

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

Name: Diana Szekeresova

SCR No: 7005510

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **17 April 2024**, 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 inclusion on a list maintained by the Disclosure and Barring Service;

The Committee decided to make an Order for removal of your registration from the Register ('a Removal Order').

Particulars of the Allegation:

That, being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended):-

1. On or about 10 October 2023, you were included on the barred list for adults maintained by the Disclosure and Barring Service.

And your actions as set out above show that your fitness to practise is impaired by reason of your inclusion on a list maintained by the Disclosure and Barring Service.

Preliminary Issues

The fitness to practise hearing was held remotely. The Registrant was not in attendance and was not represented. The Council was represented by Mr Anthony Gilmore, Solicitor, Directorate of Legal Services.

Declarations of Interest

The Chair of the Committee advised that all Committee Members had confirmed that they had no conflict of interest with the case.

Service

Mr Gilmore told the Committee that the Notice of Hearing and hearing bundle were served on the Registrant's registered email address on 07 March 2024, and that an electronic delivery receipt was received on the same date. He said that the Committee Clerk left a voice mail for the Registrant on 21 March 2024, asking her to confirm if she would be attending the fitness to practise hearing on 17 April 2024. The Committee Clerk emailed the Registrant on 28 March 2024 to inform her that the hearing was now being held remotely, and asked for her to contact the Council if she had any objections to the hearing being held remotely. The Registrant also received the link to join the remote hearing by email on 16 April 2024.

Mr Gilmore told the Committee that the Registrant has not responded to any of the above communication.

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 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 emailed.

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 Gilmore made an application to proceed in the absence of the Registrant, under Paragraph 15 of Schedule 2 of the Rules, and submitted that the Committee should hear and determine the case in the Registrant's absence. Mr Gilmore invited the Committee to conclude that the Registrant's absence was a voluntary waiver of her right to attend.

Mr Gilmore referred the Committee to the various attempts to contact the Registrant by the Council, and that there had been no contact from the Registrant in response to the emails or the telephone call. He noted that there had been no request for an adjournment or for representation to be arranged. Mr Gilmore submitted that, in all of the circumstances, it was fair to proceed with the hearing in the Registrant's absence. Mr Gilmore further submitted that proceeding in absence was in the public interest, and also was justified to ensure the expeditious disposal of the hearing.

The Committee was mindful that the discretion to proceed in the absence of the Registrant should only be exercised with the utmost care and caution. In considering the application, the Committee sought to satisfy itself that all reasonable efforts had been made to notify the Registrant of the hearing, and accepted the advice of the Legal Adviser. 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 that it should avoid reaching any improper conclusion about the Registrant's absence, and should not accept it as an admission in any way.

In considering the application to proceed in the absence of the Registrant, the Committee noted the various attempts by the Council to contact the Registrant, and the lack of response from the Registrant. Taking account of all of the circumstances, the Committee considered that there was no reason to suppose that an adjournment of the hearing would secure the Registrant's attendance at a later date, nor was there any request for such an adjournment or indication that the Registrant was seeking legal representation. Accordingly, the Committee was satisfied that the Registrant, with notice of the hearing, had voluntarily waived her right to attend. In addition, the Committee noted the serious nature of the Particulars of the Allegation faced by the Registrant, and concluded that the public interest was strongly engaged in this case.

The Committee recognised that some disadvantage to the Registrant might arise by its decision to proceed in her absence. However, the Committee was of the view that the Registrant's interests in that regard 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 hearing bundle of documents into evidence, and marked it as Exhibit 1.

Evidence and Submission on Facts

Mr Gilmore confirmed to the Committee that there were no admissions of the facts in this case.

Mr Gilmore told the Committee that the Disclosure and Barring Service ('DBS') had made a decision to bar the Registrant from working with vulnerable adults on 10 October 2023, and that it would be a criminal offence if the Registrant were to work with adults in a regulated role (unless a defence applied). He said that the Council sought to rely on the evidence within the bundle, and would not be calling any witnesses.

Mr Gilmore referred the Committee to the background as set out in the hearing bundle. He said that the Registrant is registered under Part 2 of the Register. He said that on 02 June 2023, the Council received an Employer Referral Form ('ERF') from Andrea Harkness, Home Manager of Kathryn Homes. The ERF recorded that the Registrant had aggressively shouted and cursed at a distressed elderly service user with dementia, and had threatened to lock her in her room.

Mr Gilmore told the Committee that the Registrant was questioned by her employer and that she denied the allegations, saying that the incident did not occur and that she was not properly trained.

Mr Gilmore said that on 22 June 2023, Andrea Harkness, Home Manager, confirmed that she had referred the matter to the DBS.

Mr Gilmore said that the Council progressed enquiries with the DBS and received a copy of the final decision letter addressed to the Registrant from the DBS, dated 10 October 2023, which confirmed its decision to place the Registrant on the Adults' Barred List, and that it stated:

'...DBS is satisfied you engaged in relevant conduct in relation to vulnerable adults. This is because you have engaged in conduct which endangered a vulnerable adult or was likely to endanger a vulnerable adult.

We are satisfied a barring decision is appropriate. This is because we are satisfied that, on the balance of probabilities, you acted aggressively towards and shouted and swore at a vulnerable adult suffering with dementia. You denied acting in this way, however you demonstrated heightened responses when being challenged by your seniors.

In behaving in the way you did towards a vulnerable, elderly lady, REDACTED, who was suffering with dementia, it appears that you were not considering the person behind the illness. It is reasonable to infer that, because of her dementia, REDACTED could not be held responsible for her challenging behaviours and was entitled to safe and empathic care which you did not give in these instances. Instead, you shouted and swore at her, treating REDACTED as if she was in the wrong.'

Mr Gilmore told the Committee that the Registrant did not engage in the DBS process. He submitted, therefore, that the facts were found proved in accordance with Rule 4 (1) (f) and Schedule 2, Paragraph 12 (6) and (7).

Finding of Facts

The Committee heard and accepted the advice of the Legal Adviser. The burden is on the Council to prove the facts as set out in the Particulars of the Allegation. The Committee must apply the standard of proof as applicable in civil proceedings, which is 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. He further referred the Committee to Schedule 2, Paragraph 12 (6) and (7) of the Rules. In addition, the Legal Adviser reminded the Committee not to draw any adverse inference against the Registrant in not attending or giving evidence.

The Committee took into account the submissions from Mr Gilmore, and had careful regard to all of the documentary evidence submitted.

The Committee accepted, as *prima facie* evidence, the written notification from the DBS of the Registrant's current barring status. The Committee further noted that the evidence contained within Exhibit 1, including the ERF, corroborated the DBS correspondence. In addition, the Committee had no evidence that the Registrant was not the individual referred to by the DBS, nor was there evidence of a successful appeal against her inclusion on the DBS list. Taking into account Paragraph 12 (6) and (7) of Schedule 2 of the Rules, the Committee was satisfied that the final decision from the DBS proved the facts therein. The Committee therefore

found that, on the balance of probabilities, the facts contained in the Particulars of the Allegation had been established.

Fitness to Practise

Mr Gilmore told the Committee that the Registrant had not admitted that her fitness to practise was impaired. He submitted to the Committee that the Registrant's inclusion on the DBS list was evidence of impaired fitness to practise. He submitted that being banned from working with adults falls far below the standards to be expected of a social care worker. As a consequence, Mr Gilmore submitted that it was appropriate to make a finding of current impairment to protect the public and to uphold the public interest. He submitted that the Registrant had breached the following provisions of the Standards of Conduct and Practice for Social Care Workers (Standards): 1 – 1.1, 1.2 - 2 – 2.2, 3 – 3.1, 3.7, 5 - 5.1, 5.8, 6 – 6.1, (Practice) 2 - 2.1, 2.2, 2.3, 2.4 and 3 - 3.1, 3.12.

Mr Gilmore submitted that the conduct in question could be remediated, although this would not be easily achieved. In this case, he said that there was no evidence of any remediation, no apology or remorse and the Registrant did not cooperate or engage with the DBS process or the Council's investigation. He said that the Registrant could have attended the hearing today and attempted to show insight and remediation, but that she has not done so. Mr Gilmore said that during the employer investigation meeting, the Registrant did apologise but blamed the situation on others, including the service user herself because of her challenging behaviour, colleagues for a poor handover and her employer in relation to lack of training.

Mr Gilmore said that the Council adopted the conclusion of the DBS, and considered that there was an ongoing risk as there was no indication that she has learned from the incident and no evidence of any remediation.

Mr Gilmore submitted that the public is entitled to be assured that those who work with the most vulnerable in society uphold proper standards and do not abuse service users. He said that there is a strong public interest that the proper standards are upheld and, in these circumstances, the decision should be made that the Registrant's fitness to practise is impaired. He said that a reasonable member of the public would take the view that the Registrant's fitness to practise is impaired. He said that failure to conclude that the Registrant's fitness to practise was impaired would undermine public confidence in the regulator.

The Committee accepted the advice of the Legal Adviser. He referred the Committee to the Standards of Conduct and Practice for Social Care Workers, and advised it to consider the provisions of Paragraph 24 (3) of Schedule 2 of the Rules.

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.

When considering the Registrant's actions, the Committee had regard to the Standards of Conduct and Practice for Social Care Workers 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 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:

- 1.1 Treating each person as an individual; and
- 1.2 Treating people with consideration, respect and compassion.

Standard 2: As a social care worker, you must strive to establish and maintain the trust and confidence of service users and carers. This includes:

- 2.2 Communicating in an appropriate, open, accurate and straightforward way.

Standard 3: As a social care worker, you must promote the autonomy of service users while safeguarding them as far as possible from danger or harm. This includes:

- 3.1 Promoting service users' independence and empowering them to understand and exercise their rights;
- 3.2 Using established processes and procedures to assess, respond to and manage dangerous, abusive, discriminatory or exploitative behaviour and practice; and
- 3.7 Recognising and using responsibly with service users and carers, the power that comes from your work role.

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.

Standard 6: As a social care worker, you must be accountable for the quality of your work and take responsibility for maintaining and improving your knowledge and skills. This includes:

- 6.1 Meeting relevant standards of practice and working in a lawful, safe and effective way; and
- 6.3 Being personally accountable for your actions and able to explain and account for your actions and decisions.

Standards of Practice

Standard 2: As a social care worker, you must be able to communicate effectively. This includes:

- 2.1 Developing effective relationships with service users and carers;
- 2.2 Establishing the service user's communication and language needs, wishes and preferences;
- 2.3 Using a range of communication methods and styles to meet a service user's communication needs, wishes and preferences; and
- 2.4 Recognising and addressing barriers to effective communication.

Standard 3: As a social care worker, you must deliver person-centered care and support which is safe and effective. This includes:

- 3.1 Promoting and applying person-centred values in your day to day work with service users and carers; and
- 3.12 Contributing to the physical and emotional well-being of service users and carers.

The Committee considered the Registrant's inclusion on the DBS Barred List, and the events leading to this, to be serious, involving aggressive behaviour towards a vulnerable service user who suffered from dementia. The Committee gave particular notice to the letter from the DBS, dated 10 October 2023, which set out its final decision and provided detailed information as regards the concerns raised against the Registrant. In particular, the Committee noted that the DBS stated as follows:

'...We are satisfied a barring decision is appropriate. This is because we are satisfied that, on the balance of probabilities, you acted aggressively towards and shouted and swore at a vulnerable adult suffering with dementia. You denied acting in this way, however you demonstrated heightened responses when being challenged by your seniors.

In behaving in the way you did towards a vulnerable, elderly lady, REDACTED who was suffering with dementia, it appears that you were not considering the person behind the illness. It is reasonable to infer that, because of her dementia, REDACTED could not be held responsible for her challenging behaviours and was entitled to safe and empathic care which you did not give in these instances. Instead, you shouted and swore at her, treating REDACTED as if she was in the wrong.

As you initially denied acting in this way and have not provided representations, the DBS has no indication that you would behave any differently towards any other service user who was demonstrating challenging behaviours in the future...'

The Committee considered whether the Registrant's actions were capable of remedy, and noted that there was no evidence of any insight or remorse by the Registrant into the seriousness of her behaviour. The Committee agreed with Mr Gilmore's assertion that the Registrant's actions were capable of remediation, albeit that this would not be an easy task. The Registrant did not engage with these proceedings, and the Committee noted that

the Registrant did not take the opportunity to respond to the DBS when first contacted regarding the matter. There was no evidence before the Committee to demonstrate remediation. The Registrant had not demonstrated any remorse, and even in the apology at the end of her former employer's disciplinary meeting, she blamed colleagues, her employer and the vulnerable service user herself. Accordingly, the Committee shared the DBS conclusion that there was a risk of repetition, and considered that a finding of current impairment was needed to protect the public.

The Committee also decided that a finding of current impairment was in the public interest. The Committee considered that the public interest was high, taking into account the DBS listing and the concerns raised regarding the Registrant engaging in '*conduct which endangered a vulnerable adult or was likely to endanger a vulnerable adult*'. The Committee found that the Registrant's inclusion on the DBS list was very serious, and had the potential to undermine public trust and confidence in the system of registration. The Committee decided that a finding of current impairment on public interest grounds was also required to uphold proper standards of conduct in the social care workforce.

For these reasons, the Committee concluded that the Registrant's fitness to practise is currently impaired.

Sanction

The Committee heard a submission from Mr Gilmore on the question of what, if any, sanction to impose. In the absence of the Registrant, Mr Gilmore set out the mitigating factors and informed the Committee that the Registrant had no previous regulatory or disciplinary findings against her and is entitled to the benefit of a good work / character history. He said that there was no evidence of harm being caused to the service user (although he repeated that the conduct amounted to abuse) and that a nursing home can be a challenging environment. He also referred to the employer's disciplinary meeting, where the Registrant did apologise at the end of the meeting. In relation to the aggravating factors in this case, Mr Gilmore noted that as a result of the Registrant's barred status, it would be a criminal offence to employ her in a regulated activity working with adults (unless a defence applied). He noted the lack of engagement by the Registrant with the Council, and the serious concerns as regards her aggressive behaviour towards a vulnerable service user.

Mr Gilmore submitted that the abuse was directed at a vulnerable service user who suffered from dementia. He said that the non-engagement of the Registrant with the Council, and the proceedings today, demonstrated a lack of insight and that there was a lack of regret and remorse, and no indication that the Registrant would work any differently in the future. In these circumstances, Mr Gilmore submitted there was a clear ongoing risk to service users. He said that the DBS letter referred to a lack of empathy and callousness, and that if the Registrant found herself in a challenging situation there would be ongoing risk.

Mr Gilmore submitted that the primary purpose of sanction is that a social care worker does not have the opportunity to repeat the misconduct and to maintain the reputation of the profession. He said that the fact that the Registrant has been included on a barred list also has implications in respect of working with children. He said that the same risk would be present due to her poor problem-solving skills, and that there would be a risk if

the Registrant was placed in a challenging situation. He said that the decision of the DBS related solely to adults, but that the issues are not confined to adults and that the risks would be present if the Registrant was working with children.

Mr Gilmore submitted that given the incident occurred when she had been trained, and in the presence of other staff, conditions of practice would be ineffective in preventing the risk of harm. He said that the Registrant is barred from working with adults, and that the concerns that gave rise to the barring decision were equally applicable to children.

Mr Gilmore submitted given that the Registrant is on a barred list, that the incident only occurred last year and taking into account her failure to engage, a Suspension Order would be inadequate.

He submitted that the Registrant has breached the basic tenet of a social care worker. He said that her behaviour and conduct, including the lack of engagement and the absence of any apology or insight, warranted a Removal Order. He said that a Removal Order would be appropriate to protect service users and the reputation of the profession. He also said that this would reduce the risk appropriately, as this was not a case to take a risk and allow the Registrant to work with children.

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 Gilmore'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:

- The Registrant had no previous regulatory findings against her.

The Committee considered the aggravating factors to be as follows:

- The Registrant has not engaged with the proceedings;
- The concerns raised against the Registrant involved aggressive behaviour towards a vulnerable service user in the course of providing care;

- The Registrant's behaviour endangered the vulnerable service user;
- The Registrant had not demonstrated any remorse or regret;
- The Registrant had abused her position of trust; and
- The incident in question occurred at her place of work.

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 some form of sanction was necessary, and proceeded to consider which sanction to apply in this case.

No Sanction - the Committee had no hesitation in concluding that it would be neither appropriate nor proportionate if no sanction were imposed in this case. In the view of the Committee, if no sanction were imposed this would not mark the seriousness of the issues or meet the public interest in this case.

Warning – the Committee considered whether to impose a Warning in this case. Having regard to its findings, and in particular the ongoing risk to service users, the Committee considered that such a step would be inadequate to protect the public and would fail to uphold the public interest.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Registrant has been included on the DBS Adult barred list, which makes it a criminal offence for her to work with adults. Given the Committee's conclusion about the Registrant's lack of insight and the absence of any rehabilitative steps taken, the Committee had no confidence that any conditions would be complied with. In the circumstances, and in particular the Registrant's barred status, the Committee could not formulate any workable, enforceable or verifiable conditions. Further, the Committee did not consider a Conditions of Practice Order to sufficiently match the Registrant's departure from the standards expected.

Suspension Order – the Committee next considered a Suspension Order. The Committee noted that it had made findings at the fact and impairment stages of the proceedings which were of a very serious nature. As noted above, the Registrant's conduct amounted to a serious departure from the standards expected. The Registrant had not provided any evidence of insight, and there remains an ongoing risk to service users. The Committee noted that the Registrant has been prohibited from working in any regulated activity involving adults until 2033, when the Registrant has the right to ask for a review of the DBS decision.

The Committee considered that, in all of the circumstances, a Suspension Order would be inappropriate and disproportionate to the risk from which the Committee is seeking to protect the public. In addition, the Committee considered that a period of suspension would not meet the high public interest, nor take account of the Registrant being included on the DBS Adult Barred list until at least 2033.

Removal Order – the Committee, therefore, decided to impose a Removal Order. In so doing, the Committee took into account the Guidance at Paragraphs 4.26 – 4.28.

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 such as the Registrant, who was barred from working with adults,

was allowed to remain on the Register. The Committee considered that the Registrant's inclusion on a DBS list was evidence of a serious departure from the professional standards expected of a social care worker. Having regard to the ongoing risk, the Committee concluded that registration is fundamentally incompatible with her conduct. Whilst the Committee took account of the impact of a Removal Order on the Registrant, this was outweighed by the very serious nature of the concerns raised against her regarding aggressive behaviour towards a vulnerable adult, and her lack of insight and remorse. The Committee considered that any sanction short of a Removal Order would fail to declare and uphold proper standards of conduct and behaviour and would, further, fail to maintain the reputation of the social care workforce.

The Committee decided, in order to protect the public and in the public interest, to make a Removal Order with immediate effect in respect of the Registrant's registration.

The Committee also directed that the Interim Suspension Order currently in place should be revoked and replaced with the Removal Order with immediate effect.

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

You should note that the Fitness to Practise Committee's decision takes effect from the date upon which it was made.

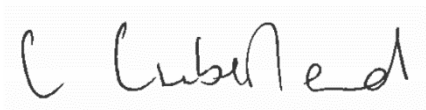
The effect of this decision is that your entry in the Register has been removed.

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

1. A member of care staff at a:
 - a.) Children's home;
 - b.) Residential care home;
 - c.) Nursing home;
 - d.) Day care setting;
 - e.) Residential family centre.
2. A person who is supplied by a domiciliary care agency to provide personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
3. A manager of a:
 - a.) Residential care home;
 - b.) Day care setting;
 - c.) Residential family care centre; or
 - d.) Domiciliary care agency.

It is **compulsory** for the above social care workers to be registered with the Northern Ireland Social Care Council in order to work. This is pursuant to the Northern Ireland Social Care Council (Social Care Workers Prohibition) and Fitness of Workers Regulations (Northern Ireland) 2013 and the Northern Ireland Social Care Council (Social Care Workers Prohibition) and Fitness of Workers (Amendment) Regulations (Northern Ireland) 2017.

In accordance with Schedule 3, Paragraph 9 of the NISCC Fitness to Practise Rules, you may not apply to be restored to the Register within five years from the date of removal. This does not affect your right to appeal the Committee's decision to the Care Tribunal. You are prohibited from working in a social care role until a successful application for restoration onto the Register has been made to the Council.



19 April 2024

Committee Manager

Date