



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

Name: Linda Graham

SCR No: 7005925

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **11 December 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 a Caution in the United Kingdom for a criminal offence;

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 accepted a caution in the United Kingdom on 17 November 2023 for the criminal offence of common assault, in that you unlawfully assaulted a service user on 02 June 2023 by lifting your hand and slapping the service user on the side of her head and ear.

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

Procedure

The hearing was held under the fitness to practise procedure. The hearing was conducted in public sitting.

Preliminary Issues

The fitness to practise hearing was held at the Council's offices in James House, Belfast. The Registrant was not in attendance, nor was she represented. The Council was represented by Ms Sinead Owens, 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

Ms Owens told the Committee that the Notice of Hearing and the hearing bundle were sent to the Registrant's registered email address on 04 November 2024. An electronic proof of delivery receipt was received on the same date.

The Committee received legal advice from the Legal Adviser, and 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 and Paragraph 5 of Schedule 2.

The Committee, in all of the circumstances of the case, was satisfied that the Notice of Hearing had been served in accordance with the Rules.

Proceeding in the Absence of the Registrant

Ms Owens made an application for the hearing to proceed in the absence of the Registrant.

Ms Owens told the Committee that the Committee Clerk called the Registrant on 05 December 2024. The Registrant confirmed in that telephone call that she would not be attending the fitness to practise hearing. The Committee Clerk reminded the Registrant that she had the option to provide a written submission for the Committee to consider in her absence, but the Registrant confirmed that she did not want to avail of this. Ms Owens invited the Committee to conclude that the Registrant's absence was a voluntary waiver of her right to attend. She further submitted that it was in the public interest for there to be an expeditious disposal of the hearing. She noted that the Registrant had not made a request for an adjournment, nor had she indicated that she had any representation. She 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 and Adeogba 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, and this also included consideration of the expeditious disposal of the hearing. 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 admitted the hearing bundle into evidence, and marked it as Exhibit 1.

Background

The Registrant is registered on Part 2 of the Register.

Ms Owens said that the matter first came to the Council's attention by way of an Employer Referral Form ('ERF') from Extra Care on 02 June 2023. The ERF stated that whilst the Registrant was assisting a service user with personal care / oral hygiene, the service user turned towards the Registrant and spat water around the Registrant. It is alleged that, in response, the Registrant lifted her hand and 'slapped' the service user on the side of the head and ear.

Ms Owens stated that the matter was referred to the PSNI, and that a joint protocol investigation was commenced. The Registrant attended the police station for interview on 09 October 2023. She subsequently accepted a Caution for the offence of Common Assault on 17 November 2023. Ms Owens referred the Committee to the hearing bundle, which contained the relevant correspondence, redacted statements, a transcript of the Registrant's under-caution interview with the PSNI and the Certificate of Caution.

Evidence

Ms Owens referred the Committee to the Certificate of Caution and the structured outline of the case, as provided by the PSNI. She noted that the structured outline of the case provided details around the incident which took place on 02 June 2023. She noted that, according to this outline, the Registrant lifted her hand and slapped a service user across the side of the head and ear whilst providing personal care to them.

The Committee considered the evidence as contained in Exhibit 1. This included, but was not limited to, a copy of the Certificate of Caution, the ERF and relevant correspondence. The Committee considered this evidence to be cogent and reliable.

Findings of Fact

Ms Owens invited the Committee to find the facts proved by reference to the Certificate of Caution contained in the hearing bundle. She said that the Certificate of Caution, signed by the Registrant on 17 November 2023, is proof of the Particulars of the Allegation against the Registrant. Ms Owens said that a Caution would only be administered where the evidence was sufficient to provide a real prospect of conviction, where the offender admitted having committed the offence, and where the offender agreed to accept the Caution and understood the significance of doing so.

The Legal Adviser advised the Committee as to the burden and standard of proof which was applicable at the fact-finding stage of the proceedings. He directed the Committee to pay careful attention to the wording of the declaration contained within the Certificate of Caution.

Having accepted the Legal Adviser's advice, the Committee had regard to documentation disclosed by the police, which included interview notes, statements, and a case summary. All of the aforementioned were consistent with a Caution having been administered. The Committee also noted that evidence from the Registrant's employer confirmed that the incident had been reported by both the Registrant and her colleague within 30 minutes of occurring, and that the Registrant accepted that the incident had happened. There was no evidence before the Committee that the Registrant disputed or denied the content of the Caution. The Committee noted that within the statements, the Registrant herself referred to 'clipping' the service user. The Committee further noted that notwithstanding this description, the Registrant admitted the offence and accepted the Caution. In any event, the Committee determined that there was no meaningful difference between 'clipping' or 'slapping' the 92-year old service user. Having regard to all of the evidence, the Committee was satisfied that the facts were proved.

Fitness to Practise

The Committee proceeded to consider whether, by reason of her Caution, the Registrant's fitness to practise was currently impaired. The Committee heard submissions from Ms Owens, who said that the Registrant's actions had fallen below the standards to be expected of a registered social care worker by reason of her Caution. She submitted that there was no evidence of insight or remorse and that, as a result, there is a risk of repetition. She further submitted that the Registrant's Caution, 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. Ms Owens said that the Committee ought to make a finding of current impairment for these reasons, to protect the public and also to make such a finding in the public interest. She referred the Committee to the Standards of Conduct and Practice for Social Care Workers, which she submitted the Registrant's conduct breached as follows: 5, 5.1 and 5.8.

The Committee considered the submissions from Ms Owens on behalf of the Council, and had regard to all of the evidence in the case. The Committee heard and accepted the advice of the Legal Adviser. In the course of that advice, he referred the Committee to Paragraph 24 (3) of Schedule 2 of the Rules, and the requirements as set out in the case of the GMC v Cohen, looking at the current competence and behaviour of the Registrant, along

with the need to protect service users, members of the public, the upholding of proper standards of behaviour and the maintenance of public confidence in social care services. He further referred the Committee to the comments of Mrs Justice Cox in the Fifth Shipman Report, cited with approval in CHRE v NMC & Grant. The Committee accepted the Legal Adviser's advice.

The Committee considered whether, by reason of her Caution, the Registrant's fitness to practise was currently impaired. When addressing that issue, the Committee 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 was satisfied that, by her actions, the Registrant had breached the following standards:

Standard 5: As a social care worker, you must uphold public trust and confidence in social care services. In particular you must not:

- 5.1 Abuse, neglect or harm service users, carers or colleagues; or
- 5.8 Behave in a way, in work or outside work, which would call into question your suitability to work in social care services.

The Committee considered whether a finding of current impairment of the Registrant's fitness to practise was required to protect the public. At the outset, the Committee had regard to the conduct which resulted in the Registrant's Caution. In principle, the Committee was prepared to accept that, with full evidence of insight and compelling evidence of remediation, the conduct in question could be capable of remedy. The Committee then considered whether, in this case, the Registrant had remedied her conduct. The Registrant did not engage in the regulatory proceedings in a meaningful way. She did not demonstrate to the Committee evidence of sufficient insight or any remediation. The Committee noted that the Registrant reported the incident to her employer, did not challenge her colleague's account of the incident, and admitted her actions during both a police interview and an employer's investigation. In the Committee's view, this demonstrated some, albeit limited, insight on the part of the Registrant. The Committee further noted the absence of any remediation. In particular, the Committee was not aware of any apology to the service user, and there were no comments before the Committee indicating the Registrant's remorse. The Committee noted that in her interview with police following the report of this matter to her employer, the Registrant said that she was shocked at her own behaviour and that she would not be returning to work in social care.

In the regulatory proceedings, the Committee was of the view that there was no evidence on the Registrant's part that she accepted the seriousness of her actions when she assaulted the service user. The Committee was not persuaded, in the absence of any evidence of remediation, that there would be no repetition of her actions. Further, the Committee's judgement was that there would be a risk of harm to service users if the Registrant, in the future, found herself in similar circumstances, and that there is a high risk of repetition.

Accordingly, the Committee determined that a finding of current impairment of the Registrant's fitness to practise was necessary to protect the public.

The Committee next considered whether a finding of current impairment of the Registrant's fitness to practise was required in order to uphold and protect the public interest. The Committee concluded that public trust and confidence would be seriously undermined if a finding of current impairment was not made in all of the circumstances of this case. In the Committee's view, an informed member of the public would be shocked and troubled if the Registrant remained on the Register without restriction. The Committee considered that not to make a finding of impairment would fail to uphold and declare proper standards of conduct in the social care workforce.

For these reasons, to protect the public and uphold the public interest, the Committee concluded that the Registrant's fitness to practise is currently impaired by reason of her Caution.

Sanction

The Committee heard a submission from Ms Owens on the question of what, if any, sanction should be imposed on the Registrant's registration.

Ms Owens referred the Committee to mitigating and aggravating factors, which she submitted were present in this case. Ms Owens confirmed that the Registrant had had no previous regulatory referrals. She said that the Registrant had promptly reported the incident, admitted to it and accepted the Caution. Ms Owens said that the Caution relates to a very serious offence, involving an assault on a vulnerable service user, which occurred in the presence of a colleague. She also highlighted the absence of any remediation or engagement on the part of the Registrant, and said that her conduct showed a serious disregard for the standards expected of social care workers. She asked the Committee to have regard to the NISCC Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance'). Ms Owens submitted that, in the view of the Council, the Registrant's actions are fundamentally incompatible with registration as a social care worker, and that the only appropriate sanction to impose, in the public interest, was a Removal Order.

The Committee heard and accepted the Legal Adviser's advice. He set out the range of available sanctions which are provided for by Paragraph 26 of Schedule 2 of the Rules. 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. The Committee was reminded that the purpose of a sanction is

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 referred the Committee to Paragraph 26 of Schedule 2 of the Rules which provides that, upon a finding of impairment of fitness to practise, the Committee may:

- (a) impose no sanction; or
- (b) warn the Registrant and direct that a record of the warning should be placed on the Registrant's entry in the Register for a specified period of up to 5 years; or
- (c) make a Conditions of Practice Order for a specified period not exceeding 3 years; or
- (d) make an Order suspending the Registrant's registration for a specified period not exceeding 2 years (a 'Suspension Order'); or
- (e) make an Order for removal of the Registrant's registration from the Register ('a Removal Order').

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

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

The Committee applied the principles of fairness, reasonableness and proportionality, weighing the public interest against the Registrant's interests, and taking into account any aggravating and mitigating factors in the case. The public interest includes the protection of members of the public, including service users, the maintenance of public confidence in the 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 carefully considered all of the available documentary material, together with Ms Owens' 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 as follows:

- early reporting of the incident;
- timely co-operation with the police and employer investigation;
- admission of her conduct and acceptance of her Caution; and

- no previous disciplinary or regulatory record.

The Committee considered the aggravating factors to be as follows:

- it was an assault on a vulnerable service user;
- the Registrant was acting in a position of trust and authority;
- the assault happened in the presence of a co-worker;
- whilst the Registrant initially accepted the facts of the assault, she subsequently downplayed their significance by referring to her actions as 'clipping' the service user around the ear; and
- the Registrant has not exhibited any appreciable remorse or taken any remedial steps.

Having balanced the aggravating and mitigating factors, and having taken 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 - having regard to its findings, the Committee considered that to conclude this matter and to take no further action would be a wholly inadequate response, and would fail to protect the public and uphold the public interest.

Warning - the Committee was mindful that imposing a Warning would permit the Registrant to practise unrestricted. In light of its findings, such a step in the Committee's view would fail to protect the public or uphold the public interest.

Conditions of Practice Order - the Committee was aware that such an Order is usually appropriate in circumstances where deficiencies have been identified in a registrant's practice and, for the duration of any such Order, conditions are appropriate to address those deficiencies. A Conditions of Practice Order is not appropriate where, as here, the regulatory concern arises as a result of a behavioural and attitudinal issue, and relates to the Registrant's conduct in which she received a Caution for assaulting a vulnerable service user in her care. The Committee could not formulate any conditions which were appropriate, workable and verifiable. The Committee specifically noted that the incident occurred in the presence of a co-worker. Further, there was no up to date information as to the Registrant's current employment status in a social care setting. The Committee had no assurance that the Registrant would co-operate with a Conditions of Practice Order. The upper-most consideration, however, was the seriousness of the Allegation found proved. The Committee was satisfied that a Conditions of Practice Order would be inadequate to protect the public, and would be insufficient to uphold the public interest.

Suspension Order - a Suspension Order is appropriate where the allegation found proved is not so serious as to justify removal from the Register. In this case, there was no meaningful engagement in the regulatory process by the Registrant. She failed to demonstrate adequate insight and did not provide the Committee with any evidence that she appreciated the seriousness of her failings and had taken steps to remedy them. The Committee had also found, as a result of this insufficient insight and a lack of evidence of remediation, that there is a high risk of

repetition. For those reasons, the Committee concluded that a Suspension Order would be inadequate to protect the public, and would be insufficient to uphold the public interest.

Removal Order - accordingly, the Committee decided to impose a Removal Order. The Registrant, by signing the Certificate of Caution, had accepted that, in the course of her duties, she had assaulted a vulnerable service user and the assault had occurred in their home. The assault was witnessed by another social care worker. In the Committee's judgement, the Registrant's actions in assaulting a service user were deplorable, and are contrary to the standards expected from a registered social care worker. The Committee was mindful of the impact on the Registrant. However, this is outweighed by the need to protect the public and maintain public confidence. Accordingly, the Committee considered that the Registrant's actions, together with the risk of repetition, are fundamentally incompatible with continued registration, and that the only appropriate and proportionate sanction to impose, to protect the public and in the public interest, would be a Removal Order.

The Committee decided that the Interim Suspension Order currently in place be replaced with 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.

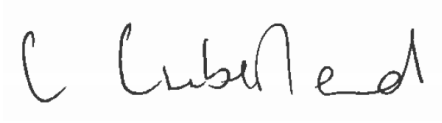
The effect of this decision is that your entry in the Register has been removed.

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.



Head of Hearings Services

13 December 2024

Date