

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

REDACTED

Name: Michael Angus Barr

SCR No: 1095364

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **04 and 25 February 2022**, 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 convictions;

The Committee decided to make an Order suspending your registration for a specified period of one year ('a Suspension Order').

Particulars of the Allegation:

That, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), on Part 1 of the Social Care Register, as a social worker, you were convicted of the following offences at the Magistrates' Court:

1. You were convicted on the 7th day of February 2020 as follows:
On dates between and including the 20th day of June 2019 and the 2nd day of September 2019, in contravention of Article 3 of the Protection from Harassment (Northern Ireland) Order 1997, pursued a course of conduct which amounted to harassment of Injured Party 1 and which you knew or ought to have known amounted to harassment, contrary to Article 4 (1) of the Protection from Harassment (Northern Ireland) Order 1997.
2. You were convicted on the 23rd day of February 2021 as follows:
Between the 12th day of July 2019 and the 4th day of November 2019, in contravention of Article 3 of the Protection of Harassment (Northern Ireland) Order 1997, pursued a course of conduct which amounted to harassment of Injured Part 2 and which you knew or ought to have known amounted to harassment

contrary to Article 4 (1) of the Protection from Harassment (Northern Ireland) Order 1997.

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 in attendance and represented himself. The Council was represented by Mr Anthony Gilmore, Solicitor, Directorate of Legal Services.

Application to Admit Hearing Bundle

Mr Gilmore 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 [REDACTED] which was provided by the Registrant, and marked it as Exhibit 2.

Conflicts of Interest

The Chair of the Committee stated that all Committee Members have confirmed that they do not have any conflict of interest with the case.

Application for Hearing to be Held in Private

Mr Gilmore made an application for the hearing to be held wholly in private. He referred the Committee to the Particulars of the Allegation against the Registrant, and submitted that the possibility of identifying the injured parties outweighed the public interest in holding a public hearing. In addition, he submitted that [REDACTED].

The Committee heard advice from the Legal Adviser, who referred it to Schedule 2, Paragraph 10 of Northern Ireland Social Care Council Fitness to Practise (Amendment) Rules 2019 ('the Rules').

The Committee noted that there was a presumption that hearings should be conducted in the presence of the Parties and held in public. However, taking into account the nature of the Particulars of the Allegation, and in the circumstances of this case that [REDACTED], the Committee decided that the hearing should be held wholly in private, and that this would cause no prejudice to either Party.

Findings of Fact

After the Particulars of the Allegation were read, the Registrant accepted and admitted the convictions against him. He told the Committee that [REDACTED]. However, he did not dispute the facts of the convictions.

Mr Gilmore said that the Council was content to accept the Registrant's admissions.

The Committee took into account the submissions made on behalf of the Council, the Registrant's admission, the certificates of conviction and the legal advice from the Legal Adviser. The Legal Adviser reminded the

Committee that under Paragraph 12 (5) Schedule 2 of the Rules, certificates of conviction issued in any UK Criminal Court '*shall be conclusive proof of the facts of convictions 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 also advised the Committee that the certificates of conviction could also be relied upon to establish the facts underlying the convictions.

The Committee, having considered the admission of the Registrant, and having taken into account the legal advice, decided that the certificates of conviction were definitive proof of the convictions against the Registrant and the underlying facts. The Committee, therefore, found the facts proved.

Council's Submission on Fitness to Practise

The Committee proceeded to consider if the Registrant's fitness to practise is impaired. The Registrant submitted to the Committee that his fitness to practise was not currently impaired.

The Committee heard a submission from Mr Gilmore. He said that the Council considered the Registrant's fitness to practise to be currently impaired due to his criminal convictions. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr Gilmore referred the Committee to the documents contained within the hearing bundle, and said that the Council's concerns were based on the Registrant being the subject of two separate criminal investigations in respect of allegations of harassment. He referred the Committee to the Registrant's conviction on 07 February 2020, when the Registrant pleaded guilty to harassment of Injured Party 1. He received a four months' custodial sentence, suspended for two years. In addition, he was made subject to a Restraining Order in relation to Injured Party 1, to last until 07 February 2022.

Mr Gilmore further referred the Committee to the Registrant's second conviction on 23 February 2021. The Registrant pleaded guilty to harassment of Injured Party 2 and received a three months' custodial sentence, suspended for one year.

He told the Committee that the Council considered that the Registrant's fitness to practise was impaired at the time of his convictions, and remained impaired. He noted the Registrant's assertion that [REDACTED] at the time of the events for which he was convicted of harassment. [REDACTED]

He referred the Committee to the Standards of Conduct and Practice for Social Workers, which he submitted the Registrant's criminal convictions breached, as follows: 1.2, 5.1, 5.8 and 5.9

Mr Gilmore told the Committee that the Registrant's convictions and conduct fell far below the minimum standard expected of a registered social worker, and called into question his fitness to practise. He referred the Committee to the nature of the harassment, and noted that in respect of Injured Party 1 this took place over a

prolonged period of time. He submitted that the content of the emails sent by the Registrant was extremely concerning, and that the Registrant had utilised his personal knowledge of Injured Party 2, mocking him on multiple occasions over a sustained period of months. He submitted that the Registrant's actions went against the duty of a social worker to be compassionate and understanding. In relation to Injured Party 2, he referred the Committee to police statements, and the Registrant's use of social media in carrying out acts of harassment.

Mr Gilmore submitted that the Registrant had demonstrated some insight into the matter when he pleaded guilty to the criminal charges. He further noted that the Registrant apologised to Injured Party 1. However, he submitted that the best indicator of future behaviour is to consider how a person has behaved in the past. He submitted that the Registrant's actions were not a one-off incident and that it would appear that a sense of grievance remained, and that therefore the risk of repetition was present. He submitted that service users may be put at risk should they come into conflict with the Registrant. Mr Gilmore submitted that the public interest and confidence in the social work profession would be undermined if a finding of current impairment was not made in these particular circumstances. He submitted that the Registrant had brought the profession into disrepute and that he had breached fundamental tenets of the social work profession.

Registrant's Submission

The Registrant gave affirmed evidence to the Committee. He said that he had heard the submission from the Council and accepted this as being true. He said that his behaviour had been odious, and that he was embarrassed and ashamed at what had happened. He said that he has thought about what he said and has reflected on this, and is now completely shocked at what he did. He told the Committee that prior to these events, he had 32 years' social care practice and described how he loved his work and had no previous disciplinary issues. He told the Committee about the issues that arose during his employment at [REDACTED] Children's Home. He gave evidence that he reported issues concerning the wife of Injured Party 2, and described the work environment at the time as toxic. He gave evidence that the employer investigation against him was not independent, and that his subsequent treatment [REDACTED]. He said that, at the time, he was angry and that his dismissal caused the loss of his home as he was no longer able to pay his mortgage.

The Registrant gave evidence that [REDACTED]. He told the Committee that he was successful in an employment tribunal hearing against his employer. Subsequent to this, he gave evidence that he was living with his partner and had applied for work. He was offered work through an Agency. However; he said that due to the lack of an appropriate reference from the Northern Health and Social Care Trust ('the Trust'), the offer was withdrawn. He said that [REDACTED] and sent the awful messages. He told the Committee that he had completed his suspended sentence and that he had no vendetta against Injured Party 1 or Injured Party 2. He said that he wanted justice, and considered that he had been harassed by those who had made the allegations. He said that he has contacted the Ombudsman and that investigations are ongoing. He gave evidence that he has no sense of hatred against the injured parties, and would welcome an opportunity to apologise and share his

pain. He said that his comments to the injured parties were despicable, and [REDACTED]. He gave evidence that his learning from these events could make him become a better practitioner.

In response to questions from Mr Gilmore, the Registrant said that he now knows the pain suffered by the injured parties as a result of his comments. He accepted that at the time of making those comments he wasn't thinking, he was just reacting. He said that the criminal convictions were an indelible stain on him as a social worker, and he said that if the public knew the full context they would understand what had happened. He said that there were clear [REDACTED] for his conduct and that he had a lot to offer as a social worker.

In response to clarification questions from the Committee, the Registrant gave evidence that he continued to read and learn about trauma and its impact. He said that he is now more self-aware, and [REDACTED].

Fitness to Practise

The Committee considered the submissions from Mr Gilmore on behalf of the Council, the submissions from the Registrant, 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 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 convictions 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 these convictions. 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 the maintenance 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 noted that the Registrant's two convictions for harassment were serious and involved two different members of the public, Injured Party 1 and Injured Party 2. In respect of Injured Party 1, the Registrant, on 07 February 2020, received a sentence of four months' imprisonment, suspended for two years. In addition, a Restraining Order was placed on the Registrant in respect of Injured Party 1 for a period of two years. In respect of Injured Party 2, the Registrant, on 23 February 2021, received a sentence of three months' imprisonment, suspended for one year.

The Committee noted that the Registrant pleaded guilty to the charges of harassment, and took into account the Registrant's evidence today of his remorse for his actions. In considering this, the Committee had regard to the Standards of Conduct and Practice for Social 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, as evidenced in his criminal convictions, were in breach of the following Standards of Conduct:

Standard 1: As a social worker, you must protect the rights and promote the interests and wellbeing of service users and carers. This includes:

1.2 Treating people with consideration, respect and compassion.

Standard 5: As a social worker, you must uphold public trust and confidence in social work services. In particular you must not:

5.1 Abuse, neglect or harm service users, carers or colleagues;

5.8 Behave in a way, in work or outside work, which would call into question your suitability to work in social care services; or

5.9 Use social media or social networking sites or other forms of electronic communication in a way that contravenes professional boundaries, organisational guidelines or NISCC standards.

The Committee was in no doubt that the Registrant's criminal convictions provided evidence as regards the Registrant's fitness to practise being impaired. The convictions were not isolated, involving two different parties, and related to a large number of emails sent by the Registrant over a prolonged period of time. The Committee considered the contents of the emails to be horrendous, and that the Registrant had used different email addresses in an attempt to conceal his identity.

[REDACTED]

The Committee then went on to consider whether the Registrant's impaired fitness to practise is capable of remediation, and if it has been remediated. The Committee considered that the Registrant's actions were capable of remediation. The Committee noted the Registrant's evidence as regards his frustrations with the Trust, and his ongoing focus on how he was treated. The Committee accepted the Registrant's acknowledgement of the pain caused to the injured parties as a result of his criminal behaviour. However, the Committee was not satisfied that the Registrant fully understood the impact of his criminal behaviour on the

injured parties and the public impression of the social work profession. Whilst the Committee considered the risk of repetition to be low, it considered that there remained some risk of repetition as full remediation has not taken place, and as a result there remained a serious risk of harm.

In all of the circumstances, the Committee concluded that the Registrant's convictions for harassment brought the social work profession into disrepute and concluded that a finding of impaired fitness to practise is, therefore, necessary for the maintenance of public confidence in the social work profession and the Council as its regulator, and that public confidence in the social work 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 convictions.

Sanction

Having found that the Registrant's fitness to practise was currently impaired, the Committee went on to consider the issue of sanction. The Committee accepted into evidence three testimonials on behalf of the Registrant, and the Chair marked the testimonials as Exhibit 3, Exhibit 4 and Exhibit 5.

In reaching its decision on sanction, the Committee considered the submission of Mr Gilmore on behalf of the Council, the submission from the Registrant, and took into account all of the evidence in this case.

Mr Gilmore addressed the Committee in relation to aggravating and mitigating factors. He told the Committee that the Registrant had no prior disciplinary findings against him. As regards to mitigating factors, he suggested that the Committee may wish to take into account [REDACTED]. Mr Gilmore noted that the Registrant had co-operated with the Council's investigation, making early admissions and apologising for his actions. In addition, the Registrant pleaded guilty to the criminal charges and the suspended prison sentences had now expired. He noted the Registrant's evidence [REDACTED].

In considering aggravating factors, Mr Gilmore drew the Committee's attention to the background and issues arising from the two criminal convictions. He noted that the convictions related to two separate incidents, concerning a campaign of harassment conducted by the Registrant during the summer of 2019. He submitted that the content of the emails and messages sent by the Registrant was extremely offensive, and noted that the Committee has described these as being horrendous. In addition, he referred the Committee to the Registrant's use of false email addresses, which he said provided evidence of a deliberate attempt to conceal his identity. In particular, he noted that one of the false email addresses gave the impression that the content came from the Council.

Mr Gilmore referred to the requirements as set out in Schedule 2 Paragraph 26 (2) of the Rules. He submitted that the Registrant's criminal convictions were serious and amounted to behaviour that fell far short of the minimum standards expected of a social worker. He submitted that the public were entitled to expect that social workers would provide safe and effective care to the most vulnerable in society, and suggested that the

Registrant's behaviour in harassment of two members of the public 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 submitted that the Registrant's actions were premeditated, and that the Council had a strong concern that the Registrant retained a grudge against those he worked with in the past. He suggested that the Registrant is focused on those he blames for his own predicament and, therefore, that a sanction is required to take account of the ongoing risk of repetition. Whilst the Registrant's behaviour took place outside the workplace and did not involve service users, he noted that the Registrant has [REDACTED] and has faced up to his criminal proceedings.

He submitted that a sanction was appropriate and fair, and that the sanctions of Warning or Conditions of Practice Order would not be sufficient to protect the public or be appropriate. As regards the sanction of Suspension Order, he suggested that this may be appropriate as there had been an acknowledgement by the Registrant of his wrongdoing, therefore 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 may not be appropriate in all of the circumstances.

The Committee heard a submission from the Registrant. He told the Committee that he accepted the balanced submission made by Mr Gilmore. In relation to remediation and Mr Gilmore's reference to his holding a 'grudge', he said that he has reflected profoundly over the past two years and has worked on self-regulation. He said that he has looked at [REDACTED], and described his behaviours as being impulsive and carried out [REDACTED]. He told the Committee that he was absolutely disgusted at what he had done, and said that he had an impeccable work record up until the time of these events. He said that he would never do something like this again and felt great shame. He told the Committee that he felt no animosity towards the people involved in these matters.

The Registrant said that he has been open and transparent with the Committee, and has now served and completed his criminal sentences. He accepted that he had brought his profession into disrepute, and said that he had not been a rational person at the time of these events. He referred the Committee to the three testimonials, two of which he said were from managers. All of whom provided the references were aware of what had happened. He told the Committee that he would like to work in providing therapeutic care for men who had suffered trauma similar to him. He said that he was not a risk to the public or vulnerable people, and that if the public were aware of the whole narrative concerning this matter would not consider him to be a 'bad or sinister' man.

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, if any, 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 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 mitigating factors to be:

- there were no previous concerns raised with the Council;
- the Registrant pleaded guilty to the two criminal charges of harassment;
- [REDACTED]; and
- the Registrant engaged and cooperated with the Council, and made early admissions to the allegations against him.

The Committee considered the aggravating factors to be:

- the Registrant was convicted on two occasions of harassment against two separate victims, which took place over a prolonged period of time;
- the harassment involved messages sent to former colleagues and their relatives; and
- the messages sent were of an extremely offensive nature, using false email addresses to conceal the Registrant's identity.

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.

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 two criminal convictions demonstrated a serious disregard for the Standards of Conduct and Practice for Social Workers. 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 was concerned. The Committee bore in mind that a Warning would entitle the Registrant to work as a social worker.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Registrant's convictions related to harassment of two separate members of the public and took place over a prolonged period of time. The harassment took place outside the work place, and although relating to former work colleagues did not involve service users. However, the content of these messages was horrendous and caused distress to Injured Parties 1 and 2. In particular, the Committee noted that the messages addressed to Injured Party 1 used information of a personal nature that caused extreme upset to Injured Party 1.

The Committee did not consider that conditions of practice would protect the public from the low 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 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 considered that the Registrant's criminal convictions were serious and his suitability to be registered was impaired. However, whilst a lesser sanction was not sufficient, it did not consider removal from the Register to be warranted in all of the circumstances. In particular, the Registrant's actions did not cause harm to service users, and the interests of service users and the public would be protected by a period of suspension. Whilst the Committee, in considering remediation, decided that there was a risk of repetition of the Registrant's behaviour, it considered the risk to be low. The Committee had no evidence of repetition of these behaviours since the incidents.

The Committee determined that the Registrant's behaviour is not fundamentally incompatible with continuing to be a registered social worker in the long term. Suspension will give a clear message to the Registrant, the public and the profession that the Registrant's conduct was not appropriate for a social worker. The Registrant had a good work history, and no other complaints had previously been raised with the Council in respect of his professional practice. The Committee took into account that [REDACTED] were no longer of concern, and that his suspended prison sentences had expired. However, the Committee concluded that a period of suspension would mark the seriousness of the Registrant's convictions and enable the Registrant to fully remediate his behaviour. Remediation by the Registrant will allow him to fully address and reflect upon his understanding of the injured parties' trauma, and the full impact of this upon the victims of his harassment. The Committee noted that a Suspension Order would be reviewed at the conclusion of the period of suspension, and that the Registrant would have the opportunity to present evidence of the steps which he had taken to remediate his behaviour. A review Committee may be assisted by engagement with the Council by the Registrant and, in particular, provision of evidence of remediation. The public would be sufficiently protected in the meantime by a period of suspension.

The Committee carefully considered the potential impact which a Suspension Order could have on the Registrant. However, it concluded that any consequences for the Registrant are outweighed by the need to protect the public and maintain public confidence in the social work profession.

The Committee determined that suspension for a period of one year would be proportionate to the seriousness of the facts found, and would provide an adequate opportunity for the Registrant to demonstrate remediation.

Removal Order - the Committee did consider a Removal Order. Whilst acknowledging that some of the factors listed in the Indicative Sanctions Guidance were engaged, the Committee concluded that a Removal Order would be disproportionate, in particular as the Registrant did not cause harm to service users, has engaged with the Council and acknowledged and admitted the allegations made against him. On balance, the Committee was persuaded that a Removal Order at this stage would not be appropriate.

The Committee concluded that a Suspension Order for a period of one year was the most suitable, appropriate and proportionate sanction to 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 suspended for a specified period of **one year** and you may not practise as a social worker during the period **25 February 2022 to 24 February 2023** inclusive.

It is compulsory for all qualified social workers to be registered with the Northern Ireland Social Care Council in order to work. If you practise as a qualified social worker while the Order is in place, you will be guilty of an

