

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

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**Name:** David Weatherburn

**SCR No:** 6023838

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **07 October 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 conviction;**

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

**Particulars of the Allegation:**

That, on 28 January 2021, as set out below, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted of the following offence at the Magistrates' Court:

1. [You] on 5<sup>th</sup> day of August 2020, unlawfully assaulted [a child], contrary to section 42 of the Offences Against the Person Act 1861.

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, nor was he represented. 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 23 August 2021, and that a delivery receipt was received on the same date. The

Council received an email from the Registrant on 25 August 2021, stating that he would not be in attendance at the hearing.

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 had 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 Registrant sent an email to the Council on 25 August 2021 to confirm that he would not be in attendance at the hearing, but asked to be kept informed of the outcome. Mr Carson further suggested that it was in the public interest for there to be an expeditious disposal of the hearing, and noted that the events in question took place in August 2020.

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 email received from the Registrant on 25 August 2021, in which the Registrant confirmed that he would not be in attendance and asked for the outcome to be sent to him. 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.

## **Declaration of Conflicts of Interest**

The Chair of the Committee advised that all Committee Members had confirmed that they did not have any conflicts of interest with the case.

## **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 17 August 2016 on Part 2 of the Register as a social care worker. The Registrant commenced employment as an adult residential care worker on 25 September 2019 with Lansdowne Care Home (Four Seasons Healthcare) in Belfast. Mr Carson directed the Committee to the PACE interview transcript notes and case summary from the PSNI, received by the Council on 25 May 2021. He also noted the press extract, dated 31 January 2021, dealing with the events in question.

## **Evidence**

Mr Carson referred the Committee to the Certificate of Conviction in Exhibit 1. He advised that the conviction against the Registrant related to an unlawful assault of a minor, aged 12, which took place on 05 August 2021. Mr Carson told the Committee that the Registrant pleaded guilty on 19 November 2020, was convicted on 28 January 2021 and was sentenced to one month's imprisonment, to be suspended for one year, and a monetary penalty. Mr Carson referred the Committee to the PSNI case summary and PACE interview transcript notes, received by the Council on 25 May 2021. He noted that the matter was in the public domain and had been reported by the press, as outlined in the extract which was included in the bundle. He submitted that the Particulars of Allegation could, therefore, be proved in accordance with Rule 4 (1) (d) and Paragraph 12 (5) of Schedule 2 of the Rules.

## **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. 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 was 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.

**Particular 1: [You] on 5<sup>th</sup> day of August 2020, unlawfully assaulted [a child], contrary to section 42 of the Offences Against the Person Act 1861.**

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 found that, on the balance of probabilities, the facts contained in the Particulars of the Allegation had 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 minor on 05 August 2020. The Committee noted that the Registrant pleaded guilty to this charge and was sentenced to one month's imprisonment, suspended for one year, and that a monetary penalty of £300 was imposed.

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 was impaired. The Committee heard submissions from Mr Carson, who advised that there was no formal admission from the Registrant in relation to impaired fitness to practise. 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 ('the Standards'), which he submitted that the Registrant's criminal conviction breached, at 5 - 5.8 of the Standards.

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 a complete lack of respect for the injured minor. He said that in light of the Registrant's lack of engagement and his failure to attend the hearing, there was nothing to persuade the Committee that the Registrant's behaviour would not be repeated in the future. There was also no evidence from the Registrant that he had remediated his behaviour. Mr Carson submitted that the Registrant demonstrated limited insight into the matter when he pleaded guilty to the criminal charge. He submitted that the level of insight was central to consideration of the Registrant's fitness to practise. He noted that the Registrant made an initial denial when confronted by the Police, and attributed this to him being intoxicated. 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, 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 was being asked to determine whether the Registrant's fitness to practise was impaired because of this conviction. She referred the Committee to Paragraph 24 of 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 maintaining 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 carefully considered whether the Registrant's fitness to practise was impaired by reason of his conviction, as set out in the Particulars of 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 minor was very serious. The Committee noted that the Registrant received a custodial sentence of one month, which was suspended for one year, and that the Registrant was still under this period of suspension.

The Committee had regard to the Standards and the Council guidance titled '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 5: As a social care worker, you must uphold public trust and confidence in social care services. In particular you must not:**

- 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 took into account that the Registrant pleaded guilty to the criminal charge and said that he had no memory of what happened at this time due to being intoxicated. In addition, the

Committee noted the Registrant's comments in his email to the Council on 25 August 2021. In this email, he stated that he knew that what he had done was wrong.

In view of the Registrant's lack of meaningful engagement to date, the Committee had no basis on which it could be satisfied that the Registrant now had developed full insight into the impact of 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 limited 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 of a minor brought the social care profession into disrepute, and that the public would find it totally unacceptable that a Registrant convicted in these circumstances should remain on the Register without restriction. The Committee considered that being registered as a social care worker carried with it the expectation that a registrant's behaviour, both within and outside the workplace, would be in compliance with the Standards. Whilst the Committee took into account the Registrant's comments in his email of 25 August 2021, the Committee noted that the Registrant did not make any reference to the impact of his behaviour on the 12 year old minor whom he was convicted of assaulting. The Committee had no information as regards the Registrant's current employment, nor whether he was still working as a social care worker. The Committee noted that the Registrant's criminal conviction and the circumstances of this were reported in the press and that it was, therefore, clearly within the public domain and, as a consequence, that the public interest is highly engaged.

In all of the circumstances, the Committee concluded that a finding of impaired fitness to practise was, 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 of a minor. He noted that it was reported that the Registrant had apologised to the victim of the assault and appeared, in his email of 25 August 2021, to acknowledge that what he had done was wrong.

As regards to aggravating factors, Mr Carson submitted that the Registrant's behaviour, in assaulting a 12 year old minor, could not be considered to be at the lower end of the spectrum of behaviour. He suggested that the Registrant's criminal behaviour was fundamentally incompatible with remaining on the Register. He noted that

the Registrant followed the minor into a shop before the assault took place. In addition, he said that the Registrant was too intoxicated at the time to recall what had happened. He further submitted that the Registrant had failed to meaningfully engage with the Council during its investigation.

He submitted that imposing a sanction was appropriate and fair, and that the sanctions of Warning or a Conditions of Practice Order would not be sufficient to protect the public or be appropriate in all of the circumstances. As regards the sanction of a Suspension Order, he suggested that there may be circumstances where this would be appropriate, such as if there had been an acknowledgement by the Registrant of the impact of his criminal behaviour, and that therefore the risk of repetition would be low. However, 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 included 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 Guidance, bearing in mind that the decision on sanction was 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 committed an assault on a minor, aged 12 years;
- the Registrant followed the minor to another location before the assault took place;
- the Registrant initially denied having committed the assault, saying that he was intoxicated at the time; and
- the Registrant did not meaningfully engage with the Council.

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 admissions to the PSNI, after viewing CCTV evidence;
- the Registrant pleaded guilty to the criminal charge;
- the Registrant was noted as making an apology to the injured party; and
- the Registrant demonstrated limited insight and regret for his actions.

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, 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. The Committee considered that the Registrant's criminal conviction demonstrated a serious disregard for the Standards. The circumstances of the Registrant's impairment of fitness to practise were 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 to remain registered. The Committee bore in mind that a Warning would entitle the Registrant to work as a social care worker. The Committee was concerned by the Registrant's limited insight, in particular as regards the impact of his assault on the minor. 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 a minor, which took place outside of his work environment.



Therefore, a Conditions of Practice Order would not address the risk identified with the Registrant's criminal behaviour. The Committee 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 Order** – 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 as set out in Standard 5 - 5.8.

The Committee took into account the Guidance at 4.20. 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 had limited information from the Registrant, other than his plea of guilty to the criminal charge and his email of 25 August 2021. 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 impact of his behaviour on a minor. The Committee considered the public interest in this matter. The Committee found the Registrant to have shown limited insight, and also failed to meaningfully engage with the Council. The Registrant's criminal conviction was in the public domain, with details of the court case being reported in the press. 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. In particular, the Committee noted 4.26, which states as follows:

*'This is the most serious sanction which a Committee can impose. A Removal Order is likely to be appropriate when the Registrant's behaviour is fundamentally incompatible with being a social care worker. Removal should be used where there is no other way to protect the public, for example, where there is a lack of insight, continuing problems and a pattern of unacceptable behaviour or denial, where there is no evidence that there is likely to be satisfactory remediation and where confidence in the social care profession would be undermined by allowing the Registrant to remain on the Register.'*

The Committee concluded that given the seriousness of the Registrant's criminal conviction, and his limited insight and lack of remediation, 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. The Registrant's criminal behaviour involved an assault on a 12 year old minor, and brought the

social care profession into disrepute. The Committee considered the public interest to be particularly engaged as a result of the circumstances of this incident. The Registrant showed limited insight and remorse, and failed to meaningfully engage with the Committee in relation to today's hearing. Therefore, the Committee had very little information as regards the Registrant's current circumstances or any remediation undertaken. In all of the circumstances, the Committee concluded that a Removal Order was 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 seriously undermined if a social care worker who was criminally convicted of assault on a minor, and who failed to show sufficient 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 was imposed on the Registrant's registration with immediate effect.

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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:

- a.) A member of care staff at
  - a) Children's home;
  - b) Residential care home;
  - c) Nursing home;
  - d) Day care setting;
  - e) Residential family centre.
- b.) 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.
- c.) 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.



13 October 2021

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Committee Clerk

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Date