



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

Name: Patrick Edward Duffy

SCR No: 1147946

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **16 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 conviction;

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

Particulars of the Allegation:

That, on 15 September 2023, whilst being registered as a social care worker under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted of the following offences at the District Judges' Court:

1. [You] on the 12th day of October 2021 at Orchardville Care Home ill-treated or wilfully neglected a patient, namely [REDACTED] who was for the time being subject to your guardianship under The Mental Health (Northern Ireland) Order 1986 or was otherwise in your custody or care, contrary to Article 121 (2) of the Mental Health (Northern Ireland) Order 1986

And your actions, as set out above, show that your fitness to practise is impaired by reason of your conviction in the United Kingdom for a criminal offence.

Procedure

The hearing was held under the fitness to practise procedure.

Preliminary Matters

The hearing was held remotely by way of video-link. The Registrant was neither present nor represented. The Council was represented by Mr Peter Carson, Solicitor, Directorate of Legal Services.

Declarations of Conflict of Interest

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

Service

Mr Carson told the Committee that the Notice of Hearing and hearing bundle were sent to the Registrant's registered address by special delivery post on 07 March 2024, and were signed for the following day.

The Committee received legal advice from the Legal Adviser. 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 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 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 Carson invited the Committee to conclude that the Registrant's absence was a voluntary waiver of his right to attend. Mr Carson stated that, on 09 April 2024, the Committee Clerk had telephoned the Registrant and asked him to confirm if he would be attending the fitness to practise hearing on 16 April 2024. The Registrant confirmed that he would not be in attendance at the hearing, and that he wanted to move on with his life.

Mr Carson noted that there had been no request for an adjournment or for representation to be arranged. He submitted that, in all of the circumstances, it was fair to proceed with the hearing in the Registrant's absence. Mr Carson 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 to avoid reaching any improper conclusion about the Registrant's absence, and not to accept it as an admission in any way.

In considering the application to proceed in the absence of the Registrant, the Committee noted the telephone call with the Registrant and his confirmation that he would not be in attendance at the fitness to practise hearing. Taking account of all of the circumstances, the Committee concluded that the Registrant had voluntarily absented himself from attending the hearing. 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. 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.

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 Carson told the Committee that there were no admissions of the facts.

Mr Carson told the Committee that the Registrant had been employed at Orchardville House, a residential home for older people with dementia, and that he provided personal care and support for them as a care assistant. Mr Carson referred the Committee to the Employer Referral Form ('ERF'), dated 22 October 2021, which reported an incident that had occurred on 12 October 2021, and which indicated that the Registrant had been witnessed by other staff members verbally and physically abusing a male resident.

Mr Carson said that the employer had stated that there were no previous allegations against the Registrant.

Mr Carson directed the Committee to the evidence contained within the hearing bundle, which included the Common Law Police Disclosure ('CLPD') letter, a Structured Outline of Case document, provided to the Council by the PSNI, and the Certificate of Conviction. He said that the Structured Outline of Case document contained information that the Registrant allegedly addressed the service user in a derogatory manner and pushed a care supply trolley into him. The document also noted that an assessment was carried out on the service user following the incident, and it was concluded that he had capacity for limited communication but had no memory of recent events. Mr Carson referred the Committee to the notes from the police interview, where the Registrant denied the allegations.

Mr Carson referred the Committee to the Certificate of Conviction. He submitted that the Council sought to rely on the certificate as conclusive proof that the Registrant had been convicted of the offence that was set out in the Particulars of the Allegation. Mr Carson told the Committee that the Registrant pleaded guilty at the Magistrates'

Court on 01 August 2023, was subsequently convicted on 15 September 2023 and received a three-month custodial sentence, suspended for 18 months.

Mr Carson referred the Committee to Schedule 2, Paragraph 12 and 13 of the Rules, along with Rule 4 (1) (d), and noted that there was no evidence that the Registrant had successfully appealed his conviction or that the conviction did not relate to this Registrant. He invited the Committee to find the facts proved on the balance of probabilities.

Findings of Fact

The Committee heard and accepted the advice of the Legal Adviser. He reminded the Committee that it must apply the standard of proof as applicable in civil proceedings, which is the balance of probabilities. He further referred the Committee to Schedule 2, Paragraph 12 (5) of the Rules. In addition, he reminded the Committee not to draw any adverse inference from the Registrant not attending or giving evidence.

The Committee reminded itself that the burden is 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 was more likely than not to have occurred.

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 presented in Exhibit 1. The Committee found that, on the balance of probabilities, the facts contained in the Particulars of the Allegation had been proved. Taking into account Paragraph 12 (5) of Schedule 2 of the Rules, the Committee was satisfied that the Certificate of Conviction against the Registrant proved the facts therein. The Certificate of Conviction against the Registrant related to an offence of ill-treatment or wilful neglect of a vulnerable service user whilst providing care to him. Whilst some information in relation to the events of 12 October 2021 was contained in the Structured Outline of Case document, the Committee gave particular weight to the information contained within the Certificate of Conviction. The Committee noted that the Registrant pleaded guilty to the charge of ill-treatment or wilful neglect of a service user, and was sentenced to three months' imprisonment which was suspended for 18 months. The Committee further noted that the Registrant did not dispute that the Certificate of Conviction related to him, nor did he present evidence that he had successfully appealed the conviction.

Taking all of this into account, the Committee found proved, on the balance of probabilities, the facts in accordance with Rule 4 (1) (d) of the Rules.

Fitness to Practise

The Committee proceeded to consider if the Registrant's fitness to practise is currently impaired. The Committee heard submissions from Mr Carson, who advised that there was no formal admission or submission from the Registrant in relation to the matter generally, or specifically in relation to his alleged impairment of his fitness to practise. He submitted that the Registrant's conviction calls into question his ability to work in social care

services and to remain on the Register without restriction, or to be registered at all. He referred the Committee to the Standards of Conduct and Practice for Social Care Workers ('the Standards'), which he submitted the Registrant's criminal conviction breached as follows: 5, 5.1 and 5.8.

Mr Carson told the Committee that the Registrant's conviction and conduct fell far below the minimum standard expected of a registered social care worker, and calls into question his fitness to practise. He submitted that the Registrant's actions constituted an abuse of his position of trust, and showed a complete lack of respect for the service user. He said that in light of the Registrant's lack of engagement, and his failure to attend the hearing, he has not taken the opportunity to give any explanation for his actions. He said that there was nothing to persuade the Committee that the Registrant's behaviour would not be repeated in the future. Mr Carson said that it was possible for a conviction of ill-treatment to be remedied. However, there was no evidence from the Registrant that he had in fact remedied his behaviour.

Mr Carson submitted that there was no evidence of any regret or remorse by the Registrant, nor was there information to suggest that the Registrant would act differently in the future. In the circumstances, Mr Carson submitted that there remains a future risk of harm to service users if the Registrant was allowed to practise without restriction. Mr Carson submitted that it might be open to the Committee to find that the Registrant had demonstrated some limited insight as he had pleaded guilty at Court. Mr Carson submitted that the public interest and confidence in the social care profession would be undermined if a finding of current impairment was not made in these particular circumstances.

The Committee considered the submissions from Mr Carson on behalf of the Council, and had regard to all of the evidence in the case. The Committee accepted the advice of the Legal Adviser. He referred the Committee to the Standards, and advised it to adopt a sequential approach when considering this issue. 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 is currently impaired because of this conviction. He referred the Committee to Paragraph 24 of Schedule 2 of the Rules, and the requirements as set out in the case of the GMC v Cohen, looking at the current 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. He further referred the Committee to the findings of Dame Janet Smith in the Fifth Report to the Shipman Inquiry as regards the potential causes of impairment. He also referred the Committee to the cases of GMC v Meadows and CHRE v NMC & Grant.

The Committee considered whether the Registrant's fitness to practise is currently 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 Registrant has been convicted of the ill-treatment of a vulnerable service user in his care. It was clear to the Committee that, by his actions, the Registrant had conducted himself in a manner which amounted to a serious departure from the standards to be expected of a registered social care worker. The Committee had regard to the Standards and the Council guidance titled 'Making a Determination of Impaired Fitness to Practise: Guidance for Committees on Remediation' ('the Guidance'). The Committee was satisfied that the Registrant's actions were in breach of the following Standards:

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.

In principle, the Committee's view was that with evidence of full insight and remediation, the conduct which had resulted in the Registrant's conviction was capable of remedy. However, in this case, there was at best only very limited evidence of insight. The Registrant had denied the allegation of ill-treatment during interview in spite of there being witness statements from five other staff members who had witnessed the incident. However, the Registrant had pleaded guilty, thereby accepting his criminal wrongdoing without the necessity of a hearing. The Registrant chose not to engage in these proceedings, and there was no explanation forthcoming from him for his actions. In addition, there was no evidence from the Registrant of remediation which would assure the Committee that there would be no repetition of similar conduct in a care setting in future. Accordingly, there was a high risk of repetition. The Committee concluded, in light of these factors, that a finding of current impairment of the Registrant's fitness to practise was required to protect the public in general, and vulnerable service users in particular.

The Committee considered whether a finding of current impairment of the Registrant's fitness to practise was also required in the public interest. The Registrant was convicted of the ill-treatment of a vulnerable service user in his care. In the Committee's view, not to make a finding of current impairment in these circumstances 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. Accordingly, the Committee concluded that a finding of current impairment of the Registrant's fitness to practise was also required in the public interest.

For these reasons, the Committee is satisfied, on public protection and public interest grounds, that the Registrant's fitness to practise is currently impaired by reason of his conviction.

Sanction

In reaching its decision on sanction, the Committee considered the submission of Mr Carson on behalf of the Council, and had regard to all of the evidence in this case. Mr Carson referred the Committee to the mitigating factors, and confirmed that the Registrant had a prior good history with the Council.

As regards aggravating factors, Mr Carson submitted that the public was entitled to expect that care workers would provide safe and effective care to the most vulnerable in society, and suggested that the Registrant's behaviour in wilfully ill-treating a vulnerable service user could not be considered to be at the lower end of the spectrum of unacceptable behaviour. He said that the nature of the Registrant's ill-treatment of the service user goes against the core functions of social care. He noted that the Registrant did not express any remorse for his behaviour, nor had he submitted any evidence of remediation. He said that the Registrant had failed to engage with the Council, and had not provided the Committee with any information or explanation for his actions.

Mr Carson submitted that a sanction needed to be appropriate and fair, and that making no Order, or the sanctions of Warning or Conditions of Practice, would not be sufficient to protect the public or be appropriate. As regards the sanction of a Suspension Order, he suggested that this could be appropriate if there had been an acknowledgement by the Registrant of his failings. He noted that the Registrant had failed to substantially engage with the Council and the fitness to practise process. Mr Carson said that the Registrant had shown no evidence of insight or remorse, and that it was the Council's view that there was no evidence to suggest that the Registrant's actions would not be repeated. He referred the Committee to Paragraph 4.26 of the Guidance, and suggested that the sanction of a Removal Order should be considered. He said that the Registrant had failed to provide a level of acceptable care to a vulnerable service user. Mr Carson submitted that the Registrant's actions were fundamentally incompatible with remaining on the Register.

The Committee accepted the advice of the Legal Adviser. He 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.

He 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').

He further reminded the Committee that in deciding which sanction to impose, the Committee should take into account:

- (a) the seriousness of the Particulars of the Allegation;
- (b) the degree to which the Registrant has fallen short of any expected standards;
- (c) the protection of the public;
- (d) the public interest in maintaining confidence in social care services; and
- (e) the issue of proportionality.

The Committee applied the principles of fairness, reasonableness and proportionality, weighing the public interest against the Registrant's interests, and taking into account any aggravating and mitigating factors in the case. The public interest includes the protection of members of the public, including service users, the maintenance of public confidence in the social care workforce and the declaring and upholding of proper standards of conduct and behaviour within the social care workforce.

The Committee took into account its powers under Paragraph 26 of Schedule 2 of the Rules in relation to the sanctions available to it, and also had regard to the Guidance, bearing in mind that the decision on sanction was one for its own independent judgement.

The Committee recognised that the purpose of sanction was not to be punitive, although a sanction may have a punitive effect. The Committee considered the aggravating and mitigating factors in this case.

The Committee considered the mitigating factors to be:

- Previous good history.

The Committee considered the aggravating factors to be:

- Abuse of trust;
- Lack of insight / regret;
- Serious disregard for the NISCC Standards of Conduct and Practice; and
- The Registrant's actions are directly related to his duties as a registrant.

No sanction – having balanced the aggravating and mitigating factors, and taking into account the interests of public protection and public interest, the Committee considered that a sanction was appropriate and proceeded to consider which sanction to apply in this case. The Committee had no information regarding the financial impact that a sanction would have on the Registrant, nor were there any testimonials or references provided.

Warning – the Committee considered the issue of a Warning in this case. It bore in mind that the imposition of a Warning for a period of time would not protect the public from the risk of repetition, and consequent risk of harm to service users and members of the public. The Committee considered that the Registrant's criminal conviction

demonstrated a flagrant disregard for the applicable Standards. The circumstances of the Registrant's impairment of fitness to practise were at the most serious end of the spectrum. The Committee bore in mind that a Warning would entitle the Registrant to work as a social care worker unrestricted. The Registrant had not provided any evidence of insight or remediation, had failed to acknowledge the seriousness of his actions, and their impact on the service user and his colleagues. For these reasons, the Committee concluded that a Warning would be wholly inadequate to protect the public and uphold the public interest.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Registrant's conviction related to the ill-treatment of a vulnerable service user who was in the Registrant's care. As the Registrant had not attended the hearing, the Committee had no evidence as to his current employment circumstances or whether he would agree to any conditions, if imposed. However, the uppermost concern of the Committee was the seriousness and gravity of the offence of which the Registrant had been convicted.

The Committee, therefore, concluded that a Conditions of Practice Order be insufficient to meet the public interest in this matter given the seriousness of the Registrant's conviction, which amounted to a fundamental departure from the standards expected of a registered social care worker. In these circumstances, the Committee considered that a Conditions of Practice Order was inadequate to protect the public and insufficient to uphold the public interest.

Suspension Order – the Committee next considered a Suspension Order. The Committee noted that it had made findings at the fact and impairment stages of the proceedings which were of a very serious nature, and related to the Registrant breaching fundamental tenets of the social care profession. The Standards require a social care worker to treat each person as an individual with consideration, respect and compassion, along with respecting and maintaining their dignity. The Registrant, by his actions, had failed to adhere to these Standards.

The Committee had no evidence before it of remediation by the Registrant, nor had it any information to indicate that the Registrant was unlikely to repeat his criminal behaviour in the future. The Committee considered that the Registrant had failed to express any insight or remorse, particularly in relation to the seriousness of his criminal conviction and the risk of harm which his behaviour presented to the service user. The Committee had no evidence from the Registrant, nor did he engage with the Council in any meaningful way. The Committee considered the public interest in this matter. The Committee considered that the public would perceive the Registrant's criminal behaviour as falling far short of what would be expected of a registered social care worker.

Given the Registrant's failure to engage in these proceedings, the Committee had no confidence that he would provide any evidence of insight and remediation during the period of any Suspension Order.

In all of the circumstances, the Committee concluded that a Suspension Order would not be sufficient to protect the public and uphold the public interest.

Removal Order – the Committee then considered a Removal Order. In considering this, the Committee took into account the Guidance at 4.26 – 4.28. The service user in this case was vulnerable and dependent upon the

Registrant to provide safe and effective care to him. In the Structured Outline of Case document, police confirmed that the service user in question had capacity only for limited communication, and had no memory of the incident. It was fortunate, in the Committee's view, that the incident was witnessed by a number of other staff members who were willing to make witness statements setting out what they had seen. The Registrant had been observed by work colleagues shouting and cursing at the vulnerable service user. He pushed a trolley into the service user and shouted 'get out of the fucking way'. The Registrant, by his actions, had acted outrageously and deplorably, and had breached the fundamental duty which he owed to the service user to treat him with dignity and compassion. He had failed to engage in these proceedings, and had chosen not to provide the Committee with evidence of insight or remediation. Accordingly, there was no basis upon which the Committee could be assured that the Registrant's conduct, which fell seriously below the standards to be expected of a social care worker, would not be repeated in future. As such, the Committee concluded that the Registrant's actions were fundamentally incompatible with remaining on the Register and that the only appropriate and proportionate sanction to impose, to protect the public and uphold the public interest, is a Removal Order. This Order will take effect immediately. The Committee directs that the Interim Suspension Order, which has been in force until this hearing, is revoked 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.

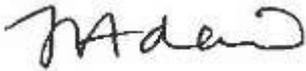
You are prohibited from working as a social care worker in any of the following positions:

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.



18 April 2024

Hearings Officer
(Clerk to the Fitness to Practise Committee)

Date