

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

SUSPENSION ORDER REVIEW HEARING

REDACTED

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**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 **22 August 2019**, 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 impose a further Suspension Order to commence upon the expiry of the existing Suspension Order for a specified period of two years. The existing Order will expire on 23 August 2019. The further Order takes effect on 24 August 2019 and will expire on 23 August 2021.**

#### **Legal Advice Given**

Advice given to the Committee by the Legal Adviser is contained within the body of this Decision.

#### **Preliminary Matters**

The Registrant was neither present nor represented. The Council was represented by Mr Wilson, Solicitor, Tughans. The application was referred to the Fitness to Practise Committee in accordance with Schedule 2 Paragraph 33 (3) (b) (c) of the NISCC Fitness to Practise (Amendment) Rules 2019 ('the Rules').

#### **Procedure**

The review hearing was held under the health procedure.

#### **Service**

In a Notice of Review Hearing, dated 17 July 2019, 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 review hearing. The package was received and signed for on 18 July 2019. The Committee heard and accepted the advice from the Legal Adviser. She referred the Committee to Rule 3 of Part 1 of the Rules and Paragraph 5 (2) of Schedule 2 of the Rules.

The Committee, in all of the circumstances of the case, is satisfied that the Notice of Review Hearing has been served in accordance with Rule 3 of the Rules and the requirements of Paragraph 33 (5) of Schedule 2 of the Rules.

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

Mr Wilson made an application to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules, and submitted that the Committee should hear and determine the case in the Registrant's absence. Mr Wilson submitted that the Registrant signed for the documents on 17 July 2019, and that she advised in a telephone call with a member of Council staff on 06 June 2019 that she would not be attending. He submitted that the Committee, having been satisfied as to service, should proceed in the absence of the Registrant. He submitted that this was a mandatory review and that the Suspension Order would expire at midnight tomorrow night, and that if the matter was not dealt with there was a risk that she could return to work without restriction. He said that there was a public interest in proceeding in her absence and that she had made it clear that she was not attending and had not requested an adjournment.

In considering the application, the Committee satisfied itself that all reasonable efforts had been made to notify the Registrant of the hearing and it heard and accepted the advice of the Legal Adviser, who referred the Committee to the cases of R v Jones 2003 1 AC and Adeogba and Visvardis v GMC 2016. The Legal Adviser reminded the Committee that in exercising its discretion to proceed in the Registrant's absence, it must have regard to all of the circumstances with fairness to the Registrant being of prime consideration, although fairness to the Council and the public interest must also be taken into account. She reminded the Committee of the requirement to exercise its discretion to proceed with the utmost care and caution. The Committee noted that this is a mandatory review and that the Suspension Order will expire on 23 August 2019.

The Committee bore in mind the public interest in the expeditious disposal of the review 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. The Committee considers that the Registrant has voluntarily absented herself from today's hearing. There has been no correspondence received from the Registrant requesting an adjournment and no indication that an adjournment would secure her attendance at a later date. After careful consideration of all of the issues, the Committee decided to exercise its discretion to proceed in the absence of the Registrant, having carefully balanced fairness to the Registrant against the wider public interest.

### **Background**

This is the first review of a Suspension Order imposed on 24 August 2017. The current Order is due to expire on 23 August 2019.

Following a hearing at which the Registrant was neither present nor represented, on 24 August 2017, the Fitness to Practise Committee found the following Particulars of the Allegation proved by admission:

1. On 07 September 2015, you attended work under the influence of alcohol.

2. [REDACTED].

The original Committee were provided with an Agreed Statement of Facts, signed by the Registrant, 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)'*

The original Committee determined the following with regard to impairment:

*'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.'

The original Committee determined the following with regard to 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.’

### **Decision on Current Fitness to Practise**

Mr Wilson submitted that no evidence had been provided by the Registrant to demonstrate that the issues identified at the hearing on 24 August 2017 had been remediated. Indeed, the evidence which had been provided by the Registrant was to the effect that her doctor did not consider her to be fit to practise currently, and the Registrant has not given any indication of disagreeing with that assessment by the GP. The Registrant indicated in an email dated 13 July 2019 that she hoped to be fit to practise in the future. Mr Wilson submitted that it was a matter for the Committee to decide whether she remained currently impaired and, given the contents of the email, the Committee could not be so satisfied.

In reaching its decision, the Committee heard and accepted the legal advice. The Committee was reminded that it was not required to go behind the previous decision in assessing facts, and that it was required to review any

evidence provided since the hearing on 24 August 2017. The Committee was reminded that it is assessing current impairment and needed to take into account any evidence of remediation, insight and risk of repetition. The Committee was also reminded of the need to take account of the wider public interest, which includes upholding standards and maintaining confidence in the regulatory process.

The Committee noted that the Registrant has demonstrated some insight into her condition as she has accepted that she is not currently fit to practise based on her doctor's advice. However, the Committee has not received any evidence as to remediation or the risk of repetition. In light of the evidence provided, the Committee concludes that the Registrant's fitness to practise remains impaired.

### **Sanction**

Mr Wilson submitted that it was a matter for the Committee to identify the appropriate sanction in this case. He submitted that the Registrant had engaged in the process, had made realistic concessions at the original hearing and was working towards remediation which was to her credit. He said that the identified difficulties that led to the Suspension Order being imposed were not fundamentally incompatible with remaining on the Register and were capable of remediation. It was his view that a Conditions of Practice Order was not achievable or workable, and that the appropriate sanction was to continue the Suspension Order.

The Committee heard and accepted the independent legal advice in relation to sanction. The Committee was reminded that the purpose of a sanction was not to punish but to protect the public, and that any sanction had to be proportionate and measured. The Committee considered the Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees in reaching its decision.

**Conditions of Practice Order** – the Committee considered revoking the Suspension Order and replacing it with a Conditions of Practice Order. The Committee has taken into account that the Registrant accepts that she is currently not fit to practise as a result of her health condition. The Committee is therefore unable to formulate workable conditions that would enable the Registrant to deal with her health issues whilst protecting service users from the risk of harm.

**Suspension** – the Committee determined that a Suspension Order remains the appropriate and proportionate sanction in this case. The Registrant has demonstrated some insight and it is hoped that in time she will be fit to return to practice. The Committee carefully considered the period of time and determined to make a further Suspension Order for two years. The Committee determined that it may take time for the Registrant to be in a position to return to practice and the time period of two years is not intended to be punitive. In reaching this decision, the Committee took into account the history of her engagement and willingness to achieve remediation, and concluded that it may well take a further two years for her to [REDACTED].

The Committee acknowledges the Registrant's engagement 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 feels that she is ready to consider a return to practice.

**Removal** – removal was considered by the Committee to be a disproportionate sanction at this time.

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