



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

Name: Alan Willian Johnston

SCR No: 6014929

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **16 May 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 a caution in the United Kingdom for a criminal offence;

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

Particulars of the Allegation:

That, on 13 May 2022, as set out below, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you:

1. Received an adult caution for Common Assault, in relation to your treatment of a service user on 07 October 2019 whilst working as a care assistant.

And your actions as set out above show that your fitness to practise is impaired by reason of your caution, as per Rule 4 (1) (d) of the Fitness to Practise (Amendment) Rules 2019.

Procedure

The hearing was held under the Fitness to Practise Procedure.

Preliminary Matters

The Registrant was not in attendance, nor was he represented. The Council was represented by Mr Peter Carson, Solicitor, Directorate of Legal Services.

Declarations of Conflict of Interest

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

Service

Mr Carson told the Committee that the Notice of Hearing for today's hearing and the hearing bundle were emailed to the Registrant, to an email address provided by him, on 22 March 2023. An electronic delivery receipt was received on the same date.

The Committee received legal advice from the Legal Adviser, and he 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 and Paragraph 5 of Schedule 2.

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 Carson made an application for the hearing to proceed in the absence of the Registrant.

Mr Carson told the Committee that the Registrant had been sent a further email on 09 May 2023 to enquire whether he would be in attendance at today's hearing, and that a response was received on 10 May 2023 stating 'I AM hoping to be' [sic]. During a telephone call with the Registrant on 11 May 2023, he indicated to the Council that he hoped to be in attendance, work permitting. He stated that he would confirm his attendance on Monday 15 May 2023. During the telephone call, he was made aware that the Committee could proceed in his absence. On 12 May 2023, the Registrant emailed the Council to advise that he would be working and would not be attending today's 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 satisfied itself that all reasonable efforts had been made to notify the Registrant of the hearing, and accepted the advice of the Legal Adviser. He referred the Committee to the cases of R v Jones and Adeogba. He 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 should also be taken into account.

In reaching its decision, the Committee had regard to the following:

- The Registrant, in his email dated 12 May 2023, had made it clear that he would not be attending today's hearing;
- The Registrant had not made an application for an adjournment;

- There was no reason to suppose that adjourning the case would secure his attendance at a future date; and
- The Registrant had not sought an adjournment in order to be legally represented at any future hearing.

The Committee, taking into account these factors, concluded that the Registrant's absence was deliberate and voluntary, and that he had waived his right to attend the hearing.

The Committee considered that there would be some disadvantage to the Registrant in not being able to attend the hearing, but concluded that such disadvantage was outweighed by the public interest, which included the need to protect service users, maintain the reputation of the social care workforce and uphold proper standards.

Therefore, after careful consideration of all of the issues, the Committee decided 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 into evidence, and marked it as Exhibit 1.

Background

The Registrant is registered on Part 2 of the Register as an adult residential care worker, and was employed by Runwood Homes as a care assistant at Carrickfergus Manor Care Home. This matter first came to the Council's attention by way of an Employer Referral Form ('ERF'), dated 08 October 2019. The ERF reported:

'On 07/10/19 at approx. 8.15pm [Care Assistant] was in [Service User] room and was explaining that she was going to assist [Service User] to get ready for bed when she noticed [Service User] was more confused than normal and he did not want to get changed. While [Care Assistant] was speaking to [Service User] CA J stormed into the room with the standing hoist. As [Care Assistant] was speaking to [Service User] CA J grabbed the back of [Service User]'s back to sit him forward and shouted 'Right [Service User] time to get changed for bed', at the same time as pulling at [Service User] t shirt. [Service User] said no and to wait. CA J continued to pull at [Service User] t shirt and grabbed his arms above the elbow trying to take the t shirt off. [Service User] tried to remove CA J hands shouting for him to get off. CA J then grabbed both of [Service User] arms by the wrists and forcefully pushed them down beside [Service User]. [Care Assistant] told CA J to stop but CA J continued to fight and force [Service User] t shirt off, during this time [Service User] was trying to stop CA J. [Care Assistant] left the room and went and reported to the two nurses who were on duty. Manager contacted. Manager attended home and suspended CA J immediately. Duty social worker contacted. PSNI contacted. No fresh bruising ????' [SIC]

Mr Carson provided the Committee with a background to the case. He stated that the matter was referred to the PSNI and that a joint protocol investigation had commenced. The Registrant attended the police station for interview on 14 November 2019. He was subsequently prosecuted, and accepted a caution at Court for the offence of Common Assault on 13 May 2022. Mr Carson referred the Committee to the hearing bundle, which

contained the relevant correspondence, redacted statements and a transcript of the Registrant's under-caution interview with the PSNI and the Certificate of Caution.

Evidence

The Committee considered the evidence as contained in Exhibit A. This included, but was not limited to, a copy of the Certificate of Caution, the ERF and relevant correspondence. The Committee considered this evidence to be cogent and reliable.

Finding of Facts

The Committee heard a submission from Mr Carson. He invited the Committee to find the facts proved by reference to the Certificate of Caution contained in the hearing bundle.

Mr Carson submitted that the Certificate of Caution, signed by the Registrant on 13 May 2022, was sufficient evidence to demonstrate the Registrant's acceptance that he had committed an offence of common assault against a service user in his care on 07 October 2019.

The Legal Adviser advised the Committee as to the burden and standard of proof which was applicable at the fact-finding stage of the proceedings. He also reminded the Committee that a caution would only be administered where: 1.) the evidence was sufficient to provide a real prospect of conviction; 2.) the offender unequivocally admitted having committed the offence; and 3.) the offender agreed to accept the caution and understood the significance of doing so.

Having accepted the Legal Adviser's advice, the Committee was satisfied that the facts were proved by reason of the Certificate of Caution, which the Registrant had signed on 13 May 2022.

Fitness to Practise

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

Mr Carson submitted that the Registrant's actions had fallen below the standards to be expected of a registered social care worker by reason of his caution. He submitted that there was no evidence of insight or remorse and that, as a result, there was a risk of repetition. He submitted that the Committee ought to make a finding of current impairment for these reasons, to protect the public and also to make such a finding in the public interest.

The Committee considered the submissions from Mr Carson on behalf of the Council, and had regard to all of the evidence in the case. The Committee heard and accepted the advice of the Legal Adviser. In the course of that advice, he 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 the maintenance of public confidence in social care services. He further referred the Committee to the

findings of Dame Janet Smith in the 5th Shipman Report, cited with approval in CHRE v NMC & Grant. The Committee accepted the Legal Adviser's advice.

The Committee considered whether, by reason of his caution, the Registrant's fitness to practise was currently impaired. When addressing that issue, the Committee 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 was satisfied that the Registrant, by his actions which resulted in his caution, had breached the following Standards:

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

The Committee considered whether a finding of current impairment of the Registrant's fitness to practise was required to protect the public. At the outset, the Committee had regard to the conduct which had resulted in the Registrant's caution. In principle, the Committee was prepared to accept that, with full evidence of insight and compelling evidence of remediation, the conduct in question could be capable of remedy. The Committee then considered whether, in this case, the Registrant had remedied his conduct. The Registrant had not engaged in the regulatory proceedings in a meaningful way. He had not demonstrated to the Committee evidence of insight or remediation. In his undated statement following the report of this matter to his employer, the Registrant attempted to blame the service user by stating that the service user had tried to hit him, and that the Registrant had acted in self-defence. This explanation for his actions was repeated in the Registrant's under-caution interview with the PSNI on 14 November 2019. In spite of these denials, the Registrant had accepted that he was criminally responsible for assaulting the service user as signified in the Certificate of Caution. Both in the criminal proceedings and in the regulatory proceedings, the Committee was of the view that there was no evidence on the Registrant's part that he accepted the seriousness of his actions when he assaulted the service user, nor did he evidence any remediation to persuade the Committee that there would be no repetition of his actions. In those circumstances, the Committee considered that there was an attitudinal issue with regard to the

Registrant's actions. Further, the Committee's judgement was that there was a risk of harm to service users if the Registrant, in the future, found himself in similar circumstances, and there was a high risk of repetition.

Accordingly, the Committee determined that a finding of current impairment of the Registrant's fitness to practise was necessary to protect the public.

The Committee next considered whether a finding of current impairment of the Registrant's fitness to practise was required in order to uphold and protect the public interest. The Committee concluded that public trust and confidence would be seriously undermined if a finding of current impairment was not made in all of the circumstances of this case. Further, the Committee considered that not to make such a finding would fail to uphold and declare proper standards of conduct in the social care workforce.

For these reasons, to protect the public and uphold the public interest, the Committee concluded that the Registrant's fitness to practise is currently impaired by reason of his caution.

Sanction

The Committee heard a submission from Mr Carson on behalf of the Council on the question of what sanction, if any, should be imposed on the Registrant's registration.

Mr Carson referred the Committee to mitigating and aggravating factors, which he submitted were present in this case. He also asked the Committee to have regard to the NISCC Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance'). Mr Carson submitted that in the view of the Council, the Registrant's actions were fundamentally incompatible with registration as a social care worker, and that the only appropriate sanction to impose, in the public interest, was a Removal Order.

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 accepted the Legal Adviser's advice.

The Committee carefully considered all of the available documentary material, together with Mr Carson's submissions. It also had careful regard to the Guidance.

The Committee considered that, while the Registrant had no previous adverse findings against him, there were no mitigating factors which it could identify in his favour.

The Committee considered the aggravating factors to be as follows:

- Lack of evidence of insight;
- Lack of evidence of remediation;
- Absence of an expression of regret / apology / remorse on the Registrant's part; and
- During the incident, the Registrant persisted with his actions in spite of being told to stop by the service user and a work colleague.

Having balanced the aggravating and mitigating factors, and having taken into account the interests of public protection and the public interest, the Committee proceeded to consider which sanction to apply in this case.

No sanction - having regard to its findings, the Committee considered that to conclude this matter and to take no further action would be a wholly inadequate response, and would fail to protect the public and uphold the public interest.

Warning - the Committee was mindful that imposing a Warning would permit the Registrant to practise unrestricted. In light of its findings, such a step in the Committee's view would fail to protect the public or uphold the public interest.

Conditions of Practice Order - the Committee was aware that such an Order was usually appropriate in circumstances where deficiencies had been identified in the Registrant's practice and, for the duration of any such Order, conditions were appropriate to address those deficiencies. A Conditions of Practice Order was not appropriate where, as here, the regulatory concern arose as a result of a behavioural and attitudinal issue, and related to the Registrant's conduct in which he received a caution for assaulting a vulnerable service user in his care. Further, there was no up to date information as to the Registrant's current employment status in a social care setting. The Committee had no assurance that the Registrant would co-operate with a Conditions of Practice Order. The upper-most consideration, however, was the seriousness of the Allegation found proved. The Committee was satisfied that a Conditions of Practice Order was inadequate to protect the public, and was insufficient to uphold the public interest.

Suspension Order - a Suspension Order was appropriate where the allegation found proved was not so serious as to justify removal from the Register. In this case, there had been no meaningful engagement in the regulatory process by the Registrant. He had failed to demonstrate insight and had not provided the Committee with any evidence that he appreciated the seriousness of his failings and had taken steps to remedy them. The Committee had also found, as a result of this absence of insight and a lack of evidence of remediation, that there was a high risk of repetition. For those reasons, the Committee concluded that a Suspension Order was inadequate to protect the public, and was insufficient to uphold the public interest.

Removal Order - accordingly, the Committee decided to impose a Removal Order. The Registrant, by signing the Certificate of Caution, had accepted that, in the course of his duties, he had assaulted a vulnerable service user. This vulnerable service user had dementia, and the assault occurred in the care home where the service

user was a resident. Both the service user and a colleague who was present at the time attempted to prevent the assault. The Registrant carried on with the assault in spite of efforts to make him desist. In the aftermath of the incident, the Registrant had attempted to shift the blame for the assault onto the service user. He had suggested to his employer and to the PSNI that he had acted in self-defence after the service user had assaulted him. The Registrant's account was flatly contradicted by his work colleague, who had witnessed the assault and had attempted to intervene to prevent the assault from continuing. In turn, the Registrant stated that the witness was lying in her account, and that she had made up what she said she saw as she bore the Registrant a grudge. There was no foundation for this assertion, which was investigated by the PSNI. In the Committee's judgement, the Registrant's actions in assaulting a service user, and his subsequent efforts to shift the blame onto others for his wrong-doing, were deplorable and were contrary to the standards expected from a registered social care worker. Accordingly, the Committee considered that the Registrant's actions were fundamentally incompatible with continued registration, and that the only appropriate and proportionate sanction to impose, to protect the public and in the public interest, was a Removal Order.

The Committee decided that the Interim Suspension Order currently in place be replaced with the Removal Order 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.

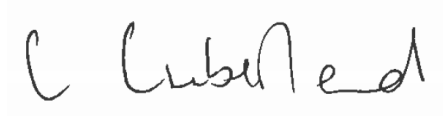
You are prohibited from working as a social care worker in any of the following positions:

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.



17 May 2023

Committee Clerk

Date