



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

Name: Kerry Dorothy Donnan

SCR No: 2084822

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **14 June 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 convictions 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, being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended):

1.	You were convicted on 26 April 2022 of the following offences at Newtownards Magistrates' Court:
(i)	You) on 13 th day of September 2021 unlawfully assaulted LESLEY HAGAN, contrary to Section 42 of The Offences Against the Person Act 1861
(ii)	You) on the 13 th day of September 2021 unlawfully assaulted EILEEN HAGAN, contrary to Section 42 of The Offences Against the Person Act 1861
(iii)	You) on the 13 th September 2021, without lawful excuse, damaged motor vehicle belonging to Eileen Hagan, intending to damage such property or being reckless as to whether such property would be damaged contrary to Article 3 (1) of the Criminal Damage (Northern Ireland) Order 1977.
(iv)	You) on the 13 th day of September 2021 had a hammer in your custody or under your control intending without lawful excuse to use or cause or permit another to use it to destroy or damage certain property namely a motor vehicle belonging to Eileen Hagan contrary to Article 5 (a) of the

	Criminal Damage (Northern Ireland) Order 1977.
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And your actions as set out above show that your fitness to practise is impaired by reason of your convictions.

Procedure:

The hearing was held under the fitness to practise procedure.

Preliminary Matters

The Registrant was not in attendance, nor was she represented. The Council was represented by Ms Sinead Owens, Solicitor, Directorate of Legal Services.

Service

Ms Owens advised the Committee that the Notice of Hearing and hearing bundle were served to the Registrant's registered email address on 18 April 2023. An electronic proof of delivery receipt was received on the same date. The Head of Hearings Services attempted to call the Registrant on 13 June 2023 on the mobile number held for the Registrant on the Register to ask if she would be attending the hearing today, but received the message 'the call cannot be completed as dialled'. Ms Owens told the Committee that there has been no communication from the Registrant in response to the Notice of Hearing.

The Committee received legal advice from the Legal Adviser, who referred the Committee to the requirements as set out in the Northern Ireland Social Care Council's Fitness to Practise (Amendment) Rules 2019 ('the Rules') and, in particular, Rule 3 which states that service shall be treated as being effected on the day after the Notice was emailed. The Committee took into account that the Notice of Hearing provided details of the date and time of the hearing, and that it was to be held virtually. In addition, it contained information about the Registrant's right to attend, be represented and call evidence, as well as the power to proceed in her absence.

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. She submitted that the Committee should hear and determine the case in the Registrant's absence. She invited the Committee to conclude that the Registrant's non-attendance was a voluntary waiver of her right to attend. She further suggested that it was in the public interest for the case to proceed, as this would ensure a fair and expedient 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 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 should also be taken into account. She reminded the Committee to avoid reaching any improper conclusion about the Registrant's absence.

In reaching its decision, the Committee had particular regard to the factors as set out in the case of R v Jones 2003 1 AC and noted that:

- The Registrant had not made an application for an adjournment;
- There was no reason to suppose that adjourning the case would secure her attendance at a future date;
- The Registrant had not sought to be legally represented at the hearing;
- The Notice of Hearing provided details of the allegation, the time, date and method of the hearing and, amongst other things, information about the Registrant's right to attend, be represented and call evidence, as well as the Committee's power to proceed in her absence. Therefore, the Committee concluded that the Registrant's absence was deliberate and a waiver of her right to appear; and
- There was some disadvantage to the Registrant in not attending and giving evidence to the Committee, but this was outweighed by the public interest in the expeditious disposal of this case, along with the serious nature of the allegations.

Therefore, after careful consideration of all of the issues, the Committee decided to exercise its discretion to proceed in the absence of the Registrant, striking a careful balance between fairness to the Registrant and the wider public interest. However, the Committee reminded itself that it must avoid reaching any improper conclusion about the Registrant's absence.

Declarations of Conflicts of Interest

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

Application to Admit Hearing Bundle

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

Evidence and Submission on the Facts

By way of background to the case, Ms Owens submitted that the Registrant is registered on Part 2 of the Register and, at the time of the offences, was employed by Positive Futures as a support worker.

Ms Owens told the Committee that the Council received an Employer Referral Form ('ERF') from Positive Futures, dated 24 November 2021, advising the Council that the Registrant was on long term sick leave but was due to appear in Court for two counts of unlawful assault, one count of unlawful damage to a car and one count

of having a hammer with the purpose of destroying or damaging a motor vehicle. Ms Owens noted that the Registrant had pleaded guilty and was convicted at Newtownards Magistrates' Court on 26 April 2022, and that she had received a sentence of four months' imprisonment, suspended for two years, on all four counts, to run concurrently.

Ms Owens noted that the Registrant has not appealed against her convictions, nor has she submitted that she is not the person named on the Certificates of Conviction. Ms Owens drew the Committee's attention to the name on the Certificates of Conviction as being Kerry Hagan, and submitted that the Registrant is known by both her maiden name and her married name, and that the Registrant confirmed this during her interview with the PSNI.

Ms Owens also drew the Committee's attention to the PSNI witness statements contained within the hearing bundle, which she submitted detailed a harrowing background of a serious and prolonged incident.

Findings of Fact

The Committee heard and accepted the Legal Adviser's advice. In the course of that advice, she 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 only where there was evidence that it did not refer to the registrant, or where the conviction had been successfully challenged on appeal.

She advised the Committee that it was entitled to rely on the Certificates of Conviction to establish conclusively that the Registrant had been convicted of the offences as set out in the Particulars of the Allegation.

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 determined that the Registrant was the person referred to in the Certificates of Conviction. In reaching this decision, the Committee took into account the information in the ERF from the Registrant's employer, dated 24 November 2021, the PSNI case summary, the PSNI Registrant interview notes, and the PSNI witness statements.

The Committee noted that the Registrant's married name is Kerry Hagan and that her maiden name is Kerry Donnan.

The Committee considered the facts contained in the Certificates of Conviction. The Committee noted that the Registrant had not submitted that she was not the person named on the Certificates of Conviction. The Committee concluded that the Certificates of Conviction were conclusive proof of the convictions and the facts underlying them. The Committee noted the serious nature of the background to the Registrant's convictions, involving assault and use of a weapon, and carefully considered the accounts given by the victims of the assault when interviewed by the PSNI. The Committee noted that when interviewed by the PSNI, the Registrant made no comment and that she subsequently pleaded guilty on 26 April 2022 and received a custodial sentence of four months' custodial, suspended for two years.

The Committee, therefore, 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 a submission from Ms Owens. She said that the Registrant's convictions called into question her suitability 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 Care Workers ('the Standards'), which she submitted that the Registrant had breached by reason of her convictions, namely, Standards of Conduct 5, 5.7 and 5.8. Ms Owens submitted that the Registrant's actions fell below the standards to be expected of a registered social care worker. She submitted that the Council is of the view that by virtue of the Registrant's lack of engagement with the Council and her no comment interview with the PSNI, the Registrant has displayed no insight into her actions or the impact which they would have had on her victims, or shown any evidence of remorse and that, therefore, the risk of repetition remains high.

Ms Owens submitted that the public interest was strongly engaged in this matter. 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, particularly given that the Registrant remains subject to a suspended custodial sentence. Ms Owens invited the Committee to make a finding of current impairment by reason of the Registrant's convictions.

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 heard and accepted the advice of the Legal Adviser. In the course of that advice 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 social care services. She 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 next considered whether by reason of her convictions, 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 concluded that the four convictions for common assault, unlawful damage to a vehicle and possession of a hammer with intent to damage a vehicle called into question the Registrant's fitness to practise. The Committee considered the Registrant's convictions to be serious, and took account of the custodial sentence imposed upon her. In addition, the Committee noted the background to the convictions as set out in the PSNI case summary.

The Committee had regard to the Standards of Conduct and Practice for Social Care Workers and the Council guidance entitled 'Making a Determination of Impaired Fitness to Practise: Guidance for Committees on Remediation'.

Taking all of the evidence into account, the Committee was satisfied that the Registrant, by her actions which had resulted in her convictions, 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:

5.7 Put yourself or other people at unnecessary risk; or

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

The Committee has no information or evidence from the Registrant as regards any action which she has taken to remediate her behaviour. The Committee noted the very serious nature of the Registrant's criminal convictions, in particular the two convictions for criminal assault. The Committee considered that such conduct is not easily remediable, and that the Registrant's behaviour fell far below the standards to be expected of a social care worker. The Committee has no evidence of remorse or insight from the Registrant, and she has failed to engage with the Council or attend the proceedings today. The Committee noted that the Registrant pleaded guilty to the criminal charges. Taking all of the above into account the Committee, therefore, considered that there was a high risk of the Registrant's behaviour being repeated in the future.

The Committee concluded that the Registrant's criminal convictions, for which she received a suspended custodial sentence, bring the social care profession into disrepute, and that the public would find it totally unacceptable that a registrant's fitness to practise was not found to be impaired on the basis of these criminal convictions. In those circumstances, the Committee concluded that a finding of current impairment was required to protect the public.

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

Sanction

In reaching its decision on sanction, the Committee considered the submission from Ms Owens on behalf of the Council and had regard to all of the evidence in the case. Ms Owens referred the Committee to various mitigating and aggravating factors, and the NISCC Indicative Sanctions and Use of Interim Orders: Guidance for

Fitness to Practise Committees ('the Guidance'). She submitted that the sanction of a Warning or a Conditions of Practice Order would not provide adequate public protection or address the seriousness of the Registrant's impaired fitness to practise. She further submitted that the sanction of suspension would not be appropriate or proportionate as there has been no acknowledgement by the Registrant of her failings, and a period of suspension would not address the risk of repetition. She said that the Registrant's criminal convictions constituted serious criminality, involving violent behaviour. She submitted that the Registrant's actions were fundamentally incompatible with registration as a social care worker. In light of this, and given the Registrant's lack of engagement in the proceedings, Ms Owens invited the Committee to make a Removal Order.

The Committee heard and accepted the advice of the Legal Adviser. She 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. She reminded the Committee 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 to protect the public and in the public interest.

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, and took into account the aggravating and mitigating factors in the case. 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 workforce. 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 carefully considered all of the available documentary material, together with Ms Owens's submissions. It also had careful regard to the Guidance.

The Committee considered the aggravating and mitigating factors in this case.

The Committee considered the mitigating factors to be as follows:

- The Registrant has no previous findings of misconduct; and
- The Registrant had a clear work record with Positive Futures from 2012 to the date of the incident on 13 September 2021.

The Committee considered the aggravating factors to be:

- The Registrant's criminal convictions are of a very serious nature including violence, which resulted in a custodial sentence;
- The Registrant has not engaged with the Council in relation to these proceedings;
- The Registrant has not expressed any regret or remorse for her actions, or demonstrated that she has reflected on her actions. There is a lack of insight; and
- The Registrant's actions which led to her convictions demonstrate a serious disregard for the Social Care Council's Standards of Conduct and Practice.

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 considered whether to impose a Warning. 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 convictions are not at the lower end of the spectrum and that a Warning would not address the risk of repetition.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Registrant's convictions relate to two incidents of criminal assault, along with damage to a vehicle and possession of a hammer with intent to damage a vehicle. The Committee has no evidence as to the Registrant's current employment circumstances as there has been no engagement by the Registrant with the Council. As a result of the Registrant's lack of engagement, the Committee has no information concerning insight, regret or remorse. Taking into account the Committee's findings regarding the risk of repetition, the Committee does not consider that conditions of practice would protect the public from the risk of repetition.

The Committee concluded that a Conditions of Practice Order was not 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 serious impaired fitness to practise as evidenced by her criminal convictions, and adequately protect the public.

Suspension Order – the Committee next considered a Suspension Order. The Committee determined that the Registrant's actions had fallen far below the standards to be expected of a registered social care worker.

The Committee carefully considered the issue of proportionality, and whether suspension would address the concerns which it had identified. The Committee noted Paragraphs 4.19 and 4.20 of the Guidance, which state:

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.

Suspension may be appropriate when some or all of the following factors are apparent (this list is not exhaustive):

- *serious incident of misconduct where suitability to be registered is impaired and where a lesser sanction is not sufficient, but removal is not warranted;*
- *behaviour is not fundamentally incompatible with continuing to be a registered social care worker in the long term;*
- *interests of service users and the public are sufficiently protected by suspension;*
- *no real risk of repeating the behaviour;*
- *no evidence of harmful deep-seated personality or attitudinal problems;*
- *no evidence of a repetition of the behaviour since the incident/s;*
- *insight;*
- *where the evidence demonstrates that the Registrant will be able to resolve or remedy the cause of the misconduct during the period of suspension.*

The Committee considered that the Registrant's serious criminal behaviour was fundamentally incompatible with unrestricted registration as a social care worker. Taking into account the Registrant's lack of remorse, insight and engagement with these proceedings, the Committee was not confident that the Registrant would be unlikely to repeat her behaviour in the future.

The Committee considered that the public would view the Registrant's criminal behaviour as falling well below 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 unacceptability of the Registrant's criminal behaviour.

Removal Order – the Committee next considered a Removal Order. In considering this, the Committee took into account the Guidance as follows:

4.26 *This is the most serious sanction which a Committee can impose. A Removal Order is likely to be appropriate when the Registrant's behaviour is fundamentally incompatible with being a social care worker. Removal should be used where there is no other way to protect the public, for example, where there is a lack of insight, continuing problems and a pattern of unacceptable behaviour or denial, where there is no evidence that there is likely to be satisfactory remediation and where confidence in the social care profession would be undermined by allowing the Registrant to remain on the Register.*

4.27 *Removal may be appropriate where some or all of the following factors are apparent (this list is not exhaustive):*

- *doing serious harm to service users either deliberately or through gross neglect and particularly where there is a continuing risk to service users;*
- *abuse of position/trust (particularly involving vulnerable people who use services) or the violation of the rights of people who use services, eg sexual abuse;*
- *dishonesty (especially where persistent or covered up);*
- *persistent lack of insight into seriousness of actions or consequences;*
- *blatant disregard for the system of registration which is designed to safeguard the interests of service users, the public and the reputation and standards of the social care profession;*
- *a serious departure from the relevant professional standards set out in the Standards of Conduct and Practice for Social Care Workers.*

The Committee concluded, given the seriousness of the Registrant's criminal convictions, taken together with an absence of evidence of insight, remorse and remediation, that a Removal Order was the only appropriate and proportionate sanction to impose in order to protect the public and to maintain public confidence in the social care profession and the Council as its regulator. Such a sanction, in the Committee's view, was also necessary to declare and uphold proper standards and behaviour.

The Registrant's criminal behaviour constituted a serious departure from the professional standards as set out in the Standards of Conduct and Practice for Social Care Workers. The Committee determined that the Registrant's behaviour, which resulted in her convictions, was fundamentally incompatible with continued registration on the Social Care Register.

The Committee did take into account the Registrant's previous good work history. However, balancing all of the factors in this case, and after taking into account all of the evidence, the Committee determined that the appropriate and proportionate sanction was that of a Removal Order. Having regard to the effect of the Registrant's actions in bringing the profession into disrepute by adversely affecting the public's view of how a

registered social care worker should conduct herself, the Committee concluded that nothing short of this would be sufficient.

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.

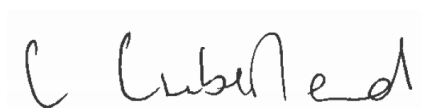
The effect of this decision is that your entry in the Register has been removed.

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.



Head of Hearings Services

15 June 2023

Date