



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

CONFIDENTIAL

Name: Gillian Christine Nixon

SCR No: 7004505

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **18 November 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 inclusion on a list maintained by the Disclosure and Barring Service and also by reason of misconduct.

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):

1. You had been barred by the Independent Safeguarding Authority prohibiting you from working with children and vulnerable adults and you were included on the following lists:
 - Disqualification from working with Children (DWC(NI)) List
 - Disqualification from working with Vulnerable Adults (DWVA(NI)) ListAnd the Disclosure and Barring Service has confirmed that your current status remains Barred.

And your actions as set out above show that your fitness to practise is impaired by reason of inclusion on a list maintained by the Disclosure and Barring Service. .

2. During the course of the application process for registration with the Northern Ireland Social Care Council, you dishonestly stated that you had never been barred from working with vulnerable adults or children.

You answered “False” to the questions “Have you ever been barred from working with children?” and “Have you ever been barred from working with vulnerable adults?”
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And your actions as set out above show that your fitness to practise is impaired by reason of your misconduct.

Procedure

The hearing was held under the fitness to practise procedure.

Preliminary Matters

The Registrant was not in attendance, nor was she represented. The Northern Ireland Social Care Council (‘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 by email to the Registrant’s registered email address on 12 October 2021 and an electronic delivery receipt was received on the same date.

The Committee received legal advice from the Legal Adviser. He referred the Committee to the requirements as set out in Rule 3 and Paragraph 8 of Schedule 2 of the Northern Ireland Social Care Council Fitness to Practise (Amendment) Rules 2019 (‘the Rules’).

The Committee was satisfied that the Notice of Hearing had been served in accordance with the Rules.

Proceeding in the Absence of the Registrant

Mr Carson made an application to proceed in the absence of the Registrant. Mr Carson told the Committee that the Committee Clerk left a voicemail for the Registrant on 16 November 2021 and asked for her to return the call to confirm whether or not she would be in attendance at the Fitness to Practise hearing. The Council also emailed the Registrant on 16 November 2021 in the same terms. The Registrant did not respond to either phone call or email. Mr Carson invited the Committee to conclude that the Registrant’s absence was a voluntary waiver of her right to attend. He further submitted that it was in the public interest for there to be an expeditious disposal of the hearing.

The Committee heard and accepted the advice of the Legal Adviser. He referred the Committee to the cases of R v Jones and GMC v Adeogba. He 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. He 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 noted the attempts made by the Council to contact the Registrant by email and by phone and further noted that the Registrant did not respond to any communication from the Council. The Committee concluded that the Registrant, with knowledge of the proceedings, had voluntarily absented herself from the hearing. There was no reason to suppose that an adjournment of the hearing would secure the Registrant's attendance at a later stage. The Committee also noted the serious nature of the allegations faced by the Registrant. It was also of the view that the public interest was strongly engaged. Accordingly, the Committee decided that it was fair and appropriate to proceed with the hearing in the Registrant's absence.

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. The Committee also accepted into evidence the email that was issued to the Registrant on 16 November 2021 asking her to confirm her attendance at the Hearing and marked it as Exhibit 2.

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 this case.

Background

Mr Carson referred the Committee to the background of the case, as set out in Exhibit 1.

The Registrant was registered on Part 2 of the Register on 26 July 2019 and had commenced work with Admiral Care Services (NI) Ltd on 13 March 2019 as a Domiciliary Care Worker. He further submitted that the Council received an Employer Referral Form ('ERF') on 04 September 2019. The Operations Manager informed the Council that he received notification from Access NI on 22 August 2019 which stated the following;

".. Enhanced Disclosure Certificate 2000779606 issued on 11 February 2019 is inaccurate. In accordance with 117 of Part V of the Police Act 1997 a replacement certificate – 2000888798 has been issued.

Whilst case tracking cannot be updated there is information included on this replacement certificate which shows the applicant is barred from working in regulated activity with both children and vulnerable adults.

Given this, Ms Nixon is no longer able to work in regulated activity and it would be a criminal offence for your company to employ her in such a role."

Mr Carson informed the Committee that during an interview with Admiral Care Services, the Registrant had told her employer that she had been accused of theft 15 years previously but nothing had come of it and it was false. However, this was not the case. The Registrant had been barred from regulated activity, meaning that she should

not have been employed in any regulated role. An error by Access NI in February 2019 meant that this fact was missed during her enhanced check.

The Registrant attended a formal meeting on 30 August 2019 with Admiral Care Services' Operations Manager. During this meeting, the Registrant admitted that she was aware she was barred, although, believed it had only lasted for seven years and that she did not know how to get her name removed from the list.

Mr Carson informed the Committee that the Registrant did not make any relevant declarations on her application for inclusion on the Social Care Register, which was submitted online on 23 May 2019. No disclosures were made in relation to any sanctions, removal from a register for conduct reasons or disciplinary proceedings.

Mr Carson told the Committee that the correspondence sent to the Registrant, and shared with the Council, included a letter to the Registrant dated 02 March 2010, from the Disclosure and Barring Service ('DBS'). The letter referred to a previous letter sent to the Registrant, dated 15 June 2006, by the Department of Health and Social Services and Public Safety ('DHSSPS') which confirmed her inclusion on the following lists:

- Disqualification from working with Children (DWC(NI)) List
- Disqualification from working with Vulnerable Adults (DWVA(NI)) List

The letter from the DBS stated that, arising from her disqualifications as set out above and following a change in the legislative requirements, the Registrant would be included in both the Children's Barred List and the Adults' Barred List as of 02 March 2010.

Evidence

At the hearing, the Committee considered all of the documentary evidence contained in the Exhibits.

Finding of Facts

Mr Carson referred the Committee to the correspondence sent to the Council from the DBS, which confirmed that, from 02 March 2010, the Registrant had been included in the Children's Barred List and the Adults' Barred List. Further, Mr Carson referred the Committee to a letter sent by the DBS to the Registrant, dated 02 March 2010, which confirmed her inclusion in the said Lists. Mr Carson also referred the Committee to the Registration application form completed by the Registrant. The form, in his submission, evidenced that the Registrant had denied that she had ever been barred from working with children and vulnerable adults. Mr Carson invited the Committee to find the facts proved.

The Committee heard and accepted the advice of the Legal Adviser. The burden is on the Council to prove the facts as set out in the Particulars of the Allegation. The Committee must apply the standard of proof as applicable in civil proceedings, which is 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. He further referred the Committee to Schedule 2, Paragraph 12 (5) of the Rules. In addition, the Legal Adviser reminded the Committee not to draw any adverse inference against the Registrant in not attending or giving evidence.

The Committee took into account the submissions from Mr Carson and had careful regard to all of the documentary evidence submitted.

Particular 1

You had been barred by the Independent Safeguarding Authority prohibiting you from working with children and vulnerable adults and you were included on the following lists:

- **Disqualification from working with Children (DWC(NI)) List**
- **Disqualification from working with Vulnerable Adults (DWVA(NI)) List**

And the Disclosure and Barring Service has confirmed that your current status remains Barred.

The Committee found that, on the balance of probabilities, the facts contained in Particular 1 were proved. The Committee had regard to the correspondence from the DBS which confirmed that, with effect from 02 March 2010, the Registrant had been included in the Children's Barred List and the Adults' Barred List. The Committee had regard to Paragraph 12 (6) and (7) of Schedule 2 of the Rules. The Committee was satisfied that the correspondence from the DBS contained in the hearing bundle provided *prima facie* evidence of the Registrant's barred status. There was no evidence that the decision by the DBS has been appealed or reviewed by the Registrant nor was there anything to suggest that correspondence related to anyone other than the Registrant.

The Committee therefore found Particular 1 proved on the balance of probabilities.

Particular 2

During the course of the application process for registration with the Northern Ireland Social Care Council, you dishonestly stated that you had never been barred from working with vulnerable adults or children. You answered "False" to the questions "Have you ever been barred from working with children?" and "Have you ever been barred from working with vulnerable adults?"

The Committee found that, on the balance of probabilities, the facts contained in Particular 2 were proved. The application form completed by the Registrant contained two questions:

- Have you ever been barred from working with children?
- Have you ever been barred from working with vulnerable adults?

In response to each question, the Registrant inserted "False" to indicate that she had never been so barred. In light of the DBS correspondence and the Committee's findings in relation to Particular 1, the Registrant's responses were plainly dishonest and would be regarded as dishonest by the standards of ordinary decent people.

The Committee therefore found Particular 2 proved on the balance of probabilities.

Fitness to Practise

Mr Carson, at the outset, applied to admit an email from the Registrant, dated 07 December 2020. Having accepted the Legal Adviser's advice, the Committee decided that it was fair and appropriate to admit the email and marked it as Exhibit 3.

The Committee heard a submission from Mr Carson. Mr Carson stated that the Registrant's actions were serious. She had engaged in regulated activity when she was prohibited from doing so and had failed to disclose her barred status in her application form. The Registrant's actions had fallen below the standards to be expected of a social care worker. As a consequence, Mr Carson submitted that it was appropriate to make a finding of current impairment to protect the public and to uphold the public interest.

The Committee accepted the advice of the Legal Adviser. He 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 question of current impairment.

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.

With regard to Particular 1, the Committee noted that it had found prima facie evidence, which had not been rebutted by the Registrant, of her barred status. With regard to Particular 2, the Committee was satisfied that the Registrant's dishonest actions fell below the standards to be expected of a registered social care worker. Her actions were serious and amounted to misconduct.

When considering the Registrant's actions, in relation to Particular 1 and Particular 2, 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 was satisfied that the Registrant's actions were in breach of the following Standards of Conduct:

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

2.1 Being honest and trustworthy.

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

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 considered the Registrant's inclusion on the DBS Barred Lists and her dishonest entries on the application form. In her email, dated 07 December 2020, the Registrant stated as follows:

"I am in no means trying to make excuses, or justify my actions, for I know what I done was wrong. I would just like to say that at the time this event took place, [REDACTED].

Once again I know what I did was wrong and it was a breach of conduct which I am deeply sorry for as I know I have ruined my chances of ever working with vulnerable adults again."

It was unclear to the Committee as to whether the Registrant was explaining her actions at the time she was added to the Barred Lists or when she falsely completed the application form or both. The Committee considered whether the Registrant's actions were capable of remedy. To the Committee's mind, the Registrant's actions, and particularly her dishonesty, would be difficult to remedy. The Committee next considered whether the Registrant's actions had been remediated. Apart from her email, dated 07 December 2020, there was no other evidence that the Registrant was insightful into the seriousness of her actions. As a result the Committee concluded that the Registrant's insight was limited and that there was a high risk of repetition. Accordingly, a finding of current impairment was needed to protect the public.

The Committee was also of the view that a finding of current impairment was in the public interest. The Registrant's actions were serious and had the potential to undermine public trust and confidence in the system of registration. In addition, the Committee decided that a finding of current impairment on public interest grounds was also required to uphold proper standards of conduct in the social care workforce.

For these reasons, the Committee concluded that the Registrant's fitness to practise is currently impaired.

Sanction

The Committee heard a submission from Mr Carson on the question of what, if any, sanction to impose. The Committee was informed that the Registrant had no previous regulatory findings against her. In light of the Registrant's barred status, it would be a criminal offence to employ her in a regulated activity. The Registrant's dishonest conduct was persistent and serious. Mr Carson submitted that the only appropriate sanction to impose was a Removal Order.

The Committee heard and accepted the Legal Adviser's advice. He set out the range of available sanctions which were provided for by Paragraph 26 of Schedule 2 of the Rules. In summary, the Committee could impose no sanction, warn the Registrant for a period of up to five years, make a Conditions of Practice Order not to exceed three years, make a Suspension Order not to exceed two years or make a Removal Order. The Committee was reminded that the purpose of a sanction was not to be punitive, although a sanction may have a punitive effect. Instead, in its consideration of a sanction, the Committee should have at the forefront of its mind the need to protect the public and the public interest. The Legal Adviser also reminded the Committee that it

should act proportionately, and that any measure taken to limit the fundamental right of the Registrant to practise in the social care setting should be no more than what was necessary in the public interest.

The Committee carefully considered all of the available documentary material, together with Mr Carson's submissions. It also had careful regard to the Northern Ireland Social Care Council Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance').

The Committee considered the aggravating and mitigating factors in this case.

The Committee considered the mitigating factors to be:

- The Registrant had no previous regulatory findings against her. The Committee attached very little weight to this factor. Given her barred status she was prohibited from working in any regulatory activity for a significant period;
- The Registrant had shown some limited insight into her misconduct; and
- The Registrant was undergoing difficulty in her personal circumstances

The Committee considered the aggravating factors to be as follows:

- There was evidence of dishonesty and concealment of wrongdoing;
- The misconduct was directly related to the Registrant's employment in the social care workforce;
- The Registrant's actions had the potential to undermine the system of registration; and
- The Registrant's actions had the potential to cause risk of harm to service users in her care.

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 some form of sanction was necessary, and proceeded to consider which sanction to apply in this case.

Warning – the Committee considered whether to impose a Warning in this case. Having regard to its 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 has been included on the DBS barred list which makes it a criminal offence for her to work with children and vulnerable adults. Therefore, the Committee could not formulate any workable, enforceable or verifiable conditions in light of the Registrant's barred status.

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. While there was some evidence of insight on the Registrant's part, this was limited. The Registrant remained at a high risk of repetition. Further, her misconduct was at the upper end of the spectrum of seriousness.

Removal – the Committee, therefore, decided to impose a Removal Order. In so doing, the Committee took into account the Guidance at Paragraphs 4.26 – 4.28.

Whilst employed, the Registrant enjoyed a position of responsibility and would have been expected to deliver care to vulnerable service users. The Registrant was fully aware that she ought not to have engaged in social care employment. She was prohibited from doing so because of her barred status. The Registrant acted wilfully in a manner which exposed service users to the risk of harm and which undermined the system of registration. As a consequence, the Committee concluded that the Registrant's actions were fundamentally incompatible with continued registration. The Committee also considered that public confidence in the social care profession, and the Council as its regulator, would be undermined if a social care worker, such as the Registrant, who was barred from working with children and vulnerable adults and who had dishonestly failed to disclose this information to her employer and to her Regulator, 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 and would, further, fail to maintain the reputation of the social care workforce.

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.

The Committee also directed that the Interim Suspension Order currently in place should be revoked 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.

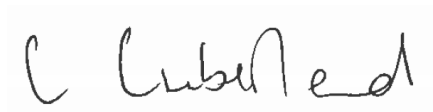
You are prohibited from working as a social care worker in any of the following positions:

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.



Committee Manager

23 November 2021

Date