

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

REDACTED

Name: Joel Adrain McPeake

SCR No: 7005760

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **02 November 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 convictions;

The Committee decided to make an Order suspending your registration for a specified period of nine months ('a Suspension Order').

Particulars of the Allegation:

That, being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted on 10 November 2022 of the following offences at the Magistrates' Court:

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| 1 | Charge 1: [You] on the 22nd October 2021 unlawfully had in your possession a controlled drug of Class B of Schedule 2 to the Misuse of Drugs Act 1971 namely cannabis in contravention of section 5(1) of the Misuse of Drugs Act 1971 contrary to Section 5(2) of the Misuse of Drugs Act 1971 |
| 2. | Charge 2: [You] on 22nd October 2021 had in your possession a controlled drug of Class B of Schedule 2 to the Misuse of Drugs Act 1971 namely cannabis with intent unlawfully to supply it to another in contravention of section 4(1) of the Misuse of Drugs Act 1971 contrary to section 5(3) of the Misuse of Drugs Act 1971 |
| 3. | Charge 5: [You] on the 16th day of August 2021, offered to supply a controlled drug of Class B, namely cannabis, to another in contravention of section 4(1) of the Misuse of Drugs Act 1971, contrary to Section 4(3)(a) of the Misuse of Drugs Act 1971 |
| 4. | Charge 6: [You] on the 3rd day of August 2021, offered to supply a controlled drug of Class B, namely cannabis, to another in contravention of section 4(1) of the Misuse of Drugs Act 1971, contrary to Section 4(3)(a) of the Misuse of Drugs Act 1971 |

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 criminal offences.

Procedure

The hearing was held under the fitness to practise procedure.

Preliminary Matters

The fitness to practise hearing was held at the Social Care Council offices. The Registrant was in attendance and was not represented. The Council was represented by Ms Sinead Owens, Solicitor, Directorate of Legal Services.

Declarations of Conflict of Interest

The Chair confirmed with the Committee that none of the 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 and Submissions on the Facts

Ms Owens provided the Committee with a background to the case. She advised the Committee that the Council had received an Employer Referral Form ('ERF') from Sense NI, dated 23 December 2022. She said that the Registrant is registered on Part 2 of the Register and, since 2019, had been employed as a support worker at Holly House, Dunmurry. She said that on 22 December 2022, the Registrant advised his employer that he had been convicted of possession of a Class B drug – cannabis. As a result, the Registrant was suspended by his employer.

Ms Owens referred the Committee to the certificates of conviction in Exhibit 1. She advised that the four convictions against the Registrant related to the possession of cannabis, intent unlawfully to supply to another and two counts relating to the supply of cannabis. She told the Committee that the Registrant pleaded guilty in Court to the four charges on 18 August 2022. Ms Owens told the Committee that, on 10 November 2022, the Court imposed a Probation Order for a period of 18 months. The Registrant was also ordered to participate in a drug / alcohol programme.

Ms Owens referred the Committee to the Police case summary, which detailed the background. She noted that when interviewed by the Police, the Registrant gave a pre-prepared statement and admitted to possession of cannabis, but denied allegations of supplying cannabis to others.

Ms Owens submitted that the documentation in the hearing bundle confirmed that the Registrant was convicted of each of the charges as set out within the Particulars of the Allegation. She submitted that the certificates of conviction, when taken alongside the background information obtained from his employer and from the PSNI, allowed the Council to prove the facts on the balance of probabilities. She noted that there was no appeal against the convictions, nor had there been any issue raised as regards the convictions relating to this registrant.

She referred the Committee to the emails between the Registrant and the Council requesting information as regards any Court ordered programme which he had completed with Probation Services. She told the Committee that, until the day of the hearing, no information was provided by the Registrant.

Ms Owens submitted that, in accordance with Paragraph 12 (5) of Schedule 2 of the Rules, the certificates of conviction were conclusive proof of the facts, with there being no issue as regards the identity of the Registrant or an appeal against the convictions.

The Registrant told the Committee that he had no issue with the certificates of conviction.

Findings of Fact

The Legal Adviser reminded the Committee that under Paragraph 12 (5) Schedule 2 of the Rules, a certificate of conviction issued in any UK Criminal Court '*shall be conclusive proof of the facts or convictions so found*'. She advised the Committee that a registrant could challenge a certificate of conviction if it did not refer to the registrant, or where the conviction had been challenged successfully on appeal. She informed the Committee that it must be satisfied that the certificates of conviction in this case were issued by a competent Court of jurisdiction and, in the absence of any other evidence, the Committee was entitled to rely on the certificates of conviction to establish conclusively that the Registrant was convicted of the offences as set out in the Particulars of the Allegation.

The Committee reminded itself that the burden was on the Council to prove the facts as set out in the Particulars of the Allegation, and that to find the facts proved the Committee must be satisfied on the balance of probabilities. This means that for any fact to be found proved, the Committee must be satisfied that it is more likely than not to have occurred.

The Committee took into account the submissions from Ms Owens, on behalf of the Council, and the Registrant's submissions, and had careful regard to all of the documentary evidence submitted. The Committee noted the facts contained in the certificates of conviction. The Committee concluded that the certificates of conviction were conclusive proof of the convictions. The Committee, therefore, found the facts proved.

Fitness to Practise

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

The Committee received affirmed evidence from Witness 1, who joined the hearing via video-link. She gave evidence that she was not the Registrant's Probation Officer but had delivered a brief intervention substance misuse programme ('Court ordered programme') to the Registrant. She said that this comprised of six sessions, commencing on 25 January 2023 and completing on 07 March 2023. She told the Committee that the Registrant had fully engaged with the programme and was still working with his Probation Officer. She told the Committee that the sessions were delivered on a one-to-one basis, and that each session lasted between 30 and 40

minutes. She gave evidence that she worked through an intervention workbook with the Registrant, looking at [REDACTED]. She confirmed that the Registrant had successfully completed the Court ordered programme.

The Committee heard submissions from Ms Owens. She said that there was no formal admission from the Registrant as regards impairment of his fitness to practise. She said that the Registrant's convictions called into question his 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 had breached by reason of his convictions: namely, Standards of Conduct 5 and 5.8. Ms Owens submitted that the Registrant's actions fell far below the standards to be expected of a registered social care worker. Ms Owens submitted that the Registrant had not produced evidence of remediation to date. She said that, in these circumstances, there remained a risk of repetition. She submitted that there was no evidence of insight on the part of the Registrant, and that there was no evidence to show that the Registrant would act differently in the future. She noted that, as regards insight, the Registrant admitted some of the charges at an early stage. She noted that the Registrant had made admissions to the Police as regards the possession of cannabis, but that he had denied the intention to supply it and had said that it was for personal use only. The Registrant pleaded guilty at Court to all four counts concerning the possession and intent to unlawfully supply cannabis. She noted that there was limited evidence from Witness 1 as regards the Court ordered programme. She submitted that there was no confidence that the risk of repetition had been reduced.

Ms Owens submitted that the Registrant's convictions were in the public domain. She submitted that a failure to make a finding of current impairment of the Registrant's fitness to practise would undermine public trust and confidence, and would fail to uphold proper standards of conduct and behaviour. She noted that the Registrant was still subject to an ongoing Probation Order. In all of the circumstances, Ms Owens invited the Committee to make a finding of current impairment by reason of the Registrant's convictions.

The Committee received a submission from the Registrant. He told the Committee that it was very difficult for him to go to Court and to lose his job. He said that he was good at his job, he loved his work and working with people. He said that at the time of these events, he was not in a good place and, over the last year, he had thought about what he wanted to do going forward. He said that he was in bad company at the time of these events and that these people were no longer his friends. He told the Committee that he had a different partner and that he had a new outlook on life. He submitted that he was not a harm to anyone and referred to his younger brothers and sister, [REDACTED]. He submitted that he was especially good with children, and had a good supportive family.

He told the Committee that he regretted his decision making and now realised how much happier he was now. He confirmed that he had completed his Court ordered programme and initially saw his Probation Officer once a week, but that he now only sees her once a month. He told the Committee how he had attempted to address his cannabis usage prior to these events, [REDACTED]. He told the Committee that, in the future, he would like to

work with young adults with a disability. He said that he was disappointed in himself with what had happened, and that he had let his family down. He said that he was currently employed as an activity instructor, commencing work six months ago, and that he had declared his convictions to them and that they knew everything about him.

The Committee considered the submissions from Ms Owens and the Registrant, and had regard to all of the evidence in the case. The Committee heard and accepted the advice of the Legal Adviser. She referred the Committee to Paragraph 24 (3) of Schedule 2 of the Rules, and the requirements as set out in the case of 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 his convictions, 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 had regard to Rule 4 (d) of the Rules, which states that fitness to practise may be impaired by a conviction for a criminal offence. The Committee was satisfied that the Registrant's convictions for possession of, and intent to unlawfully supply, cannabis were reason for the alleged impairment of fitness to practise.

The Committee had regard to the Standards of Conduct and Practice for Social Care Workers. The Committee was satisfied that the Registrant's actions were in breach of the following 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:

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

The Committee was of the view that the Registrant's criminal behaviour fell significantly below the standards of conduct expected of a registered social care worker, and was very serious.

In considering the risk of harm to service users as a result of the Registrant's criminal convictions, the Committee noted that there was no suggestion that the Registrant's actions had caused harm to service users or work colleagues.

The Committee addressed itself to the Registrant's insight and remediation. The Committee concluded that the events which led to the convictions were capable of remediation. The Committee noted that the Registrant had engaged successfully with Probation Services, and continued to engage with them. However, the Committee noted that the Registrant was still subject to a Probation Order through to May 2024. The Committee noted the decreased frequency of probation visits and the Registrant's recognition of his problems. Whilst the Committee considered that the Registrant's behaviour was capable of remediation, it was not convinced that full remediation had taken place and, therefore, a risk of repetition remained.

The Committee accepted that the Registrant had displayed some insight into the impact of his criminal convictions, and noted that he now had different friends and a different partner, which had given him a new outlook on life. The Committee also noted that the Registrant pleaded guilty to the four charges against him.

The Committee concluded that a finding of current impairment of fitness to practise was necessary in the public interest. The Committee considered that the Registrant's criminal convictions, which were serious, brought the social care profession into disrepute and damaged the reputation of the profession. The Committee noted that the Registrant, in addition to a conviction for possession of cannabis, was convicted of possession of cannabis with intent to supply and two counts of offering to supply cannabis. In these circumstances, it was considered by the Committee that public confidence in the social care profession, and the Council as its regulator, would be undermined if a finding of impaired fitness to practise in these circumstances was not made.

Therefore, the Committee concluded that the Registrant's fitness to practise was currently impaired by reason of his criminal convictions.

Sanction

In reaching its decision on sanction, the Committee considered the submission of Ms Owens, on behalf of the Council, and the Registrant's submission, 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. She also noted that the Registrant had pleaded guilty to the four charges, and that no service users were harmed arising from the criminal convictions. In considering aggravating factors, Ms Owens submitted that the convictions were very serious. She noted the Registrant's late reporting of these events to his employer and the lack of reporting, at that time, to the Council. She submitted that the Registrant had shown limited evidence of remorse and remediation. She further noted the reference in the ERF to the Registrant's previous caution for possession of cannabis. She submitted that the Registrant's criminal convictions constituted a serious disregard for the Standards.

Ms Owens referred the Committee to the NISCC Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance'). She noted that the Registrant's criminal convictions were not at the lower end of the spectrum, and submitted that it was the view of the Council that it would be inappropriate to take no action or to impose a Warning in this case. She submitted that a Warning would not provide adequate protection for service users, nor address the public interest.

Ms Owens referred the Committee to the Guidance, and submitted that conditions of practice would be difficult to formulate as these were usually directed to an area of particular performance at work. She submitted that appropriate and relevant conditions would be difficult to impose which would meet the concerns arising from the Registrant's criminal behaviour. She noted that the Registrant's Probation Order was in place for another six months.

As regards the sanction of suspension, she submitted that this may be appropriate given the Registrant's acknowledgment of his failings, his engagement with Probation Services and the lack of any repetition of his criminal behaviour to date.

As regards the sanction of a removal, she reminded the Committee that this was a draconian option, and would be only appropriate where a registrant's behaviour was fundamentally incompatible with remaining as a registered social care worker.

The Committee heard from the Registrant as regards sanction. He said that he had never caused harm to anyone other than himself, and that he would never hurt anyone in the caring sector. He told the Committee that he had worked successfully with his previous employer for five years, working as a key worker for a challenging service user. He told the Committee that he could not change what had happened before his convictions, and could only change his life going forward. He said that he had kept out of trouble and away from bad company. He described himself as a caring person who did not want to lose his registration. He said that the main issue in his work revolved around providing safety for a vulnerable person. He submitted that there was no benefit to removing him from the Register, and that the caring profession had a need for young males.

The Committee accepted advice from 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 with the Registrant's interests. The public interest included the protection of members of the public, including service users, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour within the 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 Council's 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:

- The Registrant had successfully completed his Court ordered programme;
- The Registrant continued to engage with Probation Services in accordance with the Probation Order;
- The Registrant had no prior disciplinary matters with the Council, nor had there been any other matters of a similar nature since the time of his convictions;
- The Registrant fully engaged with the hearing after a period of non-engagement;
- The Registrant expressed genuine remorse and regret for his behaviour;
- No harm was caused to service users as a result of the Registrant's convictions; and
- The Registrant's convictions related to his behaviour outside of work.

The Committee considered the aggravating factors to be:

- The Registrant's criminal convictions relate to four serious offences involving possession of cannabis and possession with intent and offer to supply;

- The Registrant failed to report the criminal investigation and his convictions to his employer until a late stage, and failed to report the matter to the Council;
- The Registrant's prior caution for possession of cannabis; and
- The Registrant's behaviour constituted a serious disregard for the Standards.

Having balanced the aggravating and mitigating factors, and taking into account the interests of public protection and the public interest, the Committee was satisfied that a sanction was necessary, and proceeded to consider which sanction to apply in this case.

No sanction - the Committee had no doubt that it would be entirely inappropriate to impose no sanction in this case in view of the seriousness and nature of the Registrant's criminal convictions. To impose no sanction would not address the concerns identified by the Committee.

Warning – the Committee considered whether to impose a Warning in this case. Having regard to its previous findings, the Committee considered that such a step would be inadequate to protect the public, and would fail to uphold the public interest. The Committee considered that the Registrant's criminal convictions demonstrated a serious disregard for the Standards. A Warning would allow the Registrant to work without restriction, and would not be sufficient to protect the public or meet the public interest.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Committee noted the Guidance at Paragraph 4.13, which states that conditions may be appropriate in cases involving particular areas of a registrant's performance, and where a Committee is satisfied that it is appropriate for an individual to remain on the Register. The Registrant's convictions were very serious, involving possession and intent to supply cannabis, for which the Court imposed a Probation Order for 18 months and instructed the Registrant to attend a Court ordered programme. The Registrant attended the hearing and told the Committee that he had been employed as an activity instructor for the last six months. The Committee noted that the Registrant's criminal behaviour did not involve the provision of social care. The Registrant is currently subject to a Probation Order that will remain in place until May 2024. In these circumstances, 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 criminal 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 facts and impairment stages of the proceedings which were of a very serious nature, and that the Registrant's actions fell far below the standards to be expected of a registered social care worker.

The Committee carefully considered the issue of proportionality, and whether suspension would address the concerns which it had identified. The Committee noted 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.'

Although the Committee considered that the Registrant's criminal convictions were serious, it did not consider them so serious as to justify removal from the Register. In particular, the Committee noted that the Registrant's criminal behaviour took place outside the workplace with no harm to service users. The Committee determined that the Registrant's behaviour was not fundamentally incompatible with continuing to be a registered social care worker in the long term. Suspension would give a clear message to the Registrant, the public and the profession that the Registrant's conduct was inappropriate for a social care worker. There were no other complaints raised with the Council in respect of the Registrant. The Committee noted that the Registrant is presently subject to a Probation Order and had successfully completed a Court ordered programme. He continues to attend his Probation Officer on a monthly basis. The Committee noted that a Suspension Order would be reviewed at the conclusion of the period of suspension, and that the Registrant would have the opportunity to demonstrate to the Council his commitment to unrestricted registration and compliance with the Probation Order. The public would be sufficiently protected by a period of suspension for nine months. This period would mark the seriousness of the Registrant's criminal behaviour, allow him time to fully comply with the Probation Order and present evidence to the Council of full remediation and that his fitness to practise is no longer impaired.

The Committee considered the public interest. The public must be able to have confidence in those who provide care to the most vulnerable. In all of the circumstances of the case, the Committee determined that the reputation of the profession and the role of the Council to uphold proper standards of behaviour will be met by a Suspension Order. The Committee was satisfied that a Suspension Order was appropriate, having weighed the public interest with the interests of the Registrant.

The Committee carefully considered the potential impact which a Suspension Order could have on the Registrant. However, it concluded that any consequences for the Registrant were outweighed by the need to protect the public and maintain public confidence in the social care profession.

Removal Order - the Committee did consider the sanction of removal. Whilst acknowledging that some of the factors listed in the Guidance were engaged, the Committee concluded that a Removal Order would be disproportionate, in particular as the Registrant has expressed remorse and regret and complied with the Court Order. There were no previous referrals to the Council, with the Registrant engaging with the Committee at the hearing. On balance, the Committee was persuaded that a Removal Order at this stage would not be appropriate.

The Committee concluded that a Suspension Order for a period of nine months was the most suitable, 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 suspended for a specified period of nine months and you may not practise as a social care worker during the period 02 November 2023 to 01 August 2024 inclusive.

Early Review

The Fitness to Practise Committee may, at your request, review the Order before the end of the period for which the suspension has been imposed if there has been a material change of circumstances since the Order was imposed. The Committee may, after reviewing a Suspension Order, revoke that Order or replace that Order with a Conditions of Practice Order.

Review at Conclusion of Sanction

A review of your fitness to practise will be undertaken towards the end of the period for which the Suspension Order has been imposed. The Council will write to you no later than 12 weeks before the expiry of the Order to invite you to submit any information or documentation which you would like to have considered as part of the review process. The review will consider the particular concerns which have been outlined above by the Fitness to Practise Committee, and will seek to ascertain what remedial steps you have taken during the period of your suspension.

Following the Council's review, the matter may be referred for review by the Fitness to Practise Committee. If the Committee reviews the Order and it is satisfied that your fitness to practise remains impaired, it may impose a further Order to commence upon expiry of the existing Order, or it may impose a Conditions of Practice Order to commence upon expiry of the existing Order, or it may vary the terms of the existing Order, or it may revoke the existing Order and impose a Removal Order.



07 November 2023

Committee Clerk

Date