

**IN THE CARE TRIBUNAL**

**BETWEEN:**

**CD**

**Appellant**

**-and-**

**NORTHERN IRELAND SOCIAL CARE COUNCIL (NISCC)**

**Respondent:**

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**Date:** Friday 1<sup>st</sup> June 2018 and Monday  
4<sup>th</sup> June 2018

**Venue:** The Tribunals Hearing Centre,  
Royal Courts of Justice, Belfast

**Tribunal:** Stephen G Quinn Q.C., Chairman  
with Tribunal Members Sally  
O’Kane and Harry Murray

**Result:** Appeal allowed; The Interim  
Suspension Order (ISO) imposed on  
CD on the 15<sup>th</sup> January 2018 is to be  
set aside and the Appellant should  
be reinstated on the Register held  
by the NISCC with no conditions.

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1. The Appellant, born on the 31<sup>st</sup> March 1964, is a qualified Social Worker and has worked in Social Care since 1986. He was first registered as a qualified Social Worker on the 1<sup>st</sup> June 2005 on Part 1 of the Register in accordance with the legislation empowering the NISCC to keep, monitor and regulate a Register for Social Workers to ensure that proper standards for the profession are maintained. He was employed by the Northern Health & Social Care Trust (“the Trust”) as a temporary, full-time integrated Care Manager (Band 7) at Newtownabbey Community Service Centre, Rathcoole, Co Antrim from the 14<sup>th</sup> July 2015.
2. This appeal arises from a decision of the Preliminary Proceedings Community (“PPC”) of the NISCC dated the 15<sup>th</sup> January 2018 after a hearing on the 11<sup>th</sup> January 2018 following a Referral Reference (“the Referral”) to

the PPC by Denise Rooney, Fitness to Practice Officer (signed 2<sup>nd</sup> January 2018) and Helen McVicker, Head of Fitness to Practice (signed 3<sup>rd</sup> January 2018). The PPC was advised that the NISCC (“the Council”) was applying for an Interim Suspension Order (“ISO”) under Paragraph 5(1) of Schedule 1 of the NISCC Fitness to Practice Rules 2016 (“the Rules”) on the grounds of public protection and public interest arising out of an allegation of child sexual exploitation regarding improper relations with a young person (“yp A”), a former resident of Barn Court Children’s Home, Carrickfergus (“Barn Court”) where the Appellant previously worked. The PPC having heard submissions from Ms Rachel Kelso, Solicitor, (DLS) on behalf of the Council and considered the relevant documents presented and, having considered the legal requirements and test, and proceeding in the absence of the Appellant, imposed an ISO on the Appellant’s registration for the maximum period of six months commencing immediately.

3. The Appellant served a Notice of Appeal dated the 5<sup>th</sup> February 2018 setting out his points of appeal and comment on the PPC’s written decision of the 15<sup>th</sup> January 2018 (arising out of the hearing of 11<sup>th</sup> January 2018). A written reply to the Appellant’s appeal document was submitted to the Care Tribunal by Ms Rachel Kelso, Solicitor representing the Council, dated 14<sup>th</sup> February 2018. The Chairman decided that a Preliminary Directions Hearing would be appropriate and arranged the hearing for the 30<sup>th</sup> April 2018. We refer to the Directions document dated 15<sup>th</sup> May 2018. At the Directions hearing the Appellant was unrepresented and the Council was represented by Mr Anthony Gilmore, Solicitor, DLS, Belfast. The Chairman, considering the nature of the proceedings and allegations, granted a Restricted Reporting Order (Regulation 19) anonymising the proceedings and excluded the press and public from the hearing (Regulation 20) under his powers of the Care Tribunal Regulations (NI) 2005 (2005 Regs). The Respondent was directed to prepare Hearing Bundles to include all documents relevant to the referral and PPC hearing and all documents and information that could be gathered from the Police Service of Northern Ireland (PSNI) together with all relevant information from the Appellant’s employer and any references or material that the Appellant may wish to submit. The Panel thanks the Respondent and its lawyers for diligently attending to the Directions given on the 15<sup>th</sup> May 2018 as the Hearing Bundle greatly assisted our understanding of this appeal process and the issues involved.
4. At the Directions Hearing it became apparent that the Trust had suspended the Appellant without pay, yet it was clear that as part of its decision analysis the PPC took account of the hardship test and were advised that the Appellant was suspended on full pay. The Panel therefore thought it appropriate, having decided to allow the appeal, that a Preliminary Decision should issue on the 6<sup>th</sup> June 2018 ordering the appeal should be allowed and the Appellant reinstated on the Register to allow him to return to work as soon as possible. The Tribunal also issued a confidential letter of the 6<sup>th</sup> June 2018 addressed to the Trust identifying the Appellant as the subject of the appeal (“CD”) and explaining why such steps had been taken to anonymise the proceedings.

5. Having already given their decision and allowed the appeal, what follows is the full unanimous written decision of the Tribunal Panel arising out of the hearing of the 1<sup>st</sup> and 4<sup>th</sup> June 2018.
6. This matter was brought to the Council's attention upon receipt of an Employer Referral Form sent to the Council by the Trust on the 21<sup>st</sup> December 2017. The Appellant was under a police investigation following allegations made by a former female resident (yp A) of Barn Court. The Appellant was employed at this home when yp A was resident there between the ages of 10 and 13 (she is now 19 years old). The Appellant was suspended by the Trust on the 21<sup>st</sup> December 2017 with the Referral Reference stating that the Appellant is being "investigated for child sexual exploitation". The report to the PPC, mentioned above, and signed by Mesdames Rooney and McVicker sets out the allegations, Standards of Conduct and Practice and the Test for the Committee. They refer to Rule 6(1) of Schedule 1 of the Fitness to Practice Rules that should be applied by the PPC when deciding whether to impose an ISO:
  - (a) To protect members of the public.
  - (b) Is otherwise in the public interest.
  - (c) Is in the interest of the Registrant (the Appellant).

The Council submitted that as the Appellant is under police investigations following allegations of sexual exploitation of a child and as the Appellant was in a position of trust and authority and in view of the graphic nature of the allegations, that the Appellant should not be at liberty to work unrestricted and that an ISO of the minimum period of six months, while police investigations are ongoing, should be imposed.

7. The Council's referral to the PPC was heard on the 11<sup>th</sup> January 2018. The Appellant was not present nor represented for the hearing and the PPC, having properly considered the facts and advice given, decided to proceed having been satisfied that the Appellant knew of the proceedings and the hearing and did not seek a postponement. In reaching this decision to proceed the PPC was aware that it must strike a careful balance between fairness to the Appellant, the NISCC and the wider public interest.
8. The PPC heard a submission from Ms Kelso, Solicitor on behalf of the Council, and considered the bundle of papers and documents available. It appears to us that the main points considered were:
  - (a) The Appellant is currently under police investigation following allegations made by yp A arising out of when she was a resident at Barn Court between the ages of 10 and 13.
  - (b) Yp A, now aged 19, has made "sexual disclosures to the PSNI" in respect of Barn Court and further subsequent matters arising in 2016.
  - (c) The Committee was directed to a PSNI interview schedule and "summary of the Registrant's Police interview contained within the papers". This was an email which formed part of the decision making process.

(d) Ms Kelso advised the PSNI have secured the Appellant's electronic devices which are currently being examined and that the PSNI intend to interview the Appellant once this has been done. They were advised that "the Police investigation is ongoing".

Ms Kelso further submitted that on the evidence available there is a "cogent prima facie case" that an Interim Order is required to protect the public and that it is also in the public interest. Having considered the submissions and the papers and taken advice on all matters to be taken into account and applying the proper test and weight to be given to the relevant factors including, inter alia, the risk to the public, the weight of the "cogent prima facie case" and proportionality (including the impact on the Appellant) they decided to impose an ISO. The Committee, quite properly, also took into consideration the Appellant's good record and noted that he had been suspended on "full pay" pending investigation, recording that this may reduce the financial impact of an ISO.

9. This Tribunal felt it necessary to set out the background to this case in some detail as it can then directly address the main issues and evidence raised at this hearing on 1<sup>st</sup> and 4<sup>th</sup> June 2018. The Respondent supplied a comprehensive Hearing Bundle and, having read the papers and in particular the written decision of the PPC of the 15<sup>th</sup> January 2018 (Page 7 of the Bundle) and considered the Appellant's Appeal Form, this Panel felt that the important issues raised in the Appellant's appeal application are:

(a) The Appellant wants a fair hearing to challenge the PPC decision to impose an ISO as he felt he had been judged as guilty of the allegations whereas he says they are "false", totally unproven and that no charges have been brought against him.

(b) There appears to be an inconsistency between the Council's understanding that he had been suspended on full pay and the Trust's decision to suspend without pay especially as the allegations are "wholly unsubstantiated".

(c) He has an excellent record of service with the Trust for many years.

(d) That yp A advised him in 2011 that she would be making allegations about him and other staff members for "financial reasons".

10. At the oral hearing the Appellant requested representation by Ms Katherine Arkinson, Higher Executive Officer from NIPSA. The representation was approved and the Respondent was represented by Ms Rachel Kelso, DLS with Ms Denise Rooney, Fitness to Practice Officer, in attendance. Ms Kelso had an in-depth knowledge of the case and opened the facts to the Tribunal in a very professional manner. She took us through the hearing Bundle in detail including that the PPC imposed an ISO that was due to expire on the 10<sup>th</sup> July 2018 but was listed for review on the 5<sup>th</sup> July 2018. The Chairman drew her attention to the short email report from the PSNI relating to the interview of the Appellant by Detective Constable Alan Lee, PSNI, dated 19<sup>th</sup> December 2017 that was sent to the Trust (Pages 56 to 59). DC Lee also referred to his short statement of the 24<sup>th</sup> May 2018 (page 210-211).

11. DC Lee was called to give evidence on Oath. Ms Kelso took him through his evidence; he confirmed that he was with the Child Abuse Unit at Ballymena and that he had been in that post for the last ten years. He was investigating Barn Court in 2016 arising out of child cruelty complaints. A team of officers investigated a number of complaints none of which involved the Appellant. Though the Appellant was not involved in the child cruelty investigations, arising out of the investigations and interviews, child yp A (as she was then) made a separate allegation of sex abuse against the Appellant. DC Lee referred to his witness statement of 24<sup>th</sup> May 2018 setting out this brief history. It stated that he interviewed the Appellant on the 14<sup>th</sup> December 2017 and refers to the email he sent to Melanie Phillips at the Northern Trust on the 19<sup>th</sup> December 2017. The Chairman asked if he had the interview notes or any other documents with him at the hearing but all he could refer to was the PSNI disclosure documents (page 56-57) that included the investigation of:

- Article 14 (Child under 13 Years) - Sexual assault and sexual touching;
- Article 16, Sex with a child (touching including penetration);
- 150 massages in the laundry and living room between 2008 and 2010;
- Article 17 - Causing / inciting a child to engage in sexual activity;
- 50 to 100 images / pics requested from yp A by the Appellant between March 2013 and September 2015;
- Article 18 - Engaging in sexual activity in the presence of a child (includes via a webcam);
- 20 or so images / videos sent by Appellant to yp A between March 2013 and September 2015;
- Article 19 - Causing a child to watch a sexual act (either in person or, for example, on film);
- The 20 or so images / videos that the Appellant sent yp A between March 2013 and September 2015;
- Possession of indecent images of children – as above till now
- 50 to 100 images / pics requested of yp A by the Appellant between March 2013 and September 2015;
- Sexual activity involving penetration by an adult with a person with a mental disorder impeding choice;
- Appellant having sex with yp A once and digitally penetrating her twice at Rathcoole Community Services' offices between 10<sup>th</sup> September 2015 till mid-2016.

Other areas to be discussed in the interview were:

*“His working, romantic and sexual relationship with yp A at Barn Court. His routine regime with her, his physical and electronic contact with her.”*

The Tribunal was told that there was an interview at Musgrave Street Police Station on the 14<sup>th</sup> December 2017 that lasted between 3 and 4 hours. There was a further interview of yp A on the 24<sup>th</sup> May 2018. Arising out of the

allegations there was an extensive search of the Appellant's home and office work space. The Detective Constable has none of the interview notes, no documents from the PSNI file or any documents or papers concerning the referral to the Public Prosecution Service that should follow from these investigations. We asked why none of the documentation was available but did not get a satisfactory answer, in that DC Lee suggested that he did not realise nor was he made aware of the nature of the investigation of the Tribunal hearing. This was an explanation that we found difficult to understand.

12. As a result of the interviews carried out by DC Lee, he sent an email of the 19<sup>th</sup> December 2017 to Melanie Phillips at the Trust and, as previously stated, organised an extensive search of the Appellant's home and offices by a team of around twenty personnel during which all electronic devices held by the Appellant and his family (including cameras) were taken for inspection and investigation. The main reason for this search seems to have arisen out of yp A's allegation regarding filming and exchange of images and videos. We then heard a history of yp A (date of birth 10<sup>th</sup> September 1997), dating from her residence at Barn Court between the 10<sup>th</sup> October 2008 and the 28<sup>th</sup> October 2010, concluding in 2016. This reflected a sad history of yp A, who was resident at various institutions and foster homes, eventually going to Middlesbrough in England, then returning to Newtownabbey in May 2016 and thereafter an admission to Holywell Mental Health Unit, Antrim in December 2016. The Police carried out extensive electronic investigations and searches of the phones and the devices seized in the search but found absolutely nothing suggesting any sexual images or inappropriate sexual content. The Chairman asked several questions about the forensic ability of PSNI electronics experts and the ability to find deleted materials. DC Lee agreed that if material had been in the memory of the phones and devices, and even if deleted, it was highly likely that it would have been found by the PSNI experts. Therefore, it seems that the only conclusion is that there are no indecent images in the Appellant's phone or devices despite yp A alleging such images had been sent on work and personal devices. DC Lee agreed that the Police would have expected to see such images had they been sent but that no images were found. When he asked yp A for access to her phone to allow the forensic experts to seek evidence supporting her allegations she refused to provide her phone for examination.
13. DC Lee gave evidence about putting each of the allegations on the disclosure document to the Appellant at interview. The Appellant totally denied any sexual assault or penetration at any time. He denied sending or receiving images of a sexual nature and DC Lee reminded us that the Police found absolutely no evidence of any images, videos or any such material in his phones or devices, either personal or work orientated. The Chair and Panel asked a number of questions to get more detail and information. DC Lee stated that the Appellant did admit to giving foot massages at Barn Court but that this was done at the request of the children and that there was no sexual gratification in this. Any other rubbing or massage was totally denied by the Appellant though he did admit meeting yp A in 2016 at his offices in Rathcoole. He admitted that he let her use the office computer and work facilities. He bought her food and though admitting he was foolish in

allowing this he denies any sexual activity or flirting but alleged that yp A was flirting with him. He added that he felt sorry for her as her dad had paramilitary connections and that is why he allowed her to use the offices.

14. The Panel also enquired as to why there was delay in following up the investigation and sending the file to the PPS and investigating the alleged screenshots on yp A's phone. DC Lee told the Tribunal that submission of the papers to the PPS was imminent and also confirmed that there was no evidence of any screenshots, as alleged by yp A on the Appellant's phone.
15. Ms Arkinson cross-examined the Police Officer and he confirmed that there was a text exchange between the Applicant and yp A but in relation to specific questions asked, he agreed:
  - (a) There were no terms of endearment like "love" or "sugar" etc. in the text exchange between them and that no messages were deleted.
  - (b) That the Appellant was not engaging sexually or romantically in the text exchanges between the Appellant and yp A in 2016 and that it was mostly "tittle-tattle".
  - (c) The 23<sup>rd</sup> May 2016 exchange about a "row at home" and yp A's panic attack revealed absolutely nothing incriminating against the Appellant.
16. In answer to further questions in cross-examination and from the Tribunal Panel, DC Lee gave evidence that:
  - (a) The Appellant has been fully cooperative throughout the investigation.
  - (b) Yp A was asked for further evidence to support the screenshots that she gave to the Police that suggested involvement by the Appellant but would not cooperate and provide details of the text exchanges nor let the Police examine her phone for evidence.
  - (c) When yp A first phoned the Appellant he was unable to identify her number. In other words he didn't know who it was and that would suggest that she made the first contact.
  - (d) After enquiries about the Appellant with other staff during his investigations at Barn Court, they all reported that he is "a text book social worker". No other person made any allegations or complaints about him.
  - (e) Yp A made allegations of violent behaviour against five other social workers at Barn Court and, just before the violent behaviour interviews, made the sex allegations against the Appellant.
  - (f) Yp A seems to have initiated all the text exchanges and that the Appellant simply replies and enquires if she is okay and if he can help her.

- (g) There is no other evidence against the Appellant in the form of any forensics, supporting witnesses etc., in relation to the allegation made by yp A against the Appellant.
  - (h) He found that yp A was a very persuasive girl but was not consistent at interview. He agrees that in his opinion the Appellant was “open and honest and fully cooperative”.
17. The Appellant gave evidence on Oath and gave a history of employment starting with the Trust in 1993. In relation to Barn Court, he said in evidence:
- (a) He recalls yp A at Barn Court and said that she could be violent so staff were never left on a one on one with her. She was considered high risk and there were always two staff on duty when she was there.
  - (b) He admitted to the foot rubbing allegations as he did when first interviewed by the Police but said that it was nothing like 150, it was not a regular thing and there was always female staff in attendance.
  - (c) He never received or sent any sexual images, photographs or videos or anything of a sexual nature. He totally denied all of this.
18. Regarding the contact with yp A in 2016, he said it started in March 2016 after he had messages and calls from her saying she was homeless, felt unsafe and that the paramilitaries and her father were looking for her. He offered her money for electricity and met her on two occasions. He recalls that the first was on a Monday when she came to the office for an hour and explained her fears and troubles. The second was a Thursday when she explained that she was very frightened. He let her use the office computer, gave her food and she used the tumble dryer. He said that she was “full-on about him caring for her”. He tried to get her involved with Social Services and go to the Citizen’s Advice Bureau for benefits advice. In response to the talk about them “having a baby” he said that he explained the nature of their relationship to yp A and stated that he could not have and did not want any sexual relations with her. He said that she “blew a fuse” and said she would tell people “I did things to her”.
19. In conclusion, he denied sending inappropriate screenshots but admitted that he did text her. In response to reading the email from DC Lee to the Trust, he agreed that he “stepped over boundaries” in letting her use the facilities at his office but said that the email in no way does justice to the four hour interview at Musgrave Street. The Appellant concluded by telling us that he is now a Team Manager with HR function and spends most of his time managing the budget and providing directions. He is no longer engaged with or in touch with young people or any mental health clients and has very limited public contact.
20. Ms Kelso cross-examined on a number of issues but the Panel felt it was worth noting his answer to the question about yp A making the sexual allegations against him. The Appellant relied that:



- (a) She said she was going to make sexual allegations against him.
- (b) She was flirting but he made it clear he would support her as she was frightened and felt unsafe but stressed that he would not have sexual relations with her.
21. In re-examination, Ms Arkinson asked why the Appellant didn't report yp A's threat to the Trust and he answered that:

*"It's the biggest regret of my life."*

22. The Tribunal has to decide if this Appellant is a fit person to be on the Register of Social Workers and that he satisfies the "Standards of Conduct and Practice of Social Workers" as set out in the NISCC publication of November 2015 particularly the Standards set out in Sections 4 and 5. Ms Rooney and Ms McVicker applied the correct test in the Referral Report Form (Pages 45 - 47) when they set out in page 3 of their document standard 5:

*"As a Social Worker you must uphold public trust and confidence in social work services. In particular, you must not;*

- 5.1 *Abuse, neglect or harm service users, carers or colleagues.*
- 5.2 *Exploit service users, carers or colleagues in any way.*
- 5.4 *Form inappropriate personal relationships with service users.*
- 5.8 *Behave in a way, in work or outside, which would call into question your suitability to work in social care services.*
- 5.9 *Use social media or social networking sites or other forms of electronic communication in a way that contravenes professional boundaries, organisational guidelines or NISCC standards."*

23. The Panel would also refer to the advice the PPC received from its legal advisers who, when explaining and reviewing the Committee's powers and the relevant issues and tests to be applied, provided good advice which we feel is worth repeating:

- (a) Paragraph 6(1) of Schedule 1 of the Rules sets out quite clearly that an Interim Order may not be imposed unless the Committee is satisfied that it is necessary for the protection of the public or is otherwise in the public interest or is in the interests of the Registrant.
- (b) In addition to protection of the public, the public interest includes maintaining confidence in the profession and maintaining proper standards of conduct.

The PPC were then referred to a list of relevant factors such as:

- The seriousness of the allegation.
- The weight of the evidence before it.
- The likelihood of the conduct being repeated before the final hearing of the case.

- The steps that should be taken to guard against the risk of harm.
- The severity of the harm likely to result should the conduct or performance be repeated.
- The potential prejudice to the Registrant; and
- The Registrant's previous character and employment history.

(Read 'Registrant' as 'Appellant'.)

We felt that this was good advice and we also remind ourselves that we must take into account the principle of proportionality and the impact on the Appellant.

24. Unlike the PPC, we had the advantage of hearing oral evidence on the issues addressed by the very comprehensive Hearing Bundle and the issues opened before the PPC on the 11<sup>th</sup> January 2018. In particular, we felt that the advice given to the PPC about the relevant factors to consider when assessing the risk to members of the public was good advice and we address those points below:

- There is no doubt that the allegations of "child sexual exploitation", if at all founded in evidence, are very serious, as are the allegations that improper sexual contact was made at the offices in Newtownabbey.
- We found that there was no evidence, despite extensive police investigations, of any offences of child sexual exploitation. DC Lee could put forward no evidence, even prima facie evidence, of any case to be made against this Appellant on the allegations made by yp A.
- The fact that the police carried out extensive searches of the Appellant's home and offices and seized all electronic devices and SIM cards and also taking into account that yp A refused to hand over her phone for examination, points us to the conclusion that the Appellant was telling the truth under Oath. He has admitted that he stepped over his boundary during the contact in 2016 but this Tribunal saw a man who was trying to help a young adult (yp A was then 19 years old), not someone who was taking advantage of his position.
- We find the allegation of "child sexual exploitation" is not supported in any way by evidence that comes before this Tribunal having examined all of the available evidence and having listened carefully to DC Lee regarding the interviews, phones, devices and the allegations of images and videos and web cams. Hearing from and assessing the Appellant we must come to the conclusion that there is no corroborating evidence whatsoever to support the allegation of "child sexual exploitation".
- We are satisfied that the Appellant now works in a mainly administrative role with little or no contact with the public and no contact with children and, therefore, even if there was evidence of any wrongdoing, there seems to be a very low risk of the alleged

conduct being repeated and therefore no steps need to be taken to reduce any perceived risk.

- We note the Appellant's previous good character and excellent record of employment. We also note the references supplied by the Appellant that are with the Hearing Bundle. All those references refer to a man of excellent character and with a very good history in social work. We take into account DC Lee's comment in evidence on Oath that the Appellant's colleagues see him as a "*Text book Social Worker*". We also take from DC Lee's evidence the fact that the initial investigations at Barn Court arise out of allegations of violence and that the Appellant was not involved in any way. It was only during those investigations in 2016 that yp A made the allegations of sex abuse that appear in the PSNI disclosure sheet. When reviewing the evidence we gave weight to the fact that yp A refused to assist the Police by letting them inspect her phone for evidence and also that she did not make any complaints and allegations of any kind whatsoever until interviewed by the Police about other matters in late 2016.

25. We have already mentioned that we must take into account proportionality. This includes the Appellant's right to employment as a Social Worker, damage to his reputation and the financial impact of suspension without pay. He told us that he is married with a family, has a mortgage, debts and is under financial pressure as he hasn't had any wages for four months. Having had the advantage of hearing the evidence, we feel that the consequence of the imposition of an ISO is disproportionate to the risk to the public. We considered imposing Conditions but having heard the Appellant and weighing the evidence given by DC Lee and, with no challenge to the Appellant's evidence about his current job, we feel that Conditions are unnecessary. We therefore set aside the Decision of the PPC in accordance with our powers under Section 15 of the Health & Personal Social Services Act (NI) 2001.

26. No other Order is required.

**STEPHEN G QUINN Q.C.**  
**CHAIRMAN OF THE CARE TRIBUNAL**

**SALLY O'KANE;**

**HARRY MURRAY**

**Dated this 11<sup>th</sup> day of May 2020**