



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

Name: Marie Therese Mullan

SCR No: 7010442

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **25 October 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 12 April 2023, 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 the 25th day of April 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 in the United Kingdom for a criminal offence.

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 15 September 2023, and that an electronic delivery receipt was received on the same date. He said that the Committee Clerk called the Registrant on 17 October 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 25 October 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, 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:

- That service had been properly effected;
- 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;
- 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; and
- There may be some disadvantage to the Registrant in not attending and giving evidence to the Committee.

The Committee concluded that the Registrant's absence was deliberate and a waiver of her right to appear. It considered that any disadvantage to the Registrant was outweighed by the public interest in the expeditious disposal of this case. The Committee noted that this case related to a matter dating back to April 2022.

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

Declarations of Conflict of Interest

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

Application to Admit Hearing Bundle

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

Background

Mr Carson, on behalf of the Council, provided the Committee with a background to the Allegation. He told the Committee that this matter first came to the Council's attention following an Employer Referral Form ("ERF") from Kingdom Healthcare on 05 May 2022. The referral outlined an allegation that the Registrant had engaged in the physical assault of a service user on 25 April 2022.

The ERF reported that the manager '*received a text after working hours from a care worker reporting an incident that had occurred, no real information was supplied at this time so I asked her for an official statement...*'

A statement was supplied by the person who made the allegation, this person also being a care worker on shift at the time, and it stated:

'On Monday 25th of April myself and care worker X were working the double Maghera run. We were in with REDACTED on her lunch call between 12 and 12:30. We were changing REDACTED pad and i was getting the bag ready, REDACTED was unsettled during this time and had scraped Care Woker X on her arm. Care worker x then hit REDACTED back with force on her right arm, REDACTED let out a scream as you would as it clearly hurt her. I was in total shock and said to Care worker X what are you doing she replied it was a "shock reaction". We completed the call.' [sic]

The matter was investigated by the PSNI, and the Structured Outline of Case provided additional information that the victim was a 93 year old lady in poor health, who suffered from dementia and had the assistance of carers four times per day.

The Council was advised by the Designated Adult Protection Officer (DAPO) at the Northern Health and Social Care Trust ('the Trust') that the matter was being investigated under Joint Protocol with the PSNI.

The contents of the Structured Outline of Case disclosed that the service user had:

'hit the defendant on the inside of the right forearm. She describes REDACTED as frial [sic] person and it was not a forceful hit and not malicious in nature, just a presentation of her condition. However she sees the defendants [sic] reaction to this being that she cleched [sic] her fingers on her right hand and brought her hand back down striking REDACTED on her forearm with the palm of her hand. She describes it as a forceful hit.'

The witness described being shocked, and reported the incident to management when she was next on shift a few days later.

Mr Carson said that further to the Joint Protocol investigation, the Public Prosecution Service ('PPS') directed prosecution for Common Assault on 10 October 2022.

Mr Carson said that the Registrant confirmed by email, dated 05 January 2023, that she was no longer working in the 'social sector' and that the matter was a case of 'alleged common assault'.

Mr Carson told the Committee that on 13 April 2023, the PSNI confirmed that the matter concluded at Court on 12 April 2023, and that the Registrant was convicted of unlawful assault and received a sentence of two months' imprisonment, suspended for 18 months.

Mr Carson informed the Committee that the Certificate of Conviction incorrectly referred to the Registrant as 'Mary' rather than 'Marie'. However, the Council carried out investigations with the Court Office, who confirmed in correspondence that the Certificate of Conviction does in fact relate to the Registrant.

Evidence

Mr Carson referred the Committee to the Certificate of Conviction contained within the hearing bundle, which confirmed that the Registrant had pleaded guilty to one charge of unlawful assault on 12 April 2023 and was sentenced to two months' imprisonment, which was suspended for one year and six months.

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 Rules.

In addition, Mr Carson referred the Committee to the email, dated 04 May 2023, from the Northern Ireland Courts and Tribunal Service, in which it was confirmed that the Certificate of Conviction did in fact relate to the Registrant.

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 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 unlawful assault of a vulnerable service user in the course of her duties providing care to them. 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 continued to deny the allegations throughout the police investigation and eventually pleaded guilty to the charges in Court. However, the Registrant has not engaged with the Council or this Committee to demonstrate any insight or remorse for her actions. Mr Carson submitted that the Council is concerned that the Registrant has not provided any information to the Council or the Committee to satisfy it that there would be no repetition of her criminal behaviour. Mr Carson said 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 were 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 advised the Committee that it should adopt a two-stage approach to the question of impairment. Firstly, the Committee should satisfy itself that the statutory ground of conviction has been made out, and then consider whether the Registrant's fitness to practise is currently impaired on the basis of the statutory ground. She referred the Committee to Paragraph 24 of Schedule 2 of the Rules, and the principles as set out in the case of the GMC v Cohen, in relation to remediation, insight and risk of repetition. She referred the Committee to the principles identified in the findings of Dame Janet Smith in the 5th Shipman Report in relation to impairment. She also referred the Committee to the cases of GMC v Meadows and CHRE v NMC & Grant, and the need to ensure that the wider public interest was taken into account in relation to upholding public confidence in the profession, upholding proper standards of conduct and maintaining confidence in the Regulator.

The Committee, having considered the Certificate of Conviction, and having found the facts proved by reason of the conviction, was satisfied that the statutory ground of Conviction had been made out.

The Committee next considered whether the Registrant's fitness to practise is currently 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, and is currently subject to a suspended prison sentence. 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:

- 1.2 Treating people with consideration, respect and compassion.

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. It found that a conviction for assault against a service user, while not easily remediable, was capable of being remediated. 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 any significant 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, but also noted that she only pleaded guilty at Court and had denied the allegations until that time. The Committee also noted that the Registrant has not shown any sign of remorse regarding her behaviour. The Committee was concerned that there was no evidence of any significant insight as to the effect of her behaviour on the service user or the wider public interest. The Committee has no evidence as to any steps taken by the Registrant to demonstrate that she has remediated, or is in the process of remediating, her behaviour. It, therefore, considered that there was a risk of repetition.

In relation to the wider public interest, the Committee concluded that the Registrant's conviction for unlawful assault brought the social care profession into disrepute. It considered 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. The Committee also concluded 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. As regards mitigating factors, Mr Carson submitted that the Registrant had no previous referrals to the Council and that she pleaded guilty to the offence at Court.

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 her daily needs in her own home. The Registrant had inflicted pain and caused harm.

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 not shown insight and remorse, and 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; and
- The Registrant pleaded guilty.

The Committee considered the aggravating factors to be:

- The Registrant's criminal conviction related to an unlawful assault of a vulnerable service user in her own home, where she should have felt safe;
- The incident took place when the Registrant was providing care to the vulnerable service user;
- The Registrant failed to engage with the Council during the fitness to practise hearing; and
- The Committee had no evidence of remediation, insight or remorse from the Registrant.

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 her. 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 pleaded guilty at her Court hearing. Since the Registrant pleaded guilty and was convicted of unlawful assault, she has not provided any evidence of insight into the impact which her actions had on the service user or on the wider public interest. The Registrant has not shown any remorse for her behaviour since the conviction. The Committee further noted that the Registrant has not provided any evidence of any steps which she has taken to demonstrate that she is unlikely to repeat her criminal behaviour in the future. The Committee had previously determined that there was a risk of repetition.

The Committee considered the public interest in this matter. In all of the circumstances of this case, the Committee concluded that a Suspension Order would not be sufficient to address the seriousness and unacceptability of the Registrant's criminal conviction for assaulting a service user in her own home.

Removal Order – the Committee then considered a Removal Order. In considering this, the Committee took into account the Guidance and, in particular, paragraph 4.26 in which it noted as follows:

'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.'

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 Committee has not been provided with any evidence from the Registrant as to remedial action or insight, and has failed to engage with the Committee in relation to today's hearing.

The Committee concluded that given the seriousness of the Registrant's criminal conviction, and her lack of remorse, insight and remediation, a Removal Order was the only appropriate sanction to protect the public and to maintain public confidence in the social care profession and in the Council as its regulator. The Committee noted that this was a one-off incident. However, 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 are fundamentally incompatible with continued registration.

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 in a social care setting. 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 convicted of unlawful assault on a vulnerable service user was allowed to remain on the Register. The Committee considered that a Removal Order was the appropriate and proportionate sanction to be 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.

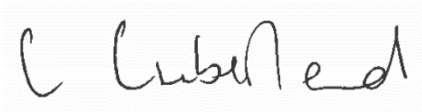
The effect of this decision is that your entry in the Register has been removed.

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.



26 October 2023

Committee Manager

Date