

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

REDACTED

Name: Anne Pauline Bernadette Donnelly

SCR No: 1099422

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **24 August 2017**, 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 health;

The Committee decided to make an Order suspending your registration for a specified period of two years ('a Suspension Order').

Particulars of the Allegation:

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

1. On 07 September 2015, you attended work under the influence of alcohol.
2. [REDACTED].

And that by reason of the matters set out above, your fitness to practise is impaired because of your health.

Preliminary Matters

Service

The Registrant was neither present nor represented. The Council was represented by Mr Alistair Wilson of Tughans Solicitors and attended by Fitness to Practise Officer Jaimie Harvey.

In a Notice of Hearing dated 25 July 2017, sent by Special Delivery post and addressed to the Registrant at her address as it appears on the Register, the Council notified her of the date, time and venue for this hearing. The Notice was signed for on 26 July 2017. By email dated 19 August 2017, the Registrant advised the Council that she would not be in attendance at the hearing as this could be detrimental to her improving health.

The Committee reminded itself of the provisions of Rule 3 of the NISCC Fitness to Practise Rules 2016 ('the Rules') and is satisfied that the Notice of Hearing has been served in accordance with the requirements of the Rules.

Proceeding in the Absence of the Registrant

An application was made to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules. Mr Wilson submitted that it was clear the Registrant was aware of the hearing and did not intend to come. In his view, she had voluntarily absented herself from the hearing, she had not requested an adjournment and it would be appropriate to proceed in her absence. The Committee heard and accepted the advice of the Legal Adviser.

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. The Committee was satisfied that reasonable efforts had been made to notify the Registrant of the hearing and determined that the Registrant had voluntarily waived her right to be present. The Committee concluded that no useful purpose would be served in adjourning the proceedings. The Committee balanced the interest of the Registrant against the wider public interest and in all the circumstances, resolved to hear the case in the absence of the Registrant.

Application to Admit Hearing Bundle

The Committee heard an application from Mr Wilson under Paragraph 12 of Schedule 2 of the Rules to admit a bundle of papers into evidence. The Committee was satisfied that the bundle met with the requirements of relevance and fairness and admitted the bundle.

Finding of Facts

The Registrant admitted the facts and signed an agreed Statement of Facts as follows:

The registrant was employed as a Team Leader of the Gateway Team at Belfast and Lisburn Women's Aid between 6 June 2012 and 15 December 2015.

Belfast and Lisburn Women's Aid is a charity which provides support and emergency accommodation to women and children affected by domestic violence.

The Gateway Team in Belfast and Lisburn Women's Aid are responsible for dealing with new referrals into the service. As a Team Leader the registrant had responsibility for supervising support workers who handled cases concerning women and children affected by domestic violence. The registrant also had other responsibilities including seeking funding for the work of the charity from various sources.

On 7 September 2015 the registrant attended work under the influence of alcohol. The registrant was confronted by Patricia Lyness, Chief Executive of Belfast and Lisburn Women's Aid. The registrant went with Patricia Lyness to Patricia Lyness' office. Whilst there, Patricia Lyness indicated to the registrant that she believed the registrant was under the influence of alcohol and unfit to work. The registrant initially denied being under the

influence of alcohol but subsequently admitted that she was. The registrant apologised to Patricia Lyness for having attended work under the influence of alcohol.

Patricia Lyness left the registrant in her office while she went to the registrant's workstation to seek the registrant's phone, which the registrant had misplaced. After Patricia Lyness had left the office the registrant left the building and drove away in her car.

The registrant parked her car a short distance away from Belfast and Lisburn Women's Aid and was subsequently discovered asleep in her car by some colleagues. Patricia Lyness came to meet the Registrant and made arrangements to take her to be collected by her husband. The registrant again apologised to Patricia Lyness for having attended work under the influence of alcohol.

On 5 May 2017 the Registrant attended a medical examination arranged by NISCC with Dr [A, Medical Adviser]. Dr [A] [REDACTED] and opined that the Registrant is not currently fit to practise. The Registrant accepts and agrees with the contents of Dr [A]'s report dated 10 May 2017, and in particular accepts that she [REDACTED] and that she is not currently fit to practise.

The Registrant is currently undergoing treatment for her condition [REDACTED]. (*currently*)

In accordance with Paragraph 19 (3) of Schedule 2, the facts have been found proved.

Fitness to Practise

The Committee heard submissions from Mr Wilson. Mr Wilson advised the Committee that the Registrant does admit that her fitness to practise is currently impaired and the Council's position is that her fitness to practise is currently impaired because of her health.

The Committee heard and accepted the advice of the Medical Adviser and Legal Adviser.

The Committee was in no doubt that when the Registrant attended work on 07 September 2015 under the influence of alcohol her fitness to practise was impaired. The Committee went on to consider whether her fitness to practise is currently impaired by reason of her health. The Committee noted the admissions made by the Registrant in her letter to the Council dated 01 July 2017, where she stated that "I hope [REDACTED] to be in a position to practise once again". The Committee determined that the Registrant herself did not consider that she had [REDACTED]. The Committee also noted that in the agreed Statement of Facts, the Registrant accepts [REDACTED] and that she is currently not fit to practise.

The Committee next considered the report from Dr [A], dated 10 May 2017. The Committee accepted his conclusion that the Registrant is [REDACTED], which caused or substantially contributed to the alleged misconduct. The Committee noted the view of Dr [A] that the Registrant has engaged with treatment services and is showing some insight into her condition but has not yet [REDACTED]. The Committee accepted the finding of Dr [A] that the Registrant is not currently fit to practise as in his opinion, she has not yet achieved [REDACTED].

The Committee carefully considered the evidence of the Registrant's engagement with treatment services. She is [REDACTED]. The Committee considered there was evidence that the Registrant had engaged with medical treatment for her health condition. However, her impairment has not been remediated. Although it is hoped that the Registrant will be able to [REDACTED], in the view of the Committee there remains a risk of repetition as [REDACTED] has not been achieved [REDACTED]. The Committee finds that the Registrant is in breach of the following Standards of Conduct for Social Workers:

Standard 2: As a social worker, you must strive to establish and maintain the trust and confidence of service users and carers. This includes:

2.6 Being reliable and dependable.

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

5.7 Put yourself or other people at unnecessary risk;

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 that the Registrant's actions in attending work whilst under the influence of alcohol brought the social care profession into disrepute. The Committee determined that public confidence in the social work profession would be undermined if a finding of impaired fitness to practise was not made.

Accordingly, the Committee determined that the Registrant's fitness to practise is currently impaired by reason of her health.

Sanction

In reaching the decision on sanction, the Committee had regard to all of the evidence in the case, together with the submissions from Mr Wilson on behalf of the Council. The Committee heard and accepted the advice of the Legal Adviser. The Committee took into account that any sanction must be appropriate and proportionate and although not intended to be punitive, its effect may have such consequences. The Committee has had regard to the Council's Indicative Sanctions Guidance.

The Committee first considered the mitigating and aggravating factors in the case. The Committee determined that the mitigating factors were:

- The Registrant has fully cooperated with the NISCC investigation;
- She had made an early admission of the facts alleged;
- She has displayed some insight as outlined in the report of Dr [A];
- The Registrant has apologised and expressed regret;
- She has the benefit of a previous good history and previous good character;

- The Committee received evidence that she has engaged with treatment and appropriate rehabilitative steps have been taken;
- The Committee noted evidence in the papers of circumstances in her life which impacted on her ill health; and
- There was no evidence that her behaviour caused harm to service users.

The Committee next considered the aggravating factors and determined that they are:

- The Registrant attended work under the influence of alcohol; and
- Her actions posed a potential risk both to service users and the public generally.

The Committee then went on to consider the appropriate sanction. In determining which sanction to impose, the Committee took into account the following:

- a) the seriousness of the Particulars of the Allegation;
- b) the protection of the public;
- c) the public interest in maintaining confidence in social work services; and
- d) the issue of proportionality.

Taking all of the above into account, and having balanced the aggravating and mitigating factors, the Committee went on to consider which sanction to apply in this case.

Warning – the Committee considered the issue of a Warning. The Committee did not consider a Warning to be appropriate as it would allow the Registrant to work unrestricted as a social worker. A Warning would not provide adequate public protection.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Committee noted Paragraph 4.13 of the NISCC Indicative Sanctions Guidance, which states conditions may be appropriate in cases involving particular areas of a Registrant's performance, for instance, following a single incident or where there is evidence of shortcomings in a specific area or areas of the Registrant's work. This is not such a case as the Registrant continues to suffer from a health condition. Although the Registrant has cooperated with the NISCC investigation, the Registrant was not present today and the Committee found it difficult in her absence to formulate conditions that were both achievable and accepted. The Committee is aware that the Registrant accepts that she is not currently fit to practise as a result of her health. In these circumstances, the Committee was unable to formulate workable conditions which would allow her to deal with her health issues whilst protecting service users from the risk of harm.

Suspension – the Committee determined that a Suspension Order would be an appropriate and proportionate sanction in this case. Suspension gives a clear message to the public and to the social care profession that attending work under the influence of alcohol is not appropriate conduct for a social worker. The Committee considered that the Registrant's actions in September 2015 were serious, but took into account that she has acknowledged her failings and engaged with treatment. The Registrant has demonstrated some insight and it is

hoped that with continued treatment during the course of her suspension she will [REDACTED] and be fit to return to practise. The Committee carefully considered the period of time and determined to make a Suspension Order for two years. The Committee determined that it will take time for the Registrant to be in a position to return to practise and the time period of two years is not intended to be punitive but rather to allow the Registrant to establish [REDACTED]. In reaching this decision, the Committee took into account the history of her condition over the past few years and the evidence of Dr [A], and concluded that it may well take a further two years for her to [REDACTED].

The Committee commends the Registrant on her engagement with treatment to date and would like to ensure that the Registrant is aware that she has the ability to seek an early review of her suspension if her health continues to improve and she is fit to return to practise.

Legal Advice Given

Service

If we start at Paragraph 5 of Schedule 2 of the Fitness to Practise Rules, which requires that a hearing such as this should not be fixed for earlier than 28 days after service of the Notice of Hearing. The Notice in this case was served on 25 July 2017, which I can confirm is more than 28 days before today's hearing.

Rule 3 sets out that service refers to, as Mr Wilson has already directed you, sending a Notice to the Registrant's registered address by some form of recorded delivery, or her last known address if it is different to the address as it appears in the Register. The Notice under the Rules is deemed to be served on the day after it was so posted. We have been told and I have been shown documentation to confirm that the Notice of Hearing was sent by recorded delivery post to the Registrant's address as it appears in the Register on 25 July 2017, and it was signed for as received by the Registrant on 26 July 2017. It is, therefore, my advice that it is safe for you to proceed on the basis that service has been effected in accordance with the requirements of the Fitness to Practise Rules.

Proceeding in the Absence of the Registrant

Paragraph 15 of Schedule 2 of the Rules deals with when you proceed in the absence of the Registrant at a substantive hearing such as this, and it specifies that where the Registrant fails to attend and is not represented, the Chair shall require evidence that the Registrant has been served with the Notice of Hearing in accordance with the Rules and that reasonable efforts have been made to inform the Registrant of the hearing. You, as a Committee, have already satisfied yourself that that is in fact the case. Then the Chair is obliged to inquire as to whether there are any reasons for the Registrant's non-attendance and we have been given her email of 19 August 2017.

When the Committee is satisfied that the Notice of Hearing has been duly served, it may direct that the allegation should be heard and determined notwithstanding the absence of the Registrant, or may adjourn the matter and

issue directions. I refer the Committee to the case of GMC v Adeogba, which is a case with the Court of Appeal heard in March 2017. They set out the basis upon which the panel should exercise its discretion in deciding whether or not to go ahead in the absence of a Registrant. Lord Bingham said that the principles in the well-known cases of R v Hayward and R v Jones do provide a useful starting point for any direction given to a panel. He went on to say, however, that it is important to bear in mind that there is a difference between a criminal trial proceeding in the absence of a defendant and a regulator continuing a disciplinary hearing without the registrant attending.

The principles and guidance given in R v Hayward and R v Jones set out that a trial judge has a discretion as to whether to proceed in the absence of the representatives. That discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented. In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all of the circumstances of the case, including the nature and circumstances of the defendant's behaviour in absenting himself from the trial, in particular whether his behaviour was deliberate, voluntary and, as such, plainly waived his right to appear; whether an adjournment might result in the defendant attending and the length of time of any such adjournment and whether there is an indication that the defendant wishes to be legally represented even though absent; the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him, and the risk of a jury reaching an improper conclusion about the absence of the defendant.

That is the point that Mr Wilson has just made to you, that given that there is admissions made and agreement reached in much of the evidence in this case, the risk of disadvantage to this Registrant is lessened as a result of that approach.

Lord Bingham went on to say that that was the starting point, and having commented that it was important to bear in mind the difference between a criminal trial and a disciplinary hearing or a professional regulator's hearing, he said they must be also guided by the context and the statutory objective of the regulator, that is protection, promotion and maintenance as health and safety of the public. In that regard, you should take into account the analogy between a criminal prosecution and regulatory proceedings must not be taken too far.

There is a burden on Registrants and all practitioners and professionals subject to regulatory regimes to engage with the regulator both in relation to the investigation and the ultimate resolution of the allegations made against them. This is the responsibility to which they sign up on being part of the profession.

So those are the matters which you take into account when you reach your decision on whether to proceed in the absence of this Registrant today, and I would advise that you should retire to allow you to take time to consider your decision.

Fitness to Practise

It now falls to me to give you some advice about your deliberations in respect of impairment and the things that you can properly take into account as you reach your decision. I would remind you to start with Rule 4, which sets out that a Registrant's fitness to practise may be impaired by one or more of a number of reasons, and in this case you are asked to consider impairment by reason of the Registrant's health. I direct you, in particular, to Paragraph 29 of Schedule 2 of the Rules which sets out where a Committee is considering whether a Registrant's fitness to practise is impaired by reason of health the sorts of things that the Committee should take into account. At sub-paragraph (3) (a), it sets out that you should take into account whether the Registrant is physically and mentally fit to perform the whole or part of the work of a person registered in the Register;

(b) may take into account any failure of the Registrant to agree to any reasonable invitation to be examined.

We know that is not the case. This Registrant is entitled to the benefit of having attended the appointment which was arranged for her.

And (c) may take into account:

- (i) the Registrant's current physical or mental condition;
- (ii) any continuing or episodic condition suffered by the Registrant;
- (iii) any condition suffered by the Registrant which, although currently in remission, may be expected to cause a recurrence of impairment of fitness to practise.

Sub-paragraph (3) (d) states that you shall, subject to sub-paragraph (e) below, consider any medical reports or other medical evidence on which the alleged impairment of fitness to practise has been caused or substantially contributed to, by the Registrant's physical or mental ill-health.

Mr Wilson has already directed and taken you through the report of Dr [A] in that regard.

(e) states that you shall not receive any medical reports unless the Registrant has consented to being examined and for such reports to be provided.

You know from the submissions already made by Mr Wilson that the Registrant in fact agrees with the report of Dr [A] and with his findings.

So you are asked, having taken into account all of those factors, to determine whether the Registrant's fitness to practise is impaired as a result of her health. I must remind you that although the facts have been found proved by virtue of the Registrant's admission, that does not of itself mean that her fitness to practise must be impaired. You can and should view the matters found proved in context and, in particular, you should examine the surrounding events and circumstances at the time in question and subsequently.

This is a matter for you to determine exercising your own independent judgment without references to a burden or standard of proof. It is well established that Committees such as you considering the issue of impairment should do so in the present tense. That is to say determine whether this Registrant's fitness to practise is impaired today. I know that the Committee will be familiar with Silber J guidance on remediation as set out in the

case of Cohen, but when deciding whether fitness to practise is impaired he stated that panels should take into account whether the conduct which led to the charge is easily remediable, whether it has been remedied, and whether it is likely to be repeated. So the issue of remediation and future risk is an important one that you will take into account in your own deliberations.

It has been pointed out to you that the Registrant has complied with treatment and has demonstrated some insight into her condition, but the issue for you to consider is whether she is now in a position to practise safely.

As set out in Fifth Shipman report at Paragraph 25.44 when dealing with what amounts to impairment in a health case the example was given if a doctor is suffering from ill-health one might say that he or she is not fit to practise because his or her concentration is so affected that she cannot make effective decisions on diagnosis and treatment. So impairment because of health is well established as a reason.

In the case of Sarkodie-Gyan v NMC, which is a 2009 case, the issue of present impairment and looking forward was not properly considered by the Committee in that case. The Registrant had a history of addiction and depression, which was in remission, but was quite capable of amounting to impairment in the future, but in light of her admission it was wrong for the committee to speculate on the risk of future relapse. They should instead have focused on the evidence before them.

I would, therefore, say that as you make your decision on current impairment and any future risks in relation to this Registrant, you should do so based only on the evidence before you and not make any speculation in that regard.

Sanction

At this point it falls to me to give you advice on the sanctions which you can properly consider.

As you will be aware, Paragraph 26 of Schedule 2 of the Rules sets out the available sanctions open to you as a Committee at this stage. Chair, you have already outlined those and I don't intend to repeat them again to you now. However, in determining the appropriate sanction you should refer to Paragraph 22 (2) and work through the issues which are set out for you there. So, firstly to consider the seriousness of the particulars of the allegation; the degree to which the Registrant has fallen short of any expected standard; thirdly, the protection of the public; fourthly, the public interest in maintaining confidence in social care services; and lastly, and importantly in this case, the issue of proportionality. That means weighing the interests of the Registrant on the one side against the interests of the public on the other side.

Mr Wilson has directed you towards the Indicative Sanctions Guidance and I would commend that to you as well. Paragraphs 2.5, 2.6 and 2.7 of the Guidance deal with those issues of fairness and proportionality.

I would remind you that the purpose of sanction is not to be punitive. As Laws LJ said in the case of Raschid and Fatnani v The General Medical Council, the panel is centrally concerned with the reputational standing of the profession rather than the punishment of the doctor as it was in that case but would equally apply to a social worker.

In reaching your decision you should consider all the evidence that has been placed before you as well as the submissions. You should take into account the aggravating and mitigating factors. Mr Wilson has summed those up for you, but it is a matter for you reviewing the evidence to form your own view in respect of those. In reaching your decision I remind you that protection of the public and public interest should be at the fore of your mind, and maintaining confidence in the profession and the standards of declaring and upholding proper standards of conduct and behaviour. You should consider each of the options that are available to you, starting with the least restrictive sanction and then working up until you find the option that you consider is appropriate for you to make in this case. You should also take into account the potential effect financially and personally that a sanction could have on this Registrant.

Medical Advice Given

Fitness to Practise

[REDACTED].

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 suspended for a specified period of two years and you may not practise as a social worker during the period 24 August 2017 to 23 August 2019 inclusive.

It is compulsory for all qualified social workers to be registered with the Northern Ireland Social Care Council in order to work. If you practise as a qualified social worker while the Order is in place, you will be guilty of an offence pursuant to Article 8 of the Health and Personal Social Services Act (Northern Ireland) 2001. Article 8 states that if a person who is not registered as a social worker in any relevant Register takes or uses the title of social worker or any description implying that s/he is registered as a social worker, or in any way holds him/herself out as registered, s/he is guilty of an offence.

Early Review

The Fitness to Practise Committee may, at your request, review the Order before the end of the period for which the suspension has been imposed if there has been a material change of circumstances since the Order was imposed. The Committee may, after reviewing a Suspension Order, revoke that Order or replace that Order with a Conditions of Practice Order.

Review at Conclusion of Sanction

A review of your fitness to practise will be undertaken towards the end of the period for which the Suspension Order has been imposed. The Council will write to you no later than 12 weeks before the expiry of the Order to invite you to submit any information or documentation which you would like to have considered as part of the review process. The review will consider the particular concerns which have been outlined above by the Fitness to Practise Committee, and will seek to ascertain what remedial steps you have taken during the period of your suspension.

Following the Council's review, the matter may be referred for review by the Fitness to Practise Committee. If the Committee reviews the Order and it is satisfied that your fitness to practise remains impaired, it may impose a further Order to commence upon expiry of the existing Order, or it may impose a Conditions of Practice Order to commence upon expiry of the existing Order, or it may vary the terms of the existing Order, or it may revoke the existing Order and impose a Removal Order.

EU Directive

EU Directive 2013 / 55 / EU requires regulatory bodies to provide notification to all EU counterparts regarding regulatory decisions about social work registrants. An alert containing this decision (i.e. Warning / Suspension Order / Conditions of Practise Order / Removal Order), as well as your name, date of birth, place of birth (if known) and registration number will therefore be sent out to all EU regulatory counterparts. No further details will be contained in the alert. More information about the IMI Alert system can be found on their website: http://ec.europa.eu/internal_market/imi-net/about/index_en.htm.

M. Stentaut

Clerk to the Fitness to Practise Committee

30 August 2017

Date