



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

Name: Tatenda Ndanatsei Macheka

SCR No: 7026979

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **21 October 2024**, made the following decision about your registration with the Northern Ireland Social Care Council:

The Committee found the facts proved;

The Committee found that your fitness to practise is impaired by reason of your inclusion on a list maintained by the Disclosure and Barring Service;

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

Particulars of the Allegation at the Outset of the Hearing:

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

- | | |
|----|---|
| 1. | On 29th April 2023, you were included on the barred list for adults maintained by the Disclosure and Barring Service. |
| 2. | On 29th April 2023, you were included on the barred list for children maintained by the Disclosure and Barring service. |

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

Procedure

The hearing was held under the fitness to practise procedure.

Preliminary Issues

The fitness to practise hearing was held remotely by way of video-link. The Registrant was not in attendance, nor was she 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 the Notice of Hearing and hearing bundle were sent to the Registrant's registered email address on 11 September 2024 and that proof of delivery was received on the same date.

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 ('the Council') 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 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. He said that the Committee Clerk called the Registrant's registered mobile telephone number, on 14 October 2024, to confirm if the Registrant would be in attendance at the hearing. Mr Carson told the Committee that the Committee Clerk sent the Registrant a further email, on 15 October 2024, to confirm that the venue of the hearing had changed and that the hearing would now proceed remotely by way of video-link. He said that the telephone number held for the Registrant on the Register was no longer recognised. Mr Carson said that no communication had been received from the Registrant.

Mr Carson invited the Committee to conclude that the Registrant's absence was a voluntary waiver of her right to attend. He further submitted that it was in the public interest for there to be an expeditious disposal of the hearing. He noted the Registrant had not made a request for an adjournment, nor had she indicated that she had any representation. He submitted that any disadvantage to the Registrant would be outweighed by a fair and expedient 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, Adeogba and Visvardis v GMC. 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.

The Committee reminded itself that fairness to the Registrant should be a prime consideration. The Committee concluded that the Registrant, with knowledge of the proceedings, had voluntarily absented herself from the hearing. There was no reason to suppose that an adjournment of the hearing would secure the Registrant's attendance at a later stage. The Committee also noted the serious nature of the allegations faced by the Registrant. It was also of the view that the public interest was strongly engaged. Accordingly, the Committee decided that it was fair and appropriate to proceed with the hearing in the Registrant's absence.

Application to Admit Hearing Bundle

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

Application to Amend Particulars of the Allegation

The Committee heard an application from Mr Carson that the allegation should be amended. Mr Carson outlined that the Notice of Hearing stated incorrectly that the Registrant had been included in the relevant barred lists on 29 April 2023 when in fact the Registrant had been included in the relevant barred lists on 28 April 2023. Mr Carson applied to amend the Particulars of the Allegation to correct this typographical error and to substitute 28 April 2023 for 29 April 2023.

The Committee accepted the Legal Adviser's advice, who referred it to Paragraph 18 of Schedule 2 of the Rules. The Legal Adviser reminded the Committee that an amendment should not be entertained by the Committee unless the Committee was satisfied that such an amendment would cause no injustice or prejudice to the Registrant in the proceedings.

The Committee granted Mr Carson's application. The Committee noted that the Registrant had been put on notice of the proposed amendment application by way of an email sent to her by the Council on 13 September 2024. The Registrant did not reply to this email. The Committee was satisfied that the proposed amendment was typographical in nature and that no injustice or prejudice arose in respect of the Registrant's interests.

Particulars of the Allegation as Amended at the Hearing:

That being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended):	
1.	On 28 April 2023, you were included on the barred list for adults maintained by the Disclosure and Barring Service.
2.	On 28 April 2023, you were included on the barred list for children maintained by the Disclosure and Barring service.
And your actions, as set out above, show that your fitness to practise is impaired by reason of your inclusion on a list maintained by the Disclosure and Barring Service.	

Background

Mr Carson told the Committee that the Registrant is registered on Part 2 of the Register as an Adult Residential Care Worker.

Mr Carson told the Committee that this case first came to the Council's attention by way of Employer Referral Form ('ERF') from Brooklands Health Care, dated 08 September 2023. The ERF stated that:

"HCA Tatenda Ndanatsei Macheke is currently working in Brooklands Care Home. We have been informed on 05/09/2023 by [REDACTED] ANI that information has been received from DBS which means the applicant cannot work in Regulated Activity. We have been informed when we enquired if the enhanced disclosure certificate that the Home received in respect of this role was accurate at the time to which it was confirmed it was, [REDACTED] informed us that Tatenda Ndanatsei Macheke will be receiving correspondence in respect of this very soon but in the meantime if she needs clarification, she should contact DBS. HCA Tatenda Ndanatsei Macheke was informed with support of HR and removed from the duty rota immediately on 05/09/2023"

Mr Carson advised that, on 03 January 2024, the Council received a copy of the Disclosure and Barring Service ('DBS') Final Decision letter, dated 28 April 2023, which set out the allegations against the Registrant along with the DBS rationale for its decision to include the Registrant on the Adults Barred List and the Children's Barred List.

Mr Carson noted that, on 14 September 2023, Fitness to Practise Officer, Celia Lynn-Hawkins contacted the Registrant by telephone. The Registrant confirmed that she had received a copy of her recent Access NI Enhanced Disclosure Certificate which stated that she was 'Barred from working in Regulated Activity'.

Mr Carson told the Committee that the Registrant stated that she did not know why she had been barred. At the time, the Registrant said that she had worked in domiciliary care for First Class Healthcare based in Kent, England, for seven weeks and she was not aware of any complaints made against her.

Evidence

Mr Carson referred the Committee to the Final Decision letter as provided by the DBS, informing the Council the Registrant had been barred from working with children and vulnerable adults as of 28 April 2023.

Mr Carson referred the Committee to Paragraph 12 of Schedule 2 of the Rules and submitted that the Registrant had not provided any evidence as set out at Paragraph 12 (7) to prove that she was not the person named in the correspondence from the DBS nor had she provided any evidence to show that she had appealed her current DBS status.

Mr Carson submitted that the correspondence from the DBS should be regarded as *prima facie* evidence with regards to the Registrant's current DBS status. He therefore invited the Committee to find that the facts had been proved on the balance of probabilities.

Findings of Fact

The Committee heard and accepted the advice of the Legal Adviser. The burden is on the Council to prove the facts as set out in the Particulars of the Allegation. The Committee must apply the standard of proof as applicable in civil proceedings, which is the balance of probabilities. This means that for any fact to be found

proved, the Committee must be satisfied that it is more likely than not to have occurred. He further referred the Committee to Schedule 2, Paragraph 12 (6) of the Rules. In addition, the Legal Adviser reminded the Committee not to draw any adverse inference against the Registrant in not attending or giving evidence.

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

The Committee reminded itself that the burden was 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.

The Committee accepted, as *prima facie* evidence, the written notification from the DBS, as set out in the Enhanced Disclosure Certificate and related correspondence which confirmed the Registrant's current barred 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 her inclusion on the DBS lists. Taking into account Paragraph 12 (6) of Schedule 2 of the Rules, the Committee was satisfied that the Final Decision from the DBS proved the facts therein. Therefore, the Committee found that, on the balance of probabilities, the facts contained in the Particulars of the Allegation had been proved.

Fitness to Practise

Mr Carson told the Committee that the Registrant had not admitted her fitness to practise was impaired. He submitted to the Committee that the Registrant's inclusion on the DBS lists was evidence of impaired fitness to practise. He submitted that being banned from working with children and vulnerable adults fell far below the standards to be expected of a social care worker. As a consequence, Mr Carson submitted that it was appropriate to make a finding of current impairment to protect the public and to uphold the public interest and submitted that she had breached the following provisions of the Standards of Conduct and Practice for Social Care Workers ('the Standards'): 5, 5.8.

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 the question of current impairment and 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 and the Council guidance entitled 'Making a Determination of Impaired Fitness to Practise: Guidance for Committees on Remediation' ('the Guidance'). The Committee was satisfied that the Registrant's actions were in breach of the following Standards 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 considered the Registrant's inclusion on the DBS Barred Lists and the events leading to this, to be serious. The final decision made by the DBS, on 28 April 2023, provided detailed information as regards the concerns raised against the Registrant and which had resulted in the decision of the DBS to include the Registrant in the applicable barred lists.

In particular, the Committee noted the reasons provided by the DBS in its letter confirming the Registrant's barred status. The letter stated as follows:

"We are satisfied a barring decision is appropriate. This is because a risk assessment was completed and the DBS had concerns that you failed to understand the thoughts and feelings of those you were employed to care for, this was evidenced by you failing to engage with service users when providing care in their home, furthermore by being rough when providing care and rushing the care calls, you have demonstrated an inability to consider the experiences of the service users who relied on you for their care and the fact that you caused them emotional and physical harm.

By not offering a service user a wash and by refusing to wash another service users [sic] hair, you have demonstrated a lack of concern for the service user/s their independence and reliance on you for their care, you have also shown a lack of insight into how your actions made the service users feel. These behaviours evidence that you have a lack of empathy.

The DBS also had significant concerns that you left service user A in an unhygienic state both personally and in relation to the equipment used for his care. Given that you have worked in regulated activity previously and more recently as a senior carer you have failed to honour the obligations of your role, have shown a lack of regard for A and have acted irresponsibly in regards to the needs of the service users you were employed to care for. If you were to act in such a way without any regard to the impact your behaviour can have on others in the future, emotional and/or physical harm could be caused to the vulnerable groups.

In addition, the DBS had concerns that your attitude towards the service users in your care would cause harm in the future if it were to be repeated in a regulated activity setting, you have failed to work within the policies and

procedures for your role and have displayed an attitude that you can behave as you wish, regardless of the impact on those you are employed to care for.”

The Committee considered whether the Registrant’s actions were capable of remedy and noted that she had chosen not to engage in these proceedings. There was no evidence of any insight or remorse by the Registrant into the seriousness of her behaviour. In addition, the Committee accepted that the Registrant is currently unable to work in social care by reason of the DBS decision to include her on the barred lists. Accordingly, the Committee considered that a finding of current impairment was needed to protect the public.

The Committee also decided that a finding of current impairment was in the public interest. The Committee found that the Registrant’s inclusion on the DBS lists was very serious and had the potential to undermine public trust and confidence in the system of registration. The Committee decided that a finding of current impairment on public interest grounds was also required to uphold proper standards of conduct in the social care workforce. Further, a failure to make a finding on public interest grounds, to the Committee’s mind, would undermine the public’s trust and confidence in the social care workforce.

For these reasons, the Committee concluded that the Registrant’s fitness to practise is currently impaired by reason of her inclusion on the barred lists maintained by the DBS.

Sanction

The Committee heard a submission from Mr Carson on the question of what, if any, sanction to impose. The Committee was informed that the Registrant had no previous regulatory findings against her. In considering aggravating factors, he noted the lack of engagement by the Registrant, and noted that as a result of the Registrant’s barred status, it would be a criminal offence to employ her in a regulated activity. He told the Committee the public should be protected from social care workers who were unfit to practise. Mr Carson submitted that, in all of the circumstances, the only appropriate sanction to impose was a Removal Order.

The Committee heard and accepted the Legal Adviser’s advice. He set out the range of available sanctions which were provided for by Paragraph 26 of Schedule 2 of the Rules. In summary, the Committee could impose no sanction, warn the Registrant for a period of up to five years, make a Conditions of Practice Order not to exceed three years, make a Suspension Order not to exceed two years or make a Removal Order. The Committee was reminded that the purpose of a sanction was not to be punitive, although a sanction may have a punitive effect. Instead, in its consideration of a sanction, the Committee should have at the forefront of its mind the need to protect the public and the public interest. The Legal Adviser also reminded the Committee that it should act proportionately, and that any measure taken to limit the fundamental right of the Registrant to practise in the social care setting should be no more than what was necessary in the public interest.

The Committee carefully considered all of the available documentary material, together with Mr Carson’s submissions. It also had careful regard to the Guidance.

The Committee considered the aggravating and mitigating factors in this case.

The Committee considered the mitigating factors to be:

- Previous good work history.

The Committee considered the aggravating factors to be as follows:

- Lack of insight/regret;
- Risk of harm posed to service users; and
- Actions complained of directly related to role as a social care worker.

Having balanced the aggravating and mitigating factors, and taken into account the interests of public protection and the public interest, the Committee was satisfied that some form of sanction was necessary, and proceeded to consider which sanction to apply in this case.

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

Warning – the Committee considered whether to impose a Warning in this case. Having regard to its findings, the Committee considered that such a step would be inadequate to protect the public, would fail to uphold the public interest, and would permit the Registrant to work unrestricted in a social care setting.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Registrant has been included on the DBS barred lists which makes it a criminal offence for her to work with children and vulnerable adults. Therefore, the Committee could not formulate any workable, enforceable or verifiable conditions in light of the Registrant's barred status.

Suspension – the Committee next considered a Suspension Order. The Committee noted that it had made findings at the fact and impairment stage of the proceedings which were of a very serious nature. The Registrant has provided no evidence of insight, nor has she submitted evidence of regret, remorse or remediation. The Committee noted that the Registrant was prohibited from working in any regulated activity until 2033, when the Registrant has the right to ask for a review of the DBS decision. The Committee noted the findings of the DBS in relation to the impact of the Registrant being included on the Adults' and Children's Barred Lists.

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

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

The Committee considered that public confidence in the social care profession, and the Council as its regulator, would be undermined if a social care worker, such as the Registrant, who was barred from working with children

and vulnerable adults was allowed to remain on the Register. The Committee considered that, the Registrant's inclusion on DBS lists was evidence of a serious departure from the professional standards expected of a social care worker. Whilst the Committee took account of the impact of a Removal Order on the Registrant, this was outweighed by the very serious nature of the concerns raised against her, regarding her failure to provide appropriate care to service users for whom she had a responsibility, together with the Registrant's lack of insight and remorse. The Committee considered that any sanction short of a Removal Order would fail to declare and uphold proper standards of conduct and behaviour and would, further, fail to maintain the reputation of the social care workforce.

The Committee decided, in order to protect the public and in the public interest, to make a Removal Order, with immediate effect, in respect of the Registrant's registration. The Committee also directed that the Interim Suspension Order currently in place should be revoked 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.



25 October 2024

Hearings Officer
(Clerk to the Fitness to Practise Committee)

Date