

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

Name: Gerald Francis McCaffery

SCR No: 6032890

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **15 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 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, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted of the following offences at the Magistrates' Court on 26 April 2021:

1. [You] on the 10th day of April 2020, unlawfully had in your possession a controlled drug of Class A of Schedule 2 of the Misuse of Drugs Act 1971, namely Cocaine, in contravention of Section 5 (1) of the Misuse of Drugs Act 1971, contrary to Section 5 (2) of the Misuse of Drugs Act 1971.
2. [You] on 10th day of April 2020, unlawfully had in your possession a controlled drug of Class B of Schedule 2 to the Misuse of Drugs Act 1971, namely Cannabis, in contravention of Section 5 (1) of the Misuse of Drugs Act 1971, contrary to Section 5 (2) of the Misuse of Drugs Act 1971.
3. [You] on 10th day of April 2020, when driving a mechanically propelled vehicle on a road, namely, Killyleagh Road, Downpatrick, were unfit to drive due to drink or drugs, contrary to Article 15 (1) of the Road Traffic (Northern Ireland) Order 1995.

And your actions, as set out above, show that your fitness to practise is impaired by reason of your convictions.

Procedure

The hearing was held under the fitness to practise procedure.

Preliminary Matters

The Registrant was not in attendance, nor was he represented, and the Council was represented by Mr Anthony Gilmore, Solicitor, Directorate of Legal Services.

Declarations of Interest

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

Service

Mr Gilmore told the Committee that the Notice of Hearing and hearing bundle were emailed to the Registrant's registered email address on 02 September 2021, and that a delivery receipt was received on the same date. He said that the Committee Clerk called the Registrant's landline on 06 October 2021, and left a message with his mother asking him to contact her in relation to his registration with the Council. The Registrant did not return the call.

The Committee received legal advice from the Legal Adviser. 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 took into account that the Notice of Hearing had provided details of the date and time of the hearing, and that it was to be held virtually. In addition, it contained information about the Registrant's right to attend, be represented and call evidence, as well as the power to proceed in his absence.

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 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 his absence. He invited the Committee to conclude that the Registrant's absence was a voluntary waiver of his right to attend. He further suggested that it was in the public interest for the case to proceed as this would ensure a fair and expedient 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. The Committee 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.

In reaching its decision, the Committee had particular regard to the factors as set out in the case of R v Jones 2003 1 AC and noted that:

- The Registrant had not made an application for an adjournment;
- The Registrant did not respond to the communication from the Council;
- There is no reason to suppose that adjourning the case would secure his attendance at a future date; and
- There is a strong public interest in the expeditious disposal of this case.

Therefore, after careful consideration of all of the issues, the Committee decided to exercise its discretion to proceed in the absence of the Registrant, striking a careful balance between fairness to the Registrant and the wider public interest. The Committee reminded itself that it must avoid reaching any improper conclusion about the Registrant's absence.

Application to Admit Hearing Bundle

The Committee accepted the bundle into evidence and marked it as Exhibit 1.

Background

Mr Gilmore provided the Committee with a background to the case. He advised the Committee that the Registrant had been on Part 2 of the Register since 22 November 2019. In terms of chronology, Mr Gilmore told the Committee that the Registrant was not working as a social care worker when the offences occurred.

The allegations in this case concern the Registrant's alleged criminal behaviour, disclosed by way of a common law disclosure by the PSNI, dated 12 April 2020. The disclosure was made by the PSNI, who took into consideration both proportionality and relevance. The PSNI disclosed that the Registrant was arrested and interviewed by Police, who were investigating allegations of:

- Driving while unfit through drink or drugs;
- Possession of a Class A drug; and
- Possession of a Class B drug.

The disclosure by the PSNI was based on their assessment of the need to do so, due to '*a pressing social need and a transference of risk to the workplace whereby the subject could be driving to or from work and carrying out his role as a care worker whilst under the influence of drugs, potentially causing danger to himself and others.*'

The disclosure document stated that the Registrant had made admissions during interview to two allegations relating to possession of Class A and Class B drugs. Further, the PSNI indicated that this was the third alleged incident involving drugs relating to the Registrant, and that they were concerned that he was displaying a pattern of behaviour which could give rise to a concern in relation to his fitness to practise.

At the conclusion of the PSNI investigation, papers were placed before the Public Prosecution Service and, on 27 September 2020, a prosecution was directed.

Evidence

Mr Gilmore referred the Committee to the three certificates of conviction in Exhibit 1. He advised that the convictions against the Registrant related to the possession of controlled drugs and driving whilst unfit through drink or drugs. He told the Committee that the Registrant pleaded guilty to the charges relating to the possession of drugs on 05 November 2020, and pleaded guilty to the third charge of driving whilst under the influence of drink or drugs on 26 April 2021.

Mr Gilmore directed the Committee to the three certificates of conviction within the bundle, which show that the Registrant was convicted of each offence and fined £100 in respect of the first matter, fined £75 in respect of the second matter and £150 in respect of the driving matter. The Registrant was also disqualified from driving for 12 months.

Mr Gilmore submitted that, as part of its investigation, the Council had spoken to the Registrant's previous employer. The employer confirmed in a telephone call, and subsequently in writing, that the Registrant had left on 11 December 2019, prior to these offences, and that there had been no issues with regard to his work.

Mr Gilmore submitted that the documentation in the hearing bundle confirmed that the Registrant was convicted of each of the offences as set out within the Particulars of the Allegation. He submitted that the certificates of conviction, when taken alongside the background information obtained from his employer and from the PSNI, allows the Council to prove the facts on the balance of probabilities. Mr Gilmore submitted that in accordance with Paragraph 12 (5) of Schedule 2 of the Rules, the certificates of conviction are conclusive proof of the facts.

Findings of Fact

The Committee took into account the submissions made on behalf of the Council, the certificates of conviction and the legal advice from the Legal Adviser. The Legal Adviser reminded the Committee that under Paragraph 12 (5) of Schedule 2 of the Rules, a certificate of conviction issued in any UK Criminal Court '*shall be conclusive proof of the facts or conviction so found*'. She advised the Committee that a registrant could challenge a certificate of conviction if it did not refer to the Registrant, or where the conviction had been challenged successfully on appeal. She informed the Committee that the certificates of conviction in this case were issued before a competent Court of jurisdiction and, in the absence of any other evidence, the Committee was entitled to rely on the certificates of conviction to establish conclusively that the Registrant was convicted of the offences as

set out. She also advised the Committee that the certificates could also be relied upon to establish the facts underlying the convictions.

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 noted the facts contained in the certificates of conviction. The Committee concluded that the certificates of conviction are conclusive proof of the convictions and the underlying facts. The Committee, therefore, found the facts proved.

Fitness to Practise

The Committee proceeded to consider whether the Registrant's fitness to practise was currently impaired by reason of his convictions.

The Committee heard submissions from Mr Gilmore, who advised that the Registrant had made no formal admission in respect of impairment. He submitted that the Registrant's convictions 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, in his submission, the Registrant had breached by reason of his convictions: Standards of Conduct - 5.7 and 5.8 and Standards of Practice 6.1.

Mr Gilmore submitted that the Registrant's actions fell far below the standards to be expected of a registered social care worker. He submitted that there was some insight as the Registrant has accepted his own actions. Mr Gilmore told the Committee that the Council would have welcomed further co-operation from the Registrant to understand the background to events which led to the offences, and also whether steps have been taken to remediate. Mr Gilmore submitted that it is the Council's position that drug related issues can be remediated, but the Registrant has not produced evidence of remediation at this point. He said that in these circumstances, there remains a risk of repetition. He also stated that a failure to make a finding of current impairment of the Registrant's fitness to practise would undermine public trust and confidence, and fail to declare proper standards of conduct and behaviour. Mr Gilmore invited the Committee to make a finding of current impairment by reason of the Registrant's convictions.

The Committee considered the submissions from Mr Gilmore and had regard to all of the evidence in the case. The Committee heard and accepted the advice of the Legal Adviser. She referred the Committee to Paragraph 24 (3) 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 5th 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 convictions 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 Rule 4 (d) of the Rules, which states that fitness to practise may be impaired by a conviction. The Committee was satisfied that the Registrant's convictions for possession of drugs and driving under the influence of drink or drugs were a reason for the alleged impairment of fitness to practise.

The Committee had regard to the Standards of Conduct and Practice for Social Care Workers. 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:

- 5.7 Put yourself or other people at unnecessary risk; or
- 5.8 Behave in a way, in work or outside work, which would call into question your suitability to work in social care services.

The Committee noted that the Registrant's convictions for possession of illegal drugs and driving whilst unfit were serious. The Committee was of the view that the Registrant acted in a way which fell significantly below the standards to be expected of a registered social care worker as he had been convicted of serious criminal offences for possession of drugs and driving whilst under the influence of drugs.

The Committee considered the question of the Registrant's insight and remedial action. The Committee concluded that the events which led to the convictions were capable of remediation. However, there was no information or evidence from the Registrant to demonstrate that he had developed insight and had undertaken the necessary action to remedy his behaviour. The Committee noted that he had shown some insight by accepting his actions. The Committee was of the view that the Registrant's insight was limited. At the Magistrates' Court, he had pleaded guilty to two charges of possession of illegal drugs and one charge of driving

whilst unfit. However, set against this, the Committee noted that the Registrant had not provided any evidence of regret for his actions. Furthermore, it was noted that the Registrant had failed to engage in the regulatory proceedings which were before the Committee.

In addition, the Registrant had failed to provide any evidence that he had remedied his wrongdoing. The Committee noted the disclosure from the PSNI, which referred to concerns about a pattern of behaviour which caused concern about his fitness to hold registration as a social care worker. The Committee considered, in light of the very limited insight on the Registrant's part and the absence of any evidence of remedial action, that there was a likelihood of repetition. Although these events occurred outside of the workplace, because of the serious nature of the offences, the risk of harm to himself and others as a result of the Registrant driving under the influence of drugs, and the concern that these risks could be transferred to the workplace, the Committee concluded that a finding of current impairment was necessary to protect the public.

The Committee also concluded that a finding of current impairment of fitness to practise was also necessary in the public interest. It was considered by the Committee that public confidence in the social care profession, and the Council as its regulator, 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 his criminal convictions.

Sanction

In reaching its decision on sanction, the Committee considered the submission of Mr Gilmore on behalf of the Council, and had regard to all of the evidence in this case. Mr Gilmore 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 three criminal charges.

Mr Gilmore submitted that whilst sanction was entirely a matter for the Committee, it was the view of the Council that it would not be appropriate to take no action or impose a Warning in this case, due to the serious nature of the offences. Mr Gilmore submitted that conditions of practice would be extremely difficult to formulate as the Registrant was not in attendance and is not currently working in social care. In the view of the Council, the appropriate sanction would be either a Suspension Order or Removal Order.

The Committee accepted advice from the Legal Adviser. She referred the Committee to the Sanctions 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 took 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 Council's Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees, 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 mitigating factors to be:

- The Registrant made early admissions during his police interview to possession of drugs, and pleaded guilty to all three offences;
- The Registrant has the benefit of previous good character and, in particular, the Committee noted that his previous employer had no issue with his work as a social care worker; and
- The offences were committed outside of work.

The Committee noted that during his police interview, the Registrant had referred to a previous assault in Portugal as a reason for his drug taking. However, the Committee had no further evidence in relation to this, and could not be satisfied that this was the cause of his offences and did not, therefore, consider this to be a mitigating factor. The Committee also took into consideration the reference by the Registrant to the Council that he was obtaining professional help. However, again, the Committee had no evidence that he had obtained this

help and the steps that he had taken to address his problems with drugs. The Committee was, therefore, unable to give this weight as a mitigating factor.

The Committee considered the aggravating factors to be:

- The possession of drugs was a premeditated offence;
- This was not an isolated incident - there are three criminal convictions and the police had referred to concerns about a pattern of behaviour;
- The Registrant has demonstrated limited insight;
- There is no evidence of regret or remorse;
- The Registrant has only co-operated to a limited extent with the Council investigation;
- The Committee has not been provided with any evidence of rehabilitative steps;
- Although there was no risk to service users, by driving a car whilst under the influence of drugs, the Registrant posed a risk to himself and to the general public; and
- The Registrant has shown a serious disregard for the Social Care Council's Standards of Conduct and Practice. The Committee had previously found that his convictions meant that his actions fell far below the standards which could be expected of a registered social care worker.

Having balanced the aggravating and mitigating factors, and taken into account the interests of public protection and the public interest, the Committee was satisfied that a sanction was necessary, and proceeded to consider which sanction to apply in this case.

No sanction - the Committee had no doubt that it would be entirely inappropriate to impose no sanction in this case. To impose no sanction would be inappropriate in view of the seriousness of the case, and would not address the concerns identified.

Warning – the Committee considered whether to impose a Warning in this case. Having regard to its previous findings, the Committee considered that such a step would be inadequate to protect the public and would fail to uphold the public interest.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Registrant's convictions were serious. As the Registrant did not attend the hearing, the Committee had no evidence as to his current employment circumstances, or whether he would agree to any conditions, if imposed. However, notwithstanding a lack of knowledge concerning the Registrant's employment status, the Committee concluded that a Conditions of Practice Order would be insufficient to protect the public and uphold the public interest, given the seriousness of the Registrant's departure from the standards expected of a registered social care worker. The Committee could not formulate workable, enforceable or verifiable conditions which would address the Registrant's behaviour, adequately protect the public and address the wider public interest.

Suspension – the Committee next considered a Suspension Order. The Committee noted that it had made findings at the facts and impairment stages of the proceedings which were of a very serious nature, and that the Registrant's actions fell far below the standards to be expected of a registered social care worker.

The Committee carefully considered the issue of proportionality, and whether suspension would address the concerns which it had identified. The Committee noted Paragraph 4.19 of the Indicative Sanctions Guidance, which states:

'4.19 Suspension from the Register may be an appropriate sanction for impairment which while very serious, is not so serious as to justify removal from the Register; for example, where there has been an acknowledgment of failings and where a Committee is satisfied that the behaviour is unlikely to be repeated, and the Registrant has no psychological or other difficulties preventing them from understanding and seeking to remedy the failings and the failings are realistically capable of being remedied, then suspension may be appropriate.'

The Committee had no evidence before it that the Registrant acknowledged his failings in so far as they impacted on his registration as a social care worker. The Committee accepted that the Registrant had pleaded guilty to the criminal offences but he had made no admissions to the Committee. The Registrant had demonstrated limited insight and had provided no evidence of remediation. The Committee had earlier determined that there was a risk that he could repeat his criminal behaviour in the future. The Registrant failed to express remorse or demonstrate insight into the seriousness of his criminal convictions and the risk of harm which his behaviour presented to the public. The Committee was left with no alternative but to conclude that the Registrant had failed to satisfy the Committee that he would realistically remedy his behaviour during a period of suspension.

The Committee considered the public interest. 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.

The Committee concluded that a Suspension Order would be insufficient to protect the public, and to address the seriousness and unacceptability of the Registrant's criminal convictions.

Removal – the Committee, therefore, decided to impose a Removal Order. The Committee took into account the Guidance at Paragraphs 4.26 – 4.28. In particular, the Committee paid careful regard to Paragraph 4.26, which states:

'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.'

It concluded that, given the seriousness of the Registrant's criminal convictions and his lack of insight and remediation of his failings, a Removal Order was the only appropriate sanction to protect the public and to

maintain public confidence in the social care profession and the Council as its regulator. The Registrant's actions constituted a very serious departure from the professional standards as set out in the Standards of Conduct and Practice for Social Care Workers. The public is entitled to expect that social care workers will provide safe and effective care to the most vulnerable in society. The Committee was concerned by the risk identified by the police that there could be a transference of risk to the workplace, whereby the Registrant could be driving to or from work and carrying out his role as a care worker whilst under the influence of drugs, potentially causing danger to himself. The Registrant's actions, which resulted in him receiving three criminal convictions, brought the social care profession into disrepute. The Committee determined that the Registrant's behaviour identified him as being unfit to be a member of a caring and responsible profession.

The Committee was satisfied that the Registrant's convictions for possession of cocaine, and driving whilst under the influence of drugs, were so serious that they are fundamentally incompatible with continued registration. Public confidence in the Council, and in social care services, would be undermined if a social care worker who was convicted of possession of illegal drugs, and driving whilst unfit through drink or drugs, and who failed to show appropriate insight or any remediation, was allowed to remain on the Register. The Committee considered that a sanction short of a Removal Order would fail to declare and uphold proper standards of conduct and behaviour.

The Committee decided, in order to protect the public and in the public interest, to make a Removal Order with immediate effect, in respect of the Registrant's registration.

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.

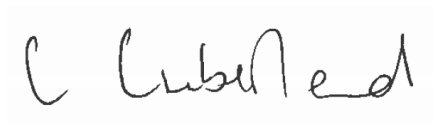
You are prohibited from working as a social care worker in any of the following positions:

- 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.



20 October 2021

Regulatory Committee Manager

Date