



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

**Name:** Kelly Hamilton

**SCR No:** 2044997

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **18 July 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 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.   | You were convicted on 12 January 2021 of the following offences at Downpatrick Crown Court:   |
| (i)  | Defendant on the 16 <sup>th</sup> day of June 2019, had in their possession a controlled drug of Class B of Schedule 2 to the Misuse of Drugs Act 1971, namely Cannabis, with intent unlawfully to supply it to another in contravention of section 4(1) of the Misuse of Drugs Act 1971, contrary to section 5(3) of the Misuse of Drugs Act 1971 [Count 1]. |
| (ii) | Defendant on dates between and including the 1 <sup>st</sup> day of January 2019 and the 17 <sup>th</sup> day of June 2019 were concerned in the supply of a controlled drug of Class B namely, Cannabis, to another in contravention of section 4(1) of the Misuse of drugs Act 1971, contrary to section 4(3)(b) of the Misuse of Drugs Act 1971 [Count 6]. |

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

**Procedure:**

The hearing was held under the fitness to practise procedure.

## **Preliminary Matters**

The Fitness to Practise hearing was held remotely by video conference. The Registrant was not in attendance and was not represented. The Council was represented by Ms Sinead Owens, solicitor, Directorate of Legal Services.

## **Declaration of Conflict of Interest**

The Chair of the Committee advised that all the Committee Members had no conflict of interest with the case.

## **Service**

Ms Owens told the Committee that the Notice of Hearing and the hearing bundle were emailed to the Registrant's registered email address on 09 June 2022 and an electronic delivery receipt was received the same day. The Committee Clerk called the Registrant on 07 July 2022 and left a voicemail message asking her to confirm if she would be attending the hearing. She said there has been no communication from the Registrant to date.

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.

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

## **Proceeding in the Absence of the Registrant**

Ms Owens made an application to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules, and submitted that the Committee should hear and determine the case in her absence. She invited the Committee to conclude that the Registrant's absence was a voluntary waiver of her right to attend. Ms Owens told the Committee that the Committee Clerk called the Registrant on 07 July 2022, and left a voicemail message asking for the Registrant to confirm her attendance at the Fitness to Practise hearing and that the Registrant did not return the call or respond to the original email. Ms Owens further suggested that it was in the public interest for there to be an expeditious disposal of the hearing, and noted that the events in question took place in 2019.

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 bore in mind the public interest in the expeditious disposal of the hearing. The Committee noted the attempted telephone call to the Registrant on 07 July 2022, in which the Committee Clerk left a message asking for the Registrant to confirm whether or not she would be in attendance at the hearing and noted that she had not returned the phone call or responded to the email. The Committee noted that the Registrant had not asked for an adjournment in any communication with the Council. Therefore, after careful consideration of all of the issues, the Committee decided to exercise its discretion to proceed in the absence of the Registrant, taking into account the serious nature of the Particulars of the Allegations, and striking a careful balance between fairness to the Registrant and the wider public interest. The Committee, in all of the circumstances, considered that the Registrant had voluntarily absented herself from today's hearing. However, the Committee reminded itself that it must avoid reaching any improper conclusion about the Registrant's absence, nor treat the absence as an admission.

### **Application to Admit Hearing Bundle**

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

### **Background**

On 10 February 2021, the Council received an Employer Referral Form ('ERF') from Belfast Health and Social Care Trust ('the Trust'). The Trust advised the Council that the Registrant had been suspended on 05 February 2021, from her position as a home care worker. The suspension arose out of an anonymous call from a relative of a service user in relation to an article concerning the Registrant, reported in the Newtownards Chronicle, arising from alleged illegal drug possession and supply. The Trust indicated that after speaking to the Registrant, she said that she had not informed her employer of the allegations against her as she had not been sentenced by the Court. The ERF stated that an Adult Safeguarding referral had been made.

### **Evidence**

Ms Owens referred the Committee to the certificate of conviction in Exhibit 1, dated 20 April 2021. She advised that the convictions against the Registrant related to one count of possessing cannabis with intent unlawfully to supply to another and a second count relating to being concerned in the supply of cannabis. She told the Committee that the Registrant pleaded guilty to both charges on 12 January 2021.

Ms Owens directed the Committee to the certificate of conviction within the bundle, which indicated that the Registrant was given a Combination Order, which included a Community Service Order for 60 hours and a Probation Order for 12 months. The Registrant was also ordered to participate in a drug/alcohol programme.

Ms Owens referred the Committee to the Police case summary which detailed the background and circumstances of the Registrant's convictions. She noted that on the 16 June 2019, the PSNI carried out a search in the presence of the Registrant and seized cannabis with an alleged estimated street value of between £1255 and £2510. The Police seized cash in the amount of £900, along with suspected deal lists, scales and bags and mobile phones.

Ms Owens submitted that the documentation in the hearing bundle confirmed that the Registrant was convicted of each of the charges as set out within the Particulars of the Allegation. She submitted that the certificate of conviction, when taken alongside the background information obtained from her employer and from the PSNI, allows the Council to prove the facts on the balance of probabilities. Ms Owens submitted that in accordance with Paragraph 12 (5) of Schedule 2 of the Rules, the certificate of conviction was conclusive proof of the facts with there being no issue as regards the identity of the Registrant or an appeal against the convictions.

### **Finding of Facts**

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

The Committee reminded itself that the burden is on the Council to prove the facts as set out in the Particulars of the Allegation, and that to find the facts proved the Committee must be satisfied on the balance of probabilities. This means that for any fact to be found proved, the Committee must be satisfied that it is more likely than not to have occurred.

The Committee had careful regard to all of the documentary evidence, including the ERF and the PSNI case summary form. The Committee noted the facts contained in the certificate of conviction. The Committee accepted that the certificate of conviction referred to this Registrant and was not subject to an appeal. The Committee therefore concluded that the certificate of conviction, relating to two counts concerning the supply of cannabis, was conclusive proof of the convictions and the underlying facts. The Committee found the facts proved.

## **Fitness to Practise**

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

The Committee heard submissions from Ms Owens. She said that there was no admission from the Registrant as regards impairment of her fitness to practise. She said that the Registrant's convictions called into question her ability to work in social care services and to remain on the Register without restriction, or to be registered at all.

She referred the Committee to the Standards of Conduct and Practice for Social Care Workers, which she submitted the Registrant had breached by reason of her convictions, namely, Standards of Conduct 5 and 5.8. Ms Owens submitted that the Registrant's actions fell far below the standards to be expected of a registered social care worker. Ms Owens submitted that the Registrant had not produced evidence of remediation to date, nor has there been any engagement with the Council. She said that in these circumstances, there remained a risk of repetition. She submitted that there was no evidence of insight on the part of the Registrant and there was no evidence to show that the Registrant would act differently in the future. She noted that the Registrant made admissions to the Police and pleaded guilty at Court to two counts concerning supply of cannabis.

Ms Owens submitted that social care workers, such as the Registrant, provide care for vulnerable service users in their own homes and therefore a high level of honesty is required. She further noted that the Registrant's convictions were in the public domain and that a service user's relative had raised concerns with the Trust. She submitted that a failure to make a finding of current impairment of the Registrant's fitness to practise would undermine public trust and confidence, and would fail to uphold proper standards of conduct and behaviour. Ms Owens invited the Committee to make a finding of current impairment by reason of the Registrant's convictions.

The Committee considered the submission from Ms Owens and had regard to all of the evidence in the case. The Committee heard and accepted the advice of the Legal Adviser. She referred the Committee to Paragraph 24 (3) of Schedule 2 of the Rules, and the requirements as set out in the case of the GMC v Cohen, looking at the current competence and behaviour of the Registrant, along with the need to protect service users, members of the public, the upholding of proper standards of behaviour and maintaining of public confidence in the social care profession. She further referred the Committee to the findings of Dame Janet Smith in the 5<sup>th</sup> 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 her convictions as set out in the Particulars of the Allegation.

The Committee, in considering the issue of impairment of fitness to practise, took account of Paragraph 24 (3) of Schedule 2 of the Rules, which states that it should have regard to:

- (a) whether it is satisfied as to the reason for the alleged impairment of fitness to practise;

- (b) the Standards of Conduct and Practice issued by the Council under Section 9 of the Act;
- (c) whether the impairment is capable of remediation;
- (d) whether the impairment has been remediated;
- (e) the risk of repetition; and
- (f) the public interest.

The Committee had regard to Rule 4 (d) of the Rules, which states that fitness to practise may be impaired by a conviction for a criminal offence. The Committee was satisfied that the Registrant's convictions for possession of cannabis with intent unlawfully to supply and the unlawful possession of cannabis were reason for the alleged impairment of fitness to practise.

The Committee had regard to the Standards of Conduct and Practice for Social Care Workers. The Committee was satisfied that the Registrant's actions were in breach of the following Standards of Conduct:

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

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

The Committee was of the view that the Registrant's criminal behaviour fell significantly below the standards of conduct expected of a registered social care worker, and was very serious.

The Committee addressed itself to the Registrant's insight and remediation. The Committee concluded that the events which led to the convictions were capable of remediation. However, there was no information or evidence from the Registrant to demonstrate that she had developed insight and had attempted to remediate her behaviour. The Committee noted that the Registrant had pleaded guilty to the offences of possessing and intending to supply cannabis. However, the Committee had no information from the Registrant as regards her completing an alcohol/drug counselling treatment course as ordered by the Court. Accordingly, the Committee had no evidence as regards the Registrant demonstrating insight or remorse in relation to her criminal behaviour. The Committee considered, in light of the absence of insight and remediation by the Registrant, there was a likelihood of repetition.

Although these events occurred outside of the workplace, because of the very serious nature of the offences and the Registrant's convictions being in the public domain, the Committee concluded that a finding of current impairment was necessary to protect the public.

The Committee also concluded that a finding of current impairment of fitness to practise was also necessary in the public interest. It was considered by the Committee that public confidence in the social care profession and the Council as its regulator would be undermined if a finding of impaired fitness to practise in these circumstances was not made.

Therefore, the Committee concluded that the Registrant's fitness to practise is currently impaired by reason of her criminal convictions.

## **Sanction**

In reaching its decision on sanction, the Committee considered the submission of Ms Owens on behalf of the Council, and had regard to all of the evidence in this case. Ms Owens referred the Committee to mitigating factors, and advised that the Registrant had no previous referrals to the Council, and therefore was entitled to the benefit of a good work history. She also noted that the Registrant had pleaded guilty to the charge of possessing with the intent unlawfully to supply cannabis and no service users were harmed arising from the criminal convictions. In considering aggravating factors, Ms Owens submitted that the convictions were very serious and that the Registrant had failed to engage with the Council. She said that the Registrant had not provided any evidence of insight, remediation or remorse and noted that the Registrant had failed to advise her employer of the criminal charges against her.

Ms Owens submitted that whilst sanction was entirely a matter for the Committee, it was the view of the Council that it would be inappropriate to take no action or to impose a Warning in this case, due to the serious nature of the criminal offences. She submitted that a Warning would not provide adequate protection for service users nor address the risk of repetition.

Ms Owens referred the Committee to the NISCC Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance') and submitted that conditions of practice would be difficult to formulate as these were usually directed to an area of particular performance at work. She submitted that appropriate and relevant conditions would be difficult to impose which would meet the concerns arising from the Registrant's criminal behaviour. In addition, the Registrant's lack of engagement would suggest conditions would be unworkable. In considering the sanction of suspension, she noted that the Registrant has not acknowledged any of her failings, and therefore this sanction would be inappropriate and would fail to meet the concerns as regards repetition. As regards the sanction of a removal, she reminded the Committee that this would be appropriate where a Registrant's behaviour was fundamentally incompatible with remaining as a registered social care worker.

The Committee accepted advice from the Legal Adviser. She referred the Committee to the Guidance, and reminded the Committee to consider the question of sanction in ascending order of severity, paying particular attention to the issue of proportionality.

She referred the Committee to Paragraph 26 of Schedule 2 of the Rules which provides that, upon a finding of impairment of fitness to practise, the Committee may:

- (a) impose no sanction; or
- (b) warn the Registrant and direct that a record of the warning should be placed on the Registrant's entry in the Register for a specified period of up to 5 years; or

- (c) make a Conditions of Practice Order for a specified period not exceeding 3 years; or
- (d) make an Order suspending the Registrant's registration for a specified period not exceeding 2 years (a 'Suspension Order'); or
- (e) make an Order for removal of the Registrant's registration from the Register ('a Removal Order').

She further reminded the Committee that in deciding which sanction to impose, the Committee should take into account:

- (a) the seriousness of the Particulars of the Allegation;
- (b) the degree to which the Registrant has fallen short of any expected standards;
- (c) the protection of the public;
- (d) the public interest in maintaining confidence in social care services; and
- (e) the issue of proportionality.

The Committee applied the principles of fairness, reasonableness and proportionality, weighing the public interest with the Registrant's interests. The public interest included the protection of members of the public, including service users, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour within the profession. The Committee took into account its powers under Paragraph 26 of Schedule 2 of the Rules in relation to the sanctions available to it, and also had regard to the Council's Guidance, bearing in mind that the decision on sanction was one for its own independent judgement.

The Committee recognised that the purpose of sanction was not to be punitive, although a sanction may have a punitive effect. The Committee considered the aggravating and mitigating factors in this case.

The Committee considered the mitigating factors to be:

- No previous disciplinary record with the Council;
- No evidence of persistent misconduct;
- Admissions made to PSNI; and
- Pleading guilty to criminal charges.

The Committee considered the aggravating factors to be:

- The Registrant's criminal convictions related to possession of cannabis with intent unlawfully to supply this drug and, being concerned in the supply of cannabis;
- The Registrant's actions were premeditated;
- The Registrant failed to inform her employer as regards the criminal charges against her;
- The Registrant failed to engage with the Council and the hearing;



- The Registrant provided no evidence of insight, regret or remorse as regards her criminal behaviour or its impact on her registration;
- The Registrant's criminal behaviour related to her actions outside the workplace and this criminal behaviour carried with it a risk to vulnerable service users; and
- The Committee had no evidence of rehabilitative steps taken by the Registrant, nor did she provide any personal mitigation or testimonials.

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

**No sanction** - the Committee had no doubt that it would be entirely inappropriate to impose no sanction in this case in view of the seriousness and nature of the Registrant's criminal convictions. To impose no sanction would not address the concerns identified by the Committee.

**Warning** – the Committee considered whether to impose a Warning in this case. Having regard to its previous findings, the Committee considered that such a step would be inadequate to protect the public and would fail to uphold the public interest. The Committee considered that the Registrant's criminal convictions demonstrated a serious disregard for the Standards of Conduct and Practice for Social Care Workers. The Committee had no evidence before it of the Registrant's insight, and whether she had engaged in any rehabilitative action as regards her criminal behaviour. Therefore, a Warning would not be appropriate or proportionate in all the circumstances.

**Conditions of Practice Order** – the Committee next considered a Conditions of Practice Order. The Committee noted the Guidance at Paragraph 4.13, which states that Conditions may be appropriate in cases involving particular areas of a Registrant's performance and where a Committee is satisfied that it is appropriate for an individual to remain on the Register. The Registrant's convictions were very serious, involving possession and supply of cannabis, for which the Court imposed a Combination Order of probation and community service. As the Registrant did not attend the hearing, the Committee had no evidence as to her current employment circumstances, or whether she would agree to any conditions, if imposed. Further, the Committee noted that the Registrant's criminal behaviour did not involve the provision of social care. However, notwithstanding a lack of knowledge concerning the Registrant's employment status, the Committee concluded that a Conditions of Practice Order would be insufficient to protect the public and uphold the public interest, given the seriousness of the Registrant's departure from the standards expected of a registered social care worker. The Committee could not formulate workable, enforceable or verifiable conditions which would address the Registrant's criminal behaviour, adequately protect the public and address the wider public interest.

**Suspension** – the Committee next considered a Suspension Order. The Committee noted that the Registrant's convictions were of a very serious nature and involved breaching of the standards of conduct and practise. The Committee took into account the Guidance at Paragraph 4.19 which states: 'Suspension from the Register may

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

The Committee considered that the Registrant's convictions evidenced behaviour that is fundamentally incompatible with unrestricted registration as a social care worker. The Committee determined that a Suspension Order would not address the risk of repetition as identified above. The Committee has no evidence of insight, remorse or remediation by the Registrant, nor had it any information to indicate that the Registrant is unlikely to repeat her criminal behaviour in the future. The Committee considered that the public would view the Registrant's criminal behaviour as falling far short of what would be expected of a registered social care worker.

In all of the circumstances, the Committee concluded that a Suspension Order would not be sufficient to mark the seriousness and unacceptable nature of the Registrant's convictions.

**Removal** – the Committee next considered a Removal Order. In considering this, the Committee took into account the Guidance at Paragraphs 4.26 – 4.28. The Committee decided to make a Removal Order in this case. The Registrant failed to demonstrate any insight into the seriousness of her criminal behaviour and there was, in the Committee's view, a high risk of repetition. The Registrant failed to engage with her regulator and the regulatory process. The Committee had no evidence of the Registrant taking any rehabilitative steps to address her criminal behaviour. In the Committee's judgement, the Registrant's actions were fundamentally incompatible with remaining on the Register. In all of the circumstances, the Committee concluded that a Removal Order was the only sanction available to protect the public and to meet the public interest. The Committee considered the devastating impact of a Removal Order on the Registrant, but concluded that the safety and interest of service users was more important than the impact on the Registrant.

The Committee concluded that a Removal Order was the most suitable, appropriate and proportionate sanction to apply in this case, which will be imposed on the Registrant's registration with immediate effect.

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**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.



21 July 2022

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Committee Clerk

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Date