



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

Name: Nancy Gardner Harland

SCR No: 6005379

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **01 August 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 misconduct;

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

Particulars of the Allegation:

That on 01 November 2023, whilst being registered as a social care worker under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were found guilty of the following offence at the Magistrates' Court:

1. Defendant [You] on 5th day of September 2022 unlawfully assaulted [REDACTED] contrary to section 42 of the Offences Against the Person Act 1861

And your actions, as set out above, show that your fitness to practise is impaired by reason of your misconduct.

Procedure

The hearing was held under the fitness to practise procedure.

Preliminary Issues

The fitness to practise hearing was held by way of video-link. The Registrant was not in attendance and was not represented. The Council was represented by Mr Peter Carson, Solicitor, Directorate of Legal Services.

Declarations of Conflict of Interest

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

Service

Mr Carson told the Committee that on 30 April 2024, the Registrant provided the Council with the name and contact details of a nominated person to send any further fitness to practise documents to, and that they had accepted responsibility for the service of the Registrant's documents. He said that on 24 June 2024, the Notice of Hearing and hearing bundle were emailed to the Registrant's nominated person. An electronic proof of delivery receipt was received on the same day.

The Committee received legal advice from the Legal Adviser, and she referred the Committee to the requirements as set out in the Northern Ireland Social Care Council's ('the Council') Fitness to Practise (Amendment) Rules 2019 ('the Rules'). 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 the requirements of 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. Mr Carson referred the Committee to the email from the Registrant, dated 03 April 2024, where she clearly stated that she did not wish to have any further engagement with the Council's investigation process. The Registrant further nominated a person to accept all correspondence in relation to the Council's investigation. He outlined to the Committee that, on 22 July 2024, the Committee Clerk attempted to call the Registrant's nominated person, and left a voicemail message asking her to confirm if she or the Registrant would be attending the hearing. There was no contact from the nominated person or the Registrant in response to the email or the telephone call. Further, on 30 July 2024, the Committee Clerk sent an Amendment to the Notice of Hearing to the nominated person's email address. The document confirmed that the venue of the hearing had changed, and would instead be held remotely by way of video-link. An electronic delivery receipt was received on the same date.

Mr Carson invited the Committee to conclude that the Registrant's absence was a voluntary waiver of her right to attend. Mr Carson submitted that, in all of the circumstances, it was fair to proceed with the hearing in the Registrant's absence. He further submitted that proceeding in absence was in the public interest, and was also justified to ensure the timely disposal of the hearing.

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

The Committee noted the Registrant's position that she did not wish to communicate with the Council in relation to their investigation, and her nomination of a third party to accept all documentation on her behalf. The Committee noted the telephone call by the Committee Clerk to the Registrant's nominated person on 22 July 2024, and the lack of response received. The Committee was satisfied that, in these circumstances, the Registrant had voluntarily waived her right to attend the hearing. There was no reason to suppose that an adjournment of the hearing would secure the Registrant's attendance at a later date and, indeed, no request for an adjournment or representation was received. 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 allegation faced by the Registrant. The Committee considered that it was important to proceed with the hearing, given the seriousness of the allegation and that the public interest was strongly engaged.

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 heard an application from Mr Carson under Paragraph 12 of Schedule 2 of the Rules to admit a bundle of papers into evidence. Having received legal advice, the Committee was satisfied that the bundle met with the requirements of relevance and fairness. The hearing bundle was accepted into evidence and named Exhibit 1.

Background and Submission on Facts

Mr Carson told the Committee that the allegation against the Registrant first came to the Council's attention following an Employer Referral Form ('ERF') from Sense NI, which was received on 04 October 2022. The Registrant is registered on Part 2 of the Register as an adult residential care worker. Mr Carson said that the ERF reported an alleged physical abuse of a vulnerable resident from one of Sense NI's facilities on 05 September 2022. It was alleged that the Registrant used excessive force towards one resident whilst on shift, in the presence of colleagues and other service users. He said that the Registrant was witnessed allegedly using the full length of her arm to push a vulnerable service user onto a sofa. He noted the information that this service user was a vulnerable adult, and at the time was not being difficult or acting in a threatening way.

Mr Carson told the Committee that the Registrant pleaded not guilty, on 04 May 2023, to the charge of unlawful assault. The Registrant was convicted on 01 November 2023 and received a Conditional Discharge for two years. Mr Carson made clear that, for the purposes of Rule 4, it was the Council's contention that the Registrant's fitness to practise was impaired as a result of misconduct related to said conviction.

Mr Carson submitted that the allegation against the Registrant was extremely serious, relating to an alleged assault against a vulnerable service user. He submitted that the Registrant's conviction, and the information in support of the conviction, provided evidence of the facts as being proved on the balance of probabilities.

Findings of Fact

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

The Committee was reminded 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 Legal Adviser instructed that the underlying facts relating to the conviction were admissible if not inconsistent with the conviction. The Committee took into account the submissions from Mr Carson on behalf of the Council, and had careful regard to all of the documentary evidence submitted.

The Committee was satisfied that the Certificate of Order / Conviction confirmed that the Registrant had been found guilty, on 01 November 2023, of unlawfully assaulting a service user on 05 September 2022, contrary to Section 42 of the Offences Against the Person Act 1861. The Magistrates' Court gave the Registrant a Conditional Discharge for a period of two years.

For these reasons, the Committee found the Particulars of the Allegation to be proved on the balance of probabilities.

Fitness to Practise

The Committee proceeded to consider if the Registrant's fitness to practise is impaired. The Committee heard submissions from Mr Carson, 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 Conditional Discharge, and the underlying facts, call into question her 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 conduct breached as follows: 5, 5.1, 5.8.

Mr Carson told the Committee that the Registrant's conduct fell far below the minimum standard expected of a registered social care worker, and call into question her fitness to practise. He submitted that the Registrant's actions constituted an abuse of her position of trust, and showed a complete lack of respect for the service user. He noted that the service user had extreme vulnerabilities, and was unable to tell anyone what had happened or to defend himself. He further noted that the Registrant's actions in unlawfully assaulting the service user were described by her colleague as being 'brutal'.

Mr Carson said that in light of the Registrant's lack of engagement, and her failure to attend the hearing, 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 she had remediated her behaviour. He said that there was no evidence of any regret or remorse by the Registrant, nor was there information to suggest that she would act differently in the future. In the circumstances, Mr Carson submitted that there remained a future risk of harm to service users if the Registrant was allowed to practise without restriction. Mr Carson submitted that the Registrant demonstrated no insight into the matter, that she made no admissions during the Police investigation and that she pleaded not guilty at trial. 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. She referred the Committee to the Standards, and advised it to adopt a sequential approach when considering this issue. In particular, she advised the Committee on the meaning of misconduct by reference to Roylance v GMC. She further advised the Committee on the need for misconduct to be serious, and referred the Committee to the case of Cheatle v GMC. She reminded the Committee that impairment generally refers to the suitability of a registrant to remain on the Register without any restriction. She further reminded the Committee that fitness to practise proceedings are not designed to punish registrants for past misconduct, but to protect the public against the acts and omissions of those who are not fit to practise. The Committee was directed to consider whether the impairment was capable of remediation, had been remediated, and the risk of repetition (including consideration of the Registrant's insight).

The Committee considered whether the Registrant's fitness to practise is impaired by reason of her conduct 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 noted that the Registrant's conviction for assaulting a vulnerable service user is very serious. The Committee considered that the Registrant was in a position of trust as a residential care worker, and had abused that trust when she assaulted the service user whilst providing one-to-one care for him. This service user

was described as a very vulnerable adult who required full time care. He had learning disabilities, was non-verbal and had difficulties with both his vision and hearing. In her police statement, the manager of the facility said that she completed a body map of the service user subsequent to the alleged incident, and was unable to see any marks or injuries. In all of these circumstances, the Committee considered that the Registrant's actions and subsequent conviction for unlawful assault amounted to misconduct.

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 are in breach of the following Standards of Conduct and Practice:

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:

- 1.2 Treating people with consideration, respect and compassion; and
- 1.8 Respecting and maintaining the dignity and privacy of service users.

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.

The Committee had no information or evidence from the Registrant as regards any action which she had taken to remediate her behaviour. The Committee found that the Registrant's assault of the service user amounted to a very serious abuse of trust. The Committee considered that such conduct is not easily remediable. In view of the Registrant's lack of engagement to date, the Committee had no basis on which it could be satisfied that the Registrant had full, or indeed any, insight into her misconduct or that she would not repeat her actions in the future. In all of the circumstances, the Committee considered there to be a continued high risk of repetition of her behaviour.

The Committee concluded that the Registrant's Conditional Discharge for unlawful assault, including the underlying facts, brings the social care profession into disrepute, and that the public would find it totally unacceptable that a registrant convicted in these circumstances remained on the Register without restriction.

In all of the 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 her misconduct.

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 mitigating factors, and advised that the Registrant had no previous referrals to the Council.

As regards aggravating factors, Mr Carson submitted that the public is entitled to expect that care workers will provide safe and effective care to the most vulnerable in society, and suggested that the Registrant's behaviour in assaulting a vulnerable service user could not be considered to be at the lower end of the spectrum of unacceptable behaviour. He noted that the service user was described as very gentle, had 'letterbox vision' and very little hearing. He suggested that it was difficult to imagine a more vulnerable person. He submitted that the Registrant's behaviour towards the service user was violent, and that her actions caused the service user's feet to be off the ground when pushed by her. He suggested that the Registrant's actions were fundamentally incompatible with remaining on the Register. He noted that the Registrant did not express any remorse for her behaviour, and had not provided the Committee with any information or explanation for her actions. He noted that the Registrant had failed to meaningfully engage with the Council and the hearing process. He referred the Committee to paragraphs 2.3 and 2.4 of the Guidance, and suggested that the sanction of a Removal Order should be considered.

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

She 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').

She 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 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 is one for its own independent judgement.

The Committee recognised that the purpose of sanction is 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 factor to be:

- The Registrant had no previous referrals to the Council or as a result of her work with Sense NI, for whom she had worked since October 2004. Therefore, the Registrant had the benefit of a good work history.

The Committee considered the aggravating factors to be:

- The Registrant's misconduct constituted an abuse of trust;
- Whilst the incident was isolated in nature, the Registrant's actions were deliberate;
- The Registrant provided no genuine expression of remorse or regret for her behaviour;
- The Registrant provided no insight into her misconduct;
- The Registrant's misconduct posed a direct risk to the service user;
- The Registrant's misconduct constituted a serious disregard for the Standards; and
- The Registrant's misconduct was committed at work in the course of the provision of care for a vulnerable service user.

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 which a sanction would have on the Registrant, nor were there testimonials or references provided.

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 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 misconduct demonstrates a serious disregard for the Standards. The circumstances of the Registrant's impairment of fitness to practise are not at the lower end of the spectrum, nor were the circumstances such that the Committee would be confident that this sanction would provide adequate public protection as far as the Registrant's suitability for registration is concerned. The Committee bore in mind that a Warning would entitle the Registrant to work as a social care worker. The Registrant did not provide any evidence of insight into the harm which her behaviour could have caused to the service user. In addition, the Committee had no evidence of rehabilitative steps taken by the Registrant, nor did she provide references or testimonials.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Registrant's conviction relates to a serious abuse of trust when she, as a residential care worker, assaulted a vulnerable service user whilst providing care for him. As the Registrant did not attend the hearing, the Committee had no evidence as to her current employment circumstances, or whether she would agree to any conditions, if imposed. Further, the Committee did not consider that conditions of practice would protect the public from the risk of repetition (as identified above), and noted that the misconduct occurred in the presence of a colleague.

The Committee, therefore, concluded that a Conditions of Practice Order would not be sufficient to meet the public interest in this matter, given the seriousness of the Registrant's departure from the standards expected of a registered social care worker. In these circumstances, the Committee could not formulate workable, enforceable or verifiable conditions which would address the Registrant's misconduct and adequately protect the public.

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 Committee had no evidence before it of remediation by the Registrant, nor had it any information to indicate that the Registrant is unlikely to repeat her 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 her misconduct and the risk of harm which her behaviour presented to the service user. The Committee had no evidence from the Registrant, nor did she engage with the Council in any meaningful way. The Committee

considered that the Registrant's serious misconduct is fundamentally incompatible with her continuing to be a registered social care worker. In addition, the Committee noted that the Registrant is still subject to a Conditional Discharge, in place for two years, from 01 November 2023. The Committee considered the public interest in this matter. The Committee considered that the public would perceive the Registrant's behaviour as falling far short of what would be expected of a registered social care worker. In all of the circumstances, the Committee concluded that a Suspension Order would not be sufficient to address the seriousness and unacceptability of the Registrant's misconduct.

Removal Order - the Committee then considered a Removal Order. In considering this, the Committee took into account the Guidance at 4.26 – 4.28. It concluded that, given the seriousness of the Registrant's misconduct and her lack of insight and remediation of her failings, a Removal Order was the only sanction appropriate to protect the public and to maintain public confidence in the social care profession, and the Council as its regulator. The Committee considered that the Registrant's actions constitute a serious departure from the professional standards as set out in the Standards of Conduct and Practice for Social Care Workers, and are fundamentally incompatible with continued registration. The Registrant's behaviour involved an assault on a very vulnerable service user, described as a gentle person who was non-verbal, with 'letterbox sight' and limited hearing, and constituted an abuse of her position of trust as a social care worker, and brought the social care profession into disrepute. The Registrant showed no insight or remorse, took no remedial action and failed to engage with the Committee in relation to the fitness to practise hearing. In all of the circumstances, the Committee concluded that a Removal Order was the only sanction available to it that would protect the public and meet the public interest in upholding confidence in the social care profession and its regulator, by marking the seriousness and unacceptability of the Registrant's actions. The Committee considered that a Removal Order would ensure that the Registrant did not have an opportunity to repeat her behaviour. 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 who received a Conditional Discharge for an assault on a vulnerable service user, and who failed to show any insight or remediation, was allowed to remain on the Register.

The Committee concluded that a Removal Order was a suitable, appropriate, and proportionate sanction, which will be imposed on the Registrant's registration with immediate effect, and that the Interim Suspension Order currently in place should be revoked.

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.



06 August 2024

Hearings Officer
(Clerk to the Fitness to Practise Committee)

Date