

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

**REDACTED**

**Name:** Patrick John Smyth

**SCR No:** 2017411

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **Monday 20 February 2023**, 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 issue a Warning and directed that a record of the Warning should be placed on your entry in the Register for a period of 18 months.**

**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 27 <sup>th</sup> January 2022 of the following offences at the Crown Court at Newry.
(i)	'Defendant on dates between 30 <sup>th</sup> day of September 2020 the 3 <sup>rd</sup> day of October 2020, had in his possession a controlled drug of Class B of Schedule 2 to the Misuse of Drugs Act 1971, namely, Cannabis, with intent unlawfully 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'
(ii)	'Defendant on the 2 <sup>nd</sup> day of October 2020, at [REDACTED], contravened Section 6(1) of the Misuse of Drugs Act 1971 in that you cultivated cannabis plants. contrary to Section 6(2) of the Misuse of Drugs Act 1971'
(iii)	'Defendant on the 2 <sup>nd</sup> day of October 2020, produced a controlled drug of Class B, namely cannabis tablets, in contravention of section 4(1)(a) of the Misuse of Drugs Act 1971. contrary to Section 4(2)(a) of the Misuse of Drugs Act 1971'
(iv)	'Defendant on unknown dates between the 1 <sup>st</sup> day of November 2018 and the 30 <sup>th</sup> day of September 2020, unlawfully supplied 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)(a) of the Misuse of Drugs Act 1971'
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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 in attendance and was not represented. The Council was represented by Ms Sinead Owens, Solicitor, Directorate of Legal Services.

## **Application to Admit Hearing Bundle**

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

## **Declaration of Conflicts of Interest**

The Chair of the Committee advised that the Committee Members did not have any conflict of interest with the case.

## **Background**

Ms Owens told the Committee that the Council had received a letter from the Common Law Police Disclosure ('CLPD') Unit, dated 21 October 2020. The letter was issued under a 'pressing social need', and stated as follows:

*'The information we are providing is that Police are investigating the above person in respect of an allegation of Possession of Class B, Possession of Class B with intent to supply and Cultivating Cannabis. Following a search of his vehicle and home, quantities of drugs were recovered. This is alleged to have occurred on 1<sup>st</sup> October 2020, at Dublin Road, Newry.'*

## **Evidence**

Ms Owens referred the Committee to the Certificate of Conviction in Exhibit 1. She advised that the conviction against the Registrant related to possessing a Class B controlled drug – namely cannabis, producing and possessing with intent to supply cannabis, and cultivating cannabis. She told the Committee that the Registrant pleaded guilty to the charges on 27 January 2022, and that a Community Service Order was imposed on him for a period of 12 months. She advised the Committee that the Registrant had completed his community service, and had resigned from his position as a social worker with the Southern Health and Social Care Trust ('the Trust') on 07 December 2020. She noted that the personal circumstances put forward by the Registrant were taken into account by the Court in the nature of the sentence imposed, and that no appeal against the sentence was

lodged. She noted that the Registrant had advised the Council that he had no intention to return to practise as a social worker.

The Registrant told the Committee that he admitted the Particulars of the Allegation.

### **Findings of Fact**

The Committee took into account the submissions made on behalf of the Council, the Registrant's submission and the Certificate of Conviction.

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 was more likely than not to have occurred.

The Committee had careful regard to the submissions and all of the documentary evidence. The Committee noted the facts contained in the Certificate of Conviction, accepted that it referred to this Registrant and was not subject to an appeal. The Committee, therefore, concluded that the Certificate of Conviction was conclusive proof of the conviction and the underlying facts. The Committee took into account the Registrant's admission to the facts as set out in the Particulars of the Allegation. Accordingly, the Committee found the facts proved by way of admission.

### **Fitness to Practise**

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

The Committee heard a submission from Ms Owens. She said that the Registrant's conviction called into question his ability to work in social care services and to remain on the Register without restriction, or to be registered at all.

Ms Owens referred the Committee to the Standards of Conduct and Practice for Social Workers ('the Standards'), which she submitted that the Registrant had breached by reason of his conviction, namely, Standards of Conduct 5.8. Ms Owens submitted that the Registrant's actions fell below the standards to be expected of a registered social worker. She submitted that the Registrant's conviction concerned a serious matter, and that the Council was unable to fully assess the Registrant's level of insight into his actions and, therefore, address concerns as regards any risk of repetition of his behaviour. She noted that the Registrant had stated an intention to retire. She submitted that the Committee was required to assess current impairment irrespective of the Registrant's stated intention to retire from practice.

Ms Owens submitted that the public interest was strongly engaged in this matter, although the circumstances of the conviction arose outside of the Registrant's workplace. 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 conviction.

The Committee received affirmed evidence from the Registrant. He provided the Committee with an historical outline of the circumstances relating to his conviction.

Whilst the Committee noted that there was a presumption that hearings should be conducted in public, taking into account the particular circumstances of this matter, and that references would be made to the health of third parties, the Committee decided that the hearing should be held partly in private when those matters were discussed, and that this would cause no prejudice to either party.

The Registrant gave evidence to the Committee as regards [REDACTED].

The Committee considered the submissions from Ms Owens and the Registrant, 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 work 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 his 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 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 conviction for possessing a Class B controlled drug – namely cannabis, producing and possessing with intent to supply cannabis, and cultivating cannabis were reasons for the alleged impairment of fitness to practise.

The Committee had regard to the Standards. The Committee was satisfied that the Registrant's actions were in breach of the following Standards of Conduct:

**Standard 5: As a social worker, you must uphold public trust and confidence in social work 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 noted that the Registrant's conviction related to behaviour which took place outside of his workplace, and took into account the evidence from the Registrant as regards [REDACTED].

The Committee addressed itself to the Registrant's insight and remediation. The Committee noted that the Registrant had now completed the 120 hours of community service ordered by the Court. The Committee took into account, and accepted, the Registrant's evidence when he gave assurances that his behaviour would not be repeated. The Committee noted that the Registrant's criminal conviction did not result in a custodial sentence. The Committee accepted the Registrant's evidence that his involvement with the production and supply of cannabis related to [REDACTED]. The Registrant has now retired from practice and indicated that he has no intention to return to work as a social worker. In the circumstances, the Committee accepted that the Registrant had remediated his behaviour and, therefore, that there was a very low risk of repetition in the future.

The Committee concluded that a finding of current impairment of fitness to practise was necessary in the public interest. Whilst there was no evidence that the Registrant's actions placed service users at risk, the Committee considered that public confidence in the social work profession would be undermined if a finding of impairment was not made. The Registrant's conviction, to which he pleaded guilty, related to his unlawfully supplying cannabis, cultivating cannabis plants, producing cannabis tablets and unlawfully supplying cannabis to another person. The Committee considered these actions to be serious, and noted that the Registrant gave evidence that he had spent time researching the process of purchasing and cultivating cannabis, along with the process of administering cannabis tablets. The Registrant explained to the Committee that his actions were [REDACTED], and described these actions, with hindsight, as being 'silly'. However, given the serious nature of the conviction, the Committee considered that public interest in this matter was high. It was considered by the Committee that the upholding of the reputation of the social work profession, and public confidence in the Council as a regulator of social workers, 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 was currently impaired by reason of his criminal convictions.

### **Sanction**

In reaching its decision on sanction, the Committee considered the submission of Ms Owens on behalf of the Council, the Registrant's submission, and had regard to all of the evidence in this case. Ms Owens referred the Committee to the aggravating and mitigating factors, and advised that the Registrant had no previous referrals to

the Council. She also noted that the Registrant had pleaded guilty to the criminal charges, and had completed 120 hours of community service.

Ms Owens referred the Committee to the various sanctions available to it, and noted that there was no allegation against the Registrant that service users were harmed. However, public interest was an important factor in light of the criminal conviction against the Registrant.

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 the Registrant was not currently working in the social work sector, nor would conditions address any specific areas of concern in the Registrant's practice. In considering the sanction of a Suspension Order, she noted that this sanction provided a clear mark of disapproval of a registrant's behaviour. As regards the sanction of a Removal Order, she reminded the Committee that this should be a proportionate response, and would be appropriate where the Registrant's actions were fundamentally incompatible with remaining on the Register.

The Registrant addressed the Committee, and acknowledged that it was now difficult to hear the description of his behaviour in a legal context. He said that the seriousness of the matter was reinforced to him. He expressed his remorse for what had happened, and thanked the Committee for allowing him to provide information as regards his personal circumstances. He said that as a result of his conviction, he no longer worked as a social worker, and that it was a big blow to him to have to give up his profession prematurely. He told the Committee that he had completed his community service, and that this related to working with victims of alcohol and drug abuse and / or dependency. He said that he found this very rewarding, and that he had continued to work in that area on a voluntary basis.

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:

- The Registrant made an early admission to the PSNI and pleaded guilty to the criminal charges;
- The Registrant engaged with the Council investigation;
- The Registrant had completed 120 hours of community service in accordance with the Court Order;
- The Registrant's behaviour took place outside of the workplace, and no service users were harmed or put at risk of harm;
- The Registrant expressed genuine regret and remorse for his actions;
- The Registrant had a previous good work history with no disciplinary matters; and
- The Registrant provided the personal circumstances relevant to his convictions.

The Committee considered the aggravating factors to be:

- The Registrant's criminal conviction constituted a serious disregard for the Council's Standards of Conduct and Practise; and
- The Registrant's actions were pre-meditated, with a degree of planning in relation to the obtaining and production of cannabis.

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.

**Warning** – The Committee had regard to Paragraphs 4.8-4.12 of the Guidance. In particular, the Committee had regard to those factors which would be present in a case in which a Warning was imposed. In this case, the Committee was satisfied that the following factors were present in the Registrant’s case:

- There was no evidence that the Registrant’s behaviour had caused direct or indirect harm to service users;
- The Registrant was very insightful into the implications of his behaviour and had successfully completed 120 hours of community service;
- The circumstances of the Registrant’s conviction took place outside the workplace and, although deliberate, were carried out with the intention of [REDACTED];
- The Registrant had a previous good work history;
- There had been no repetition of the Registrant’s behaviour since the incident which resulted in his referral to the Council; and
- The Registrant continued to work in a voluntary capacity with victims of alcohol / drug abuse and dependency.

From its consideration of the available documentary and oral evidence, the Committee was in no doubt that the Registrant now appreciated the full impact of his criminal actions on his registration as a social worker. The Committee noted the Registrant’s description of the embarrassment he felt, which resulted in his terminating his employment. He described giving up his work as a big blow and a huge loss.

After careful consideration of these factors, the Committee concluded that the Registrant’s failings were at the lower end of the spectrum of impairment and that there was a low risk of repetition. In the unusual and exceptional circumstances of this case, having considered all of the available material and the oral evidence of the Registrant, the Committee considered that a Warning was sufficient to uphold and protect the public interest. In its judgement, a Warning would mark the Committee’s disapproval of the Registrant’s actions, while making it clear that he should not act in a similar fashion in the future. The Committee had regard to Paragraph 4.8 of the Guidance and decided that a Warning for a period of 18 months, reflecting the serious nature of the criminal conviction, was appropriate and proportionate in light of the Registrant’s conduct and the need to declare and uphold proper standards in the social work workforce, together with the need to maintain the social work workforce’s reputation.

**Conditions of Practice Order** – The Committee considered the next available sanction in order of severity, namely a Conditions of Practice Order. The Committee noted that the Registrant had retired from work and had no intention to return to practising as a social worker. In addition, the Registrant’s conduct took place outside of the workplace, and there were no specific areas of his practice that required restriction. For these reasons, the Committee concluded that the imposition of a Conditions of Practice Order would be inappropriate and disproportionate, and that a Warning was the most appropriate and proportionate Order in all of the circumstances.



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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 you have been warned and a record of the Warning has been placed on your entry in the Register for a period of 18 months (20 February 2023 – 19 August 2024). This Warning does not affect your ability to practise.**



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Committee Clerk

24 February 2023

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Date