



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

Name: Ewa Justyna Kosowska

SCR No: 7006855

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **21 September 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, whilst being registered as a social care worker under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), and whilst employed at Victoria Court Care Home as a care assistant:

1. You accepted a caution in the United Kingdom on 18 October 2022 for the criminal offence of Common Assault, in that you unlawfully assaulted a service user on 23 October 2021, by putting your hand over the service user's nose and mouth and pushed the service user's head into the pillow.

And your actions as set out above show that your fitness to practise is impaired by reason of a caution in the United Kingdom for a criminal offence.

Procedure

The hearing was held under the fitness to practise procedure.

Preliminary Matters

The Registrant was neither present nor represented. The Council was represented by Ms Sinead Owens, Solicitor, Directorate of Legal Services.

Service

The Notice of Hearing and hearing bundle were sent to the Registrant's registered email address on 08 August 2023. An electronic proof of delivery receipt was received on the same date. The Committee Clerk called the Registrant on 19 September 2023 and left a voicemail message, asking the Registrant to confirm if she would be attending the fitness to practise hearing. No response to the communication was received from the Registrant.

The Committee received legal advice from the Legal Adviser, and she referred the Committee to the requirements as set out in the Northern Ireland Social Care Council's ('the Council') Fitness to Practise (Amendment) Rules 2019 ('the Rules') and, in particular, Rule 3 which states that proof of service shall be treated as being effected on the day after it was properly sent.

The Committee, in all of the circumstances of the case, was satisfied that the Notice of Hearing had been served in accordance with Rule 3 and Paragraph 5 of Schedule 2 of the Rules.

Proceeding in the Absence of the Registrant

Ms Owens made an application to proceed in the absence of the Registrant, under Paragraph 15 of Schedule 2 of the Rules, and submitted that the Committee should hear and determine the case in the Registrant's absence. Ms Owens invited the Committee to conclude that the Registrant's absence was a voluntary waiver of her right to attend. She outlined to the Committee that on 19 September 2023, the Committee Clerk had attempted to call the Registrant and had left a voicemail message asking her to confirm if she would be attending the hearing. There had been no contact from the Registrant in response to the email or the telephone call. In light of this information Ms Owens submitted that, in all of the circumstances, it was fair to proceed with the hearing in the Registrant's absence. Ms Owens further submitted that proceeding in absence was in the public interest, and also was justified to ensure the expeditious disposal of the hearing.

The Committee was mindful that the discretion to proceed in the absence of the Registrant should only be exercised with the utmost care and caution. In considering the application, the Committee sought to satisfy itself that all reasonable efforts had been made to notify the Registrant of the hearing, and accepted the advice of the Legal Adviser. She referred the Committee to the cases of R v Jones and GMC v Adeogba. She reminded the Committee that in exercising its discretion to proceed in the Registrant's absence, it must have regard to all of the circumstances, with fairness to the Registrant being of prime consideration, although fairness to the Council and the public interest must also be taken into account. She reminded the Committee to avoid reaching any improper conclusion about the Registrant's absence, and not to accept it as an admission in any way.

In considering the application to proceed in the absence of the Registrant. The Committee noted the telephone call by the Committee Clerk to the Registrant on 19 September 2023 and the lack of response received. Taking account of all of the circumstances, the Committee considered there was no reason to suppose that an adjournment of the hearing would secure the Registrant's attendance at a later date, nor was there any request for such an adjournment or indication that the Registrant was seeking legal representation. Accordingly, the

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

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

Application to Admit Hearing Bundle

Ms Owens directed the Committee to a typographical error in the documentation. She told the Committee that the index to the documents incorrectly described the Employer Referral Form, and that the author of the document should be noted as Perla Balmes, with the date of the document being 26 October 2021.

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

Declarations of Conflict of Interest

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

Background and Evidence

Ms Owens told the Committee that there was no formal admission of the facts by the Registrant.

Ms Owens set out the background of the case. She told the Committee that the Registrant is registered on Part 2 of the Register and that she commenced work with Victoria Court Care Home ('the Home') in April 2019.

Ms Owens told the Committee that this matter was first brought to the Council's attention by way of an Employer Referral Form ('ERF'), received by the Council on 27 October 2021, from the Home Manager at Victoria Court Care Home ('the Home'), advising that an allegation had been made that the Registrant had covered a service user's mouth and nose with her hand during an intervention. The ERF advised that the matter was being investigated by the Safeguarding Team, who were referring the matter to the Police.

On 07 January 2022, the Council received a notification from the PSNI under Common Law Police Disclosure ('CLPD'), advising of a '*pressing social need*' to disclose to the Council that the Police were investigating the Registrant in respect of an allegation of common assault on a service user, arising out of the incident that occurred on 23 October 2021. The letter advised that the Registrant had not been interviewed by Police at that stage, but that she was aware of the investigation and had indicated that she had done nothing wrong.

Ms Owens told the Committee that the service user was practically totally deaf and blind and had been assessed as having no capacity to make a complaint. She said that the incident was witnessed and subsequently reported by a work colleague.

Ms Owens said that the Designated Adult Protection Officer ('DAPO'), confirmed to the Council that the Registrant had resigned as of 09 February 2022 and that a file had been submitted to the Public Prosecution Service ('PPS for consideration'). In the course of exchanges, it was confirmed that the Registrant denied the allegation, saying that she possibly touched the service user's lips gently to let her know that she was being too noisy.

Ms Owens advised the Committee that on 15 June 2022, the Trust's DAPO further advised the Council that the service user was deceased, and that the safeguarding investigation was being closed. However, the Police input was ongoing, and case papers were before the PPS with a view to proceeding with a prosecution based on the witness statement provided by the Registrant's work colleague. She said that the Council received confirmation from CLPD on 27 September 2022 that the PPS had directed prosecution in this matter on 30 May 2022, and that the Registrant had pleaded not guilty on 09 August 2022 at Laganside Magistrates' Court. The matter was listed for contest on 18 October 2022. Following this, the Council received a telephone call from the Investigating Officer, confirming that the Registrant had appeared in Court and had accepted an adult caution for common assault on 18 October 2022.

Ms Owens told the Committee that on 31 October 2022, the Council received a copy of the Certificate of Caution and other relevant documents from Police.

Ms Owens invited the Committee to find the facts proved by reference to the Certificate of Caution contained in the hearing bundle. Ms Owens submitted that the Certificate of Caution, signed by the Registrant on 18 October 2022, was sufficient evidence to demonstrate the Registrant's acceptance that she had committed the offence of common assault against a service user.

Evidence

The Committee considered the evidence as contained in Exhibit A. This included but was not limited to:

- Certificate of Caution;
- Employer Referral Form;
- PSNI Witness statements;
- PSNI Outline of Case;
- PSNI Interview Notes;
- Email to Registrant dated 03 August 2022; and
- Registrant's handwritten statement.

The Committee considered this evidence to be cogent and reliable.

The Committee in particular took into account the police witness statement and the handwritten statement from the Registrant's colleague who was with the Registrant at the time of the alleged incident on 23 October 2021.

This work colleague subsequently reported what she had observed to the nurse on duty. The Committee considered her evidence to be credible and noted she followed the requisite process to escalate her concerns.

Finding of Facts

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

The Legal Adviser advised the Committee that the caution would only have been issued where 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 18 October 2022.

Fitness to Practise

The Committee proceeded to consider if the Registrant's fitness to practise was impaired. The Committee heard submissions from Ms Owens, who advised that there had been no formal admission from the Registrant in relation to impaired fitness to practise. She submitted that the Registrant's caution for the offence of common assault called into question her ability to work in social care services and to remain on the Register without restriction, or to be registered at all. She referred the Committee to the Standards of Conduct and Practice for Social Care Workers ('the Standards'), which she submitted the Registrant's criminal conviction breached as follows 5 - 5.1 and 5.8.

Ms Owens told the Committee that the Registrant's behaviour fell well below the minimum standard expected of a registered social care worker, and called into question her fitness to practise. She said that in light of the Registrant's lack of engagement and her failure to attend the hearing, there was nothing to persuade the Committee that the Registrant's behaviour would not be repeated in the future. There was also no evidence from the Registrant that she had remediated her behaviour. She said that there was no evidence of any regret, remorse or insight by the Registrant, nor was there information to suggest that she would act differently in the future. In the circumstances, Ms Owens submitted that there remained a future risk of harm to service users if the Registrant was allowed to practise without restriction. Ms Owens submitted that the Registrant demonstrated no insight into the matter and that she denied the allegation during the police investigation. She noted that the Registrant did not plead guilty at the earliest opportunity and that she eventually co-operated and accepted a caution when she appeared in court. Ms Owens submitted that the public interest and confidence in the social care profession would be undermined if a finding of current impairment was not made in these particular circumstances.

The Committee considered the submissions from Ms Owens on behalf of the Council, and had regard to all of the evidence in the case. The Committee accepted the advice of the Legal Adviser. She referred the Committee to

the Standards, and advised it to adopt a sequential approach when considering this issue. In particular, she asked it to take into account the nature and content of the police caution 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 caution. 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 case of CHRE v NMC & Grant 2011.

The Committee considered whether the Registrant's fitness to practise was impaired by reason of her caution as set out in the Particulars of the Allegation.

The Committee, in considering the issue of impairment of fitness to practise, took account of Paragraph 24 (3) of Schedule 2 of the Rules which states that it should have regard to:

- (a) whether it is satisfied as to the reason for the alleged impairment of fitness to practise;
- (b) the Standards of Conduct and Practice issued by the Council under Section 9 of the Act;
- (c) whether the impairment is capable of remediation;
- (d) whether the impairment has been remediated;
- (e) the risk of repetition; and
- (f) the public interest.

The Committee noted that the Registrant's caution for common assault was serious and involved an assault on a vulnerable service user. The Committee considered that the Registrant was in a position of trust and had abused that trust when she assaulted the service user whilst providing care for her. The Committee noted that the Registrant assaulted the service user in the presence of her work colleague. The Committee took in account the Registrant's colleague's statement where she described how the Registrant "put her hand on [REDACTED] face pushing her head into the pillows".

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:

Standards of Conduct

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 had no information or evidence from the Registrant as regards any action which she had taken to remediate her behaviour. The Committee found that the Registrant's common assault of a service user, who was described as deaf and blind, amounted to a very serious abuse of trust. The Committee considered that such conduct was not easily remediable. In view of the Registrant's lack of engagement to date, both with the Council investigation and at this hearing, the Committee had no basis on which it could be satisfied that the Registrant had full insight into her behaviour or that she would not repeat her actions in the future. The Committee considered there was no evidence that the Registrant had any appreciation of the degree of harm that her actions caused to a very vulnerable service user. The Committee was concerned that the Registrant's assault of the service user took place in the presence of her co-worker. The Committee acknowledged that the Registrant, in accepting a caution for the offence of common assault, showed a small degree of insight, although her admission came at a very late stage after consistent denials. However, in all of the circumstances, the Committee considered there to be a continued high risk of repetition of her behaviour.

The Committee concluded that the Registrant's caution for common assault brought the social care profession into disrepute, and that the public would find it totally unacceptable that a registrant who had received a caution for the offence of common assault in these circumstances remained on the Register without restriction.

In all of the circumstances, the Committee concluded that a finding of impaired fitness to practise was, therefore, necessary for the maintenance of public confidence in the social care profession and the Council as its regulator, and that public confidence in the social care profession would be undermined if a finding of impaired fitness to practise was not made.

Therefore, the Committee concluded that the Registrant's fitness to practise was currently impaired by reason of her caution for the offence of common assault.

Sanction

In reaching its decision on sanction, the Committee considered the submission of Ms Owens on behalf of the Council, and had regard to all of the evidence in this case. Ms Owens referred the Committee to mitigating factors, and advised that the Registrant had no previous referrals to the Council and that she had accepted a police caution for common assault.

As regards aggravating factors, Ms Owens submitted that the public was entitled to expect that care workers would provide safe and effective care to the most vulnerable in society, and suggested that the Registrant's behaviour in assaulting a vulnerable service user could not be considered to be at the lower end of the spectrum of unacceptable behaviour. She suggested that the Registrant's actions were fundamentally incompatible with remaining on the Register. She noted that the Registrant did not express any remorse for her behaviour, and had not provided the Committee with any information or explanation for her actions. She

submitted that a sanction was appropriate and fair, and that the sanctions of Warning, Conditions of Practice or Suspension would not be sufficient to protect the public or be appropriate, and would not satisfy the public concerns arising out of an assault on a service user that took place in the work place and in the presence of a co-worker. She noted that the Registrant had failed to engage with the Council and the hearing process. She referred the Committee to Paragraph 4.4 and 4.7 of the Guidance and suggested that the sanction of a Removal Order should be considered.

The Committee accepted the advice of the Legal Adviser. She referred the Committee to the Guidance, and reminded the Committee to consider the question of sanction in ascending order of severity, paying particular attention to the issue of proportionality.

She referred the Committee to Paragraph 26 of Schedule 2 of the Rules which provides that, upon a finding of impairment of fitness to practise, the Committee may:

- (a) impose no sanction; or
- (b) warn the Registrant and direct that a record of the warning should be placed on the Registrant's entry in the Register for a specified period of up to 5 years; or
- (c) make a Conditions of Practice Order for a specified period not exceeding 3 years; or
- (d) make an Order suspending the Registrant's registration for a specified period not exceeding 2 years (a 'Suspension Order'); or
- (e) make an Order for removal of the Registrant's registration from the Register ('a Removal Order').

She further reminded the Committee that in deciding which sanction to impose, the Committee should take into account:

- (a) the seriousness of the Particulars of the Allegation;
- (b) the degree to which the Registrant has fallen short of any expected standards;
- (c) the protection of the public;
- (d) the public interest in maintaining confidence in social care services; and
- (e) the issue of proportionality.

The Committee applied the principles of fairness, reasonableness and proportionality, weighing the public interest against the Registrant's interests, and taking into account any aggravating and mitigating factors in the case. The public interest includes the protection of members of the public, including service users, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour within the profession. The Committee took into account its powers under Paragraph 26 of Schedule 2 of the Rules in relation to the sanctions available to it, and also had regard to the Guidance, bearing in mind that the decision on sanction was one for its own independent judgement.

The Committee recognised that the purpose of sanction was not to be punitive, although a sanction may have a punitive effect. The Committee considered the aggravating and mitigating factors in this case.

The Committee considered the mitigating factors to be:

- There were no previous referrals as regards this Registrant to the Council;
- The Registrant was employed at the Home since 2019 with no concerns noted;
- It was an isolated incident; and
- The Home had considered the Registrant's return to work under supervision.

The Committee considered the aggravating factors to be:

- The Registrant's caution related to common assault of a vulnerable service user, and took place when the Registrant was providing care to a very vulnerable service user who was placed at risk of harm;
- The Registrant assaulted the service user, who was deaf and blind, in the presence of a co-worker;
- At the time of the investigation by her employer and the PSNI, the Registrant denied the allegations against her;
- The Registrant failed to engage with the Council during its investigation and with the fitness to practise hearing;
- The Committee had no evidence from the Registrant of remorse, regret or insight as regards her behaviour;
- The Committee had no evidence of remediation by the Registrant, nor had she provided any personal mitigation or testimonials; and
- The Registrant's actions fell far below the expected standards of a social care worker and constituted an abuse of trust.

Having balanced the aggravating and mitigating factors, and taking into account the interests of public protection and public interest, the Committee considered that a sanction was appropriate and proceeded to consider which sanction to apply in this case. The Committee had no information regarding the financial impact that a sanction would have on the Registrant, nor were there testimonials or references provided. The Committee had no information about the Registrant's current employment or her financial circumstances.

Warning – the Committee considered the issue of a Warning in this case. It bore in mind that the imposition of a Warning for a period of time would not protect the public from the risk of repetition, and consequent risk of harm to service users and members of the public. The Committee considered that the Registrant's caution for the offence of common assault demonstrated a serious disregard for the Standards. The circumstances of the Registrant's impairment of fitness to practise were not at the lower end of the spectrum, nor were the circumstances such that the Committee would be confident that this sanction would provide adequate public protection as far as the Registrant's suitability for registration was concerned. The Committee bore in mind that a

Warning would entitle the Registrant to work as a social care worker. The Registrant had not provided any evidence of insight into the harm which her behaviour may have caused to the service user and its impact on her colleague. In addition, the Committee had no evidence of rehabilitative steps taken by the Registrant, nor had she provided references or testimonials.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Registrant's caution for the offence of common assault related to a serious abuse of trust, when she, as a care worker, assaulted a very vulnerable service user whilst providing care for her. The Registrant has not expressed any remorse for her actions nor has she provided any insight into the impact of her assault on the service user. As the Registrant did not attend the hearing, the Committee had no evidence as to her current employment circumstances, or whether she would agree to any conditions if imposed. Further, the Committee did not consider that conditions of practice would protect the public from the risk of repetition as identified above.

The Committee, therefore, concluded that a Conditions of Practice Order would not be sufficient to meet the public interest in this matter, given the seriousness of the Registrant's departure from the standards expected of a registered social care worker. In these circumstances, the Committee could not formulate workable, enforceable or verifiable conditions which would address the Registrant's behaviour and adequately protect the public.

Suspension Order – the Committee next considered a Suspension Order. The Committee noted that it had made findings at the fact and impairment stages of the proceedings which were of a very serious nature, and related to the Registrant breaching fundamental tenets of the social care profession. The Standards require a social care worker to treat each person as an individual with consideration, respect and compassion, along with respecting and maintaining their dignity. During both the employer investigation and the PSNI investigation, the Registrant maintained a denial as regards the allegation, and then accepted a caution for the offence of common assault at a very late stage.

The Committee had no evidence before it of remediation by the Registrant, nor had it any information to indicate that the Registrant was unlikely to repeat her behaviour in the future. The Committee considered that the Registrant had failed to express any insight or remorse, particularly in relation to the seriousness of her caution for the offence of common assault and the risk of harm which her behaviour presented to the service user. The Committee had no evidence from the Registrant, nor did she engage with the Council. The Committee considered the public interest in this matter. The Committee considered that the public would perceive the Registrant's 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 caution for the offence of common assault.

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 behaviour which resulted in her receiving a caution for the offence of common assault and her lack of insight and

remediation of her failings, a Removal Order was the only sanction appropriate to protect the public and to maintain public confidence in the social care profession and the Council as its regulator. The Committee considered that the Registrant's actions constituted a serious departure from the professional standards as set out in the Standards, and were fundamentally incompatible with continued registration. As previously noted, the Registrant's behaviour involved an assault on a particularly vulnerable service user, and constituted an abuse of her position of trust as a social care worker, and brought the social care profession into disrepute. The Committee considered the Registrant's behaviour constituted a breach of the intimate professional relationship with the service user. The Registrant showed no insight or remorse, has taken no remedial action and has failed to engage with the Committee in relation to today's hearing.

In all of the circumstances, the Committee concluded that a Removal Order was the only sanction available to it that would protect the public and meet the public interest in upholding confidence in the social care profession and its regulator, by marking the seriousness and unacceptability of the Registrant's actions. The Committee considered that a Removal Order would ensure that the Registrant does not have an opportunity to repeat her 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 accepted a caution for the offence of common assault on a vulnerable service user and who failed to show any insight or remediation, was allowed to remain on the Register. The Committee considered a Removal Order to be a suitable, appropriate and proportionate sanction, which was imposed on the Registrant's registration with immediate effect.

The Committee noted that the Interim Order currently in place will be revoked and replaced with a 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.

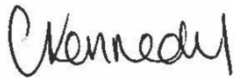
You are prohibited from working as a social care worker in any of the following positions:

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.



21 September 2023

Committee Manager

Date