

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

Name: Florence Tanyanyiwa

SCR No: 2086545

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **06 June 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 the determination of a relevant regulatory body;

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

Particulars of the Allegation:

That, on or about 21 October 2019, as set out below, whilst being registered on Part 2 of the Register as a domiciliary care manager under the Health and Personal Social Services Act (Northern Ireland) Act 2001 (as amended), findings of fact were made by another regulator, the Regulation & Quality Improvement Authority ('RQIA'), that resulted in an urgent application to seek the cancellation of your registration with the RQIA being granted on 23 October 2019:	
The facts found by the RQIA included:-	
1.	The number of service users provided to the RQIA by the Registered Person during an inspection on 21 October 2019 did not match the figures being commissioned by the South Eastern Health and Social Care Trust in September 2019.
2.	That during the inspection on 21 October 2019, the number and names of staff being supplied by the Registered Person to service users did not match with the details provided to the South Eastern Health and Social Care Trust in September 2019.
3.	That a staff member employed by Gosna Care Agency Ltd had been providing care since March 2018

without the appropriate AccessNI checks and NISCC registration. An inconsistent approach to recruitment processes, including completion of AccessNI checks and applications to NISCC for registration was identified during the inspection of 21 October 2019.
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And the findings of RQIA as set out above show that your fitness to practise is impaired by reason of the determination by the RQIA, a relevant regulatory body.
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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 Anthony Gilmore, Solicitor, Directorate of Legal Services.

Service

Mr Gilmore told the Committee that the Notice of Hearing and hearing bundle were issued to the Registrant's registered email address on 29 April 2022, and that a delivery receipt was received on the same day.

The Committee received legal advice from the Legal Adviser. He referred the Committee to the requirements as set out in Rule 3 and Paragraph 5 of Schedule 2 of the Northern Ireland Social Care Council Fitness to Practise (Amendment) Rules 2019 ('the Rules').

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

Proceeding in the Absence of the Registrant

Mr Gilmore made an application to proceed in the absence of the Registrant. He referred the Committee to the telephone call between the Registrant and the Council on 01 June 2022, in which the Registrant confirmed that she would not be in attendance and was aware that the Committee could proceed in her absence. He invited the Committee to conclude that the Registrant's absence was a voluntary waiver of her right to attend. Mr Gilmore 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 as to whether 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 that the Registrant confirmed in a telephone call on 01 June 2022 with the Council that she would not be attending and was aware that the Committee could proceed in her absence. The Registrant had not asked for an adjournment to attend at a later date or be represented. 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.

Declarations of Conflicts of Interest

The Chair of the Committee stated that all members confirmed that they did not have any conflicts of interest with the case.

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.

Background

The Registrant was first registered on Part 2 of the Register as a domiciliary care manager. She was the Registered Manager of Gosna Care Agency ('the Agency'). An Employer Referral Form ('ERF') from the Regulation and Quality Improvement Authority ('RQIA') was received by the Council on 11 November 2019. The Agency was a registered domiciliary care agency, providing personal care and housing support to older and vulnerable individuals with a range of physical health and dementia support needs. These services were commissioned from the Agency by the South Eastern Health and Social Care Trust ('the Trust').

The ERF confirmed that an unannounced inspection of the Agency by the RQIA took place on 21 October 2019. The inspection had found evidence that, despite previous efforts to support the Registrant in meeting the legislative requirements which the Agency was expected to comply with, there remained serious and ongoing issues with the Agency's compliance. In particular, failures were identified by the RQIA in respect of the Agency's vetting procedures, induction and records in respect of those providing care in the community. The RQIA had also uncovered that the Registrant had knowingly allowed staff to care for vulnerable service users without the appropriate checks and training having been undertaken.

As a result of this inspection, the RQIA applied for an Urgent Procedure Order under the applicable legislation for the cancellation of the Registrant's Registered Person status, on the basis that there was a serious risk to the health and wellbeing of a number of the Agency's service users. The application was granted on 23 October 2019.

Following the cancellation of the Registrant's Registered Person status, the Trust withdrew its contract from the Agency.

The Registrant lodged an appeal to the Care Tribunal against the decision to make an Urgent Procedure Order which had resulted in the cancellation of her Registered Person status. Following an appeal hearing, which took place on various dates between September 2020 and April 2021, on 11 August 2021 the Care Tribunal unanimously dismissed the Registrant's appeal. The Registrant was in attendance and legally represented at the appeal hearing.

Evidence

At today's hearing, the Committee considered all of the documentary evidence contained in Exhibit 1.

Findings of Fact

Mr Gilmore invited the Committee, on the basis of the documentary evidence, to find the Particulars of the Allegation proved on the balance of probabilities.

The Committee heard and accepted the advice of the Legal Adviser. In the course of that advice, the Committee was told that the burden was 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. The Legal Adviser further referred the Committee to Schedule 2, Paragraph 12 (5) of the Rules.

The Committee took into account the oral submission made by Mr Gilmore, and had careful regard to all of the documentary evidence presented at the hearing.

Particular 1: The number of service users provided to the RQIA by the Registered Person during an inspection on 21 October 2019 did not match the figures being commissioned by the South Eastern Health and Social Care Trust in September 2019.

The Committee found Particular 1 proved on the balance of probabilities. In so doing, the Committee relied upon the report of the RQIA Enforcement Decision Making Panel, dated 23 October 2019.

Particular 2: That during the inspection on 21 October 2019, the number and names of staff being supplied by the Registered Person to service users did not match with the details provided to the South Eastern Health and Social Care Trust in September 2019.

The Committee found Particular 2 proved on the balance of probabilities. In so doing, the Committee relied upon the report of the RQIA Enforcement Decision Making Panel, dated 23 October 2019.

Particular 3: That a staff member employed by Gosna Care Agency Ltd had been providing care since March 2018 without the appropriate Access NI checks and NISCC registration. An inconsistent approach

to recruitment processes, including completion of Access NI checks and applications to NISCC for registration was identified during the inspection of 21 October 2019.

The Committee found Particular 3 proved on the balance of probabilities. In so doing, the Committee relied upon the report of the RQIA Enforcement Decision Making Panel, dated 23 October 2019.

Fitness to Practise

Mr Gilmore submitted that the Committee could find that the Registrant's fitness to practise was currently impaired by reason of the RQIA's determination, which had resulted in the cancellation of her Registered Person status. He invited the Committee, on that basis, to make a finding that the Registrant's fitness to practise was currently impaired.

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. He referred the Committee to Paragraph 24 (3) of Schedule 2 of the Rules, and the guidance as set out in the case of GMC v Cohen. The Committee was charged with 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. He further referred the Committee to the formulation provided by Dame Janet Smith in her 5th Report to the Shipman Inquiry, which was cited with approval by Cox J in CHRE v NMC & Grant.

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, having considered the Approved Regulatory Bodies Policy published by the Council, was satisfied that the RQIA was a relevant regulatory body in accordance with Rule 4 (1) (e) of the Rules. In its report, the RQIA identified the following failings in the Agency:

- The number of service users provided to the RQIA by the Registered Person during an inspection on 21 October 2019 did not match the figures being commissioned by the South Eastern Health and Social Care Trust in September 2019.

- That, during the inspection on 21 October 2019, the number and names of staff being supplied by the Registered Person to service users did not match with the details provided to the South Eastern Health and Social Care Trust in September 2019.
- That a staff member employed by Gosna Care Agency Ltd had been providing care since March 2018 without the appropriate Access NI checks and NISCC registration. An inconsistent approach to recruitment processes, including completion of Access NI checks and applications to NISCC for registration was identified during the inspection of 21 October 2019.
- The continued misrepresentation of information relating to staff employed and supplied by the Agency which could affect the health and wellbeing of vulnerable service users.

The Committee addressed the question as to whether as a result of the facts found proved, the Registrant was the subject of a determination by a relevant regulatory body that her fitness to practise was impaired. At this stage, the Committee was careful not to look at the question of impairment as defined in the Rules. Instead, it applied the natural and ordinary meaning of the word impaired i.e. weakened or damaged.

In accordance with the applicable legislation, as the Registered Person, the Registrant was required to ensure that the business of the Agency, amongst other things, was conducted in a manner so as to ensure the safety and wellbeing of service users and to safeguard them against abuse or neglect. The failings identified in the report were the responsibility of the Registrant, and were used as a basis for the RQIA to apply for and obtain an Order which had resulted in the cancellation of the Registrant's Registered Person status. This Order was sought on the basis that the RQIA reasonably believed that without such an Order, there was a serious risk to the life, health or wellbeing of service users in the Agency's care.

In light of the above circumstances, the Committee was satisfied that the Registrant was the subject of a determination by the RQIA in which her fitness to practise was found to be impaired. The determination highlighted failures on the Registrant's part in respect of her management of the Agency, which had resulted in the cancellation of her Registered Person status.

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. This includes:

- 2.1 Being honest and trustworthy;
- 2.2 Communicating in an appropriate, open, accurate and straightforward way;
- 2.6 Being reliable and dependable; and

2.7 Honouring work commitments, agreements and arrangements and, when it is not possible to do so, explaining why to service users and carers.

Standard 3: As a social care worker, you must promote the autonomy of service users while safeguarding them as far as possible from danger or harm. This includes:

3.3 Following practice and procedures designed to keep you and other people safe from violent and abusive behaviour at work.

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.

Standard 6: As a social care worker, you must be accountable for the quality of your work and take responsibility for maintaining and improving your knowledge and skills. This includes:

6.1 Meeting relevant standards of practice and working in a lawful, safe and effective way; and

6.4 Maintaining clear and accurate records as required by procedures established for your work.

In addition, the Committee found that the Registrant had breached the following Standards of Practice:

Standard 1: As a social care worker, you must understand the main duties and responsibilities of your own role within the context of the organisation in which you work. This includes:

1.7 Keeping records that are up to date, complete, accurate and legible.

Standard 4: As a social care worker, you must support the safeguarding of individuals. This includes:

4.3 Knowing your own role and responsibilities in relation to safeguarding.

The Agency, for which the Registrant had legal responsibility, had been found by the RQIA to have failed to comply with basic standards which were in place to safeguard vulnerable service users. By her acts and omissions as the Registered Person of the Agency, the Registrant had acted in a manner which had exposed vulnerable service users to the risk of harm.

When considering the question of current impairment, the Committee had regard to the formulation provided by Dame Janet Smith in her Fifth Report to the Shipman Inquiry. The Committee was satisfied that in the past, by her actions as found proved, the Registrant had exposed service users to the risk of harm, had breached fundamental tenets of her profession and had brought the profession of which she is a member into disrepute.

The Committee next considered whether the Registrant had remediated her previous failings and whether she was likely to repeat them. The Committee had no evidence of insight on the Registrant's part, nor had she placed evidence of remediation before the Committee, so as to satisfy it that there would be no repetition of her

previous failings which the RQIA had identified when she was the Registered Person at the Agency. Accordingly, in the absence of such evidence, the Committee was satisfied that there was a high risk of repetition. The Committee concluded that a finding of current impairment of the Registrant's fitness to practise was required to protect the public.

The Committee next considered the public interest, which included the need to declare and uphold proper standards and maintain the reputation of the profession. The Committee was satisfied that a failure to make a finding of current impairment on public interest grounds would undermine public confidence in the profession, and would fail to maintain proper standards. The Committee, therefore, concluded that a finding of current impairment of the Registrant's fitness to practise was also required to protect and uphold the public interest.

Sanction

Mr Gilmore, on behalf of the Council, submitted that only a Removal Order would be sufficient to protect and uphold the public interest.

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 Gilmore's submission. 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 had failed to co-operate in the regulatory investigation;
- The Registrant's actions took place over an extended period of time;
- The Registrant's actions had the potential to undermine the system of registration;
- The Registrant's actions had the potential to cause risk of harm to service users in her care; and
- There was no evidence of the Registrant showing any regret or insight.

Having balanced the aggravating and mitigating factors, and having 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 Committee had no information as to the Registrant's employment status, and no information as to whether she would co-operate with a Conditions of Practice Order. Apart from this consideration, the utmost concern of the Committee was the seriousness of the Allegation found proved against the Registrant. The Committee was unable to devise workable, enforceable or verifiable conditions that would adequately protect the public and uphold the public interest.

Suspension Order – the Committee next considered a Suspension Order. The Committee noted that it had made findings at the fact and impairment stage of the proceedings which were of a very serious nature. The Registrant had exposed service users to the risk of harm by failing to properly discharge her legal responsibility as the Registered Person in charge of the Agency. Further, in light of the extensive nature of the failings identified in the RQIA report, for which the Registrant was responsible, in the Committee's judgement the Registrant's failings were at the upper end of the spectrum of seriousness. The Registrant's failings had continued over an extended period, in spite of support being offered on a regular basis by the RQIA to support the Registrant in her role as Registered Person at the Agency. This support had failed to bring about an appreciable improvement in the Agency's performance. The Care Tribunal in its determination, dated 11 August 2021, found that the Registrant's management of the Agency was not fit for purpose. The Care Tribunal stated:

'...we have concluded that there was no proper system of staff organisation and governance and that this led to a lack of control. Despite warnings by RQIA the systems did not improve, there was no evidence that control was regained, there was an admission of a number of mistakes, errors and oversights... The [Registrant], as Registered Provider and Registered Manager, failed to convince this Tribunal of her ability to reorganise the agency, to ensure that safe and suitable care packages, within the scope of the Regulations, were provided in a domestic setting for the care users. We find that the mistakes, errors and oversights were not brought under control in a way that convinces this Tribunal that the [Registrant] was managing the Agency in compliance with all of the Regulations and, therefore, this Tribunal holds that unless the Order made by the Justice of the Peace is confirmed, there will be a serious risk to a person's life, health or wellbeing.'

At this hearing, it would have been open to the Registrant to make either written or oral submissions to demonstrate insight into the seriousness of the failings identified, and to present evidence of remediation. The Registrant had failed to co-operate in the regulatory investigation and had chosen not to place any evidence of remediation before the Committee. In addition, the Committee had found a high risk of repetition. As a result of

these findings, the Committee considered that there was evidence of an attitudinal problem on the Registrant's part, and concluded that her actions were fundamentally incompatible with remaining on the Register.

Removal Order – 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 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, whose Registered Person status had been cancelled as a result of persistent failings on her part over an extended period of time, 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.

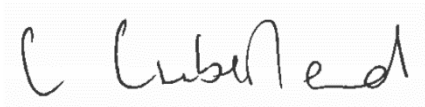
The effect of this decision is that your entry in the Register has been removed.

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

10 June 2022

Date