020, was convicted on 21 December 2020 and was sentenced to 2 months imprisonment. The Registrant appealed this sentence and at the appeal hearing on 06 January 2021, the County Court ordered that the conviction be affirmed, but the sentence be suspended for 2 years. Mr Carson referred the Committee to the ERF from Praxis Care, the PSNI case summary and the Summary of Audio Recorded Police Interview, dated 13 February 2020. He noted that the assault took place in the service user's apartment and that the Registrant was accused of grabbing the service user by his arms and spinning him around. He further noted that the Registrant, when interviewed by police, denied the allegation.

### **Findings of Fact**

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 Rules. In addition, she reminded the Committee not to draw any adverse inference in the Registrant not attending or giving evidence. She reminded the Committee that some of the documents within the bundle may contain hearsay evidence, requiring careful assessment and the application of appropriate weight.

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 Carson 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 (5) of Schedule 2 of the Rules, the Committee was satisfied that the Certificate of Conviction against the Registrant proved the facts therein. The Certificate of Conviction against the Registrant related to an offence of unlawfully assaulting a vulnerable service user whilst providing care to him in his home. Whilst some information in relation to the events of the 30 October 2019 was contained in the ERF and the case summary provided by the police, the Committee gave particular weight to the information contained within the Certificate of Conviction. The Committee noted that the Registrant pleaded guilty to the charge of unlawful assault of Service User A and was sentenced to two months imprisonment suspended for two years.

Taking all of this into account, the Committee found proved, on the balance of probabilities, the facts in accordance with Rule 4 (1) (d) 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 Carson, who advised that there were no formal admissions from the Registrant in relation to the Particulars of Allegation. He submitted that the Registrant's conviction 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 referred the Committee to the Standards of Conduct and Practice for Social Care Workers, which he submitted that the Registrant's criminal conviction breached as follows: 5 - 5.1, 5.8.

Mr Carson told the Committee that the Registrant's conviction and conduct fell far below the minimum standard expected of a registered social care worker, and called into question his fitness to practise. He submitted that the Registrant's actions constituted an abuse of his position of trust and showed a complete lack of respect for the service user. He said that in light of the Registrant's lack of engagement and his failure to attend the hearing, there is nothing to persuade the Committee that the Registrant's behaviour would not be repeated in the future. There is also no evidence from the Registrant that he has remediated his behaviour. Mr Carson submitted that the Registrant demonstrated limited insight into the matter when he pleaded guilty to the criminal charge. Mr Carson submitted that the public interest and 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 Carson 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 this issue. In particular, she asked it to take into account the nature and content of the criminal conviction against the Registrant, and reminded the Committee that it is being asked to determine whether the Registrant's fitness to practise is impaired because of this conviction. She referred the Committee to Paragraph 24 Schedule 2 of the Rules, and the requirements as set out in the case of the GMC v Cohen, looking at the current competence and behaviour of the Registrant along with the need to protect service users, members of the public, the upholding of proper standards of behaviour and the maintenance of public confidence in the social care profession. She further referred the Committee to the findings of Dame Janet Smith in the 5<sup>th</sup> Shipman Report as regards the potential causes of impairment. She also referred the Committee to the cases of GMC v Meadows 2006 and CHRE v NMC & Grant 2011.

The Committee considered whether the Registrant's fitness to practise was 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 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 noted that the Registrant's conviction for unlawfully assaulting a service user was serious and involved a vulnerable service user. The Committee considered that the Registrant was in a position of trust and had abused that trust when he assaulted the service user whilst providing care for him in the service user's own home. The Committee noted that it was alleged that the service user was distressed as result of the Registrant's behaviour and that the Registrant's actions displayed a lack of understanding and compassion when providing care to a vulnerable service user. The Committee noted that the Registrant received a custodial sentence of two months, which on appeal was suspended for two years and the Registrant is still under this period of suspension.

The Committee had regard to the Standards of Conduct and Practice for Social Care Workers and the Council guidance titled 'Making a Determination of Impaired Fitness to Practise: Guidance for Committees on Remediation'. The Committee was satisfied that the Registrant's actions were in breach of the following Standards of Conduct:

**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; 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 had no information or evidence from the Registrant as regards any action which he had taken to remediate his behaviour. The Committee found that the Registrant's criminal assault of Service User A amounted to a very serious abuse of trust. The Committee considered that such conduct is not easily remediable. In view of the Registrant's lack of engagement to date, the Committee had no basis on which it could be satisfied that the Registrant had full insight into his criminal behaviour or that he would not repeat his actions in the future. The Committee acknowledged that the Registrant in pleading guilty to the criminal charge showed a small degree of insight. However, in all of the circumstances, the Committee considered there to be a continued risk of repetition of his behaviour.

The Committee concluded that the Registrant's conviction for unlawful assault brings the social care profession into disrepute, and that the public would find it totally unacceptable that a Registrant convicted in these circumstances remained on the Register without restriction.

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 was currently impaired by reason of his criminal conviction.

## **Sanction**

In reaching its decision on sanction, the Committee considered the submission of Mr Carson on behalf of the Council, and had regard to all of the evidence in this case. Mr Carson referred the Committee to mitigating factors and advised that the Registrant had a clear work record with no previous referrals to the Council. He also noted that the Registrant had pleaded guilty to the criminal charge of unlawful assault.

As regards to aggravating factors, Mr Carson submitted that the public were entitled to expect that care workers would provide safe and effective care to the most vulnerable in society, and suggested that the Registrant's behaviour in assaulting a vulnerable service user could not be considered to be at the lower end of the spectrum of behaviour. He suggested that the Registrant's actions were fundamentally incompatible with remaining on the Register. He noted that the Registrant did not express any remorse for his behaviour and has not provided the Committee with any information or explanation for his actions. He submitted that a sanction was appropriate and fair and that the sanctions of Warning or Conditions of Practice would not be sufficient to protect the public or be appropriate. As regards the sanction of Suspension, he suggested that this could be appropriate if there had been an acknowledgement by the Registrant of his failings and the risk of repetition was low. He said that taking

into account the Northern Ireland Social Care Council Indicative Sanctions and Use of Interim Orders: Guidance Fitness to Practise Committees ('the Guidance'), the sanction of a Removal Order should be considered.

The Committee accepted the advice of the Legal Adviser. She referred the Committee to the Guidance, 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 (a '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 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 'the Guidance, bearing in mind that the decision on sanction is one for its own independent judgement.

The Committee recognised that the purpose of sanction was 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 aggravating factors to be:

- the Registrant's criminal conviction for assault constituted a serious breach of trust, taking place whilst the Registrant was providing care to a vulnerable service user, and presented a significant risk of harm;

- the Registrant's actions showed a serious disregard for the standards of care expected of social care workers;
- the Registrant expressed very limited insight and no regret for his actions;
- the Registrant has failed to engage with the Committee during these proceedings;
- the Committee had no evidence of remediation or rehabilitation, nor had the Registrant provided any references or testimonials.

The Committee considered the mitigating factors to be:

- there were no previous concerns raised with the Council and no issues raised during his previous work history;
- the Registrant made an admission to the criminal charge and pleaded guilty;

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 the financial impact that this may impose, nor were there testimonials or references provided.

**Warning** – the Committee considered the issue of a Warning in this case. It bore in mind that the imposition of a Warning for a period of time would not protect the public from the risk of repetition and consequent risk of harm to service users and members of the public. The Committee considered that the Registrant's criminal conviction demonstrated a serious disregard for the Standards of Conduct and Practice for Social Care Workers. The circumstances of the Registrant's impairment of fitness to practise was not at the lower end of the spectrum, nor were the circumstances such that the Committee would be confident that this sanction would provide adequate public protection as far as the Registrant's suitability was concerned. The Committee bore in mind that a Warning would entitle the Registrant to work as a social care worker. He had not provided any evidence of insight into the harm which his behaviour had caused to the service user. In addition, the Committee had no evidence of rehabilitative steps taken by the Registrant, nor had he provided references or testimonials.

**Conditions of Practice Order** – the Committee next considered a Conditions of Practice Order. The Registrant's conviction related to a serious abuse of trust where he assaulted a vulnerable service user whilst providing care for him. As the Registrant did not attend the hearing, the Committee had no evidence as to his current employment, or whether he would agree to any conditions, if imposed. Further, the Committee did not consider conditions of practice would protect the public from the risk of repetition as identified above.

The Committee, therefore, concluded that a Conditions of Practice Order would not be sufficient to meet the public interest in this matter, given the seriousness of the Registrant's departure from the standards expected of a registered social care worker. In these circumstances, the Committee could not formulate workable,



enforceable or verifiable conditions which would address the Registrant's criminal behaviour and adequately protect the public.

**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 fundamental tenets of the social care profession. The Standards of Conduct and Practice for Social Care Workers require a social care worker to treat each person as an individual with consideration, respect and compassion, along with respecting and maintaining their dignity. In particular, the Registrant in this matter pleaded guilty to assault on a vulnerable service user.

The Committee had no evidence before it of remediation by the Registrant, nor had it any information to indicate that the Registrant was unlikely to repeat his criminal behaviour in the future. The Committee considered that the Registrant had failed to express sufficient insight or remorse, particularly in relation to the seriousness of his criminal conviction and the risk of harm which his behaviour presented to the service user. The Committee had no evidence from the Registrant, nor had he engaged with the Council in any meaningful way. The Committee considered the public interest in this matter. The Committee considered that the public would perceive the Registrant's criminal behaviour 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 address the seriousness and unacceptability of the Registrant's criminal conviction.

**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 Registrant's criminal conviction and his lack of insight and remediation of his failings, a Removal Order was the only sanction appropriate to protect the public and to maintain public confidence in the social care profession and the Council as its regulator. The Committee considered the Registrant's actions to constitute a serious departure from the professional standards as set out in the Standards of Conduct and Practice for Social Care Workers. The Registrant's criminal behaviour involved an assault on a vulnerable service user, and constituted an abuse of his position of trust as a social care worker, and brought the social care profession into disrepute. The Registrant had shown limited insight and remorse, had taken no remedial action and had failed to engage with the Committee in relation to today's hearing. 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 actions. 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 criminally convicted of assault, and who failed to show appropriate insight or remediation, 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.

**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.**

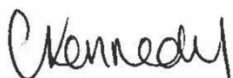
The effect of this decision is that your entry in the Register has been removed.

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.



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Committee Clerk

21 June 2021

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Date