

Strictly Private and Confidential

**REPORT OF PROFESSIONAL CONDUCT COMMITTEE FOLLOWING AN INQUIRY
HELD PURSUANT TO SECTION 58 OF THE HEALTH AND SOCIAL CARE
PROFESSIONALS ACT 2005 ("T HE ACT ")**

Name of Registrant: Gerard Lowry

Registrants in Attendance: Yes

Registration Board: Social Workers Registration Board

Register: Social Workers

Registration No: SW003024

Registered Address: [REDACTED]
[REDACTED]
[REDACTED]

Case Number: [REDACTED]

Date(s) of Inquiry: 04 and 05 December 2023

Members of Inquiry Committee: Ms. Susan Ahern - Chairperson
Ms. Aileen Sheehan – Physiotherapist Registrant Member
Ms. Ruth More O'Ferrall - Social Worker Registrant Member

Legal Assessor: Mr. Nicholas Butler SC

Appearances:

For the Registrar: Mr. Remy Farrell SC Instructed by Ms. Hannah Unger,
Fieldfisher Solicitors

For the Registrant: Ms. Lorna Lynch SC Instructed by Ms. Liz Lyons,
Hayes McGrath Solicitors

Expert Witness Mr. Ruadhan Hogan, Social Worker

Otherwise than in Public

The Nature of the Complaint that resulted in the Inquiry:

The Preliminary Proceedings Committee ("the Preliminary Committee") on the 11 July 2019 having considered all information furnished to them in relation to the complaint of the Registrar Social Workers Registration Board pursuant to Part 6 of the Act, was of the opinion that there was sufficient cause to warrant further action being taken in relation to the Complaint against **Mr. Gerard Lowry** on the grounds of **professional misconduct** within the meaning of Section 52(1)(a) and **poor professional performance** within the meaning of Section 52(1)(b) respectively and as those terms are defined by Section 50 of the Act.

The Preliminary Committee referred the complaint to the Professional Conduct Committee on the grounds of **professional misconduct and poor professional performance** as set out in section 52(1)(a) and 52(1)(b) of the Health and Social Care Professionals Act, 2005

Allegations

The Committee noted that the following allegations were contained in the Notice of Inquiry:

"1. On one or more occasions between on or around 31 December 2014 and on or around 29 December 2015, in circumstances where you knew that [REDACTED] Counsellor at [REDACTED] [REDACTED] had inaccurately merged the accounts of a [REDACTED] [REDACTED] failed to take one or more appropriate steps to ensure that one or more inaccurate records based on [REDACTED] report had been removed from the Tusla file in respect of [REDACTED] and/or

2. Between on or around 31 December 2014 and on or around 29 December 2015, failed to ensure any and/or any adequate engagement with [REDACTED] in respect of [REDACTED] Report, in circumstances where you knew or ought to have known of one or more of the errors contained therein; and/or

3. Between on or around 31 December 2014 and on or around 29 December 2015, failed to take one or more appropriate steps in circumstances where you were aware that an inaccurate Garda Notification in respect of [REDACTED] had been sent to An Garda Síochána; and/or

4. Between on or around 31 December 2014 and on or around 29 December 2015, failed to ensure that Tusla's investigation of Ms D's allegation(s) against [REDACTED] as made to [REDACTED] in 2013 was progressed in a timely manner and/or that [REDACTED] was engaged with in a timely manner; and/or

5. Following receipt of an email from [REDACTED] then Social Work Team Leader, Tusla [REDACTED]") dated 07 May 2015 and/or an email from [REDACTED], Principal Social Worker, [REDACTED] to [REDACTED] dated 08 May 2015, failed to respond appropriately and/or failed to take appropriate steps, in circumstances where you knew or ought to have known there was uncertainty in relation to the allegations being investigated by Tusla against [REDACTED] [REDACTED]; and/or

6. Between on or around 28 January 2016 and on or around 19 June 2016, failed ensure that an appropriate apology issued in a timely manner to [REDACTED], to include providing any or any adequate explanation in relation to why the letter from Tusla dated 29 December 2015 issued to [REDACTED]; and/or

7. On or around 05 July 2016, transferred and/or arranged for the transfer of the [REDACTED] File from Tusla to the Sexual Abuse Regional Team (SART), in circumstances where you knew or ought to have known that it was inappropriate to do so; and/or

8. Between on or around 28 June 2016 and on or around 22 September 2016, failed to engage adequately and/or at all with [REDACTED], [REDACTED], in respect of the [REDACTED] to include arranging and/or providing an appropriate handover; and/or

9. Between in or around January 2017 and in or around February 2017 omitted one or more key pieces of information from a briefing note for [REDACTED] ([REDACTED]) and/or from a briefing note and/or chronology of events for the Department of Children and Youth Affairs; and/or

10. Such further allegations as may be notified to you in advance of the inquiry;"

The Notice of Inquiry also alleged that these allegations constituted, individually, cumulatively and/or in combination, professional misconduct (being breaches of specified provisions of the relevant Code) and/or poor professional performance.

The Inquiry was held jointly with an Inquiry into allegations against [REDACTED]

Evidence presented to the Committee:

The Committee heard evidence from the following witnesses on behalf of the Registrar:

1. Ruadhan Hogan – expert witness

The Committee heard evidence from the following persons on behalf of the registrant:

None.

The Committee considered the following exhibits:

1. Core Book
2. Expert Witness Report

Preliminary Matter

An application on behalf [REDACTED] to hold the Inquiry in private was heard on 21 October 2023 and refused for the detailed reasons set out by the Committee in its decision. On the first day of the Inquiry, a further application was made by [REDACTED] on more detailed grounds and this time supported by a detailed medical report. The application was supported by Mr. Lowry and the Registrar adopted a neutral position. On this occasion, the Committee acceded to the application and gave its reasons (Transcript, Day 1, page 24). Both applications were heard in private in accordance with the usual practice and the relevant authority.

The Committee, at the Registrar's request, also issued its ruling and reasons in a form agreed by the parties which could be made public without defeating the purpose of the ruling. This was done on the second day of the Inquiry.

Before the ruling in the agreed form was issued, the Committee was informed that information had appeared in the press and media about the ruling and, more significantly, the Committee's reasons. It appeared to the Committee that a breach of its ruling may have taken place. The facts presented to the Committee were not such as to allow for any definitive conclusions. Neither party asked the Committee to take any particular step arising from these events. The Committee and the parties agreed that, for the time being at least, no further step should be taken. This approach was consistent with the Legal Assessor's advice and was adopted by the Committee which nevertheless took a very serious view of what had transpired.

The Committee expressed its concern but decided to proceed with the issuing of the agreed reasoned ruling and to conclude the Inquiry without further distraction. The exchanges, advice and decision of the Committee appear at pages 60 to 70 of Day 2 of the Transcript.

In the Committee's view, the matter is of sufficient concern that it would be appropriate for the Council to consider what steps should be taken to prevent any recurrence of these events in the future.

Findings of the Committee:

At the outset, the Registrant made admissions in relation to certain allegations. On this basis, the Registrar did not pursue the remaining allegations.

Specifically, the Registrant admitted the facts in Allegation 1, Allegation 5 and Allegations 6 and that these on a cumulative basis amounted to Poor Professional Performance – which is defined as *“in relation to a registrant of a designated profession, means any failure of the registrant to meet the standards of competence that may reasonably be expected of registrants practicing that profession”*.

In these circumstances the Registrar did not pursue the remaining allegations or the allegation that:

Allegation 1, Allegation 5 and Allegation 6 amounted to Professional Misconduct; or that Allegation 1, Allegation 5 or Allegation 6 taken individually amounted to Poor Professional Performance.

In considering this matter, the Committee applied the criminal standard of proof namely beyond reasonable doubt.

Allegation 1

On one or more occasions between on or around 31 December 2014 and on or around 29 December 2015, in circumstances where you knew that [REDACTED], Counsellor at [REDACTED] [REDACTED] had inaccurately merged the accounts of a 'Ms D' and a 'Ms Y' in a report [REDACTED] failed to take one or more appropriate steps to ensure that one or more inaccurate records based on [REDACTED] report had been removed from the Tusla file in respect of [REDACTED] and/or

Findings as to facts:

The Committee found this Allegation proven as to fact.

Reasons:

The admission by the Registrant from the outset in respect of this Allegation. Further, the factual matters recited in Mr. Hogan's Expert Report and evidence of Mr Hogan.

Findings as to Poor Professional Performance:

The Committee found that these facts, taken cumulatively with its findings in relation to Allegation 1 and Allegation 5 amounted to Poor Professional Performance.

Reasons:

The admissions of the Registrant in this regard. Further, the evidence of the Expert Mr Hogan.

Allegation 5

Following receipt of an email from [REDACTED] then Social Work Team Leader, Tusla [REDACTED] dated 07 May 2015 and/or an email from [REDACTED] Principal Social Worker, [REDACTED] to [REDACTED] dated 08 May 2015, failed to respond appropriately and/or failed to take appropriate steps, in circumstances where you knew or ought to have known there was uncertainty in relation to the allegations being investigated by Tusla against [REDACTED] [REDACTED] and/or

Findings as to facts:

The Committee found this Allegation proven as to fact.

Reasons:

The admission by the Registrant from the outset in respect of this Allegation. Further, the factual matters recited in the Expert Report and evidence of Mr Hogan.

Findings as to Poor Professional Performance:

The Committee found that these facts, taken cumulatively with its findings in relation to Allegation 1 and Allegation 6 amounted to Poor Professional Performance.

Reasons:

The admissions of the Registrant in this regard. Further, the evidence of the Expert Mr Hogan.

Allegation 6

Between on or around 28 January 2016 and on or around 19 June 2016, failed ensure that an appropriate apology issued in a timely manner to ██████████ to include providing any or any adequate explanation in relation to why the letter from Tusla dated 29 December 2015 issued to ██████████ and/or

Findings as to facts:

The Committee found this Allegation proven as to fact.

Reasons:

The admission by the Registrant from the outset in respect of this Allegation. Further, the factual matters recited in in Mr. Hogan's Expert Report and evidence of Mr Hogan.

Findings as to Poor Professional Performance:

The Committee found that these facts, taken cumulatively with its findings in relation to Allegation 1 and Allegation 5 amounted to Poor Professional Performance.

Reasons:

The admissions of the Registrant in this regard. Further, the evidence of the Expert Mr Hogan.

Recommendation as to Sanction

1. In the Committees view the cumulative findings are of Poor Professional Performance at the very highest end of the spectrum.
2. The Registrant had knowledge from May 2014 that allegations that a [REDACTED], a serving member of An Garda Síochána, had digitally penetrated a young child of 6/7 years of age and had made serious threats against the child's father, were both untrue and without any foundation whatsoever. Nevertheless, he allowed this information to remain on Tusla's records and to be conveyed to others specifically [REDACTED] employer, An Garda Síochána.
3. The Committee did not lose sight of the fact that Allegation 1 refers to this knowledge only during the period 31 December 2014 to 29 December 2015 (this is by reason of the commencement date of the relevant statutory provision). No explanation whatsoever has been provided as to why the Registrant allowed this to happen. The Registrant exercised his right not to give evidence. The Committee drew no adverse inference from his choice. However, there was no evidence of how this state of affairs had been allowed to persist or any explanation of a mitigating nature.
4. The Committee could not identify from all the material before it, why the grossly inaccurate and damaging material was not simply removed from the file of [REDACTED]. Equally there was no reason why others who had become aware of the material on the Tusla file of [REDACTED] could not or should not have been told of the true position including An Garda Síochána.
5. The Registrant was the Tusla Area Manager for Cavan-Monaghan. The very first line of his job specification refers to his responsibility "*to create a single point of authority and accountability in the area for the safe and effective operational delivery and performance of day to day services in the ISA*". His failure to show even minimal competence to fulfil specific responsibilities pursuant to his job description was particularly troublesome for the Committee..
6. A number of specific opportunities, to rectify matters when the true state of affairs came to the Registrant's direct attention which were not availed of by the Registrant. Examples of opportunities where the Registrant could have taken action, *inter alia*, occurred on:
 - 14 May 2014, when [REDACTED] emailed the Registrant to notify him of the error on [REDACTED] file;
 - 19 April 2014, when the Registrant emailed [REDACTED] to state that the email from [REDACTED] should not have been sent to him;
 - 7 May 2015, when [REDACTED] emailed the Registrant with a draft 'Barr letter' erroneously setting out the false allegations of sexual abuse against [REDACTED]
 - 8 May 2015, when [REDACTED] set out the five point action plan to deal with the case.


This inaction is compounded by the fact that the Registrant on 8 April 2016 in response to an email from [REDACTED] about progress on the file wrote - "*I have not looked at it. I need to do so*".

7. Equally unexplained is the Registrant's failure to express an apology to ██████████ or explain how and why what transpired had occurred. This was a further instance of the truth of these events not emerging, even now.
8. The consequences of this total lack of professionalism were predictably catastrophic for ██████████. Even if such consequences as emerged were not all foreseeable, the extent of these consequences were devastating for ██████████
9. There was an obligation on the part of Tusla and its professional staff, including the Registrant, to ensure that the records relating to Ms. D as a formally "at risk" child, were accurate. The gross inaccuracies that were allowed to persist in relation to her, constituted a risk to Ms D's welfare. The consequences of this total lack of professionalism, specifically the inaccuracy of the records relating to Ms. D as a child and subsequently, clearly indicated to the Committee that risks to her welfare must have arisen.
10. The consequence of persistent Poor Professional Performance of this kind, over many years, inevitably undermines public confidence in the social workers profession.
11. The Committee has had regard to the Guidance on Sanction document published by CORU. The Committee is aware of its obligation to act fairly and proportionately in deciding the issue of sanction and of its obligation to act proportionately in weighing the interests of the public against the interests of the Registrant and in measuring the admitted conduct against the range of sanctions. The Committee has heard and taken into account the submissions of the Parties and in particular, the submissions as to mitigation by Ms. Lynch counsel for the Registrant. The Committee has further had regard to the advice of the Legal Assessor.
12. The Committee is conscious that the primary purpose of sanction is to protect the public and serve the public interest. The purposes is not to punish, although the sanction may have a punitive effect on the Registrant.
13. The Committee identified a number of possible mitigating features;
 - First, the admissions of the Registrant are certainly a mitigating feature, they relate to the facts of Allegation 1, Allegation 5 and Allegation 6 and also to the facts amounting to Poor Professional Performance on a cumulative basis.
 - The Registrant engaged positively in the CORU process from the outset.
 - The Cavan-Monaghan Tusla area had a large caseload, and this was referred to by the Registrant throughout by his legal counsel. The implication was that his failings might in some way relate to this volume of work. The Committee was not persuaded that this could amount to a mitigating factor. There was no evidence of working conditions precluding or inhibiting the Registrant from discharging his professional obligations and no evidence of any link between his working conditions and his admitted failures. In this context the Committee noted in particular that on one of the occasions when the untrue and damaging records were brought to his specific notice

by a colleague, he responded by email dated 19 May 2014 to the effect that this information had been erroneously addressed to him.

- The Committee noted the Registrants' apology through his Counsel in relation to "*the manner in which this particular file was handled*" and he said that "*he understands and acknowledges that it simply wasn't good enough*". The Committee regarded this as a minimal expression of remorse in the context of its findings.
 - Further, the Committee also considered that the Registrant's experience during and in the aftermath of the Disclosures Tribunal has been very difficult for him both professionally and personally. As a mitigating factor, the Committee attaches only limited weight to this consideration. The Registrant's difficult experience before the Disclosures Tribunal is to a large extent a separate consequence of his actions.
 - The Committee carefully considered the question of insight on the Registrant's part, which it considers particularly relevant to the choice of sanction. It was struck by the absence of any evidence of a true understanding by him of the impact of his poor professional performance on others. Neither was there any evidence of any steps taken to remedy his professional standards so as to prevent any recurrence in the future. Whilst in the normal way an admission can be seen as a form of insight, this did not persuade the Committee that in this instance the Registrant in fact has insight or has learned from this experience in any significant way.
 - The Committee noted the Registrant's unblemished career as a registered social worker apart from the findings in this case, which is a mitigating feature.
14. The Committee noted the submission that the Registrant retired in December 2020 and would not seek to return to practice as a social worker. In terms of the need to protect the public and the broader public interest the Committee did not feel reassured by this submission as to his current intentions because he remains free to remain on the register of social workers and/or to renew his registration with CORU.
15. In light of the above, the Committee recommends that the Council consider the application of the following sanctions to the Registrant:
- In considering a minimum period before which the Registrant would be precluded from applying to be restored to the register, the Committee applied the same criteria, namely proportionality, protecting the public and the public interest, sending an appropriate message to the Registrant and wider profession as to the seriousness of what he had done and identifying what leniency was possible.

Applying these criteria, the Committee determined that the Registrant should be removed from the Register. Further, recognising that the Committee cannot know when, if ever, it would be safe and appropriate to restore the Registrant to the Register, having given it due consideration, considered that a minimum period of 5 years to be appropriate in the circumstances of this case. The Committee was of the view that that Registrant caused serious harm to service users and demonstrated a persistent lack of insight into the seriousness of his acts and omissions.

Signed 
Susan Ahern,
Chairperson

Date 20 December 2023