

**Notice of Decision of the Northern Ireland Social Care Council's Conduct Committee**

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**Name:** Philip Francis Crane

**SCR No:** 6002412

**NOTICE IS HEREBY GIVEN THAT** the Conduct Committee of the Northern Ireland Social Care Council, at its meeting on **11 May 2015**, made the following decision about your registration with the Northern Ireland Social Care Council:

**The Committee found the facts proved;**

**The Committee found that you have committed misconduct;**

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

**Charge:**

That, being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), and whilst employed as a Support Worker by the Southern Health and Social Care Trust, you committed the following offence whilst on duty:

1. On 11 November 2014, at the Crown Court at Newry, you pleaded guilty and were convicted of:  
Defendant on the 23rd day of July 2012, in the County Court Division of Armagh and South Down, intentionally and sexually touched [Service User A], a person with a mental disorder and Philip Crane knew or could reasonably be expected to know that [Service User A] had a mental disorder and Philip Crane was involved in [Service User A's] care in a way that fell within Article 55 of the Sexual Offences (Northern Ireland) Order 2008 contrary to Article 51(1) of the Sexual Offences (Northern Ireland) Order 2008.

And your actions as set out above amount to misconduct, such as to call into question your suitability to remain on the Social Care Register.

## **Preliminary Matters**

### **Service**

The Registrant was neither present nor represented at the hearing. The Council was represented by Mr Conrad Dixon.

A Notice of Hearing, dated 30 March 2015, was sent to the Registrant by Special Delivery post and addressed to him at his last known address, informing him of the date, time and venue for this hearing. The Notice of Hearing was received and signed for by the Registrant on 11 April 2015. Disclosure and Hearing bundles were sent to the Registrant by Special Delivery on 21 April 2015. The bundles were received and signed for on 23 April 2015. In addition, the Registrant's solicitor wrote to the Council on 16 April 2015 and advised that the Registrant did not intend to be present or represented at the hearing. The solicitor did not seek a postponement.

The Committee considered an application from the Council's solicitor that the Notice of Hearing had been properly served in accordance with the Rules and took into account the advice of the Legal Adviser. The Committee was satisfied that the Notice of Hearing had been served on the Registrant in accordance with the requirements of the NISCC (Conduct) Rules 2014 (the Rules).

### **Proceeding in the Absence of the Registrant**

Mr Dixon made an application to proceed in the absence of the Registrant, pursuant to Paragraph 14 of Schedule 2 of the Rules. The Committee was advised that it had a discretion as to whether to proceed in the absence of the Registrant. The Legal Adviser emphasised that this was a discretion which they should only exercise with the utmost care and caution. Having considered the issue, the Committee reached the unanimous view that it was appropriate to proceed in the Registrant's absence. The Committee was satisfied that the Registrant had voluntarily waived his right to attend the hearing. The Committee took the view that there was a public interest in proceeding without further delay. The Committee observed that if it was to postpone the hearing, there was no reason to believe that the Registrant would be any more likely to attend on a future date.

### **Application to Admit Hearing Bundle**

Mr Dixon applied, pursuant to Paragraph 11 of Schedule 2 of the Rules, to admit, by way of evidence, a bundle of documents comprising of:

1. Certificate of Conviction, dated 07 January 2015;
2. Correspondence from the Registrant's solicitor confirming the sentence and that the Registrant would not be in attendance or represented at the hearing;
3. Southern Trust Disciplinary Investigation report; and
4. Southern Trust dismissal letter.

Mr Dixon confirmed that the bundle had been served on the Registrant and that no objections had been made with regard to the content.

The Committee accepted the advice of the Legal Adviser and decided that it would be appropriate to accept the bundle of documents into evidence. The Committee noted that the bundle contained hearsay evidence, and reminded itself that it was a matter for the Committee to decide on the appropriate weight to be given to that evidence.

## **Background**

The Registrant is registered on Part 2 of the Register. His registration was first granted on 19 July 2012. The Registrant was employed by the Southern Health and Social Care Trust as a Home Support Worker in the Intensive Home Support team. Allegations were made to the Trust that the Registrant had inappropriately touched a service user, and these were investigated. The Registrant attended a disciplinary hearing and was dismissed by way of letter, dated 16 May 2013. The Charge relates to a criminal conviction arising out of the same incident that, on 23 July 2012, the Registrant intentionally and sexually touched a service user in his care. The Registrant was convicted of the offence and sentenced to:

- a three year Probation Order;
- a Sexual Offences Prevention Order, which will remain in effect until 16 December 2019 (that he was to have no direct or indirect contact with the victim, and that he notify the designated Risk Manager in advance of any employment opportunities to allow suitability checks and / or disclosure where necessary); and
- a requirement to comply with the notification requirements of the Sexual Offences Act 2003 (the Sex Offenders Register) for a period of five years.

## **Evidence**

The Committee considered the bundle of documents and noted the details of the Certificate of Conviction dated 07 January 2015, as outlined above.

## **Finding of Facts**

The Committee considered the Certificate of Conviction and accepted the advice of the Legal Adviser. The Committee received and accepted a submission from Mr Dixon, that having regard to Paragraph 11 (5) of Schedule 2 of the Rules, the Certificate of Conviction was conclusive proof of the conviction so found. The Committee is satisfied that the Certificate of Conviction is conclusive proof of the facts alleged in the Charge and finds the facts proven.

## **Misconduct**

Having found the facts proven, the Committee proceeded to consider the issue of misconduct. The Committee heard a submission from Mr Dixon, who argued that the Registrant's actions arising out of his conviction amounted to misconduct. Mr Dixon referred the Committee to the NISCC Code of Practice for Social Care Workers and, in particular, Code 1 – 1.1; Code 3 – 3.8; Code 5 – 5.1, 5.2; and Code 6 – 6.1. Mr Dixon submitted that the Registrant was in a position of trust and responsibility in relation to a vulnerable service user. By touching the service user inappropriately, the Registrant abused the trust placed in him. Mr Dixon submitted that a sexual conviction in relation to a service user is alarming. It was his opinion that the Registrant's actions were a serious departure from the standard to be expected from a registered social care worker.

The Committee reminded itself that misconduct is defined in the Rules as 'conduct which calls into question the Registrant's suitability to remain on the Register'. The Committee gave careful consideration to Mr Dixon's submissions and to the bundle of documents. The Committee is satisfied that the Registrant's actions amounted to misconduct. The Committee finds that the Registrant's actions were in breach of the following provisions of the Code:

**Code 1: As a social care worker, you must protect the rights and promote the interests of service users and carers. This includes:**

1.1 Treating each person as an individual.

**Code 3: As a social care worker, you must promote the independence of service users while protecting them as far as possible from danger or harm. This includes:**

3.8 Recognising and using responsibly the power that comes from your work with service users and carers.

**Code 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

5.2 Exploit service users, carers or colleagues in any way.

**Code 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 considered that the Registrant's conviction for intentionally and sexually touching a service user was extremely serious. The facts as established by the Certificate of Conviction demonstrate a significant departure from acceptable levels of behaviour for a registered social care worker. The Committee was concerned that the Registrant had abused his position of trust whilst working with a vulnerable service user. The Committee considers the Charges to be serious and to constitute misconduct, which calls into question the Registrant's suitability to remain on the Social Care Register.

### **Sanction**

The Committee heard a submission from Mr Dixon on sanction. Mr Dixon submitted that, in light of the serious conviction in this case, it would be necessary for the Committee to impose a suitably severe sanction. Mr Dixon referred the Committee to the Indicative Sanctions Guidance and, in particular, to Paragraph 5.4 which deals with sexual misconduct.

The Committee, in deciding which sanction to impose, has taken into account:

- a. the seriousness of the Registrant's misconduct;
- b. the protection of the public;

- c. the public interest in maintaining confidence in social care services; and
- d. the issue of proportionality.

The Committee has given due consideration to the Indicative Sanctions Guidance, and accepts that the primary purpose of sanctions is to protect the public. The Committee is aware that punishment is not the primary purpose, rather the Committee has focused on the protection of the public and service users in particular, and maintenance of public confidence in the social care profession.

The Committee considered the available sanctions in ascending order as follows:

**Admonishment** – the Committee had no hesitation in rejecting admonishment as an appropriate and proportionate sanction. Admonishment may be appropriate where the behaviour is at the lower end of the spectrum of misconduct. The misconduct in this case was serious and the Committee considers that it was at the higher end of the spectrum. It would be inappropriate to permit the Registrant to work on an unrestricted basis in the social care sector, and this would not provide sufficient protection of the public.

**Suspension** – the Committee did not consider that suspension was a suitable, appropriate or proportionate sanction. The Registrant was convicted of a serious criminal offence. There is no evidence before the Committee of insight by the Registrant into his failings or a willingness to change his behaviour. The interests of service users and the public would not be sufficiently protected by suspension. The Committee cannot be satisfied that there is no real risk of repeating the behaviour, or that the Registrant would resolve the cause of his misconduct during a period of suspension.

**Removal** – the Committee regards this sanction as being necessary because of the serious nature of the Registrant's misconduct. The Committee had regard to the Indicative Sanctions Guidance and, in particular, Paragraph 5.4 and 5.5, which deal with sexual misconduct. The Registrant abused his position of trust whilst working with a vulnerable service user. The misconduct was of a sexual nature and was a serious departure from the relevant professional standards set out in the Code of Practice for Social Care Workers. The Registrant is subject to a notification requirement as a sex offender. The Committee determined that removal was the appropriate sanction, not only to prevent the risk to service users but also to uphold public confidence in social care services. The Committee was advised that the Registrant had no previous disciplinary record with the Council. However, the Committee did not find any other mitigating factors in this case. The Registrant did not provide any references or testimonials, and there is nothing within the documentation to allow the Committee to conclude that the Registrant has demonstrated any insight or remorse. The serious nature of the misconduct led the Committee to conclude that the Registrant is unfit to be a member of a caring and responsible profession. Furthermore, the Committee noted that the Registrant remains on probation, and is subject to a Sexual Offences Prevention Order and the notification requirements of the Sexual Offences Act 2003. He has not yet completed his sentence.

The Committee has considered the consequences of removal for the Registrant and the potential financial impact of removal. However, taking into account both the need to protect the public and to maintain confidence in the profession, the Committee considers that a Removal Order is proportionate.

Accordingly, the Committee makes an Order for removal, pursuant to Paragraph 25 (1) (c) of Schedule 2, and the Interim Suspension Order imposed by the Preliminary Proceedings Committee is hereby revoked.

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## **Legal Advice Given**

### **Service**

I have had the opportunity to consider all the documentation and, as indicated by Mr Dixon, the Notice of Hearing was sent to the Registrant on 30th of March 2015 by Special Delivery post to his registered address. I have been shown an electronic proof of service dated 11th of April 2014. Paragraph 4 of Schedule 2 of the 2014 Conduct Rules governs the requirement that a Hearing should not be fixed earlier than 28 days after posting of the Notice of Hearing.

I can confirm that the Notice of Hearing in this case was sent on 30th of March and that is more than 28 days before today's Hearing. In accordance with the Rules, service refers to the sending of a Notice to the Registrant by post or postal service in which delivery or receipted delivery is recorded. The Rules specify that the Notice shall be treated as having been served the day after it was posted. I am satisfied therefore that service has been effected in accordance with the Rules, and you can accept that it is appropriate in this matter. Indeed, we have been provided, I have been shown correspondence from the Registrant's solicitor, dated 16th of April, confirming receipt of the Notice of Hearing.

### **Proceeding in the Absence of the Registrant**

You have heard an application made on behalf of the Council that you should proceed with this Hearing today in absence of the Registrant. When you are satisfied that the Notice of Hearing has been duly served, you may either hear and determine the case or adjourn and give directions, and this is absolutely a matter of discretion for you as a Committee. At this stage, I would refer you to the case of R v Jones and that is a 2003 case, a criminal case with which you are familiar. The case establishes that you as a Committee have a discretion whether to proceed in the absence of the Registrant, and that you must only exercise your discretion to proceed with the utmost care and caution. You have been referred to correspondence from the Registrant's solicitor confirming that he will not be attending today's proceedings and will not be represented. It is appropriate for you to consider this correspondence when making your decision. I would remind you that the Registrant is entitled to a fair Hearing, to attend the Hearing, to be represented, to test the points of the case against him and to present evidence on his own behalf. You should consider whether an adjournment would result in the Registrant attending proceedings at a later stage, and you should consider the time that would be involved in such an adjournment. If you are satisfied that the Registrant had knowledge or the means of knowledge of today's

proceedings, you may conclude that he has voluntarily absented himself and therefore it is appropriate to proceed in his absence. In considering this, you should take into account the information that has been provided to the Registrant in the Notice of Hearing, and consider whether it was sufficient to advise him of the importance of attending today.

The principle of fairness also applies to the Council's case, and we have heard Mr Dixon's submission in relation to the public interest in this case proceeding expeditiously. When exercising your discretion, you must balance the rights of the Registrant against the wider public interest in the expeditious disposal of this case. If you do conclude that the matter should proceed in the absence of the Registrant, I would advise you that it would be improper to reach any conclusions about his absence. You must not treat his absence today as any admission of guilt in any way, and I would advise you that you should retire to make your consideration.

### **Admission of Evidence**

You have received an application from Mr Dixon to submit a bundle, and he has quite properly referred you to Paragraph 11 of Schedule 2 of the 2014 Conduct Rules which specifies that, subject to the advice of the Legal Adviser and the requirements of a fair Hearing and of relevance, the Committee may admit evidence whether or not it would be admissible in a court of law. So what that hence really means is that the Committee can include or exclude evidence in order to ensure fairness to the Registrant and between the parties. The bundle has been served on the Registrant in advance of the Hearing and no objection has been put forward. Therefore, my advice at this point is that there does not appear to be any unfairness to the Registrant in admitting the bundle.

As regards the contents of the bundle, you have heard Mr Dixon refer to the Certificate of Conviction, and also to correspondence from the Registrant's Legal Adviser and, finally, to correspondence in relation to or documentation in relation to the Trust disciplinary investigation and process. It is really with regards to that third section, the Trust disciplinary investigation and process, that there is a potential to be any issue as that documentation does contain hearsay evidence. However, it is a matter for you to admit hearsay evidence and to decide what weight to give that evidence. In considering the weight that you would give the evidence, you can take into account the fact that the person who is the source of the documentary evidence is not appearing before you today to give evidence, and therefore you are not in a position to question them in relation to the statements within the documentary evidence and to test their credibility.

Taking all this into account, it is a matter for you to decide what weight, if any, you would give to that particular evidence.

### **Finding of Facts**

At this point as a Committee you should retire to consider the finding of facts. You should consider all of the evidence that you have received, that is both the bundle of documents and the oral submissions made by Mr Dixon. Firstly, you should bear in mind that the burden of proof lies with the Council, and that the standard of proof is the balance of probabilities. The Council have brought these proceedings, and it is up to the Council to

prove the case. The Registrant does not have to prove that he is innocent of the Charge. It is a conviction case and there has been no oral evidence produced to you today. You have, however, been presented with a Certificate of Conviction. The Council's solicitor has submitted that the Certificate of Conviction shall be conclusive proof of the facts of the conviction, and I would concur with this view. He has referred you to the provisions of Paragraph 11(5) of Schedule 2 of the 2014 Conduct Rules, which confirm this to be the case.

I would advise the Committee that you are not entitled to look behind the Certificate of Conviction when reaching a decision on the finding of facts. It is not for the Committee to do so at this point. The Rules provide that the Certificate of Conviction as entered into evidence shall be conclusive proof of that conviction. I would also remind you that your function at this stage is to satisfy yourselves that the facts referred to in the Charge are proved by reference to the Certificate of Conviction.

### **Misconduct**

Misconduct is defined in the 2014 Conduct Rules as 'conduct which calls into question the suitability of a Registrant to remain on the Register'. I would remind the Committee that there is no admission of misconduct in this case. In considering the question of misconduct, reference must be made to the Northern Ireland Social Care Council Code of Practice, and Mr Dixon has referred you to a number of particular sections of the Code which, in his opinion, have been breached. It is, however, a matter for you as a Committee to consider the Code, and to satisfy yourselves whether you are of the opinion that misconduct has occurred in this case in contravention of the Code.

I would remind you of the definition of misconduct in the case of *Roylance v GMC* which is a 1999 case, and in that case the Privy Council indicated that 'misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standards of propriety may be found in the rules a practitioner is required to follow', and, in this case, that will take us back to the references in the Code.

It is important when considering the issue of misconduct that you bring your own experience to bear. The conduct which the Registrant has been convicted of in this case is a sexual offence. The Committee should therefore consider whether the conduct would bring the reputation of the profession as a whole into disrepute. If the Committee considers the misconduct to be serious, how would the conviction be considered by fellow social care workers; would it be found that the Registrant has breached a fundamental tenet of the social care profession. These are the matters which you should consider when deciding whether there has been misconduct in this case.

### **Sanction**

We have now reached the third stage of these proceedings, and it is for you as a Committee to determine sanction. In doing so, you must take into account the various factors before you today. I would draw the attention of the Committee to Paragraph 25 of Schedule 2 of the Conduct Rules, which deals with sanction and, Mr Chairman, you have already outlined for us the sanctions which are available, that is to admonish and to



direct that record of admonishment for a period for up to 5 years, to make an Order for suspension for a period not exceeding 2 years, to make an Order for removal and to revoke an Interim Suspension Order, if that is applicable in the particular case.

At sub paragraph 2, it is made clear that in deciding what sanction to be imposed, the Committee shall take into account the seriousness of the Registrant's misconduct, the protection of the public, the public interest in maintaining confidence in social care services and the issue of proportionality. I would emphasise that you are obliged to take into account the issue of proportionality, and I would remind you that the purpose of sanctions is not to be punitive.

Mr Dixon, in his submissions, has referred you to the Indicative Sanctions Guidance and, again, I would recommend that you take the Indicative Sanctions Guidance into account. I would refer you in particular to Paragraphs 2.4, 2.5 and 2.6, which deal with the considerations of fairness and proportionality. The interests of the public and wider service users must be weighed against the interests of the Registrant, and there is a wider public interest in the approach taken to sanction in a case such as this.

I would remind you that you should consider the question of sanction in ascending order of severity, by that you should begin your deliberations by considering admonishment first, and remember that the primary purpose of sanctions is the protection of the public. When looking at the Indicative Sanctions Guidance, I draw your attention to Paragraph 2.2, which sets out that the public should have confidence in the social care services and in the Northern Ireland Social Care Council as the Regulator of social care workers. In serving the public interest, the purpose of sanctions is to ensure that the social care worker does not have an opportunity to repeat the misconduct, and also to maintain the reputation of the profession.

I would also remind you that any limitation of the right to practise your chosen profession should be no more than is necessary in the circumstances and that, in making your decision, you should give due consideration to the aggravating and mitigating factors in this case today.

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### **Right of Appeal**

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 Conduct Committee's decision takes effect from the date upon which it was made.**

**The effect of this decision is that your entry on the Register has been removed with immediate effect and you are prohibited from working as a social care worker.**

C Chamberland

Clerk to the Conduct Committee

12 May 2015

Date