



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

Name: Shaun Lynch

SCR No: 7002978

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **17 September 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 convictions.

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

Particulars of the Allegation:

That on the 11 October 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 criminal offences at the Crown Court:

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|----|--|
| 1. | <u>Count 1</u> - Defendant on a date unknown between the 1 st day of September 2019 and the 1 st day of October 2019, at Owen Mor Nursing Home, Londonderry, 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. |
| 2. | <u>Count 2</u> - Defendant on a date unknown between the 30 th day of November 2019 and the 1 st day of January 2020, at Owen Mor Nursing Home, Londonderry, 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. |
| 3. | <u>Count 3</u> - Defendant on a date unknown between the 14 th day of February 2020 and the 14 th day |

	of March 2020, at Owen Mor nursing home, Londonderry, 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.
4.	<u>Count 4</u> - Defendant on a date unknown between the 30 th day of September 2019 and the 1 st day of November 2019, at Owen Mor Nursing Home, Londonderry, 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.
5.	<u>Count 5</u> - Defendant on a date unknown between the 31 st day of January 2010 and the 28 th day of February 2020, at Owen Mor Nursing Home, Londonderry, 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.
6.	<u>Count 6</u> - Defendant on a date unknown between the 30 th day of November 2019 and the 1 st day of January 2020, at Owen Mor Nursing Home, Londonderry, 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.
7.	<u>Count 7</u> - Defendant on a date unknown between the 31 st day of October 2020 and the 1 st day of December 2020, at Owen Mor Nursing Home, Londonderry, 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.
Your actions as set out above show that your fitness to practise is impaired by reason of your convictions in the United Kingdom for a criminal offence.	

Procedure

The hearing was held under the fitness to practise procedure.

Preliminary Matters

The Registrant was not in attendance, nor was he represented. The Council was represented by Mr Peter Carson, Solicitor, Directorate of Legal Services.

Service

Mr Carson told the Committee that the Notice of Hearing and hearing bundle were emailed to both the Registrant's registered email address and to Maghaberry Prison, and that electronic delivery receipts were received for both on the same date. He said that on 25 July 2024, the Council received an email from Maghaberry Prison, stating that the Registrant had served his sentence and was no longer in custody. The Hearings Officer telephoned the Registrant on 05 September 2024 to confirm if he was attending the Fitness to Practise hearing. However, the call rang out and there was no option to leave a voice mail. An email was sent to the Registrant on 05 September 2024, asking him to confirm his attendance at the Fitness to Practice hearing, and also to update his contact details with the Council. The Registrant did not respond to any communication from the Council.

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 service shall be treated as being effected on the day after the Notice was sent. The Committee took into account that the Notice of Hearing provided details of the date and time of the hearing, and that it was to be held virtually. In addition, it contained information about the Registrant's right to attend, be represented and call evidence, as well as the power to proceed in his absence.

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 of the Rules, 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. He submitted that the Committee should hear and determine the case in the Registrant's absence. He referred the Committee to the various attempts made by the Council to contact the Registrant, and noted that the Registrant had not responded to any attempts to communicate with him. He invited the Committee to conclude that the Registrant's non-attendance was a voluntary waiver of his right to attend. Mr Carson said that there was no indication to suggest the Registrant would be any more likely to attend if the matter was adjourned today. He said that the Registrant had not asked for an adjournment to seek legal representation. He further suggested that it was in the public interest for the case to proceed, as this would ensure a fair and expedient 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 telephone. 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 that they date back to 2019. The Committee 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.

Declarations of Conflict of Interest

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

Application to Admit Hearing Bundle

The Committee accepted the hearing bundle of documents into evidence, and marked it as Exhibit 1.

Background

Mr Carson told the Committee that the Council had received an Employer Referral Form ('ERF') from Ms Joy Hynds, Home Manager at Owen Mor Care Home ('the Home'), by email on 21 May 2021. The ERF advised that an anonymous complaint had been made to the Western Health and Social Care Trust (the 'Trust') on 14 March 2020 that the Registrant had 'roughly handled' service users in the Home. The ERF also confirmed that an investigation had been commenced under Joint Protocol.

Mr Carson told the Committee that the PSNI had confirmed to the Council that several allegations of mistreatment of patients by the Registrant were being investigated. Mr Carson said that the allegations included throwing a service user across the room, pulling a service user from their chair, causing service users to fall and removing a walking aid from a service user.

Evidence

Mr Carson referred the Committee to the Certificate of Conviction that was contained within the hearing bundle. He said that on 11 October 2023, the Registrant was convicted on his guilty plea of seven counts of ill treatment or wilful neglect of a patient. He said that on 01 February 2024, the Registrant was sentenced to nine months' imprisonment for these offences.

Mr Carson submitted that the Certificate of Conviction provides conclusive proof in relation to the Particulars of the Allegation, in accordance with Schedule 2, Paragraph 12 (5) of the Rules.

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 does not refer to the Registrant, or where the conviction has been successfully appealed. 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 relates 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 offences as set out in the Particulars of the Allegation.

The Committee took into account the submissions from Mr Carson on behalf of the Council, and had careful regard to all of the evidence submitted. The Committee found that, on the balance of probabilities, the facts contained in the Particulars of the Allegation had been established. 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 relates to wilful neglect and ill treatment of service users in his care.

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 impaired in light of his convictions. The Committee heard submissions from Mr Carson, who submitted that the Registrant's convictions 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. 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 breach as follows: 5.1 and 5.8.

Mr Carson said that the Registrant had not demonstrated any evidence of remediation. He said that the Registrant initially denied all allegations despite there being a number of witnesses. He said that the Registrant showed very limited insight when he pleaded guilty at re-arraignment. He said that remediation would be difficult to prove in this case, given that the allegations took place over a long period of time and that the Registrant has not engaged or produced evidence of remediation.

Mr Carson said the Registrant's conviction has brought the profession into disrepute. He said that the public should have confidence in the regulator. He said that the Registrant failed those to whom he was providing care. He said that the Registrant's actions were unacceptable, and that there was no option other than to make a finding of current impairment of the Registrant's fitness to practise by reason of his convictions.

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

The Committee, in considering the issue of impairment of fitness to practise, took account of Paragraph 24 (3) of Schedule 2 of the Rules, which states that it should have regard to:

- (a) whether it is satisfied as to the reason for the alleged impairment of fitness to practise;
- (b) the Standards of Conduct and Practice issued by the Council under Section 9 of the Act;
- (c) whether the impairment is capable of remediation;
- (d) whether the impairment has been remediated;
- (e) the risk of repetition; and
- (f) the public interest.

When considering the Registrant's actions, the Committee had regard to the Standards of Conduct and Practice for Social Care Workers, and the Council guidance entitled 'Making a Determination of Impaired Fitness to Practise: Guidance for Committees on Remediation'. The Committee was satisfied that the Registrant's actions are 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:

- 5.1 Abuse, neglect or harm service users, carers or colleagues;
- 5.7 Put yourself or other people at unnecessary risk; 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.

The Registrant has been convicted of multiple assaults on multiple victims, for whom he was responsible as a senior care assistant at the Home in question. The Registrant's actions were deplorable, and represent a fundamental and serious departure from the standards expected by the public of a registered social care worker.

The Committee was satisfied that there was no evidence of insight or remediation on the Registrant's part. The Committee noted that the Registrant, having pleaded not guilty, had subsequently changed his plea to guilty in the course of the criminal proceedings. There was no evidence that the Registrant's decision to accept his guilt was motivated by an acceptance on his part of the extremely serious nature of the conduct which had resulted in his prosecution and his referral to this Committee. In addition, there was a clear absence of insight, remediation and regret / apology on the Registrant's part. As a result, the Committee considered that there was an extremely high risk of repetition.

The Committee was also satisfied that the public, with knowledge of the circumstances of this case, would be shocked and dismayed to learn that no finding of current impairment had been made on public interest grounds.

The Committee was of the view that not to make a finding of current impairment on public interest grounds would fail to declare and uphold proper standards, and would undermine the public's trust and confidence in the social care workforce.

Accordingly, on public protection and public interest grounds, the Committee has decided that the Registrant's fitness to practise is currently impaired by reason of his conviction.

Sanction

Mr Carson made to the Committee a submission that a Removal Order should be imposed as a sanction against the Registrant in these proceedings.

Mr Carson set out the mitigating and aggravating factors of the case. He said that the Registrant had no previous disciplinary record and had a good work history.

Regarding aggravating factors, Mr Carson told the Committee that the Registrant's ill treatment and neglect occurred against multiple vulnerable service users. His actions were prolonged and spanned over one year. He said that the Registrant's actions occurred during the course of providing care, and that the Registrant had not demonstrated any evidence of insight or remorse.

Mr Carson said that the Registrant has been convicted in the Crown Court of serious offences involving ill treatment and neglect of the vulnerable people for whom he cared. His actions had resulted in the imposition of an immediate custodial sentence. He said that the Registrant had proved himself to be a danger to vulnerable service users, and that his actions had the potential to seriously damage the reputation of the social care workforce.

The Legal Adviser 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 accepted the advice of the Legal Adviser. 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 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 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 that the only applicable mitigating factor, to which it attached very little weight, was the Registrant's previous good history.

The Committee considered the aggravating factors to be:

- Abuse of trust in the Registrant's role as a senior care assistant at the Home;
- Lack of insight / remediation / regret and apology;
- Risk to service users;
- Failure to co-operate in Council investigation;
- Serious disregard for the Standards;
- The conduct occurred over a prolonged period; and
- The conduct directly related to Registrant's occupation as a social care worker.

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 current financial impact that 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 convictions, 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 would not address the risk of harm to service users and members of the public. The Committee considered that the Registrant's criminal convictions demonstrated a serious disregard for the Standards. The circumstances of the Registrant's impairment of fitness to practise were 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 was concerned.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Registrant's convictions relate to a serious abuse of trust, when he, as a care worker, assaulted multiple vulnerable service users whilst in a position of responsibility for them. The Registrant's convictions are for serious offences committed at work, and the Committee considered that this is not something which could be easily addressed through re-training or conditions. In addition, the convictions are too serious to make this sanction appropriate. 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. 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 at the fact and impairment stages of the proceedings that the convictions in this case are serious, and fall far below the standards to be expected of a registered social care worker. 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 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 noted that the Registrant submitted no evidence of any steps taken to demonstrate that he is unlikely to repeat his criminal behaviour in the future. The Committee had previously determined that there was a high risk of repetition. The Registrant has not submitted evidence to satisfy the Committee that he would realistically take steps to remedy his behaviour during a period of suspension.

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. 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 criminal convictions.

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 Registrant has been convicted of multiple counts of ill treatment and wilful neglect of vulnerable service users. Rather than treat these vulnerable service users with dignity and respect, the Registrant abused his position to roughly handle and mistreat those for whom he was in a position of responsibility. Given the seriousness of his offending and the period of time over which it took place, the Registrant was prosecuted in the Crown Court rather than the Magistrates' Court. The Registrant's actions, which included grabbing and pulling vulnerable service users and acting in a highly aggressive manner, demonstrated to the Committee that he was manifestly not fit to remain on the Register. One particularly troubling aspect of this case was the description of the Registrant behaving, while on shift, *'like a doorman in a night club'*. The Registrant's actions breached fundamental tenets and had the tendency to bring the social care workforce into disrepute. Rather than demonstrate insight and express remorse for his actions, the Committee noted that during the criminal investigation, the Registrant sought to shift the blame to his work colleagues and denied any impropriety in relation to the discharge of his responsibilities. He maintained that position until he changed his plea to guilty during the course of the criminal proceedings against him. The Registrant's actions as admitted, by him and which resulted in his convictions, were such that they were fundamentally incompatible with continued registration.

It concluded that given the seriousness of the Registrant's criminal convictions and his lack of remediation, a Removal Order was the only sanction appropriate to protect the public and to maintain public confidence in the social care profession and in the Council as its regulator.

The Committee was very concerned by the Registrant's behaviour, therefore the Committee determined that the Registrant's criminal behaviour identifies him as being unfit to be a member of a caring profession.

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 his criminal 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 was criminally convicted of wilful neglect and ill treatment of vulnerable service users was allowed to remain on the Register. The Committee considered a Removal Order to be a suitable, appropriate and proportionate sanction, which was imposed on the Registrant's registration with immediate effect.

The Committee decided to revoke the Interim Suspension Order and substituted the Removal Order with immediate effect.

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

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

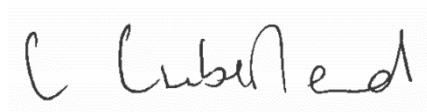
The effect of this decision is that your entry in the Register has been removed.

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

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

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

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



Committee Manager

19 September 2024

Date