



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

SUSPENSION ORDER REVIEW HEARING

Name: Charley Mitchell

SCR No: 7005268

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its hearing on **19 December 2023**, made the following decision about your registration with the Northern Ireland Social Care Council:

The Committee found that your fitness to practise is currently impaired;

The Committee decided to revoke the Suspension Order and impose a Removal Order.

Preliminary Issues

The Substantive Order Review hearing was held remotely. The Registrant was not in attendance nor was she represented. The Northern Ireland Social Care Council ('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

Mr Carson advised the Committee that a Notice of Review Hearing and hearing bundle, were emailed to the Registrant's registered email address on 10 November 2023 and an electronic delivery receipt was received on the same date.

Accordingly, the Committee was satisfied that reasonable efforts had been made to notify the Registrant of this matter and that the Notice of Review had been served in accordance with Rule 3 and Paragraph 33 (5) of Schedule 2 of the Northern Ireland Social Care Council Fitness to Practise (Amendment) Rules 2019 (the Rules').

Proceeding in the Absence of the Registrant

Mr Carson invited the Committee to proceed with the hearing in the Registrant's absence. He referred the Committee to an email from the Registrant, dated 08 December 2023, in which the Registrant stated that she would not be attending the hearing. He further referred the Committee to an email sent to the Registrant on 15 December 2023 by the Council, informing her that the hearing would be held remotely and asking her if she had any objection to a remote hearing and whether she had any objection to the hearing proceeding in her absence. There had been no response to this email. Mr Carson submitted that the Registrant by her actions had chosen to deliberately absent herself from the hearing and that it was appropriate to proceed in her absence.

The Committee heard and accepted the advice of the Legal Adviser, who reminded the Committee that the decision to proceed in the absence of the Registrant should be exercised with the utmost care and caution. The Committee was satisfied that the Registrant had been served with the Notice of Review Hearing, which notified her of the date, time and venue for this hearing and her right to attend the hearing.

The Committee took into consideration the detail in the Notice of Review Hearing and the email correspondence between the Registrant and the Council, dated 08 December 2023 and 15 December 2023 and noted that the Registrant had made it clear that she would not be attending today. The Committee was satisfied that the Registrant had voluntarily waived her right to attend the hearing and that no useful purpose would be served by adjourning the hearing to a future date to enable the Registrant to be in attendance and / or be represented. This is a review of a substantive Order which will expire on 12 January 2024. Any decision to adjourn the hearing beyond this date would result in the Order expiring which would in turn permit the Registrant to practise unrestricted.

In these circumstances, the Committee decided that it is fair, appropriate and proportionate to proceed in the absence of the Registrant.

Background and Submissions on behalf of the Council

This is the first review of a Suspension Order imposed by a Fitness to Practise Committee on 13 January 2022 ('the Substantive Order Committee'). The Order is due to expire on 12 January 2024.

The Substantive Order Committee found the following Particulars of the Allegation proved:

That, on 23 August 2021, as set out below, whilst being registered 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.	Defendant on 12 December 2020, when driving a mechanically propelled vehicle on a road, namely, A8 M, Newtownabbey, were unfit to drive through drink or drugs, contrary to Article 15 (1) of the Road Traffic (Northern Ireland) Order 1995.
2.	Defendant on 12 th day of December 2020 drove a mechanically propelled vehicle dangerously on a road, namely,

the M2 Motorway, Templepatrick, contrary to Article 10 of the Road Traffic (Northern Ireland) Order 1995.

And your actions as set out above show that your fitness to practise is impaired by reason of your conviction.
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Following its finding, the Substantive Order Committee found the Registrant's fitness to practise to be currently impaired by reason of her convictions on public protection and public interest grounds. Further, the Substantive Order Committee, as a sanction imposed a two-year Suspension Order on the Registrant's registration.

Mr Carson told the Committee that the Council had written to the Registrant on 20 January 2022, to advise her of the outcome to the Fitness to Practise hearing. The Registrant was also advised that the Council would write to her again approximately 12 weeks prior to the expiry of the Suspension Order to set out what evidence might be off assistance to a Fitness to Practise Committee which was required to conduct a review of the Suspension Order before its expiry. Mr Carson outlined that such further correspondence was sent to the Registrant on 10 October 2023. There had been no reply to that correspondence by the Registrant and no evidence had been presented by her to demonstrate that she had remedied the conduct which had resulted in her convictions and that she was no longer currently impaired.

In light of the Registrant's failure to engage with the Council following the imposition of the Suspension Order, and the absence of evidence of insight and remediation, Mr Carson invited the Committee to revoke the Suspension Order currently in place and impose a Removal Order with immediate effect.

Decision on Current Fitness to Practise (to include legal advice)

This is the first mandatory review of a two-year Suspension Order.

The Committee heard and accepted the legal advice from the Legal Adviser. He referred the Committee to cases of Cohen and Grant. He referred the Committee to Paragraph 33 of Schedule 2 of the Rules. He reminded the Committee that it was not to review the original findings made by the Substantive Order Committee but was instead required to conduct a review of the evidence before the Committee today, and to exercise its independent judgement as to whether the Registrant remains currently impaired. He advised the Committee that it should consider any evidence or information that has demonstrated remediation, insight or reduced level of risk of repetition in reaching its decision. If this Committee made a finding of current impairment, the Committee should move on to consider the question of sanction. In relation to sanction, he advised the Committee that it should consider the Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('Guidance').

The Committee gave careful consideration to the submissions and the documentary evidence. In that regard, the Committee noted the findings made by the Substantive Order Committee in relation to the question of the Registrant's current impairment. That Committee stated as follows:

“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. However, there was no information or evidence from the Registrant to demonstrate that she had developed insight and had attempted to remediate her behaviour. The Committee noted that the Registrant had pleaded guilty to the offence of driving whilst unfit through drink or drugs. However, the Committee has no information about the Registrant completing a treatment / counselling course as ordered by the Court. Accordingly, the Committee has no evidence to show that the Registrant has demonstrated insight or acceptance of her wrongdoing. The Committee considered, in light of the absence of insight and remediation by the Registrant, that there was a likelihood of repetition.

Although these events occurred outside of the workplace, because of the serious nature of the offences, along with the risk of harm to herself and others as a result of the Registrant driving under the influence of drink or drugs and dangerous driving, the Committee concluded that a finding of current impairment was necessary to protect the public.

The Committee also concluded that a finding of current impairment of fitness to practise was necessary in the public interest. 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 is currently impaired by reason of her criminal convictions”.

This Committee agreed with the Substantive Order Committee that, in principle, the conduct which had resulted in the Registrant’s convictions was capable of remedy. The Committee next considered whether in fact the Registrant had remediated the conduct which had resulted in her convictions. In that regard, this Committee noted that the Substantive Order Committee had stated as follows:

“The Committee noted that the Registrant is subject to a Probation Order, with a requirement that she participates in an alcohol / drug counselling treatment programme and that she has a further period of time to comply with this requirement. 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 present evidence of the steps which she had taken to remediate her criminal behaviour, and provide evidence of insight and remorse. This would address the risk of repetition identified. A review Committee will be assisted by the Registrant’s engagement with the Council and the provision of evidence as to compliance with the Probation Order”.

In spite of a clear indication being given to her, there was no evidence before this Committee as to whether or not the Registrant had complied with the Probation Order to which she had been made subject. In addition, there was no other evidence to demonstrate that the Registrant had insight into her offending and had taken effective

steps to remedy her conduct so as to ensure there would be no repetition of her offending behaviour. Accordingly, the Committee concluded that the risk of repetition remained and that it was necessary to make a finding, on public protection grounds, that the Registrant's fitness to practise remained currently impaired.

The Committee, in the absence of evidence of insight and remediation, also concluded that it was necessary to make a finding of current impairment on public interest grounds. The Committee considered that a failure to make such a finding, in circumstances such as these in which the Registrant had failed to put before the Committee evidence of insight and remediation, would fail to declare and uphold proper standards and would undermine the public's trust and confidence in the social care workforce.

Sanction

Having found that the Registrant's fitness to practise is currently impaired, the Committee then considered what sanction it should impose. The Committee noted the powers as set out in Paragraph 33 (8) of Schedule 2 of the Rules and took into consideration the Guidance.

Allow the Current Order to Expire - The Committee concluded that, in light of its findings and in the absence of evidence of insight and remediation, it would be wholly inappropriate to allow the current Order to expire and permit the Registrant to return to unrestricted practice.

Conditions of Practice Order - the Committee noted that the Registrant, since being made the subject of a Suspension Order, had failed to engage in a meaningful way with the Council. She had not provided evidence of insight into her failings or evidence of remediation. There was also no evidence before the Committee that the Registrant would be willing to comply with a Conditions of Practice Order. 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. The Committee concluded that a Conditions of Practice Order would be insufficient to protect the public and uphold the public interest.

Suspension Order - the Committee next considered imposing a further Suspension Order to take effect at the expiry of the existing Order. The Committee was of the view that the conduct underlying the convictions which had been found proved at the previous hearing, although serious were capable of remedy. The period of suspension was designed to provide the Registrant with the opportunity to reflect on the cause of her offending, to learn from her past mistakes and ensure it would not be repeated in the future. However, the Registrant had not engaged with the Council and, in particular, had not provided evidence of any insight or steps which she has taken since her suspension to address the conduct which had resulted in her convictions and to assure this Committee that there would be no repetition. Accordingly, the Committee saw no useful basis upon which to impose a further Suspension Order as there was nothing to suggest that the Registrant would take any action to resolve or remedy the cause of her offending during a further period of suspension.

Removal Order - the Committee determined that the only appropriate and proportionate sanction was to revoke the current Suspension Order and, with immediate effect, impose a Removal Order. The Committee concluded

that the Registrant's conduct, compounded by her lack of insight and remediation, is fundamentally incompatible with her remaining on the Register as a registered social care worker. The Committee further concluded that to impose any lesser sanction, would fail to protect the public, would fail to declare proper standards of conduct and would seriously undermine the public's trust and confidence in the social care workforce.

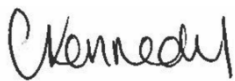
You have the right to appeal this decision to the Care Tribunal. Any appeal must be lodged in writing within 28 days from the date of this Notice of Decision.

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.

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.



20 December 2023

Regulatory Committee Manager

Date