

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

Name: Marian Sorin Radu

SCR No: 6015550

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council ('the Council'), at its meeting on 31 July 2019, 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 conviction.

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

Particulars of the Allegation:

That on the 11th September 2018, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted of the following offence at Newtownards Magistrates' Court:

- | | |
|----|---|
| 1. | Defendant on the 27/03/2018, unlawfully and maliciously inflicted grievous bodily harm upon Injured Party
A contrary to Section 20 of the Offences Against the Person Act 1861 |
|----|---|

And your actions as set out above show that your fitness to practise is impaired by reason of your conviction.

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 Anthony Gilmore, Solicitor, Directorate of Legal Services.

Service

The Notice of Hearing and hearing bundle were sent via Special Delivery post to the Registrant's registered address on 17 June 2019. An email was sent to a known address for the Registrant on 17 June 2019. The Notice of Hearing and hearing bundle were attached to the email and were password protected. The Registrant was informed to contact the Committee Clerk to receive the password for the documents. The Registrant telephoned the Committee Clerk on 26 June 2019 and was given the password for the Notice of Hearing and hearing bundle. The package containing the Notice of Hearing and hearing bundle was returned to the Council on 09 July 2019 by Royal Mail as the package was 'not called for'. The package was re-issued to the Registrant's registered address via 1st class post on 11 July 2019. The Registrant had not contacted the Council to advise of any change to his registered address. The Committee was satisfied that service had been effected in accordance with Rule 3 and Paragraph 5 of Schedule 1 of the NISCC Fitness to Practise (Amendment) Rules 2019 ('the Rules').

Proceeding in the Absence of the Registrant

In deciding whether it was fair and appropriate to proceed in the absence of the Registrant, the Committee heard a submission from Mr Gilmore and heard and accepted the Legal Adviser's advice. The Registrant had not requested an adjournment of the proceedings to a later date in order to attend or be represented. The Committee determined that the Registrant had, by virtue of his failure to engage with the regulatory proceedings against him, waived his right to appear before the Committee. The Allegation concerned the Registrant's conviction for grievous bodily harm. The Committee considered that the Allegation was serious and that no useful purpose would be served by adjourning the proceedings to a later date. Moreover, the Committee was of the view that there was a strong public interest in determining the case in the Registrant's absence, and that his interests were outweighed by the public interest.

Application to Admit Hearing Bundle

Mr Gilmore confirmed to the Committee that the hearing bundle provided to it complied with the requirements of relevance and fairness, and that the Registrant had made no objections to its contents. The Committee accepted the bundle into evidence and marked it as Exhibit 1. The Committee also accepted into evidence Exhibit 2, which detailed efforts made by the Council to provide the Registrant with the Notice of Hearing and the hearing bundle.

Background

The Registrant is registered as a social care worker on Part 2 of the Register. He was added to the Register in June 2015. From February 2015, the Registrant was employed as a care assistant by Four Seasons Health Care at Edgewater Lodge, Donaghadee. The Council received a referral from the Registrant's employer on 10 May 2018. It was confirmed that the Registrant had been suspended from his employment after he had been

charged with a criminal offence, which the employer stated raised serious concerns regarding the Registrant's suitability for his role.

The Council conducted an investigation, which established that the Registrant was convicted on 11 September 2018 at the Magistrates' Court of an assault upon his girlfriend. The Certificate of Conviction was obtained by the Council. The certificate confirmed the date of conviction and further confirmed that the Registrant had assaulted his girlfriend, Injured Party A, Contrary to Section 20 of the Offences Against the Person Act 1861.

The Council also obtained a case summary in respect of the Registrant's conviction. It confirmed that Injured Party A was admitted to hospital on 16 April 2018 with a fracture to her back. Injured Party A reported to police that on 27 March 2018, during a verbal altercation, the Registrant had pushed her causing her to fall to the ground and thereby sustaining an injury to her back. Injured Party A stated that the pain caused, as a result of the assault upon her, did not improve and she attended the hospital following a visit to her home address by medical professionals. A statement from a medical practitioner based at the hospital where Injured Party A was treated confirmed that she was examined using a CT scan, which demonstrated that she 'had suffered a significant fracture of the T11 vertebrae'.

The Committee also received into the evidence a transcript of the interview conducted between the Registrant and police on 17 April 2018, following his arrest and detention for the assault upon Injured Party A. The Registrant described Injured Party A as his girlfriend and that she had a long history of mental health problems. He stated that on the date in question, Injured Party A had been shouting at him and he thought that she was going to destroy his property. He stated that he tried to speak with her but when this failed the Registrant pushed Injured Party A out of his room, causing her to fall on the carpeted hallway. The Registrant suggested that Injured Party A declined his offer to summon medical attention on the date in question, and that her injury may have been the result of Injured Party A's pre-existing back condition.

In essence, the Registrant made the case that he used minimum force and was acting reasonably in order to remove Injured Party A from his property and to stop her causing damage. The Committee noted that the case summary contained a reference to police speaking to a medical professional, who confirmed that Injured Party A's pre-existing back condition would not have contributed to the injury sustained by Injured Party A, and which resulted in her hospital admission.

The Registrant confirmed in a telephone call with the Council on 15 August 2018 the version of events which he had given to police during his interview. The Registrant stated that he had acted in self-defence, and that during the course of removing Injured Party A from his property she had got injured, and had ended up in hospital 'for a few days'. By way of email to the Council dated 19 February 2019, the Registrant repeated that he had acted in self-defence and that he had not intended to cause injury to Injured Party A. He further confirmed that he had not sought to appeal his conviction.

Evidence

The Committee had regard to the available documentary evidence and the submissions made by Mr Gilmore.

Finding of Facts

The Committee accepted the advice of the Legal Adviser. The Legal Adviser advised the Committee to have regard to the provisions of Paragraph 12 (5) and (7) of Schedule 2 of the Rules. The Committee was satisfied that the Certificate of Conviction was conclusive proof of the conviction of the Registrant for the assault upon Injured Party A and the facts underlying the conviction. The Committee was further satisfied that the Registrant could not avail himself of those matters set out in Paragraph 12 (7); namely that he was not the person convicted or, having been convicted, had successfully appealed that conviction to a Court of competent jurisdiction.

Accordingly, the Committee found the Allegation proved on the balance of probabilities.

Fitness to Practise

The Committee heard a submission from Mr Gilmore who invited the Committee, in light of the convictions proved, to find that the Registrant's fitness to practise was currently impaired. The Committee heard and accepted the Legal Adviser's advice. He reminded the Committee of the provisions of Rule 4 and Paragraph 24 (3) of Schedule 2 of the Rules.

The Committee considered whether, by reason of the Registrant's conviction, his fitness to practise is currently impaired.

The Registrant had been convicted, following his not guilty plea, of a very serious assault which resulted in the hospitalisation of his girlfriend. While not occurring in the workplace, the Committee considered that the Registrant's actions were serious and that he had caused significant injury to a person who had a long history of mental health problems.

In light of its finding of fact, the Committee considered that the Registrant's actions had breached the following Standards:

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

- 5.7 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 Registrant has not engaged in the regulatory proceedings against him. He did not attend at the hearing, nor did he instruct someone to appear to represent him before the Committee. The Registrant has demonstrated little, if any, insight into his actions. He has not engaged in remedial action. He has failed to offer an apology to Injured Party A or express remorse to her. Instead, he continued to blame Injured Party A for the injury of which he has been convicted. The Committee, therefore, was of the view that there was a real risk in the future of the

Registrant repeating the conduct which led to his conviction. In addition, the Committee considered that the Registrant was at risk of acting in a violent and aggressive manner in the future, if presented with a service user who demonstrated difficult or challenging behaviour.

In deciding the issue of current impairment, the Committee also had regard to the formulation provided by Dame Janet Smith in her Fifth Report in respect of the Shipman Inquiry, quoted with approval by Cox J in *CHRE v NMC and Grant* [2011] EWHC 927 Admin. The Committee considered that the following limbs of Dame Janet's formulation were engaged by reason of the Registrant's conviction. The Registrant:

- a) Was liable in the future to act in a manner so as to put a vulnerable person at unwarranted risk of harm; and
- b) Had acted in the past and is liable in the future to bring the social care profession into disrepute; and
- c) Had acted in the past and is liable in the future to act in a manner so as to breach one of the fundamental tenets of the social care profession.

For these reasons, the Committee determined that the Registrant is currently impaired by reason of his conviction.

Sanction

The Committee heard a submission from Mr Gilmore on the question of sanction. It heard and accepted the Legal Adviser's advice. He told the Committee to have regard to the Indicative Sanctions Guidance document and those matters to which the Committee ought to have regard to in the Rules. The Committee was advised to commence with a consideration of the aggravating and mitigating factors in order to determine the seriousness of the Registrant's misconduct. Thereafter, the Committee was advised to act proportionately; commencing with a consideration as to whether the public would be adequately protected by the interest of no sanction and thereafter, considering further more restrictive sanctions and ending of that which the Committee considered would adequately protect the public.

The Committee first had regard to the mitigating factors. The Committee noted the following:

- The Registrant has no previous disciplinary / regulatory findings against him. He had a good previous work history from 2015 to 2018 when he was employed as a care assistant.
- There was no evidence that the Registrant intended to cause serious injury to Injured Party A. Although serious injury undoubtedly did occur, there was no evidence of pre-meditation.
- The Registrant had offered to obtain medical assistance for Injured Party A in the immediate aftermath of the incident in question, and had supported her in her attendance at hospital.

The Committee next had regard to the aggravating factors. The Committee noted the following:

- The Registrant has demonstrated little, if any, insight into his offending behaviour. At the time of the incident and during his police interview, he unjustifiably sought to suggest that Injured Party A's pre-existing back condition might have explained the serious nature of the injury sustained. He denied any blameworthiness

when he was prosecuted, and pleaded not guilty before the Court. Following his conviction, he continued to seek to blame Injured Party A for the injury which she sustained as a result of his actions.

- The Registrant has engaged in a partial and limited manner in the investigation into his conduct by the Council. He has failed to engage in the regulatory proceedings before the Committee.
- The Registrant's conviction for a serious criminal offence represented a significant breach of the applicable Standards.
- The Registrant engaged in violent conduct towards a person with mental health needs. There was a real risk of repetition. The Committee could not discount the prospect that faced with a service user with difficult and challenging behaviour; he would not repeat his violent conduct in the future.

No Sanction - the Committee considered that such a step would be inappropriate. The Registrant has been convicted of a serious criminal offence and there was a real risk, in the absence of insight or remorse, that he would repeat the behaviour which had resulted in his conviction.

Warning - the Registrant caused direct harm to a person with mental health difficulties and has shown no evidence of insight or remorse. The Registrant's actions were at the serious end of the spectrum of misconduct. A Warning, in the Committee's view, would be inappropriate in light of its findings and would result in the Registrant being permitted to practise on an unrestricted basis.

Conditions of Practice Order - the Committee discounted a Conditions of Practice Order. There was evidence contained in the papers that the Registrant was out of the jurisdiction and was not anticipated to return. In addition, there was no employer to facilitate the proper working of such an Order. Most importantly, the Committee could not devise workable conditions that would prevent the Registrant from offending again in a similar way in the future. The nature of the Registrant's conviction was also too serious for conditions to be a proportionate sanction that would adequately protect the public.

Suspension - the Committee, while acknowledging that the offence for which the Registrant was convicted was an isolated incident, could nonetheless not lose sight of the fact that the consequences of the Registrant's actions were particularly grave. Injured Party A had been admitted to hospital with a serious injury. The Registrant had failed to appreciate and accept his culpability for his violent offending behaviour. There was no evidence of insight or remorse. The Committee concluded that the Registrant's actions were fundamentally incompatible with continued registration.

Removal - the Committee decided that the only fair, appropriate and proportionate sanction to apply was a Removal Order. The Registrant had demonstrated no insight and had not engaged in remedial action to show that there would be no repetition of his offending behaviour. Instead, he had attempted to shift the blame to Injured Party A. He presented a real risk of harm to the public and vulnerable service users who might be charged to his care. The Committee also considered that a Removal Order was in the public interest. The

Committee was satisfied that the trust and confidence of the public in the social care workforce would be seriously undermined if a Removal Order was not made in the circumstances of this case.

You have the right to appeal this decision to the Care Tribunal. Any appeal must be lodged in writing within 28 days from the date of this Notice of Decision.

You should note that the Fitness to Practise Committee's decision takes effect from the date upon which it was made.

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

You are prohibited from working as a social care worker in any of the following positions:

1. A member of care staff at a:
 - a.) Children's home;
 - b.) Residential care home;
 - c.) Nursing home;
 - d.) Day care setting;
 - e.) Residential family centre.
2. A person who is supplied by a domiciliary care agency to provide personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
3. A manager of a:
 - a.) Residential care home;
 - b.) Day care setting;
 - c.) Residential family care centre; or
 - d.) Domiciliary care agency.

It is **compulsory** for the above social care workers to be registered with the Northern Ireland Social Care Council in order to work. This is pursuant to the Northern Ireland Social Care Council (Social Care Workers Prohibition) and Fitness of Workers Regulations (Northern Ireland) 2013 and the Northern Ireland Social Care Council (Social Care Workers Prohibition) and Fitness of Workers (Amendment) Regulations (Northern Ireland) 2017.

In accordance with Schedule 3, Paragraph 9 of the NISCC Fitness to Practise Rules, you may not apply to be restored to the Register within five years from the date of removal. This does not affect your right to appeal the Committee's decision to the Care Tribunal. You are prohibited from working in a social care role until a successful application for restoration onto the Register has been made to the Council.

P.P. Kennedy

Committee Manager

05.08.19

Date