



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

REDACTED

Name: Nicola Olive Acheson

SCR No: 6023475

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **Thursday 07 April 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 inclusion on a list maintained by the Disclosure and Barring Service;

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

Particulars of the Allegation:

That, being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended):-

1. On 29 December 2021, you were included on the barred lists for both children and vulnerable adults, maintained by the Disclosure and Barring Service.

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

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 to the Registrant's registered email address on 02 March 2022, and that proof of delivery was received on the same date. The Committee Clerk sent an updated hearing bundle to the Registrant's registered email address on 10 March 2022, and that proof of delivery was received on the same day.

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 to the registered email address.

The Committee, in all of the circumstances of the case, is satisfied that the Notice of Hearing has been served in accordance with Rule 3 of the Rules, and the requirements of Paragraph 5 of Schedule 2 of the Rules.

Proceeding in the Absence of the Registrant

Mr Carson made an application to proceed in the absence of the Registrant. Mr Carson told the Committee that the Committee Clerk called the Registrant's registered mobile telephone number on 30 March 2022, but that the call was unable to be connected and there was no facility to leave a voicemail message. The Committee Administrator called the Registrant on 01 April 2022 to confirm if she would be attending the hearing, but she said that she had not received the emails and so had no knowledge of her hearing. The Committee Clerk called the Registrant later that day. The Registrant provided the Committee Clerk with a new email address that she had been using. The Clerk advised the Registrant that it was her responsibility to update the Council with up-to-date contact details. The Committee Clerk agreed to re-send the Notice of Hearing and hearing bundle to the Registrant's new email address and to update her details on the Register. She asked that if the Registrant had any objections to the papers or wanted to submit anything for the Committee's consideration, she should send these in a return email ahead of the hearing. Mr Carson said that no further communication was received from the Registrant.

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. He noted that the Registrant had not made a request for an adjournment, nor did she indicate that she had any representation. He submitted that any disadvantage to the Registrant would be outweighed by a fair and expeditious hearing.

The Committee was mindful that the discretion to proceed in the absence of the Registrant should only be exercised with the utmost care and caution. In considering the application, the Committee sought to satisfy itself that all reasonable efforts had been made to notify the Registrant of the hearing, and accepted the advice of the Legal Adviser. She referred the Committee to the cases of R v Jones 2003 1 AC, Adeogba and Visvardis v GMC 2016. She reminded the Committee that in exercising its discretion to proceed in the Registrant's absence, it

must have regard to all of the circumstances with fairness to the Registrant being of prime consideration, although fairness to the Council and the public interest must also be taken into account. She reminded the Committee to avoid reaching any improper conclusion about the Registrant's absence and not to accept it as an admission in any way.

The Committee reminded itself that fairness to the Registrant should be a prime consideration. The Committee 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 allegation 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

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

Declaration of Conflicts of Interest

The Chair of the Committee confirmed that none of the Committee Members had a conflict of interest with this case.

Background and Evidence

Mr Carson told the Committee that the Registrant was first registered on the Social Care Register on 07 January 2019, and is registered on Part 2 of the Register as a domiciliary care worker. He said that the Registrant had been employed as a domiciliary care worker at Lakeland Community Care and Graan Nursing Home.

[REDACTED]

He told the Committee that the Council was updated on [REDACTED] and, as a result, the Council referred the matter to the Disclosure and Barring Service ('DBS').

By way of a letter dated 04 February 2022, from the DBS to the Council, the Council was provided with a copy of the final decision made by the DBS in relation to the Registrant. This final decision indicated that it was appropriate and proportionate to include the Registrant in the Children's and Adults' Barred Lists, which prevented her from working with vulnerable children and adults. Mr Carson noted that it was, therefore, an offence for the Registrant to carry out or seek work from which she was barred. He further noted that the Registrant had been contacted by the DBS and had declined to respond. He referred the Committee to the information taken into account by the DBS [REDACTED].

He submitted, therefore, that the facts were found proved in accordance with Rule 4 (1) (f) and Schedule 2, Paragraph 12 (6) and (7).

Finding of Facts

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. She further referred the Committee to Schedule 2, Paragraph 12 (6) 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.

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.

The Committee accepted, as *prima facie* evidence, the written notification from the DBS of the Registrant's current barring status. In addition, the Committee had no evidence that the Registrant was not the individual referred to by the DBS, nor was there evidence of a successful appeal against her inclusion on the DBS lists. Taking into account Paragraph 12 (6) of Schedule 2 of the Rules, the Committee was satisfied that the Final Decision from the DBS proved the facts therein. The Committee therefore found that, on the balance of probabilities, the facts contained in the Particulars of the Allegation had been established.

Fitness to Practise

Mr Carson told the Committee that the Registrant had not admitted that her fitness to practise was impaired. He submitted to the Committee that the Registrant's inclusion on the DBS lists was evidence of impaired fitness to practise. He submitted that being banned from working with vulnerable children and adults fell far 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, and he submitted that the Registrant had breached the following provisions of the Standards of Conduct and Practice for Social Care Workers ('the Standards'): 5, 5.8.

The Committee accepted the advice of the Legal Adviser. She referred the Committee to the Standards of Conduct and Practice for Social Care Workers, and advised it to adopt a sequential approach when considering the question of current impairment and the provisions of Paragraph 24 (3) of Schedule 2 of the Rules.

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.

When considering the Registrant's actions, 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 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 considered the Registrant's inclusion on the DBS Barred Lists, and the events leading to this, to be serious, involving concerns around [REDACTED]. The final decision made by the DBS on 30 December 2021 provides detailed information as regards the concerns raised against the Registrant. In particular, the Committee noted that the DBS stated as follows:

[REDACTED]

The Committee considered whether the Registrant's actions were capable of remedy, and noted that there was no evidence of any insight or remorse by the Registrant into the seriousness of her behaviour. In addition, the Committee accepted that the Registrant was currently unable to work in social care. The Registrant did not engage with the proceedings, and there was no evidence before the Committee as regards remorse. Accordingly, the Committee considered that a finding of current impairment was needed to protect the public.

The Committee also decided that a finding of current impairment was in the public interest. The Committee considered that the public interest was high, taking into account [REDACTED], the DBS listing and [REDACTED]. The Committee found that the Registrant's inclusion on the DBS lists was very serious and had the potential to undermine public trust and confidence in the system of registration. 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 was 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. Mr Carson noted that as a result of the Registrant's barred status, it would be a criminal offence to employ her in a regulated

activity. In considering aggravating factors, he noted the lack of engagement by the Registrant, and [REDACTED]. He told the Committee that the public should be protected from social care workers who were unfit to practise. Mr Carson submitted that, in all of the circumstances, the only appropriate sanction to impose was a Removal Order.

The Committee heard and accepted the Legal Adviser's advice. She 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 considered the aggravating factors to be as follows:

- The Registrant has not engaged with the proceedings; and
- [REDACTED].

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.

No Sanction - the Committee had no hesitation in concluding that it would be neither appropriate nor proportionate if no sanction were imposed in this case. In the view of the Committee, if no sanction were imposed this would not mark the seriousness of the issues or meet the public interest 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 lists, 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. The Registrant had not provided any evidence of insight. The Committee noted that the Registrant has been prohibited from working in any regulated activity until 2031, when the Registrant has the right to ask for a review of the DBS decision. The Committee noted the findings of the DBS in relation to the impact of the Registrant being included on the Adults' and Children's Barred Lists, as follows:

'In particular, this will prevent you from working within the care sector or as a child carer. It is considered that this will be to your detriment given that this is a career that you have chosen to pursue and may result in you suffering financial hardship. [REDACTED], it is however considered that you could seek employment in other areas of regulated activity or in the wider UK, which would present a further risk of harm. Therefore, given the risk of harm posed by your behaviour it is considered that it is proportionate, appropriate and necessary to include you upon both the Children's Barred List and the Adults' Barred List.'

The Committee considered that, in all of the circumstances, a Suspension Order would be inappropriate and disproportionate to the risk from which the Committee is seeking to protect the public. In addition, the Committee considered that a period of suspension would not meet the high public interest, nor take account of the Registrant being included on the DBS lists until at least 2031.

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.

The Committee considered that public confidence in the social care profession, and the Council as its regulator, would be undermined if a social care worker such as the Registrant, who was barred from working with children and vulnerable adults, was allowed to remain on the Register. The Committee considered that the Registrant's inclusion on DBS lists was evidence of a serious departure from the professional standards expected of a social care worker. Whilst the Committee took account of the impact of a Removal Order on the Registrant, this was outweighed by the very serious nature of the concerns raised against her [REDACTED], and her lack of insight and remorse. The Committee considered that any 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 Clerk

13 April 2022

Date