

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

Name: Alexandra McKenna-Roy

SCR No: 6024997

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **27 July 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 make an Order for removal of your registration from the Register ('a Removal Order').

Particulars of the Allegation:

That on the 20 December 2022, 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 offences at the Magistrates' Court:

1. [You] on 19th day of March 2022 unlawfully assaulted [redacted], contrary to section 42 of the Offences Against the Person Act 1861.

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

Service

Mr Carson told the Committee that the Notice of Hearing and hearing bundle were emailed to the Registrant's registered email address on 21 June 2023, and that an electronic delivery receipt was received on the same date. He said that the Committee Clerk called the Registrant on 25 July 2023 and left a voicemail, asking the Registrant to return her call and confirm if she would be attending the fitness to practise hearing on 27 July 2023. The Registrant did not respond to either the email or the telephone call from the Council.

The Committee received legal advice from the Legal Adviser. She 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 sent. 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

Mr Carson made an application to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules. He submitted that the Committee should hear and determine the case in her absence. He invited the Committee to conclude that the Registrant's non-attendance was a voluntary waiver of her right to attend. He 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 may be 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.

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 advised 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. Mr Carson stated that he would be referring to CCTV evidence in his submissions. The Committee determined that it was relevant and fair to admit the CCTV evidence, and retired to view the recording. The CCTV evidence was marked as Exhibit 2.

Background

Mr Carson, on behalf of the Council, provided the Committee with a background to the Allegation. He advised that the Particulars of the Allegation arose out of a criminal conviction against the Registrant on 20 December 2022. He said that the Registrant is registered on Part 2 of the Register as an adult residential care worker and was first registered on 09 April 2018.

Mr Carson told the Committee that this matter first came to the Council's attention following a telephone call from the Designated Adult Protection Officer (DAPO), Northern Health and Social Care Trust, on 06 April 2022. She advised that an employer referral should be expected from Hutchinson Care Homes in relation to an allegation made against the Registrant.

Mr Carson told the Committee that the Council received an Employer Referral Form ('ERF') from the Human Resources Manager at Hutchinson Care Homes, on 08 April 2022, relating to an allegation of rough handling on 19 March 2022. He said that on 21 April 2022, the Council was advised that the matter was being investigated under Joint Protocol with the PSNI, and the employer provided the Council with a copy of the CCTV footage of the alleged incident, originally provided by the service user's family. The CCTV footage appears to show the Registrant assaulting a bed ridden and very vulnerable service user.

Mr Carson submitted that following a joint protocol investigation, the Registrant was charged with assault. He directed the Committee to the 'Structured Outline of Case' provided by the police, which records that on Saturday 19 March 2022, the Registrant was working as a lone care assistant and attended the service user's home and commenced her normal duties. She started to feed the service user a yogurt. He appeared to eat some and to spit some onto the floor. It is recorded that the Registrant aggressively wiped his face and abruptly shoved him onto his bed, causing pain.

Mr Carson directed the Committee to the transcript of the police interview with the Registrant. As part of this interview, the Registrant explained that she had been working too much, not sleeping and dealing with the death of a family member. Mr Carson also invited the Committee to consider the letter of apology written by the Registrant to the family of the service user.

Mr Carson referred the Committee to an email submission from the Registrant, dated 25 May 2022, and a copy of a handwritten apology that she had sent to the service user and his family.

Evidence and Submission on the Facts

Mr Carson referred the Committee to the Certificate of Conviction contained within the hearing bundle. The Certificate confirmed that the Registrant pleaded guilty to the charge on 08 November 2022, and was convicted on 20 December 2022 and received a four-month custodial sentence which was suspended for three years, and she also received a monetary penalty and was ordered to pay compensation of £500.

Mr Carson submitted that the Certificate of Conviction provided proof in relation to the Particulars of the Allegation in accordance with Schedule 2, Paragraph 12 (5) of the NISCC Fitness to Practise (Amendment) Rules 2019.

Finding of Facts

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 informed the Committee that it must be satisfied that the Certificate of Conviction in this case was issued by a competent Court of jurisdiction and, in the absence of any other evidence, that the Committee was entitled to rely on the Certificate of Conviction to establish conclusively that the Registrant had been convicted of the offence as set out in the Particulars of the Allegation.

The Committee took into account the submissions from Mr Carson on behalf of the Council, and had careful regard to all of the 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 relates to an offence of unlawfully assaulting a vulnerable service user whilst providing care to him. 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 a service user. 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 Mr Carson, who 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. He referred the Committee to the Standards of Conduct and Practice for Social Care Workers ('the Standards'), which he submitted the Registrant's criminal conviction breached as follows: 5.1 and 5.8.

Mr Carson 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. He invited the Committee to consider whether her actions were capable of remediation, and submitted that the Registrant had demonstrated a high level of remorse and made admissions and that she should be given some credit for that. However, Mr Carson recognised that the Registrant had been convicted of unlawful assault on a service user, and submitted that public confidence in social care services and the Council would be undermined if a finding of current impairment was not made in these particular circumstances.

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 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 5th 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 has been convicted of unlawfully assaulting a service user. The Committee was satisfied that this conviction, which related to the care provided to a very vulnerable service user, was serious and was the reason for the alleged impairment of fitness to practise.

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 Guidance'). The Committee was satisfied that the Registrant's actions were in breach of the following 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:

- 1.1 Treating each person as an individual; and
- 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; and
- 2.2 Communicating in an appropriate, open, accurate and straightforward way.

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.

The Committee concluded that the Registrant's actions fell far below the standards expected of a registered social care worker.

The Committee carefully considered the question of remediation, and found that the Registrant's criminal assault of a service user was not easily remediable. However, on balance, the Committee concluded that the behaviour was capable of being remedied but that this would require more than just being upset or apologetic. Remediation

would require a high level of insight into the conduct that led to the criminal conviction, reflection and an understanding of the risks which can arise when working when tired and emotionally drained, and concrete action to prevent a similar event occurring in the future.

In view of the Registrant's lack of engagement during these proceedings, 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 admitted her actions by pleading guilty to the criminal charge, and also noted the letter that the Registrant sent to the service user's family. In the view of the Committee, this showed a degree of developing insight. However, the Committee was concerned that there was no further evidence of insight or reflection. The Committee was in particular concerned by the standard of record keeping, and apparent attempts by the Registrant to conceal her actions and reduce her role in the incident. In all of the circumstances, the Committee considered there to be a continued risk of repetition.

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 was found not to be impaired.

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 is currently impaired by reason of her criminal conviction.

Sanction

In reaching its decision on sanction, the Committee considered the submission from Mr Carson on behalf of the Council, and had regard to all of the evidence in this case. Mr Carson submitted that it was the Council's view that there are a number of mitigating factors to be taken into consideration. He submitted that the Registrant had no previous referrals to the Council. She had previously engaged both with her employer's investigation and the PSNI investigation. The incident was described as entirely out of character, and occurred at a time when the Registrant was experiencing difficult personal circumstances. He also referred the Committee to the letter that the Registrant sent to the service user's family.

As regards aggravating factors, Mr Carson 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 was at the higher end of the spectrum of unacceptable behaviour. He submitted that the incident occurred while she was providing care to a vulnerable service user who was reliant on carers for every aspect of his daily needs. The Registrant had inflicted pain and caused harm, and he submitted that her notes had been recorded to conceal her role in the incident.

Mr Carson referred the Committee to the Guidance, and suggested that the sanction of a Removal Order should be considered. He submitted that the Registrant had shown insight and remorse, but that her actions were at the higher end of seriousness.

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. She has the benefit of a good work history;
- The Registrant had shown remorse and apologised for her actions in a letter to the service user's family;
- The Registrant pleaded guilty and made early admissions to her employer; and
- The incident was described by her employer as totally out of character, and occurred at a time when she was experiencing personal and health issues.

The Committee considered the aggravating factors to be:

- The Registrant's criminal conviction related to an unlawful assault of a vulnerable service user;
- The incident took place when the Registrant was providing care. The Committee noted that the Registrant had stated that she had not fully read the care plan and did not understand the nature of the service user's needs. This failure to read the care plan contributed to the events which occurred;
- The Registrant caused actual harm to the service user;
- The Registrant's actions constituted a breach of trust;
- The Registrant failed to engage with the Council during the fitness to practise hearing; 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 current financial impact that a sanction would have on the Registrant, nor were there testimonials or references provided.

No sanction - the Committee had no doubt that it would be entirely inappropriate to impose no sanction in this case. To impose no sanction would be inappropriate in view of the seriousness of the conviction, and would not protect the public or address the public interest.

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 would not address the 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.

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 care worker, assaulted a vulnerable service user whilst providing care for him. The Registrant's conviction was for a serious offence committed at

work, and this is not something which could be easily addressed through re-training or conditions. The Committee concluded that a Conditions of Practice Order would be insufficient to protect the public and uphold the public interest, given the seriousness of the Registrant's departure from the standards expected of a registered social care worker. The Committee could not formulate workable, enforceable or verifiable conditions which would address the Registrant's behaviour, adequately protect the public and address the wider public interest.

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 that the conviction in this case was serious, and fell far below the standards to be expected of a registered social care worker. 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 Committee carefully considered the issue of proportionality, and whether suspension would address the concerns which it had identified. The Committee noted paragraph 4.19 of the Guidance which states:

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

The Committee noted that the Registrant had made early admissions and pleaded guilty on the first occasion to the criminal charges. The Committee also took into consideration her remorse as expressed during her interview with her employer, with the police and in the letter which she wrote to the family of the service user. However, the Registrant had submitted no evidence of concrete steps taken to demonstrate that she was unlikely to repeat her criminal behaviour in the future. The Committee had previously determined that there was a risk of repetition. The Registrant has not submitted evidence to satisfy the Committee that she would realistically take steps to remedy her behaviour during a period of suspension.

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 remediation, a Removal Order was the only sanction appropriate to protect the public and to maintain public confidence in the

social care profession and in 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 that they 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. The Registrant's actions have brought social care services into disrepute. The Registrant has taken no remedial action and has failed to engage with the Committee in relation to today's hearing. Whilst the Registrant has expressed remorse, she did not demonstrate insight into her role as a carer, the needs of this very vulnerable service user, the harm which she caused him or the impact of the way in which she recorded the notes so that her own actions were omitted from the records. The Committee was very concerned by the behaviour captured on CCTV and, therefore, despite the evidence of her previous good work history, the Committee determined that the Registrant's criminal behaviour identifies her as being unfit to be a member of a caring profession.

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 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.

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.

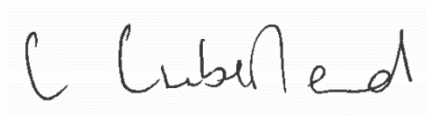
You are prohibited from working as a social care worker in any of the following positions:

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.



01 August 2023

Committee Manager

Date