



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

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**Name:** Carol Rose Smyth

**SCR No:** 6000378

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **Wednesday 03 August 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 conviction;**

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

### **Particulars of the Allegation:**

That, on 14 June 2021, as set out below, whilst being registered as a social care worker, under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted of the following offence at the Magistrates' Court:

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|----|--|
| 1. | Defendant on 7 <sup>th</sup> day of September 2020 unlawfully assaulted [Service User A] contrary to section 42 of the Offences Against the Person Act 1861. |
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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 Registrant was neither present nor represented. The Council was represented by Ms Sinead Owens, Solicitor, Directorate of Legal Services.

## **Service**

The Notice of Hearing and hearing bundle were sent to the Registrant's registered email address on 27 June 2022. An electronic proof of delivery receipt was received on the same date. The Committee Clerk called the Registrant on 25 July 2022 and left a voicemail message, asking the Registrant to confirm if she would be in attendance at the fitness to practise hearing. No response to the communication was received from the Registrant.

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 and 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 the Registrant's absence. Ms Owens invited the Committee to conclude that the Registrant's absence was a voluntary waiver of her right to attend. She outlined to the Committee that on 25 July 2022, the Committee Clerk had attempted to call the Registrant and had left a voicemail message asking her to confirm if she would be attending the hearing. There had been no contact from the Registrant in response to the email or the telephone call. In light of this information Ms Owens submitted that, in all of the circumstances, it was fair to proceed with the hearing in the Registrant's absence. Ms Owens further submitted that proceeding in absence was in the public interest, and also was justified to ensure the expeditious disposal of the 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 and GMC v Adeogba. 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 noted the telephone call by the Committee Clerk to the Registrant on 25 July 2022 and the lack of response received. There was no reason to suppose that an adjournment of the hearing would secure the Registrant's attendance at a later date, nor was there any request for such an adjournment or indication that the Registrant was seeking legal representation. Accordingly, the Committee was satisfied that the Registrant, with

notice of the hearing, had voluntarily waived her right to attend. In addition, the Committee noted the serious nature of the allegations faced by the Registrant, and concluded that the public interest was strongly engaged in this case.

For these reasons, the Committee considered that it was fair and appropriate to proceed in the absence of the Registrant.

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

The Committee admitted the hearing bundle and marked it as 'Exhibit 1'.

### **Declarations of Conflict of Interest**

The Chair of the Committee advised that none of the Committee Members had any conflict of interest with the case.

### **Background and Evidence**

Ms Owens directed the Committee to the evidence contained within the hearing bundle and, in particular, the Certificate of Conviction. She submitted that the Council sought to rely on the Certificate as proof that the Registrant had been convicted of the offence that was set out in the Allegation. Ms Owens told the Committee that the Registrant pleaded guilty on 14 June 2021, was convicted on the same day and was ordered to pay a monetary penalty of £250, with an offender levy of £15, to be paid by 06 December 2021.

Ms Owens referred the Committee to the Employer Referral Form ('ERF') from Drombane Nursing Group, the PSNI case summary and a transcript of the audio recorded police interview, dated 30 October 2020. She noted that the assault took place on 07 September 2020, in Knockan Lodge Residential Home, where the Registrant was a senior care worker. She said that the Registrant was accused of being aggressive and abusive towards a service user, and placing her forearm onto the service user's neck. She submitted that the Registrant's colleague, who reported this incident, had to physically pull the Registrant away from the service user. Ms Owens further noted that the Registrant, when interviewed by police, denied the allegation. She referred the Committee to Schedule 2, Paragraph 12 and 13 of the Rules, along with Rule 4 (1) (d), and noted that there was no evidence the Registrant had appealed her conviction or that the conviction did not relate to this Registrant.

### **Finding of Facts**

The Committee heard and accepted the advice of the Legal Adviser. She reminded the Committee that it must apply the standard of proof as applicable in civil proceedings, which is the balance of probabilities. She further referred the Committee to Schedule 2, Paragraph 12 (5) of the Rules. In addition, she reminded the Committee not to draw any adverse inference from the Registrant not attending or giving evidence.

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 was more likely than not to have occurred.

The Committee took into account the submissions from Ms Owens on behalf of the Council, and had careful regard to all of the documentary evidence submitted. The Committee found that, on the balance of probabilities, the facts contained in the Particulars of the Allegation had been established. Taking into account Paragraph 12 (5) of Schedule 2 of the Rules, the Committee was satisfied that the Certificate of Conviction against the Registrant proved the facts therein. The Certificate of Conviction against the Registrant related to an offence of unlawfully assaulting a vulnerable service user whilst providing care to him. Whilst some information in relation to the events of 07 September 2020 was contained in the ERF and the case summary provided by the police, the Committee gave particular weight to the information contained within the Certificate of Conviction. The Committee noted that the Registrant pleaded guilty to the charge of unlawful assault of Service User A, and was sentenced to pay a monetary penalty of £250, with an offender levy of £15. The Committee noted that there was no issue as regards the Registrant appealing this conviction, nor did she dispute that the Certificate of Conviction related to her.

Taking all of this into account, the Committee found proved, on the balance of probabilities, the facts in accordance with Rule 4 (1) (d) of the Rules.

### **Fitness to Practise**

The Committee proceeded to consider if the Registrant's fitness to practise was impaired. The Committee heard submissions from Ms Owens, who advised that there were no formal admissions from the Registrant in relation to the Particulars of the Allegation. She submitted that the Registrant's conviction 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 ('the Standards'), which she submitted the Registrant's criminal conviction breached as follows: Conduct; 1,1.2, 5, 5.1, 5.8, and Practice; 3, 3.1, 3.12, 6 and 6.1.

Ms Owens told the Committee that the Registrant's conviction and conduct fell far below the minimum standard expected of a registered social care worker, and called into question her fitness to practise. She submitted that the Registrant's actions constituted an abuse of her position of trust, and showed a complete lack of respect for the service user. She said that in light of the Registrant's lack of engagement and her failure to attend the hearing, there was nothing to persuade the Committee that the Registrant's behaviour would not be repeated in the future. There was also no evidence from the Registrant that she had remediated her behaviour. She said that there was no evidence of any regret or remorse by the Registrant, nor was there information to suggest that she would act differently in the future. In the circumstances, Ms Owens submitted that there remained a future risk of harm to service users if the Registrant was allowed to practise without restriction. Ms Owens submitted that the Registrant demonstrated no insight into the matter and that she made no admissions during the police investigation. She noted that the Registrant did not plead guilty at the earliest opportunity, although she

ultimately pleaded guilty when the matter proceeded to Court. Ms Owens submitted that the public interest and confidence in the social care profession would be undermined if a finding of current impairment was not made in these particular circumstances.

The Committee considered the submissions from Ms Owens on behalf of the Council, 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, 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 conviction against the Registrant, and reminded the Committee that it was being asked to determine whether the Registrant's fitness to practise was impaired because of this conviction. 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 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 conviction 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 conviction for unlawfully assaulting a service user was serious and involved a vulnerable service user. The Committee considered that the Registrant was in a position of trust as a senior care worker, and had abused that trust when she assaulted the service user whilst providing care for him. The Committee noted the Registrant's colleague's statement in relation to this incident, and her description of the Registrant as being 'aggressive and rough' with the service user. This colleague further described how she had to physically pull the Registrant away from the service user, telling her to 'leave him be, that he was an old man'. The Committee noted that it was alleged that the service user was distressed as a result of the Registrant's behaviour, and that the Registrant's actions displayed a lack of understanding and compassion when providing care to a vulnerable service user. The Committee noted that the Registrant received a monetary penalty of £250.

The Committee had regard to the Standards 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 were in breach of the following Standards:

### **Standards of Conduct**

**Standard 1: As a social care 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 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.

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

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

### **Standards of Practice**

**Standard 3: As a social care worker, you must deliver person-centred care and support which is safe and effective. This includes:**

3.1 Promoting and applying person-centred values in your day to day work with service users and carers; and

3.12 Contributing to the physical and emotional well-being of service users and carers.

The Committee had no information or evidence from the Registrant as regards any action which she had taken to remediate her behaviour. The Committee found that the Registrant's criminal assault of Service User A amounted to a very serious abuse of trust. The Committee considered that such conduct was not easily remediable. In view of the Registrant's lack of engagement to date, the Committee had no basis on which it could be satisfied that the Registrant had full insight into her criminal behaviour or that she would not repeat her actions in the future. The Committee acknowledged that the Registrant, in pleading guilty to the criminal charge, showed a small degree of insight, although her admission came at a very late stage in the criminal process. However, in all of the circumstances, the Committee considered there to be a continued high risk of repetition of her behaviour.

The Committee concluded that the Registrant's conviction for unlawful assault brought the social care profession into disrepute, and that the public would find it totally unacceptable that a registrant convicted in these circumstances remained on the Register without restriction.

In all of the circumstances, the Committee concluded that a finding of impaired fitness to practise was, therefore, necessary for the maintenance of public confidence in the social care profession and the Council as its regulator, and that public confidence in the social care 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 her criminal conviction.

## **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.

As regards aggravating factors, Ms Owens submitted that the public was entitled to expect that care workers would provide safe and effective care to the most vulnerable in society, and suggested that the Registrant's behaviour in assaulting a vulnerable service user could not be considered to be at the lower end of the spectrum of unacceptable behaviour. She suggested that the Registrant's actions were fundamentally incompatible with remaining on the Register. She noted that the Registrant did not express any remorse for her behaviour, and had not provided the Committee with any information or explanation for her actions. She submitted that a sanction was appropriate and fair, and that the sanctions of Warning or Conditions of Practice would not be sufficient to protect the public or be appropriate. As regards the sanction of a Suspension Order, she suggested that this could be appropriate if there had been an acknowledgement by the Registrant of her failings and the risk of repetition was low. She noted that the Registrant had failed to engage with the Council and the hearing process. She referred the Committee to Paragraph 4.27 of the Northern Ireland Social Care Council Indicative Sanctions and Use of Interim Orders: Guidance Fitness to Practise Committees ('the Guidance'), and suggested that the sanction of a Removal Order should be considered.

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 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 against 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 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:

- There were no previous referrals as regards this Registrant to the Council.

The Committee considered the aggravating factors to be:

- The Registrant's criminal conviction related to an unlawful assault of a vulnerable service user, and took place when the Registrant was providing care;
- At the time of the investigation by her employer and the PSNI, the Registrant denied the allegations against her;
- The Registrant failed to engage with the Council during its investigation and with the fitness to practise hearing;
- The Committee had no evidence from the Registrant of remorse or regret for her actions; and
- The Committee had no evidence of remediation by the Registrant, nor had she provided any personal mitigation or testimonials.

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. The Committee had no information regarding the financial impact that a sanction would have on the Registrant, nor were there testimonials or references provided.

**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 criminal conviction demonstrated a serious disregard for the Standards. 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 for registration was concerned. The Committee bore in mind that a Warning would entitle the Registrant to work as a social care worker. The Registrant had not provided any evidence of insight into the harm which her behaviour had caused to the service user and its impact on her colleague. In addition, the Committee had no evidence of rehabilitative steps taken by the Registrant, nor had she provided references or testimonials.

**Conditions of Practice Order** – the Committee next considered a Conditions of Practice Order. The Registrant’s conviction related to a serious abuse of trust, when she, as a senior care worker, assaulted a vulnerable service user whilst providing care for him. 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 did not consider that conditions of practice would protect the public from the 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 care 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 noted that it had made findings at the fact and impairment stages of the proceedings which were of a very serious nature, and related to the Registrant breaching fundamental tenets of the social care profession. The Standards require a social care worker to treat each person as an individual with consideration, respect and compassion, along with respecting and maintaining their dignity. The Registrant was restrained from causing further harm to the service user by the actions of her colleague. During both the employer investigation and the PSNI investigation, the Registrant maintained a denial as regards the allegation, and pleaded guilty to the assault at a late stage.

The Committee had no evidence before it of remediation by the Registrant, nor had it any information to indicate that the Registrant was unlikely to repeat her criminal behaviour in the future. The Committee considered that the Registrant had failed to express any insight or remorse, particularly in relation to the seriousness of her criminal conviction and the risk of harm which her behaviour presented to the service user. The Committee had no evidence from the Registrant, nor did she engage with the Council in any meaningful way. The Committee

considered the public interest in this matter. The Committee considered that the public would perceive 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 address the seriousness and unacceptability of the Registrant's criminal conviction.

**Removal Order** – the Committee then considered a Removal Order. In considering this, the Committee took into account the Guidance at 4.26 – 4.28. It concluded that, given the seriousness of the Registrant's criminal conviction and her lack of insight and remediation of her failings, a Removal Order was the only sanction appropriate to protect the public and to maintain public confidence in the social care profession and the Council as its regulator. The Committee considered that the Registrant's actions constituted a serious departure from the professional standards as set out in the Standards of Conduct and Practice for Social Care Workers, and were fundamentally incompatible with continued registration. The Registrant's criminal behaviour involved an assault on a vulnerable service user, and constituted an abuse of her position of trust as a social care worker, and brought the social care profession into disrepute. The Registrant showed no insight or remorse, had taken no remedial action and had failed to engage with the Committee in relation to today's hearing. In all of the circumstances, the Committee concluded that a Removal Order was the only sanction available to it that would protect the public and meet the public interest in upholding confidence in the social care profession and its regulator, by marking the seriousness and unacceptability of the Registrant's actions. The Committee considered that a Removal Order would ensure that the Registrant did not have an opportunity to repeat her criminal behaviour. 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 who was criminally convicted of unlawful assault on a vulnerable service user, which required her to be restrained, and who failed to show any insight or remediation, was allowed to remain on the Register. The Committee considered a Removal Order to be a suitable, appropriate and proportionate sanction, which was 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.



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Committee Clerk

09 August 2022

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Date