



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

Name: Eamonn Kearns

SCR No: 6036928

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **20 June 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 in the United Kingdom for a criminal offence, and 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, whilst being registered as a social care worker under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended):	
1.	You were convicted at the Crown Court on 4 th September 2023 of the following offences:
(a)	[You] on the 28 th day of January 2018 intentionally touched [REDACTED], the circumstances being that the touching was sexual, that she did not consent to the touching and you did not reasonably believe that she so consented contrary to Article 7(1) of the Sexual Offences (Northern Ireland) Order 2008 ['Count 2'].
(b)	[You] on 28-JAN-2018, other than at Count 2 above, intentionally touched [REDACTED], the circumstances being that the touching was sexual, that she did not consent to the touching and you did not reasonably believe that she so consented, contrary to Article 7(1) of the Sexual Offences (Northern Ireland) Order 2008 ['Count 3'].
2.	You were made subject to the following decision of the Disclosure and Barring Service:

(a)	On 28 th January 2024, your name was included in the list of those barred from working with adults by the Disclosure and Barring Service.
And your actions as set out in 1 (a) and (b) above show that your fitness to practise is impaired by reason of your conviction in the United Kingdom for a criminal offence.	
And on the basis of the decisions of the Disclosure and Barring Service, as set out at 2 (a) above, your fitness to practise is impaired by reason of your inclusion on the Adults' Barred List maintained by the Disclosure and Barring Service.	

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 Anthony Gilmore, 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 Gilmore told the Committee that the Notice of Hearing and hearing bundle were sent to the Registrant's registered email address on 13 May 2024. Later on the same day, when no proof of delivery receipt was received, a further copy of the documents was sent by way of special delivery post to the Registrant's registered address. Proof of delivery was received the following day.

On 14 June 2024, an Amendment to the Notice of Hearing was sent to the Registrant's registered email address to confirm that the venue of the hearing had changed to be heard remotely. Again, no electronic proof of delivery was received. On 18 June 2024, the Amendment to the Notice of Hearing was sent by way of special delivery post to the Registrant's registered address. A signed proof of delivery was received the following day. There was no communication received from the Registrant.

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 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 his right to attend.

Mr Gilmore 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 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 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 multiple attempts by the Council to contact the Registrant by way of email and special delivery post. 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.

Background

Mr Gilmore provided the Committee with a background to the case. He told the Committee that the Registrant is registered on Part 2 of the Register, and that he was employed as a care worker with Quality Care Services.

Mr Gilmore submitted that this matter came to the attention of the Council as a result of an Employer Referral Form ('ERF'), dated 18 June 2018. The ERF reported that the Registrant had told his employer that he was under investigation by the PSNI, that he had been arrested on 28 January 2018 and that he had been released on bail pending further investigation.

Mr Gilmore referred the Committee to the case summary provided by the police, which contains a background to the investigation and a summary of the police interview under caution with the Registrant.

Evidence and Submission on Facts

Mr Gilmore told the Committee that there were no admissions of the facts.

Mr Gilmore 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 Gilmore told the Committee that the Registrant pleaded guilty on 04 September 2023, was subsequently convicted on 16 October 2023 and received a Combination Order, which comprised a Community Service Order for a period of 80 hours and a Probation Order for a period of two years. The Court also imposed a Restraining Order, and required the Registrant's name to be added to the Sex Offenders' Register for a period of five years.

Mr Gilmore referred the Committee to Schedule 2, Paragraphs 12 and 13 of the Rules, along with Rule 4 (1) (d). He submitted that there was no evidence that the Registrant had successfully appealed his conviction or that the conviction did not relate to this Registrant. He submitted under the Rules that the Certificate of Conviction was conclusive proof of the conviction and underlying facts. He invited the Committee to find the facts in relation to Particular 1 proved on the balance of probabilities.

Mr Gilmore also highlighted the letter received from the Disclosure and Barring Service ('DBS'), dated 01 February 2024, informing the Council that the Registrant had been barred from working with vulnerable adults as of 28 January 2024.

Mr Gilmore submitted that the Committee should place weight on the correspondence from the DBS. Mr Gilmore invited the Committee to find that this letter from the DBS was *prima facie* evidence under Rule 12 (6), and that the facts in relation to Particular 2 had been proved on the balance of probabilities.

Findings of Fact

The Legal Adviser reminded the Committee that under Paragraph 12 (5) to 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 as set out under Paragraph 12 (7) of the Rules. He informed the Committee that it must be satisfied that the Certificate of Conviction in this case was issued by a competent Court of jurisdiction, and that it related to the Registrant. In the absence of any other evidence, the Committee was entitled to rely on the Certificate of Conviction to establish conclusively that

the Registrant was convicted of the offence as set out in the Particulars of the Allegation. He further referred the Committee to Schedule 2, Paragraph 12 (6) of the Rules, which permits the Committee to view the written notification from the DBS of current barring status as *prima facie* evidence. Mr Gilmore submitted that the Committee could place reliance on the DBS correspondence such as to find the facts proved to the required standard, namely that the Registrant had been placed on a DBS Barred List.

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 is more likely than not to have occurred.

The Committee took into account the submissions from Mr Gilmore on behalf of the Council, and had careful regard to all of the documentary evidence submitted. The Committee noted the facts contained in the Certificate of Conviction. The Committee concluded that the Certificate of Conviction was conclusive proof of the conviction, and was satisfied that the Certificate of Conviction related to the Registrant. The Committee, on the balance of probabilities, found proved the facts contained in Particular 1.

The Committee accepted, as *prima facie* evidence, the written notification from the DBS of the Registrant's current barring status. 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 his inclusion on the DBS list. The Committee was satisfied that this correspondence referred to the Registrant. Taking into account Paragraph 12 (6) of Schedule 2 of the Rules, the Committee was satisfied that the correspondence from the DBS was authentic and, therefore, found that, on the balance of probabilities, the facts contained in Particular 2 of the Allegations had been established.

The Committee, therefore, found the facts proved in their entirety.

Fitness to Practise

The Committee proceeded to consider if the Registrant's fitness to practise is impaired. The Committee heard submissions from Mr Gilmore, who advised that there were no formal admissions from the Registrant in relation to the Particulars of the Allegation. He submitted that the Registrant's conviction and current DBS barred status call into question his ability to work in social care services and to remain on the Register without restriction or to be registered at all. Mr Gilmore directed the Committee to the Standards of Conduct and Practice, and invited the Committee to determine that the Registrant's conviction, and the actions which led to his inclusion on the DBS barred list, were in breach of the following Standards: 5 and 5.8.

Mr Gilmore submitted that the Registrant's conviction was a relatively recent event as he was convicted in September 2023. He submitted that his inclusion on the DBS barred list for vulnerable adults shows that there is a clear and fundamental impairment of his fitness to practise. By being placed on that list, he has been deemed no longer fit to work with vulnerable adults by another Body.

Mr Gilmore told the Committee that the Registrant's conviction, DBS barring and conduct fell far below the minimum standard expected of a registered social care worker, and calls into question his fitness to practise. He said that there was nothing to persuade the Committee that the Registrant's behaviour would not be repeated in the future. There was also no evidence from the Registrant that he had remediated his behaviour. He said that there was limited evidence of regret or remorse from the Registrant, nor was there information to suggest that he would act differently in the future. Mr Gilmore accepted that the Registrant did co-operate with the police investigation and that he did plead guilty, albeit having maintained his innocence and having pleaded not guilty, and not changing his plea to guilty until after a significant period of time had passed. In the circumstances, Mr Gilmore submitted that there remains a future risk of harm to others if the Registrant is allowed to practise without restriction.

Mr Gilmore 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 Gilmore 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 the reason for his inclusion on the barred list. He reminded the Committee that it was being asked to determine whether the Registrant's fitness to practise is impaired because of this conviction and current DBS status. 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. He further referred the Committee to the findings of Dame Janet Smith in the fifth Shipman Report 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 impaired by reason of his conviction and inclusion on a list maintained by the DBS, 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 titled '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 5: As a social care worker, you must uphold public trust and confidence in social care services. In particular you must not:

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

The Committee was satisfied that the Registrant's actions, whereby he had been convicted of two serious sexual assaults, whereby Sex Offenders' registration for five years had been ordered, and whereby he had been placed on the DBS Barred List as a result was a serious departure from the standards of behaviour and conduct of a registered social care worker.

The Committee was prepared to accept that, in principle, the Registrant's conduct was capable of remedy. This would have required the Registrant to place before the Committee detailed and comprehensive evidence touching upon his insight and remediation. In this instance, the Committee did not have any evidence from the Registrant in this regard. It had no information or evidence from the Registrant as regards any action which he had taken to remediate his behaviour. There was some evidence of insight in that the Registrant had pleaded guilty, and had thus saved the complainant the ordeal of giving evidence in Court against him. However, the Committee considered that the Registrant's insight was very limited. He had pleaded not guilty, and had maintained his position for a significant period before changing his plea to guilty. There was no other evidence of insight to demonstrate the Registrant's appreciation of the seriousness of his actions and the likely consequences which his actions would have had on the complainant. As a result, the Committee was of the view that there was a high risk of repetition.

The Committee concluded that the Registrant's conviction for unlawful sexual assault and DBS barred status brought the social care profession into disrepute, and that the public would find it totally unacceptable if a finding of current impairment was not made in these circumstances. The Committee concluded that a finding of impaired fitness to practise was, therefore, necessary for the maintenance of public confidence in the social care profession and the Council as its regulator, and that public confidence in the social care profession would be undermined if a finding of impaired fitness to practise was not made.

Therefore, the Committee concluded that the Registrant's fitness to practise is currently impaired by reason of his criminal conviction and inclusion on the DBS barred list.

Sanction

In reaching its decision on sanction, the Committee considered the submission of Mr Gilmore on behalf of the Council, and had regard to all of the evidence in this case. Mr Gilmore referred the Committee to mitigating

factors, and advised that the Registrant had no previous referrals to the Council, he had co-operated with the police investigation and had pleaded guilty at Court.

As regards aggravating factors, Mr Gilmore submitted that the Registrant had been convicted of assaults of a sexual nature. He maintained his 'not guilty' pleas for a significant period before changing it to 'guilty'.

Mr Gilmore suggested that the Registrant's actions were fundamentally incompatible with remaining on the Register. He submitted that a sanction must be appropriate and fair, and that the sanctions of Warning or Conditions of Practice would not be sufficient to protect the public or be appropriate. He noted that the Registrant had failed to meaningfully engage with the Council and the hearing process. He referred the Committee to Paragraph 4.27 of the Northern Ireland Social Care Council Indicative Sanctions and Use of Interim Orders: Guidance Fitness to Practise Committees ('the Guidance'), and suggested that the sanction of a Removal Order should be considered.

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 and proportionality, weighing the public interest with the Registrant's interests, and taking into account any aggravating and mitigating factors in the case. The public interest included the protection of members of the public including service users, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour

within the profession. The Committee took into account its powers under Paragraph 26 of Schedule 2 of the Rules in relation to the sanctions available to it, and also had regard to the 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 that the only applicable mitigating factor was the Registrant's previous good history.

The Committee considered the aggravating factors to be:

- Concealment of wrongdoing;
- Lack of insight / regret;
- Failure to co-operate with the Council's investigation; and
- Serious disregard for the Social Care Council's Standards.

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

No sanction - the Committee had no doubt that it would be entirely inappropriate to impose no sanction in this case. To impose no sanction would be inappropriate in view of the seriousness of the case, and would not protect the public or address the public interest.

Warning – the Committee considered whether to impose a Warning. Having regard to its previous findings, the Committee considered that such a step would be inadequate to protect the public and would fail to uphold the public interest. The Committee considered that the Registrant's conviction was not at the lower end of the spectrum, and that a Warning would not address the risk of repetition.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Registrant's conviction for sexual assault is not something which could be addressed through re-training or conditions. The Registrant did not attend the hearing, and the Committee had no evidence as to whether or not he would agree to any conditions if imposed. Furthermore, the Committee concluded that a Conditions of Practice Order would be insufficient to protect the public and uphold the public interest, given the seriousness of the Registrant's departure from the standards expected of a registered social care worker. As the Registrant is on a DBS barred list, he cannot work in social care and to do so would amount to a criminal offence. As a result, the Committee could not formulate workable, enforceable or verifiable conditions which would address the Registrant's behaviour, adequately protect the public and address the wider public interest.

Suspension Order – the Committee next considered a Suspension Order. The Committee noted that it had made findings that the Registrant's conduct was of the utmost seriousness, and fell far below the standards to be expected of a registered social care worker. The Committee also noted that the Registrant is on a DBS barred list, preventing him from working with vulnerable adults.

The Committee carefully considered the issue of proportionality, and whether suspension would address the concerns which it had identified. The Committee noted Paragraph 4.19 of the Guidance, which states:

4.19 Suspension from the Register may be an appropriate sanction for impairment which while very serious, is not so serious as to justify removal from the Register; for example, where there has been an acknowledgment of failings and where a Committee is satisfied that the behaviour is unlikely to be repeated, and the Registrant has no psychological or other difficulties preventing them from understanding and seeking to remedy the failings and the failings are realistically capable of being remedied, then suspension may be appropriate.

The Committee had no evidence before it that the Registrant acknowledged his failings in so far as they impacted on his registration as a social care worker. The Registrant had demonstrated only the most limited insight, had provided no evidence of remediation and, therefore, the Committee had earlier determined that there was a high risk of repetition in the future.

The Committee concluded that a Suspension Order would be insufficient to protect the public and to address the seriousness of the Registrant's criminal conviction, and would not meet the high public interest taking into account that the Registrant has been placed on the DBS adults' barred list and on the Sex Offenders' Register for five years.

Removal Order – the Committee, therefore, decided to impose a Removal Order. The Committee took into account the Guidance at Paragraphs 4.26 – 4.28. In particular, the Committee paid careful regard to Paragraph 4.26 which states:

This is the most serious sanction which a Committee can impose. A Removal Order is likely to be appropriate when the Registrant's behaviour is fundamentally incompatible with being a social care worker. Removal should be used where there is no other way to protect the public, for example, where there is a lack of insight, continuing problems and a pattern of unacceptable behaviour or denial, where there is no evidence that there is likely to be satisfactory remediation and where confidence in the social care profession would be undermined by allowing the Registrant to remain on the Register.

It concluded, given the seriousness of the Registrant's criminal conviction and inclusion on a DBS barred list and the Sex Offenders' Register, that a Removal Order was the only appropriate sanction to protect the public and to maintain public confidence in the social care profession and in the Council as its regulator. The Registrant's actions constituted a very serious departure from the professional standards. The Committee determined that the Registrant's criminal behaviour, and his inclusion on a DBS barred list and the Sex Offenders' Register, identify him as being unfit to be a member of a caring and responsible profession.

The Committee was satisfied that the Registrant's conviction is so serious that it is fundamentally incompatible with continued registration. Public confidence in the Council, and in social care services, would be undermined if a social care worker who was convicted of such a serious offence and, as a result, was barred from working with

vulnerable adults, was permitted to remain on the Register. The Committee considered that a sanction short of a Removal Order would fail to declare and uphold proper standards of conduct and behaviour.

The Committee did take into account the Registrant's previous good work history. However, balancing all of the factors in this case, and after taking into account all the evidence, the Committee determined that the appropriate and proportionate sanction is that of a Removal Order. Having regard to the effect of the Registrant's actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered social care worker should conduct himself, the Committee concluded that nothing short of this would be sufficient.

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.

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.

Handwritten signature

25 June 2024

Hearings Officer
(Committee Clerk to the Fitness to Practise Committee)

Date