

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

SUSPENSION ORDER REVIEW HEARING

Name: Margaret Mary McCann

SCR No: 6011045

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **18 May 2018**, made the following decision about your registration with the Northern Ireland Social Care Council:

The Committee found that your fitness to practise remains impaired;

The Committee decided to revoke the Suspension Order and impose a Removal Order on your registration.

Preliminary Matters

The Registrant was neither present nor represented. The Council was represented by Ms Rachel Kelso, Solicitor, Directorate of Legal Services, BSO.

Service

In a Notice of Review Hearing dated 12 April 2018, sent by Special Delivery 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. A "while you were out card" was left at this address, however, the postal package was not subsequently collected from Royal Mail.

The Committee is satisfied that the Notice of Review Hearing has been served in accordance with Rule 3 (2) of the NISCC Fitness to Practise Rules 2016 ('the Rules'), and the requirements of Paragraph 33 (5) of Schedule 2 of the Rules.

Proceeding in the Absence of the Registrant

Ms Kelso made an application to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules. Ms Kelso advised the Committee that in accordance with Paragraph 33 of Schedule 2 of the Rules, the Registrant was advised by way of letter dated 08 February 2018, that a review of her Suspension Order was being undertaken. There was no response from the Registrant to the requests in this correspondence. Ms Kelso reminded the Committee that the allegations found proved against the Registrant are serious and, in addition, the Registrant has not engaged with the Council in any of the hearings to date. She advised that there has been no

request for an adjournment of this review and, in any event, an adjournment would serve no useful purpose as there is nothing to suggest that the Registrant would attend at a later date. Ms Kelso submitted that it is in the public interest for the matter to proceed without delay.

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 heard and accepted the advice of the Legal Adviser.

The Committee noted that the Registrant did not attend the hearings in April / August 2016 and July 2017. The Committee also took into account that there is no suggestion from the Registrant that she seeks an adjournment or that she would be more likely to attend if the hearing was adjourned to another date. The Committee therefore determined that an adjournment would serve no useful purpose. The Committee has also taken into account public protection and the public interest in ensuring that the current Suspension Order is reviewed before it expires. The Committee, in all the circumstances, is satisfied that it is appropriate to proceed with this hearing in the absence of the Registrant.

Decision of Fitness to Practise Committee – 23 August 2016 & 25 July 2017

Following a hearing on 23 August 2016, at which the Registrant was neither present nor represented, a Fitness to Practise Committee found the following allegations against her proved:

1. On 17 February 2015, you used foul and derogatory language to describe Service User 2 whilst in their presence;
2. On 17 February 2015, you used foul and inappropriate language towards Service User 2;
3. On 17 February 2015, you hit Service User 2's hand with the back of your hand;
4. On 17 February 2015, you pushed Service User 2's hand with the back of your hand.

That Committee considered that the Registrant's actions amounted to misconduct and, further, that she was currently impaired by reason of misconduct. In its impairment decision, that Committee considered that the Registrant had spoken to Service User 2 in a disrespectful and inappropriate manner and that she had smacked Service User 2 with some force. That Committee also observed that the Registrant's actions had taken place against a backdrop of an otherwise unblemished working career. That Committee considered that the conduct which led to the allegation against the Registrant could be remedied and that the Registrant should be given an opportunity to do so. That Committee decided that it was proportionate to impose a 12 month Suspension Order as a sanction in this case.

On 25 July 2017, a first review of the Suspension Order took place. On this occasion, there was no new evidence presented and the Registrant failed to attend the hearing or respond to correspondence from NISCC. That Committee, therefore, concluded that the Registrant continued to pose a risk to the public and that public confidence in NISCC would be undermined if a finding of current impairment was not made. Accordingly, the Registrant's fitness to practise was found to remain impaired and a further Suspension Order for a period of nine

months was imposed, commencing upon the expiry of the existing Order. In addition, the Committee considered that a future reviewing Committee would be assisted by the following:

- Written evidence from the Registrant to demonstrate insight into her unacceptable conduct and an acceptance of her failings which were found proved against her;
- Written evidence from the Registrant to demonstrate a genuine expression of remorse;
- Relevant character references / testimonials. These should be related to the Registrant's employment in any field, and character in general. The author(s) should confirm that they know the purpose for which a character reference / testimonial is being provided.

Fitness to Practise

This is the second review of a Suspension Order made against the Registrant.

The Committee heard a submission from Ms Kelso on the issue of impairment. She submitted that the Registrant's fitness to practise remains impaired, and referred the Committee to the lack of engagement by the Registrant as to today's review hearing and her failure to provide the Committee with any evidence that her previous conduct would not be repeated. In light of this, Ms Kelso submitted that there is a lack of insight on the part of the Registrant, and that there is no evidence to show her willingness to take steps to remedy her misconduct. She reminded the Committee that the Registrant had not responded to the request from NISCC as regards the recommendations set out by the Committee during the first review of the Suspension Order.

The Committee accepted the advice of the Legal Adviser.

The Committee first considered whether the Registrant's fitness to practise remains impaired. The Committee reminded itself that impaired fitness to practise describes those circumstances which call into question the suitability of a Registrant to remain on the Register without restriction or to be registered at all. In considering the matter, the Committee carried out a comprehensive review of the Suspension Order in light of the submissions which it heard and the hearing bundle provided for the review hearing. The Committee exercised its own judgement in reaching a decision.

In considering whether the Registrant's fitness to practise remains impaired, the Committee reminded itself of the requirements set out at Paragraph 33 of Schedule 2 of the Rules. In considering this, the Committee is satisfied as to the reason for the alleged impairment of fitness to practise, as set out in the decision of the original Committee on 23 August 2016. The Committee noted the previous finding that the misconduct was serious and that the Registrant's failings related to dealing with service users using foul and inappropriate language, along with pushing and hitting a service user. Taking into account the Standards of Conduct and Practice for Social Care Workers as set out in the previous decision, the Committee considered the Registrant remains in breach of the same Standards.

The Committee then considered whether the impairment is capable of remediation and concluded that it was. However, there is no evidence before the Committee that the Registrant has taken any steps to remediate the

impairment since the original Order was made and since the subsequent review. The Registrant has not demonstrated any insight into her failings, nor has she presented any evidence of her willingness to take steps to remedy her misconduct.

Therefore, in view of the Registrant's lack of insight, lack of remediation and lack of engagement, the Committee could not be satisfied that there is no risk of repetition of the Registrant's misconduct in the future. The Committee took into account the public interest when deciding whether the Registrant's fitness to practise remains impaired. The Committee accepted the need for NISCC to uphold proper professional standards and public confidence in the social care profession. The Committee determined that public confidence would be undermined if a finding of impairment was not made in circumstances where a Registrant had been suspended but failed to engage with NISCC, demonstrate insight or take any steps to remediate during the course of her suspension.

For these reasons, the Committee finds the Registrant's fitness to practise remains impaired.

Sanction

In reaching its decision on sanction, the Committee considered the submissions of Ms Kelso and heard and accepted the advice of the Legal Adviser. The Committee took into consideration the NISCC Indicative Sanctions Guidance (June 2017), bearing in mind that the decision on sanction is one for the Committee's own independent judgement.

The Committee was aware of its powers as set out at Paragraph 33 (8) of Schedule 2 of the Rules. The Committee, in addition to the powers set out in this Paragraph, may allow the Suspension Order to run its course and expire on 22 May 2018. The Committee took into account the need to act proportionately and that the purpose of sanctions is not punitive.

The Committee noted the findings of the previous Committees and, in particular, the recommendations set out by the Committee on 25 July 2017.

Conditions of Practice Order – the Committee first considered whether to impose a Conditions of Practice Order to commence on the expiry of the current Suspension Order on 22 May 2018. The Committee determined that it would not be appropriate to impose a Conditions of Practice Order in all the circumstances. The Committee has no evidence to suggest that the Registrant is currently working in the social care profession, nor that she would cooperate with conditions of practice or respond positively to re-training. The Registrant did not attend her initial hearing, was not present at the first review and did not attend today. In addition, the Registrant has not provided any information or documentation as considered relevant by the reviewing Committee on 25 July 2017. Therefore, the Committee determined that no practicable or workable conditions could be formulated to adequately address the Registrant's failings. In addition, the Committee does not consider a Conditions of Practice Order sufficient to protect the public from the risk of repetition, nor would it meet the public interest in upholding proper professional standards and in maintaining public confidence in NISCC.

Suspension – the Committee then went on to consider whether it would be appropriate to impose a further period of suspension. The Committee considered that the Registrant's misconduct and impairment was serious. The Committee considered the Registrant's misconduct had the potential to cause harm to vulnerable service users and that she has failed to provide evidence that her misconduct has been remedied and lessons have been learned. In all these circumstances, the Committee concluded that a further period of suspension would not resolve or remedy the Registrant's misconduct.

Removal – after careful deliberation, the Committee determined to revoke the Suspension Order and impose a Removal Order in accordance with Paragraph 33 (8) (g) of Schedule 2 of the Rules. The Committee concluded that removal from the Register is the only appropriate and proportionate sanction. The Committee concluded that the Registrant's misconduct, compounded by her lack of insight, is fundamentally incompatible with being a registered social care worker. There is no evidence of remorse and no evidence that the Registrant is likely to remediate her misconduct. Taking into account all of the evidence, the Committee is of the view that confidence in the social care profession would be undermined by allowing the Registrant to remain on the Register.

The Committee considered the potential devastating impact of a Removal Order on the Registrant, but concluded that public safety and the public interest outweighed the impact on the Registrant.

The Committee determined that a Removal Order was a suitable, appropriate and proportionate sanction, which will be imposed on the Registrant's registration with immediate effect.

Legal Advice Given

Service

Just to confirm that I have had an opportunity to consider the documentation which is available for the members of the Committee, if they wish to consider it, which confirms the information given to you by Ms Kelso that the Notice was served in accordance with Paragraph 33 (5) of Schedule 2, which specifies that a Notice of Review Hearing must be sent, and should not be fixed for hearing earlier than 28 days after the posting of the Notice except with the agreement of the Registrant, which is not applicable in this case. The Notice was sent, as you have heard, by Special Delivery on 12 April and you have been advised that a card was left for that to be collected. The Rules do allow for that to be treated as being served on the day after it was posted. Therefore, it would be my advice to you at this stage that the requirements of the Regulations have been met.

Proceeding in the Absence of the Registrant

This is a matter in which you have been satisfied that the Notice of Review Hearing in relation to this Registrant has been duly served, and you have a number of options in those circumstances. You are aware that you may either hear and determine this review hearing in the absence of the Registrant or adjourn and give directions and this is a matter of discretion for you. Ms Kelso has referred you to the Rules in relation to this and also referred you to the well-known case of R v Jones [2003], with which you are familiar, and which is a starting point when

considering proceeding in absence. This was a criminal case, but in that case Lord Bingham stated that 'the discretion to commence a trial in the absence of the Registrant should be exercised with the utmost care and caution'.

In the recent cases of Adeogba and Visvardis v GMC in 2016, Sir Brian Leveson warned that in respect of R v Jones, which was a criminal matter, it is important to acknowledge the difference between a criminal prosecution and regulatory matters. In criminal matters steps can be taken to enforce the attendance of a defendant and that is not open to you here. In addition, there is an obligation on the Registrant to engage with the Regulator which is specific to this jurisdiction.

In considering whether an adjournment may result in the Registrant attending the proceedings at a later date, I would ask you to look at the time involved in such an adjournment and the extent of disadvantage to her in not being able to present her response to the review today. As indicated by Ms Kelso, you must consider the seriousness of the matters before you, the general public interest in these matters being dealt with, along with the interests of any service users. Against this, this Registrant is entitled to a fair hearing, to attend, be represented, to test the Council's case and present evidence on her own behalf. However, if she has the knowledge, or the means of knowledge, of today's proceedings you may conclude that she has voluntarily absented herself and proceed in her absence. In considering this you should look at what information you have today that indicated the Registrant had sufficient information to appreciate the importance of attending today. And in addition to the documentation we have been referred to, I also would refer you again to the letter that was sent to her by registered post on 08 February 2018, which was not returned by the post office.

The principle of fairness in relation to proceeding in absence also applies to the presentation of the Council's case. Therefore in exercising your discretion I would ask you to balance the rights of the Registrant on the one hand against the wider public interest in the expeditious disposal of this matter. If you do consider that the matter should proceed in her absence I would ask you to avoid reaching any improper conclusion about this absence and not treat it as an admission in any way.

Fitness to Practise

I will proceed to give you advice in relation to the issue of impairment. Ms Kelso has very fairly set out the Council's position in relation to this review today, and she has referred you to the relevant paragraphs in the Rules. In relation to this matter, under Paragraph 33 of Schedule 2, the Council must invite a Registrant to provide documents or information towards the end of the suspension period as to whether their fitness to practise remains impaired, and this has been done, and you have this correspondence in your bundle and this was sent to the Registrant and you have those particular letters and I would ask you to pay attention to those. You have no response to that documentation from the Registrant. Paragraph 33 (3) (b) indicates that if there is a failure to comply with that reasonable request the matter is then referred to the Fitness to Practise Committee and that is part of the review consideration before you today. And you must then determine whether the Registrant's fitness to practise can be considered to no longer be impaired.

Therefore, the focus of your review today must be upon the current fitness to practise of this Registrant since the date of suspension. As a review Committee you will note the particular concerns set out by the original Committees in their decisions and seek to consider what steps, if any, and what evidence you have that this Registrant may have taken to allay those concerns during the period of her suspension. The original Committee did find the Registrant's fitness to practise was impaired but you must now ask yourselves does this Registrant's fitness to practise remain impaired?

Therefore, in conclusion, you must as always adopt a sequential approach. Firstly looking at any relevant facts before you today, then the question of impairment and then, if necessary, move to the consideration of sanction.

Sanction

As regards the issue of sanction, you have heard the detailed submission from Ms Kelso and I would ask you to take this into account. But I would remind you that your decision as a Committee on the issue of sanction is very much for your own deliberation and you will be exercising your professional judgement and common sense when considering all the factors in this matter.

Ms Kelso has referred you to Paragraph 33 (8) of the Rules and laid out the options you have at this stage. You will be aware that this Suspension Order expires on 22 May 2018 and you will have the options that Ms Kelso has very clearly referred you to. In your considerations I would recommend to you, and you are an experienced Committee, the Northern Ireland Social Care Council Indicative Sanctions Guidance. You will be aware and very conscious that the purpose of sanctions is not punitive and you must have at the forefront of your mind the protection of the public, the protection of service users, maintaining confidence in the profession and, importantly, upholding proper standards of conduct and behaviour. As always you must act proportionately balancing the interests of the Registrant on the one hand against your overarching duty to protect the public. Again I would ask you to look at the sanctions in ascending order of severity although you are confined in your considerations by Paragraph 33 (8). I would remind you that any limitation of the right to practise one's profession should be no more than is necessary in the circumstances and therefore you have a duty to act fairly. Unfortunately you have nothing before you from the Registrant to assist you in considering the impact of any continuing Order.

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

24 May 2018
Date