

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

---

**Name:** Charlotte Audrey Gray

**SCR No:** 6024738

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **14 November 2018**, 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 conviction;**

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

**Particulars of the Allegation:**

That, whilst being registered as a social care worker under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted of the following offence at the Magistrates' Court:

- |    |  |
|----|--|
| 1. | Defendant on a date between 26 March 2018 and 21 April 2018 stole money to the value of £230 or thereabouts belonging to Service User A, contrary to Section 1 of the Theft Act (Northern Ireland) 1969. |
|----|--|

And that by reason of the matters set out above, your fitness to practise is impaired because of your conviction.

**Procedure**

The hearing was held under the fitness to practise procedure.

**Legal Advice Given**

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

**Preliminary Matters**

**Service**

In a Notice of Hearing dated 05 October 2018, 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 the hearing. Royal Mail advised that a 'Something for you' card was left at the address. However, the documentation was not collected subsequently. The Council, in addition to service at the Registrant's registered address, also served

the documentation on the address shown for the Registrant on the Certificate of Conviction. This was served by way of Special Delivery and was signed for on 23 October 2018.

The Committee received legal advice from the Legal Adviser, and she referred the Committee to the requirements as set out in the NISCC Fitness to Practise Rules 2016 ('the Rules') and, in particular, Rule 3 which states that proof of service shall be treated as being effected on the day after it was properly posted.

The Committee, in all of the circumstances of the case, is satisfied that the Notice of Hearing has been served in accordance with Rule 3, and with the requirements of Paragraph 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, and that the Committee should hear and determine the case in the Registrant's absence. Ms Kelso advised the Committee that the Registrant has not responded in any way to the Notice of Hearing nor the hearing bundle of evidence. She invited the Committee to conclude that the Registrant's absence was voluntary, and to proceed with the hearing having regard to the public interest in the matter. She advised the Committee that in addition to serving the Notice on the Registrant in accordance with the Rules, the Committee Clerk had attempted to contact the Registrant by way of email and telephone without eliciting a response.

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. In considering the application, the Committee sought to satisfy itself that all reasonable efforts had been made to notify the Registrant of the hearing, and accepted the advice of the Legal Adviser. She referred the Committee to the cases of R v Jones 2003 1 AC, Adeogba and Visvardis v GMC 2016. She 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 NISCC and the public interest must also be taken into account. She reminded the Committee to avoid reaching any improper conclusion about the Registrant's absence and not to accept it as an admission in any way.

The Committee reminded itself that fairness to the Registrant should be a prime consideration. The Committee bore in mind the public interest in the expeditious disposal of the 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. Therefore, after careful consideration of all of the issues, the Committee decided to exercise its discretion to proceed in the absence of the Registrant, taking into account the nature of the allegations and striking a careful balance between fairness to the Registrant and the wider public interest. The Committee, in all of the circumstances, considers that the Registrant has voluntarily absented herself from today's hearing. However, the Committee reminded itself that it must avoid reaching any improper conclusion about the Registrant's absence, nor treat the absence as an admission of guilt.

## **Application to Admit Hearing Bundle**

The Committee heard an application from Ms Kelso under Paragraph 12 of Schedule 2 of the Rules to admit a bundle of papers into evidence. This bundle of papers was served by way of Special Delivery on the Registrant on 05 October 2018. No objection was raised by the Registrant on the contents of the bundle.

The Committee was satisfied that the bundle met with the requirements of relevance and fairness and admitted the bundle (Exhibit 1).

## **Background**

Ms Kelso told the Committee that the Registrant is registered at Part 2 of the Register as a social care worker. During the period of the allegation, she was employed as a domiciliary care worker with Caremark, having commenced with them on 13 June 2016. Caremark were advised by the PSNI that the Registrant was being investigated for allegations of theft arising out of her provision of care to Service User A at her residence.

## **Evidence**

Ms Kelso referred the Committee to the Certificate of Conviction in the bundle of papers, dated 16 August 2018. This confirms that the Registrant was convicted of stealing money to the value of £230 from Service User A, contrary to Section 1 of the Theft Act (Northern Ireland) 1969, on a date between 26 March 2018 and 21 April 2018. The Registrant pleaded guilty to the offence. On 08 August 2018, the Registrant was sentenced by way of a Community Service Order for a period of 12 months, requiring her to perform 120 hours of unpaid work. Ms Kelso therefore applied under Paragraph 12 (5) of Schedule 2 of the Rules for the findings of fact as set out in the Certificate of Conviction to constitute conclusive proof of the conviction therein.

## **Finding of Facts**

The Committee heard and accepted the advice of the Legal Adviser. She reminded the Committee that it must apply the standard of proof as applicable in civil proceedings, which is the balance of probabilities. She further referred the Committee to Schedule 2, Paragraph 12 (5) of the Rules, as detailed by Ms Kelso. In addition, she reminded the Committee not to draw any adverse inference in this Registrant not attending or giving evidence. She reminded the Committee that some of the documents within the bundle may contain hearsay evidence, requiring careful assessment and the application of appropriate weight.

The Committee reminded itself that the burden is on the Council to prove the facts as set out in the Particulars of the Allegation, and that to find the facts proved the Committee must be satisfied on the balance of probabilities. This means that for any fact to be found proved, the Committee must be satisfied that it is more likely than not to have occurred.

The Committee took into account the submissions from Ms Kelso on behalf of the Council, and had careful regard to all of the documentary evidence submitted. The Committee finds that, on the balance of probabilities, the facts contained in the Particulars have been established. Taking into account Paragraph 12 (5) of Schedule

2 of the Rules, the Committee was satisfied that the Certificate of Conviction against the Registrant proved the facts therein. The Certificate of Conviction against the Registrant relates to her stealing monies from Service User A during a period between 26 March 2018 and 21 April 2018. The amount stolen by the Registrant was approximately £230, and the Registrant pleaded guilty to the charge of theft. The Registrant was sentenced by way of a Community Service Order, requiring her to perform 120 hours of unpaid work during a period of 12 months commencing on 08 August 2018. Details of the offence and the investigation by the PSNI are set out in a letter of 12 September 2018 from Inspector Alan McKeown of the Protective Disclosure Unit.

Taking all of this into account, the Committee finds proved on the balance of probabilities the facts in accordance with Rule 4 (1) (d) of the Rules.

### **Fitness to Practise**

The Committee proceeded to consider if the Registrant's fitness to practise is impaired. The Committee heard submissions from Ms Kelso, who advised that there were no formal admissions from the Registrant in relation to the allegation. She submitted that the Registrant's conviction calls into question her ability to work in social care services, such as to bring into question her suitability to remain on the Register without restriction or to be registered at all. She referred the Committee to the Standards of Conduct and Practice for Social Care Workers, which she submitted that the Registrant's criminal conviction breaches, as follows: 1 – 1.1 and 1.8; 2 – 2.1, 2.6 and 2.11; 5 – 5.1, 5.2 and 5.8; 6 – 6.3.

She told the Committee that the Registrant's conviction and conduct fell far below the minimum standard expected of a registered social care worker, and called into question her fitness to practise. She submitted that the Registrant's actions constituted a premeditated invasion of Service User A's privacy and showed a complete lack of respect for Service User A. She noted that when interviewed by the Police, the Registrant said that she was 'short a couple of weeks ago and I had taken some money with full intention of giving it back but I didn't think anyone would notice'. Ms Kelso said that the Registrant displayed no understanding or insight into the effect of her actions on the service user, and that there was no evidence of remorse, regret or shame. She said that in light of the Registrant's lack of engagement and her failure to attend the hearing, there is nothing to persuade the Committee that the Registrant's behaviour would not be repeated in the future. There is also no evidence from the Registrant that she has remediated her behaviour. Ms Kelso submitted that the public interest and confidence in the social care profession would be undermined if a finding of current impairment was not made in these particular circumstances.

The Committee considered the submissions from Ms Kelso on behalf of the Council, and had regard to all of the evidence in the case. The Committee accepted the advice of the Legal Adviser. She referred the Committee to the Standards of Conduct and Practice for Social Care Workers, and advised it to adopt a sequential approach when considering the application. In particular, she asked it to take into account the nature and content of the criminal conviction against the Registrant, and reminded the Committee that it is being asked to determine whether the Registrant's fitness to practise is impaired because of this conviction. She referred the Committee to

Paragraph 24 Schedule 2 of the Rules, and the requirements as set out in the case of GMC v Cohen, looking at the current competence and behaviour of the Registrant along with the need to protect service users, members of the public, the upholding of proper standards of behaviour and the maintaining of public confidence in the social care profession. She further referred the Committee to the findings of Dame Janet Smith in the 5<sup>th</sup> Shipman Report as regards the potential causes of impairment. She also referred the Committee to the cases of GMC v Meadows 2006 and CHRE v NMC & Grant 2011.

The Committee considered whether the Registrant's fitness to practise is impaired by reason of her conviction as set out in the Particulars of the Allegation.

The Committee, in considering the issue of impairment of fitness to practise, took account of Paragraph 24 (3) of Schedule 2 of the Rules which states that it should have regard to:

- (a) whether it is satisfied as to the reason for the alleged impairment of fitness to practise;
- (b) the Standards of Conduct and Practice issued by the Council under Section 9 of the Act;
- (c) whether the impairment is capable of remediation;
- (d) whether the impairment has been remediated;
- (e) the risk of repetition; and
- (f) the public interest.

The Committee notes that the Registrant's conviction for theft from Service User A took place over a period of time when she was responsible for the provision of care in Service User A's home. The Committee considers that a registrant providing care in a service user's home is in a position of trust, and that the Registrant's theft in these circumstances is a serious abuse of this trust. In addition, the Registrant's theft from Service User A provides evidence that her integrity cannot be relied upon.

The Committee had regard to the Standards of Conduct and Practice for Social Care Workers and the Council guidance entitled 'Making a Determination of Impaired Fitness to Practise: Guidance for Committees on Remediation'. The Committee is satisfied that the Registrant's actions were in breach of the following Standards of Conduct:

**Standard 1: As a social care worker, you must protect the rights and promote the interests and wellbeing of service users and carers. This includes:**

1.8 Respecting and maintaining the dignity and privacy of service users.

**Standard 2: As a social care worker, you must strive to establish and maintain the trust and confidence of service users and carers. This includes:**

2.1 Being honest and trustworthy; and

2.6 Being reliable and dependable.

**Standard 5: As a social care worker, you must uphold public trust and confidence in social care 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;
- 5.3 Abuse the trust of service users and carers or the access you have to personal information about them or to their property, home or workplace; or
- 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 has no information or evidence from the Registrant as regards any action which she has taken to remediate her behaviour. The Registrant was convicted on her guilty plea of a serious offence involving theft of money from a vulnerable service user. As referred to above, the Committee considers that the Registrant's actions amounted to a very serious breach of trust. The Committee considers that such conduct is not easily remediable. However, in view of the Registrant's lack of engagement to date, the Committee has no basis on which it can be satisfied that the Registrant has any insight into her offending, or that she would not repeat her dishonest conduct in the future. In all of the circumstances, the Committee therefore considers there to be a continued risk of repetition of her behaviour.

The Committee concluded that the Registrant's conviction for theft from a service user brings the social care profession into disrepute, and that the public would find it totally unacceptable that a registrant convicted in these circumstances remained on the Register without restriction. The Committee considers that the Registrant's theft was not a one off incident and took place over a period of time, and notes that during the Police interview she admitted to taking 'some of the money' and took issue with the findings of the CCTV evidence.

In all of the circumstances, the Committee concluded that a finding of impaired fitness to practise is, therefore, necessary for the maintenance of public confidence in the social care profession and the Council as its regulator, and that public confidence in the social care profession would be undermined if a finding of impaired fitness to practise was not made.

Therefore, the Committee concluded that the Registrant's fitness to practise is currently impaired by reason of her criminal conviction.

### **Sanction**

In reaching its decision on sanction, the Committee considered the submissions of Ms Kelso on behalf of the Council, and had regard to all of the evidence in this case.

The Committee accepted the advice of the Legal Adviser. She referred the Committee to the Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('Indicative Sanctions Guidance'), and reminded the Committee to consider the question of sanction in ascending order of severity, paying particular attention to the issue of proportionality.

She referred the Committee to Paragraph 26 of Schedule 2 of the Rules which provides that, upon a finding of impairment of fitness to practise, the Committee may:

- (a) warn the Registrant and direct that a record of the warning should be placed on the Registrant's entry in the Register for a specified period of up to 5 years; or
- (b) make a Conditions of Practice Order for a specified period not exceeding 3 years; or
- (c) make an Order suspending the Registrant's registration for a specified period not exceeding 2 years (a 'Suspension Order'); or
- (d) make an Order for removal of the Registrant's registration from the Register ('a Removal Order');
- (e) ...

She further reminded the Committee that in deciding which sanction to impose, the Committee should take into account:

- (a) the seriousness of the Particulars of the Allegation;
- (b) the degree to which the Registrant has fallen short of any expected standards;
- (c) the protection of the public;
- (d) the public interest in maintaining confidence in social care services; and
- (e) the issue of proportionality.

The Committee has applied the principles of fairness, reasonableness and proportionality, weighing the public interest with the Registrant's interests, and taking into account any aggravating and mitigating factors in the case. The public interest includes the protection of members of the public including service users, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour within the profession. The Committee took into account its powers under Paragraph 26 of Schedule 2 of the Rules in relation to the sanctions available to it, and also had regard to the Council's Indicative Sanctions Guidance, bearing in mind that the decision on sanction is one for its own independent judgment.

The Committee recognises that the purpose of sanction is not to be punitive, although a sanction may have a punitive effect. The Committee considered the aggravating and mitigating factors in this case.

The Committee considers the aggravating factors to be:

- the Registrant's criminal conviction for theft from Service User A constituted dishonesty, which took place in the service user's home over a period of time from 26 March 2018 to 21 April 2018 and was not a one off incident;
- the Registrant's actions constituted an abuse of trust placed in her by her employer and by Service User A;
- the Registrant, during the Police investigation, denied some of the allegations of theft of the monies;
- the Registrant's actions were premeditated and took place during the course of her employment;

- the Registrant expressed no insight or regret for her actions;
- the Registrant stole monies from a vulnerable elderly service user, with these actions having a consequent impact upon her;
- the Registrant has failed to engage with the investigation by her regulator, NISCC;
- the Committee has no evidence of remediation or rehabilitation, nor has the Registrant provided any references or testimonials.

The Committee considered the mitigating factors to be:

- there have been no previous concerns raised with the Council;
- during her Police interview, the Registrant made an admission to some of the allegations of theft;
- the Registrant made an admission to the criminal charge and pleaded guilty.

Having balanced the aggravating and mitigating factors, the Committee proceeded to consider which sanction to apply in this case.

**Warning** – the Committee considered the issue of a Warning in this case. It bore in mind that the imposition of a Warning for a period of time would not protect the public from the risk of repetition and consequent risk of serious harm to members of the public. The Committee considers that the Registrant's criminal conviction demonstrates a serious disregard for the Standards of Conduct and Practice for Social Care Workers. The Registrant's impairment of fitness to practise is not at the lower end of the spectrum, nor are the circumstances such that the Committee would be confident that this sanction would provide adequate public protection as far as the Registrant's suitability is concerned, bearing in mind that a Warning would entitle the Registrant to work as a social care worker. The Registrant's theft constituted a deliberate act which was not isolated. She has expressed no regret for her actions, nor has she provided any evidence of insight into the harm which her behaviour caused Service User A. In addition, the Committee has no evidence of rehabilitative steps taken by the Registrant, nor has she provided references or testimonials.

**Conditions of Practice Order** – the Committee next considered a Conditions of Practice Order. The Registrant's conviction related to a serious incident of theft when she entered the home of a vulnerable service user in the course of her duties and, on a number of occasions, stole money. The Committee has no evidence as to the Registrant's current employment circumstances, or whether she would agree to any conditions if imposed.

The Committee, therefore, concludes that a Conditions of Practice Order would not be sufficient to meet the public interest in this matter, given the seriousness of the Registrant's departure from the standards expected of a registered social care worker. In these circumstances, the Committee could not formulate workable, enforceable or verifiable conditions which would address the Registrant's criminal behaviour and adequately protect the public.



**Suspension** – the Committee next considered a Suspension Order. The Committee noted that it had made findings at the fact and impairment stages of the proceedings which were of a very serious nature, and related to the Registrant's breaching of fundamental tenets of the social care profession. The Standards of Conduct and Practice for Social Care Workers require a social care worker to treat each person as an individual with consideration, respect and compassion, along with respecting and maintaining their dignity. In particular, the Registrant in this matter was found guilty of theft from a vulnerable elderly service user on a number of occasions over a period of time.

The Committee has no evidence before it of remediation by the Registrant, nor has it any information to indicate that the Registrant is unlikely to repeat her criminal behaviour in the future. The Committee considers that the Registrant has failed to express any insight or remorse, particularly in relation to the seriousness of her criminal conviction. The Committee considered the public interest in this matter. The Committee considers that the public would perceive the Registrant's criminal behaviour as falling short of what would be expected of a registered social care worker. In all of the circumstances, the Committee concludes that a Suspension Order would not be sufficient to mark the seriousness and unacceptability of the Registrant's criminal conviction.

**Removal** – the Committee then considered a Removal Order. In considering this, the Committee took into account the Guidance at 4.26 – 4.28. It concludes that given the seriousness of the Registrant's criminal conviction and her lack of insight into and remediation of her failings, a Removal Order is the only sanction appropriate to protect the public and to maintain public confidence in the social care profession and the Council as its regulator. The Committee considers the Registrant's actions to constitute a serious departure from the professional standards as set out in the Standards of Conduct and Practice for Social Care Workers. The Registrant's criminal behaviour involved dishonesty with the theft of monies from a vulnerable elderly service user, and constituted an abuse of her position of trust as a social care worker, and brought the social care profession into disrepute. The Registrant has shown no insight or remorse, has taken no remedial action and has failed to engage with the Committee in relation to today's hearing. In all of the circumstances, the Committee concludes that a Removal Order is the only sanction available to it that would protect the public and meet the public interest in upholding confidence in the social care profession and its regulator, by marking the seriousness and unacceptability of the Registrant's actions. The Committee considers that public confidence in the social care profession, and the Council as its regulator, would be undermined if a social care worker who was criminally convicted of theft, and who failed to show any insight or remediation, was allowed to remain on the Register. The Committee considered a Removal Order to be a suitable, appropriate and proportionate sanction which will be imposed on the Registrant's registration with immediate effect.

---

**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.**

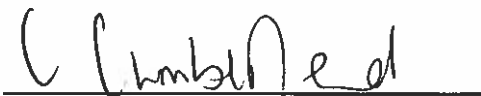
**The effect of this decision is that your entry in the Register has been removed.**

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

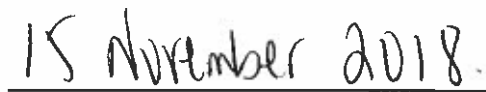
1. A member of care staff at a:
  - a.) Children's home;
  - b.) Residential care home;
  - c.) Nursing home;
  - d.) Day care setting;
  - e.) Residential family centre.
2. A person who is supplied by a domiciliary care agency to provide personal care in their own homes for persons who by reason of 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.



Committee Manager



Date