

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

Name: Lisa Marie Cullen

SCR No: 6001663

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **29 MARCH 2018**, made the following decision about your registration with the Northern Ireland Social Care Council:

The Committee found the facts proved;

The Committee found that your fitness to practise is impaired by reason of your CONVICTIONS;

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

Particulars of the Allegation:

That, being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted of the following criminal offences:

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| 1. | Charge 1: Defendant on 18th November 2016 unlawfully assaulted [Ms A], contrary to section 42 of the Offences Against the Person Act 1861. |
| 2. | Charge 2: Defendant on a date unknown between the 30th day of April 2013 and the 1st day of September 2013, in the County Court Division of Craigavon, being an officer on the staff of or otherwise employed in a nursing home, namely Kilwee Care Home, ill-treated [Service User A], a patient for the time being receiving treatment for mental disorder as an in-patient in the said nursing home, contrary to Article 121(1) of the Mental Health (Northern Ireland) Order 1986. |
| 3. | Charge 6: Defendant on a date unknown between the 30th day of April 2013 and the 31st day of August 2013, in the County Court Division of Craigavon, being an officer on the staff of or otherwise employed in a nursing home, namely Kilwee Care Home, ill-treated [Service User B], a patient for the time being receiving treatment for mental disorder as an in-patient in the said nursing home, contrary to Article 121(1) of the Mental Health (Northern Ireland) Order 1986. |
| 4. | Charge 11: Defendant on a date unknown between the 31st day of December 2012 and the 31st day of December 2013, in the County Court Division of Craigavon, being an officer on the staff of or otherwise employed in a nursing home, namely Kilwee Care Home, ill-treated [Service User C], a patient for the time being receiving treatment for mental disorder as an in-patient in the said nursing home, contrary to Article |

121(1) of the Mental Health (Northern Ireland) Order 1986.
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and, in light of the above, your fitness to practise is impaired by reason of your convictions.

Procedure:

The hearing was held under the fitness to practise procedure.

Preliminary Matters

The Registrant was neither present nor represented. The Council was represented by Mr Conrad Dixon, Solicitor.

Service

In a Notice of Hearing dated 20 February 2018, 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 21 February 2018.

The Committee, in all the circumstances of the case, is satisfied that the Notice of Hearing has been served in accordance with Rule 3 of the NISCC Fitness to Practise Rules 2016 ('the Rules'), and the requirements of Paragraph 5 of Schedule 2 of the Rules.

Proceeding in the Absence of the Registrant

Mr Dixon made an application to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules, and that the Committee should hear and determine the case in her absence. Mr Dixon advised the Committee that the Registrant had not responded in any way to the Notice of Hearing, nor the Disclosure bundle of evidence and Hearing bundle. He invited the Committee to conclude that the Registrant's absence was voluntary, and to proceed with the hearing having regard to the public interest in this matter.

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. The Committee reminded itself that fairness to the Registrant should be a prime consideration.

The Committee bore in mind the public interest in the expeditious disposal of the hearing, and that there was no evidence to indicate that the Registrant would be more likely to attend a future hearing if the matter was adjourned. Therefore, after careful consideration of all the issues, the Committee decided to exercise its discretion to proceed in the absence of the Registrant, taking into account the nature of the allegations and striking a careful balance between fairness to the Registrant and the wider public interest. The Committee, in all the circumstances, considers that the Registrant has voluntarily absented herself from today's hearing. However, the Committee reminded itself that it must avoid reaching any improper conclusion about the Registrant's absence, nor treat the absence as an admission of guilt.

Application to Admit Hearing Bundle and Documents

The Committee heard an application from Mr Dixon under Paragraph 12 of Schedule 2 of the Rules to admit a bundle of papers into evidence. He advised the Committee that this bundle of papers had been served on the Registrant by way of Special Delivery on 20 February 2018, with service signed for on 21 February 2018. In addition, Mr Dixon applied for the admission of an Employer Referral Form dated 13 January 2014. He advised the Committee that this document had been served on the Registrant and that it was, therefore, not unfair that the Committee has sight of this document, and that it was relevant to the proceedings.

On receiving advice from the Legal Adviser, and there being no objection from the Registrant, the Committee was satisfied that the bundle and the Employer Referral Form met with the requirements of fairness and relevance and should be admitted.

Background

Mr Dixon told the Committee that the Registrant is registered at Part 2 of the Register as a social care worker. He advised that the allegations against her arise out of three convictions relating to her work as a social care worker and one conviction relating to an assault on an individual. As regards the convictions in relation to the Registrant's work as a social care worker, these relate to her employment at Kilwee Care Home ('the Home'), a 44 bedded private nursing home, which provides both nursing and dementia care for residents, the majority of whom have a diagnosis of dementia.

Evidence

Mr Dixon referred the Committee to the four Certificates of Conviction in the bundle of papers. In relation to the first Particular, he advised that the conviction for unlawful assault took place on 18 November 2016 when the Registrant assaulted a witness who was present in Court. This person has been described as a whistleblower in relation to the matters for which the Registrant was convicted as regards the ill-treatment of residents at the Home. He advised the Committee that this particular witness had been assaulted by the Registrant on leaving Court and that the Registrant subsequently pleaded guilty to this charge on 10 February 2017. She was eventually sentenced to a period of two months' imprisonment in relation to this offence.

Mr Dixon referred the Committee to the allegations as set out at Particulars 2, 3 and 4. He brought the Committee through the three Certificates of Conviction relating to ill-treatment by the Registrant of three service users, at the Home, on various dates between December 2012 and December 2013. He referred the Committee to the Registrant's convictions for these offences, being two months' imprisonment to run concurrently, and that it was ordered that she be included on the Adult barred list as required under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

Mr Dixon referred the Committee to the newspaper extract in the bundle of papers and the Employer Referral Form. He confirmed that these documents provided context for the Committee in relation to the background of the allegations.

He applied under Paragraph 12 (5) of Schedule 2 of the Rules for the findings of fact as set out in the Certificates of Conviction to constitute conclusive proof of the convictions therein.

Findings of Fact

The Committee reminded itself that the burden is 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. 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.

The Committee heard the submissions from Mr Dixon on behalf of the Council, and had careful regard to all of the documentary evidence in this case. The Committee accepted the advice from the Legal Adviser. The Committee finds, on the balance of probabilities, that the facts contained within the Particulars have been established. Taking into account Paragraph 12 (5) of Schedule 2 of the Rules, the Committee was satisfied that the Certificates of Conviction proved the facts therein. The Committee finds that in accordance with Particular 1, the Registrant unlawfully assaulted [Ms A] contrary to section 42 of the Offences Against the Person Act 1861. In relation to Particulars 2, 3 and 4, the Committee finds that the Registrant ill-treated [Service Users A, B and C] who were receiving treatment for mental disorder as in-patients at the Home.

Accordingly, the Committee finds the facts proved.

Fitness to Practise

Mr Dixon addressed the Committee in relation to the allegation that the Registrant's fitness to practise is impaired because of her convictions for criminal offences. He submitted that the Registrant's convictions call into question her ability to work in social care services and evidenced behaviour well below the standard reasonably expected of a registered social care worker. He referred the Committee to the Standards of Conduct and Practice for Social Care Workers, which he submitted the Registrant's criminal convictions breach, as follows: 1 – 1.1, 1.2 and 1.9; and 5 – 5.1, 5.7 and 5.8. He submitted that the Registrant's convictions were of a serious nature, three of which relate directly to her employment as a social care worker. He said that the Registrant, whilst working at the Home, was in a position of trust, being responsible for the care of vulnerable residents and that she abused her position and this trust. He said that the Registrant has not demonstrated any insight into her behaviour and its effects, nor has she shown any evidence of remorse. Accordingly, he submitted that there remains a risk of her repeating this behaviour. He said the media coverage of the Registrant's conviction for the ill-treatment of residents and her subsequent assault on a witness at the hearing brings the events into the public domain and, therefore, the public interest is high. He suggested that a Registrant who is capable of these crimes is not fit to practise as a social care worker or to remain registered.

The Committee considered the submissions of Mr Dixon, on behalf of the Council, and had regard to all of the evidence in this case. The Committee accepted the advice of the Legal Adviser.

The Committee considered whether the Registrant's fitness to practise is impaired by reason of her convictions as set out in the Particulars of the Allegation.

The Committee had regard to the Standards of Conduct and Practice for Social Care Workers and the Council guidance entitled 'Making a Determination of Impaired Fitness to Practise: Guidance for Committees on Remediation'. The Committee is satisfied that the Registrant's actions were in breach of the following Standards of Conduct:

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

- 1.1 Treating each person as an individual;
- 1.2 Treating people with consideration, respect and compassion;
- 1.8 Respecting and maintaining the dignity and privacy of service users.

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

- 5.1 Abuse, neglect or harm service users, carers or colleagues;
- 5.7 Put yourself or other people at unnecessary risk;
- 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, in considering the issue of impairment of fitness to practise, took account of Paragraph 24 (3) of Schedule 2 of the Rules which states 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 noted the Registrant's three convictions of ill-treatment of three different service users which took place during a period from 31 December 2012 to 31 December 2013. In addition, the Committee noted the Registrant's conviction for unlawful assault against [Ms A]. The Committee concluded that the convictions are very serious, three of which relate to the Registrant's employment and involve placing vulnerable residents at risk of harm. The Committee has no information or evidence from the Registrant as regards any actions she has taken to remediate her behaviour, nor has the Committee any evidence of insight on her part. The Committee notes the Registrant pleaded guilty to the Charge at Particular 1 and pleaded not guilty to the Charges set out at Particulars 2, 3 and 4. The seriousness of the criminal convictions resulted in a custodial sentence for the

Registrant and, in all the circumstances, the Committee considers there to be a continued risk of repetition, by the Registrant, of her behaviour.

The Committee concluded that the Registrant's convictions for ill-treatment of service users and assault bring the social care profession into disrepute and that the public would find it totally unacceptable that a Registrant convicted in these circumstances remained on the Register without restriction. The Committee notes that the Registrant's conviction for unlawful assault on [Ms A] took place approximately three years after the incidents of ill-treatment of vulnerable service users.

In all the circumstances, the Committee concluded that a finding of impaired fitness to practise is, therefore, necessary for the maintenance of public confidence in the social care profession and the Council as its regulator, and public confidence in the social care profession would be undermined if a finding of impaired fitness to practise was not made.

Therefore, the Committee concluded that the Registrant's fitness to practise is currently impaired by reason of her criminal convictions.

Sanction

In reaching its decision on sanction, the Committee considered the submissions of Mr Dixon, on behalf of the Council, and had regard to all of the evidence in this case.

It accepted the advice of the Legal Adviser.

The Committee has applied the principles of fairness, reasonableness and proportionality, weighing the public interest with the Registrant's interests, and taking into account any aggravating and mitigating factors in the case. The public interest 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 Council's Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance'), bearing in mind that the decision on sanction is one for its own independent judgment.

The Committee recognises that the purpose of sanction is not to be punitive, although a sanction may have a punitive effect. The Committee considered the aggravating and mitigating factors in this case.

The Committee considers the aggravating factors to be:

- The Registrant's criminal convictions relate to three counts of ill-treatment of vulnerable service users during a period from 31 December 2012 through to 31 December 2013. The further criminal conviction relates to the unlawful assault of [Ms A] which took place on 18 November 2016, a considerable period after the timeframe involved in the ill-treatment convictions.

- The Registrant's ill-treatment of vulnerable service users at the Home constituted a breach of trust as regards her provision of care, and the Committee particularly notes that this was not a one-off type of incident.
- The Registrant has not engaged with her regulator or the Committee, and it has no evidence as regards her level of insight into the effect of her behaviour on the three service users and their families, and [Ms A].
- The Committee has no evidence as regards the Registrant's practice prior to these events, nor has it any details as regards her character.
- In relation to Particular 1 and the criminal conviction for assault on [Ms A], the Committee notes the deliberate nature of the Registrant's behaviour.
- The Committee considers that the Registrant's criminal convictions put service users and members of the public at risk of harm, and notes that the Particulars at 2, 3 and 4 occurred within the work place.
- There is no evidence of any remediation by the Registrant, nor has she provided any personal mitigation or testimonials.

The Committee considered the mitigating factor to be:

- There were no previous concerns raised with the Council.

Having balanced the aggravating and mitigating factors, the Committee proceeded to consider which sanction to apply in this case.

Warning – the Committee considered the issue of a Warning in this case. It bore in mind that the imposition of a Warning for a period of time would not protect the public from the risk of repetition and consequent risk of serious harm to service users or colleagues. The Committee considers that the Registrant's criminal convictions demonstrate a serious disregard for the Standards of Conduct and Practice for Social Care Workers. The Registrant's impairment of fitness to practise is not at the lower end of the spectrum, nor are the circumstances such that the Committee would be confident that this sanction would provide adequate public protection as far as the Registrant's suitability is concerned, bearing in mind that a Warning would entitle the Registrant to work as a social care worker.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Registrant has demonstrated no insight into her actions, nor expressed her desire to remediate her criminal behaviour. The Committee notes that as a result of her criminal convictions for ill-treatment of service users, the Registrant was included on the Adult barred list as required under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007. The Committee, therefore, concludes that a Conditions of Practice Order would not be sufficient to meet the public interest in this matter, given the seriousness of the Registrant's departure from the standards expected of a registered social care worker. In these circumstances, the Committee could not formulate workable, enforceable or verifiable conditions which would address the Registrant's criminal behaviour and adequately protect the public.

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 and related to the Registrant's breaching of fundamental tenets of the social care profession. The Standards of Conduct and Practice for Social Care Workers requires a social care worker to treat each person as an individual with consideration, respect and compassion, along with respecting and maintaining their dignity. In particular, the Registrant in this matter was found guilty of ill-treating vulnerable service users and placing them at unnecessary risk of harm. The Committee has no evidence before it of remorse, remediation or insight from the Registrant, nor has it any information to indicate that the Registrant is unlikely to repeat her criminal behaviour in the future. The Committee considered the public interest in this matter. The Committee considers that the public would perceive the Registrant's criminal behaviour as falling short of what would be expected of a registered social care worker. In all of the circumstances, the Committee concludes that a Suspension Order would not be sufficient to mark the seriousness and unacceptability of the Registrant's criminal convictions.

Removal – the Committee then considered a Removal Order. In considering this, the Committee took into account the Guidance at 4.26 – 4.28. It concludes that, given the seriousness of the Registrant's criminal convictions and her lack of insight into and remediation of her failings, a Removal Order is the only sanction sufficient to protect the public and maintain public confidence in the social care profession and the Council as its regulator. The Committee considers the Registrant's actions to constitute a serious departure from the professional standards as set out in the Standards of Conduct and Practice for Social Care Workers and were deplorable in nature. The Registrant's criminal behaviour involving both ill-treatment of vulnerable services and an assault on a co-worker constituted an abuse of her position of trust as a social care worker and brought the social care profession into disrepute. The Registrant has shown no insight or remorse, has taken no remedial action and has failed to engage with the Council in relation to this matter. In all of the circumstances, the Committee concludes that a Removal Order is the only sanction available to it to protect the public and to meet the public interest in upholding confidence in the social care profession and its regulator, by marking the seriousness and unacceptability of the Registrant's actions. The Committee considers that public confidence in the social care profession, and the Council as its regulator, would be undermined if a social care worker who was criminally convicted of ill-treatment of service users and unlawful assault, and having failed to show insight or remediation, was allowed to remain on the Register. The Committee considered a Removal Order to be a suitable, appropriate and proportionate sanction which will be imposed on the Registrant's registration with immediate effect.

The Interim Suspension Order currently imposed on the Registrant's registration is revoked with immediate effect.

Legal Advice Given

Service

As you have heard from Mr Dixon, the Notice was sent by Special Delivery to this Registrant on 20th of February 2018, along with a bundle of documents, and service was accepted on the 21st, the day after, and indeed I have had an opportunity to look at the documentation in support of that and can confirm it is in order. Paragraph 5 of Schedule 2 of the Fitness to Practise Rules governs the requirement that a hearing should not be fixed for hearing earlier than 28 days after the posting of the Notice, except with the agreement of the Registrant, and in this case as you have heard the Notice complies with that requirement. It has been sent by Special Delivery and, in fact, in any event, the acceptance of service is irrelevant because as long as the Notice has been sent properly in accordance with the Rules, the Rules allow service to be accepted as the day after posting. I have examined the documentation and I can advise you that you would be safe to accept the Notice has been properly adhered to.

Proceeding in the Absence of the Registrant

In view of the Registrant's absence today you must now consider the issue of proceeding in her absence. Application has been made under Paragraph 15 of Schedule 2 of the Rules for the matter to proceed in her absence. And where you have been satisfied, as is the case, that the Notice of Hearing has been duly served on the Registrant you have a number of options; you may either hear and determine the case in the absence of the Registrant, or adjourn and give directions, and this is a matter of discretion for you. I would refer you to the case of *R v Jones [2003]*, with which I am sure you are familiar, which is a starting point when considering exercising your discretion. This is a criminal case but it has been approved as applicable in regulatory matters. In that case Lord Bingham stated that:

"The discretion to commence a trial in the absence of a defendant should be exercised with the utmost care and caution."

A more recent case of the *General Medical Council v Adeogba* deals with this particular aspect and, in particular, what you should take into account when exercising your discretion. Again this case indicates that when exercising your discretion in terms of the Registrant's absence, all circumstances are relevant to you but foremost in your mind must be fairness to the Registrant and that is a prime consideration. *Jones* moved towards consideration of seriousness of offence but this most recent case suggests that when you are considering exercising your discretion, the most paramount consideration must indeed be fairness to the Registrant.

Generally, in relation to this matter, you have heard from Mr Dixon who has indicated there has been no contact from the Registrant. Therefore, at this stage you must consider whether an adjournment may result in this Registrant attending at a later stage, you must look at the time involved in such an adjournment and the extent of the disadvantage to this Registrant in not being able to present her account of events. You should look at the nature of the allegations, the general public interest in this matter being dealt with and the interests of any victims. I would remind you this Registrant is entitled to a fair hearing, to attend, be represented, test the Council's case and present any evidence on her own behalf. However, if this Registrant has knowledge or the means of knowledge of today's proceedings, you may conclude that she has voluntarily absented herself and

proceed in her absence. Again, in considering that, you must look at the Notice that has been sent to her.

The principle of fairness in relation to the Registrant, as I referred to earlier, applies equally to the presentation of the Council's case. Therefore, in exercising your discretion, you must balance on the one hand the rights of the Registrant and fairness to her, against the wider public interest in the expeditious disposal of this matter. If you consider the hearing should proceed in her absence you must avoid reaching any improper conclusions about this absence and must not treat it as an admission in any way.

Admission of Hearing Bundle

Yes, I can confirm that I have had sight of both the Hearing bundle and the Disclosure bundle, as referred to by Mr Dixon. As has been indicated earlier, both of those bundles were served on the Registrant on 20 February 2018, and you have heard previously that there is a signed signature in relation to those documents. So this is an application by the Council, and as Mr Dixon has indicated, Paragraph 12 of Schedule 2 of the 2016 Rules allows a Committee to admit evidence, either oral or documentary, or other, whether or not it would be admissible in a Court of Law, subject to the requirements of relevance and fairness, and those are the two considerations for you. To assist you, relevance means having some reasonable connection to the evidence in the case and having a value or a tendency to prove a matter of significance to the case. When considering fairness you should direct yourselves to the issues of equality, reasonableness, public interest and the interests of justice.

I can advise you that the documents, both in the bundle and the separate document, the Referral Form, are relevant to the Charges before you and, as I have indicated, have been served on the Registrant, and there has been no objection to any of those documents. Therefore, I would advise you there does not appear to be any unfairness to the Registrant in admitting this bundle. Therefore, at this stage it is for your decision in terms of acceptance or otherwise.

I would just remind you that some of the documents may contain hearsay evidence and in considering this you must take account of the fact that maybe the person who is the source of the information within the documents is not before you. Therefore, you and any other parties have not had the opportunity to question or assess credibility, and again it must be relevant to what weight you give that document in your consideration.

Findings of Fact

At this stage you, as a Committee, are deciding whether or not the facts of the allegations, as set out in the Particulars before you in the Notice are proved. And as you are aware you must apply the standard of proof applicable as in civil proceedings which is on the balance of probabilities, and case law has made this a single and unvarying standard. It means that a fact will be found proved if you consider it more likely than not to have happened. The Council has brought these proceedings and it is up to it to prove its case. Therefore, you must look with the greatest of care at the accusations which potentially give rise to serious consequences for this Registrant, but in determining whether or not they occurred the standard is the balance of probabilities.

I would remind you not to draw any adverse inferences or consequences of the Registrant not attending today and giving evidence. Therefore, you must look very carefully at the Particulars, weighing and balancing all the evidence presented. Mr Dixon has rightly referred you to Schedule 2, Paragraph 12 (5) of the 2016 Rules, which indicates that the findings of fact and certificates of any Criminal Court shall be conclusive proof of the facts or the convictions so found. So you must bear that in mind when you are considering firstly, the Certificates of Conviction, secondly a different standard relates to the Referral Form, and the newspaper article. You will be aware that those documents contain hearsay evidence and I have already referred you to the necessity of being careful when you are considering that type of evidence in terms of your assessment of it and the weight that you give it.

These are serious allegations and they require careful analysis of all the evidence and you must take into account any matters that require the application of good sense. In the cases of *Re P* and *Re D [2008]*, as decided by the House of Lords, it is made clear that whilst the seriousness of an allegation or its consequences may necessitate more careful consideration of the evidence, this does not require a different standard of proof or an especially cogent type of evidence.

Fitness to Practise

In addition to the detailed submissions from Mr Dixon, as well as the specific references to the Standards of Conduct and Practice for Social Care Workers, you as a Committee know that in determining whether the fitness to practise is impaired you should adopt a sequential approach, and I would refer you to the case of *GMC v Cohen* in support of this. In this matter, you have decided that the Particulars in the Allegation have been found proved. These Particulars against the Registrant, Ms Cullen, arise out of four criminal convictions, one in relation to the first Particular as regards an unlawful assault against an individual; and Particulars 2, 3 and 4 relate to ill-treatment of three service users at Kilwee Care Home where the service users were receiving treatment, and they have been referred to as vulnerable service users, and you will be aware of your own findings in relation to that.

In accordance with Rule 4 of the 2016 Rules, a Registrant's fitness to practise may be impaired by one or more specific reasons and the Council today is pleading before you that the specific reason it is relying upon is those four Certificates of Conviction and you are aware they are a matter of record. Therefore, you are being asked to determine whether the Registrant's fitness to practise is impaired because of those convictions.

Paragraph 24 of Schedule 2 of the Rules states that in deciding on the issue of impairment of fitness to practise there are a number of issues you should have regard to:

Firstly, you should have regard to your being satisfied as to the reasons for the alleged impaired fitness to practise, and I would suggest that when you are considering this first aspect you should direct yourselves to the four Certificates of Conviction, along with the Employer Referral Form, and also the newspaper extract.

You should consider the Standards of Conduct of Practice, and these have been referred to by Mr Dixon.

Thirdly, you should consider whether the impairment is capable of remediation and whether you have any evidence of remediation. I would refer you in this regard to the Northern Ireland Social Care Council Guidance as regards fitness to practise, impairment and remediation and it would not be my intention to highlight contents of this for you as you have it available for your consideration.

Then you should go on to consider the risk of repetition and, lastly, you should consider the public interest.

In the case of *GMC v Cohen*, the High Court directed you to consider firstly the current competence and behaviour of the Registrant, and this is referred to as the personal component, and then take account of the need to protect service users, members of the public, uphold proper standards of behaviour and maintain public confidence in the social care profession; this is sometimes referred to as the public component of the test.

You should also consider any evidence you have on the papers as to the degree of harm caused by the Registrant and her culpability in that harm and I would remind you that you have, in relation to Particular 1, an issue of unlawful assault against a particular individual, who has been referred to as a "whistleblower", and in relation to Particulars 2, 3 and 4 you have three separate service users. Again, I would ask you to pay particular attention to all the documentary evidence before you.

In relation to impairment, and it is set out by the Court of Appeal in case of *GMC v Meadow*, you are exercising your professional judgment and there is no applicable burden or standard of proof. I would refer you to the case of *CHRE v NMC and Grant*, and in particular the findings of Mr Justice Cox at paragraphs 74 and 75 where she indicates:

"In determining whether a Registrant's fitness to practise is impaired ..." although that refers specifically to misconduct and this is a conviction matter, this case is still of assistance to you.

"... you should consider not only whether the Registrant continues to present a risk to members of the public in his or her role ..." and that would be a current role

"... but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances."

You are an experienced Committee. You will be aware of the findings of Dame Janet Smith, as set out in the Fifth Shipman Report, where she refers to the potential causes of impairment as arising when a Registrant presents a risk to service users / patients, has brought her profession into disrepute, has breached one of the fundamental tenets of the profession, or has acted in such a way as her integrity can no longer be relied upon. And this last ground would not be relevant to you, it was more relevant to dishonesty matters. She also noted that present impairment of fitness to practise can be founded on past matters and by reference to how a Registrant is likely to behave in the future. Impaired fitness to practise is defined as: circumstances which call into question the suitability of a Registrant to remain on the Register without restriction or be registered at all.

I would ask you to look at the Certificates of Conviction when you are considering this.

In addition, you must consider any evidence you have before you showing any degree of insight the Registrant

has in relation to her failings or any steps in relation to remediation. Unfortunately, in this particular instance since the instigation of proceedings before you today, there would appear to be no engagement by the Registrant and you have no information in terms of insight or remediation.

Sanction

Paragraph 26 of Schedule 2 of the Northern Ireland Social Care Council Fitness to Practise Rules 2016 sets out the available sanctions open to you as a Committee at this stage and you have already referred to these at the outset at this stage of the proceedings, and I won't remind you of them again, you will be very much aware of them, you are an experienced Committee.

However, in considering and determining the appropriate sanction you are obliged to take into account the following factors:

Firstly, the seriousness of the Registrant's impaired fitness to practise;

secondly, the degree to which this Registrant has fallen short of any expected standard;

thirdly, the protection of the public;

fourthly, the public interest in maintaining confidence in the social care services; and

lastly, and very importantly, the issue of proportionality, which means weighing on the one part the Registrant's interests against on the other part the interests of the public.

I would also, as indicated by Mr Dixon, refer you to the Northern Ireland Social Care Council Indicative Sanctions Guidance 2017 and remind you that the purpose of sanction is not punitive. Paragraphs 2.5, 2.6 and 2.7 of the Guidance deal with the considerations of fairness and proportionality. You should consider the question of sanction in ascending order of severity beginning your deliberations by considering a Warning first. The primary purpose of sanctions is the protection of the public and also maintaining the reputation of the profession. And I would refer you to Paragraphs 2.3 and 2.4 of the Guidance and this directs that the public should have confidence that the Council will uphold proper standards of behaviour and conduct in regulating social care workers.

Public interest requires that both the public and social care users are protected from unsafe practice and that confidence in the social care workforce be maintained. And in serving that public interest, the purpose of sanctions is to ensure that the social care worker does not have an opportunity to repeat their actions and also maintain the reputation of the profession. Paragraphs 2.2 and 2.5 of the Guidance remind you that any limitation of the right to practise one's profession should be no more than is necessary in the circumstances and, as always, you have a duty to act fairly.

In this particular instance, and in relation to consideration of mitigating factors, unfortunately you have not heard from the Registrant, you have no evidence of any remediation and, as Mr Dixon has indicated, you have no indication with regards to insight or testimonials, nothing of that nature, nor do you have any information as to the effect of the sanction on this Registrant. The case of *Bolton v The Law Society* is of assistance to you in this regard and in that

matter the judge indicated that the fortunes of an individual member of the profession should be taken into account but at the same time the reputation of the profession is more important than those fortunes of any individual member.

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.

P. P. M. Stewart
Committee Manager

30 March 2018
Date