



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

Name: David Moxon

SCR No: 7015980

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **12 December 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, whilst being registered as a social care worker under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted at the Magistrates' Court on 26 October 2022 of the following offence:

1. [You] on a date unknown between the 7th day of October 2021 and 10th day of October 2021, intentionally touched a female, the touching was sexual, the female did not consent to the touching, and you did not reasonably believe that the female consented to the touching contrary to Article 7 (1) of the Sexual Offences (Northern Ireland) Order 2008.

On 30th August 2023, the above conviction was appealed before the County Court. That appeal was dismissed and the conviction and sentence affirmed.

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 Issues

The Fitness to Practise hearing was held remotely by way of video-link. The Registrant was not in attendance, nor was he represented. The Council was represented by Mr Peter Carson, 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.

Service

The Notice of Hearing and hearing bundle were sent to the Registrant's registered email address on 06 November 2023. An electronic proof of delivery receipt was received on the same date.

The Committee received legal advice from the Legal Adviser, and he 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

Mr Carson made an application to proceed with the hearing 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. He invited the Committee to conclude that the Registrant's absence was a voluntary waiver of his right to attend. He outlined to the Committee that, on 01 December 2023, the Committee Clerk had called the Registrant, who confirmed in that telephone call that he would not be in attendance at the fitness to practise hearing. In light of this information, Mr Carson submitted that, in all of the circumstances, it was fair to proceed with the hearing in the Registrant's absence. He further submitted that proceeding in the Registrant's absence was in the public interest, and also was justified to ensure the timely 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. He referred the Committee to the cases of R v Jones and GMC v Adeogba. He 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. He 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.

The Committee noted the telephone call made by the Committee Clerk to the Registrant on 01 December 2023, and the Registrant's verbal confirmation that he would not be in attendance at the hearing. The Registrant had not requested an adjournment, nor had he indicated that he would be in attendance and / or represented if the hearing was to be adjourned. There was no reason to suppose that an adjournment of the hearing would secure the Registrant's attendance at a later date. Accordingly, the Committee was satisfied that the Registrant, with notice of the hearing, had voluntarily waived his right to attend. In addition, the Committee noted the serious nature of the allegations, which relate to events in 2021, faced by the Registrant and concluded that the public interest was strongly engaged in this case.

The Committee acknowledged that its decision would likely cause disadvantage to the Registrant. However, it concluded that his interests were outweighed by the public interest.

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

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

Background and Evidence

The matter first came to the attention of the Council upon receipt of a Common Law Police Disclosure ('CLPD') notification from the PSNI, received on 16 December 2021, issued under a 'pressing social need'. Following receipt of the CLPD notification, the Council contacted the Registrant's employer, Kingdom Healthcare (previously Trackars Homecare), on 22 December 2021. Kingdom Healthcare confirmed knowledge of the alleged matter and advised that the Registrant had been placed on precautionary suspension, with effect from 07 December 2021, and confirmed that an Employer Referral Form ('ERF') would be provided in due course. On 12 January 2022, the Council received an ERF from Kingdom Healthcare, which stated that the Registrant had been charged with sexual assault and was due to be in Court on 27 January 2022.

On 28 October 2022, the PSNI advised the Council that the Registrant had been convicted of sexual assault on 26 October 2022 at the Magistrates' Court, and that he had been sentenced to two months' imprisonment, suspended for one year. The Registrant was, in addition, ordered to pay £250 compensation and was placed on the Sex Offenders' Register for seven years. The Council was advised that the Registrant had lodged an appeal against both the conviction and the sentence, which was heard at the County Court on 30 August 2023. It was confirmed that the Registrant's appeal had been dismissed, and that the conviction and sentence imposed at the Magistrates' Court had been affirmed.

Finding of Facts

The Committee took into account the submissions made on behalf of the Council, the Certificate of Conviction and the legal advice from the Legal Adviser. 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*'. He 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. He informed the Committee that the Certificate of Conviction in this case was issued before a competent Court of jurisdiction and, in the absence of any other evidence to undermine its validity, the Committee was required to rely on the Certificate of Conviction to establish conclusively that the Registrant had been convicted of the offences as set out. He also advised the Committee that the Certificate of Conviction could also be relied upon to establish the facts underlying the conviction.

The Committee took into account the submissions from Mr Carson on behalf of the Council, and had careful regard to all of the documentary evidence submitted and, in particular, the Certificate of Conviction. The Committee concluded that the Certificate of Conviction was conclusive proof of the conviction and the underlying facts. The Committee, therefore, found the facts proved by reason of the Certificate of Conviction.

Fitness to Practise

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

The Committee heard submissions from Mr Carson. He submitted that the Registrant's fitness to practise was currently impaired by reason of his conviction. Mr Carson stated that, in the Council's view, the Registrant had breached the following applicable Standards of Conduct and Practice for Social Care Workers ('the Standards'): 5, 5.1, 5.2 and 5.8. He further submitted that a finding of current impairment of the Registrant's fitness to practise was required to protect the public and uphold the public interest. For these reasons, Mr Carson invited the Committee to make a finding that the Registrant's fitness to practise was currently impaired by reason of his conviction.

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. He referred the Committee to the Standards, and advised it to adopt a sequential approach when considering the case. In particular, he asked it to take into account the nature and content of the criminal conviction against the Registrant, and reminded the Committee that it was being asked to determine whether the Registrant's fitness to practise was impaired because of the conviction. He referred the Committee to Paragraph 24 to 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 workforce. He further referred the Committee to the findings of Dame Janet Smith in the 5th Shipman Report as regards the potential causes of impairment. He also referred the Committee to the cases of GMC v Meadow and CHRE v NMC & Grant.

The Committee considered whether the Registrant's fitness to practise was impaired by reason of his 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 had regard to the Standards and the Council guidance entitled 'Making a Determination of Impaired Fitness to Practise: Guidance for Committees on Remediation'. The Committee was satisfied that the Registrant's actions, which had resulted in his conviction, were in breach of the following Standards as follows:

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;
- 5.2 Exploit service users, carers or colleagues in any way; 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 Registrant has been convicted of a serious sexual offence, namely, the sexual assault in the course of his duties of a vulnerable female service user in his care. The Registrant's actions, which resulted in his conviction, fell significantly short of the expected standards of a registered social care worker.

The Committee first considered whether the conduct which had resulted in the Registrant's conviction was capable of remedy. Although acknowledging that this would be difficult, the Committee was prepared to accept that, in principle, with full evidence of insight, reflection and remorse, such conduct was capable of remedy.

The Committee next considered whether, in fact, the Registrant's conduct, which had resulted in his conviction, had been remedied. The Committee noted that the Registrant had denied wrongdoing on two occasions when he was interviewed under caution by Police. He accepted that he had attended at the service user's home with a female colleague. He described touching the service user to the top of her thigh, which was exposed, but denied that he had any sexual motivation. He told Police that the service user was blind, and that he had made an ill-judged attempt at humour when he touched the service user and pretended to scare her. The female colleague made a statement to Police, in which she clearly stated that the Registrant 'reached over and pinched [the service user] on her bum'. The female colleague expressed her shock and surprise at the incident.

The Registrant contested the allegation of sexual assault at the Magistrates' Court and was convicted. He lodged an appeal against his conviction and sentence to the County Court, which was dismissed, and the conviction and sentence of the Magistrates' Court was affirmed.

The Registrant has not engaged in a meaningful manner in the Council's proceedings. The Committee was satisfied that the Registrant has shown no insight at any stage into his conduct, its seriousness and its impact on the service user and his work colleagues. There is a high risk of repetition as a result. The Committee concluded that a finding of current impairment of the Registrant's fitness to practise was required to protect the public, which, in this instance, includes vulnerable service users and work colleagues.

The Committee next considered whether a finding of current impairment of the Registrant's fitness to practise was required in the public interest. The Committee had no hesitation in concluding that such a finding was necessary in the public interest. The Registrant sexually assaulted a vulnerable female service user in his care. There was no evidence of insight and a high risk of repetition. In the Committee's view, not to make a finding of current impairment would seriously undermine the public's trust and confidence in the social care workforce, and would fail to declare and uphold proper standards of conduct in the social care workforce. The Committee concluded that a finding of current impairment of the Registrant's fitness to practise was necessary to protect and uphold the public interest.

For these reasons, the Committee found that, to protect the public and to uphold the public interest, the Registrant's fitness to practise is currently impaired by reason of his conviction.

Sanction

The Committee was informed by Mr Carson that the Registrant had no previous regulatory findings against him. The Committee went on to hear a submission from Mr Carson on the question of what, if any, sanction to impose. In light of its findings, it was Mr Carson's submission that the only appropriate and proportionate sanction to impose, to protect the public and to uphold the public interest, was a Removal Order.

The Committee heard and accepted the Legal Adviser's advice. He set out the range of available sanctions which were provided for by Paragraph 26 of Schedule 2 of the Rules. In summary, the Committee could impose no sanction, warn the Registrant for a period of up to five years, make a Conditions of Practice Order not to exceed three years, make a Suspension Order not to exceed two years or make a Removal Order.

The Committee was reminded that the purpose of a sanction was not to be punitive, although a sanction may have a punitive effect. Instead, in its consideration of a sanction, the Committee should have at the forefront of its mind the need to protect the public and the public interest. The Legal Adviser also reminded the Committee that it should act proportionately, and that any measure taken to limit the fundamental right of the Registrant to practise in the social care setting should be no more than what was necessary in the public interest.

The Committee carefully considered all of the available documentary material, together with Mr Carson's submissions. It also had careful regard to the Northern Ireland Social Care Council Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance').

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

The Committee considered the mitigating factors to be as follows:

- no previous adverse findings.

The Committee considered the aggravating factors to be as follows:

- abuse of trust;
- lack of insight;
- lack of regret;
- risk imposed to and / or impact on service user; and
- offence committed at work.

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

No Sanction – having regard to its findings, the Committee considered that to conclude this matter and to take no further action would be a wholly inadequate response, and would fail to protect the public and uphold the public interest.

Warning – for similar reasons as those advanced under 'No Sanction', the Committee concluded that to issue the Registrant with a warning would fail to protect the public and uphold the public interest.

Conditions of Practice Order – the Committee had no evidence as to the Registrant's current employment, and was not aware as to whether an employer would co-operate with the imposition of conditions. In the Committee's view, a Conditions of Practice Order was suitable to address a deficiency in a registrant's practice. In this case, there were no concerns about the Registrant's practice. Instead, this case related to an attitudinal issue on the Registrant's part. In any event, the uppermost consideration in the Committee's mind was the seriousness of the conduct found proved, the absence of evidence that the Registrant had insight into the seriousness of his conduct and the finding made by the Committee that there was a high risk of repetition. The Committee concluded that a Conditions of Practice Order was wholly insufficient to protect the public and uphold the public interest. The wrongdoing was too serious for such a disposal, in the Committee's view.

Suspension – the Committee gave careful consideration to this sanction. The Committee noted that the Registrant had failed to engage with the regulatory proceedings against him. There was no evidence of insight, and the Committee had found that there was a high risk of repetition. The case involves an attitudinal issue which resulted in the Registrant's conviction for a serious sexual assault of a vulnerable service user in his care.

He is the subject of a suspended sentence of imprisonment for a period of two years and, further, is the subject of registration on the Sex Offenders' Register for a period of seven years. In the Committee's view, the seriousness of the matter was exacerbated significantly by the fact that the sexual assault was perpetrated by the Registrant on a service user, who was blind and bed bound, and arose directly in the discharge of the Registrant's duties in the service user's home. The Committee concluded that the Registrant's conduct was deplorable, and that it was at the most serious end of the spectrum of seriousness. The Committee had no doubt in concluding that the Registrant's conduct was fundamentally incompatible with continuing to be a registered social care worker.

Removal – as a result, the Committee decided that the only appropriate and proportionate sanction to impose, with immediate effect, was to make a Removal Order in respect of the Registrant's registration. In so doing, the Committee had regard to the very serious nature of the Registrant's conduct which resulted in his conviction, the fact that he is the subject of a suspended sentence and is required to remain on the Sex Offenders Register for a period of seven years. The Registrant demonstrated no evidence of insight into the seriousness of his actions and the likely impact on the service user and professional colleagues, either in the criminal proceedings or the regulatory proceedings brought against him. The Committee had found that there was a high risk of repetition. The Committee had in mind paragraphs 5.4 and 5.5 of the Guidance. The Committee was reminded in these paragraphs of the particularly serious nature of sexual misconduct in a social care setting.

For these reasons, the Committee imposed a Removal Order and decided, with immediate effect, to revoke the Interim Suspension Order, to which the Registrant has been subject until this hearing.

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.



15 December 2023

Hearings Officer
(Clerk to the Fitness to Practise Committee)

Date