

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

SUSPENSION ORDER REVIEW HEARING

Name: Margaret Frances Hill

SCR No: 6014305

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **27 November 2018**, 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 revoke the Suspension Order and impose a Removal Order on your registration.

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 this Decision.

Preliminary Matters

The Registrant was not in attendance. The Council was represented by Mr Gilmore, Solicitor. 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 Rules (2016) ('the Rules').

Service

In a Notice of Review Hearing, dated 25 October 2018, and 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 Royal Mail website indicates that delivery was attempted on 26 October 2018 and that a 'something for you' card was left. The package remains uncollected at the Registrant's local sorting office.

The Committee received advice from the Legal Adviser, who referred the Committee to the requirements as set out in 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 determined, therefore, 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 Absence

Mr Gilmore 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 Gilmore advised that reasonable efforts had been made to advise the Registrant of today's hearing, and submitted that notice has been given to the Registrant in accordance with the Rules and that, given the seriousness of the Suspension Order and its expiration on 01 December 2018, it was appropriate to proceed in her absence.

In considering the application, the Committee satisfied itself that all reasonable efforts had been made to notify the Registrant of the hearing, and it 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 NISCC 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 01 December 2018.

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 and no indication that an adjournment would secure her attendance. 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 01 and 02 December 2016. The current Order is due to expire on 01 December 2018.

Following a hearing at which the Registrant was neither present nor represented, on 01 and 02 December 2016, the Fitness to Practise Committee found the following Particulars of the Allegation proved:

1. *On 12 June 2015, you were convicted in the Petty Sessions District of Belfast and Newtownabbey, County Court Division of Belfast, of the following charge:*
'Defendant on 26th Day of February 2015 in the County Court Division of Belfast stole three bottles of perfume to the total value of £203.50 belonging to John Moore contrary to Section 1 of the Theft Act (Northern Ireland) 1969'.

2. On 29 January 2016, you were convicted in the Petty Sessions District of Londonderry, County Court Division of Londonderry, of the following charge:
'Defendant on the 6th November 2015 in the County Court Division of Londonderry, stole aftershave to the value of £140.00 or thereabouts belonging to Boots, contrary to Section 1 of the Theft Act (Northern Ireland) 1969'.
3. On 29 January 2016, you were convicted in the Petty Sessions District of Londonderry, County Court Division of Londonderry, of the following charge:
'Defendant on the 6th November 2015 in the County Court Division of Londonderry, stole a jumper to the value of £35.00 or thereabouts belonging to Marks and Spencer, contrary to Section 1 of the Theft Act (Northern Ireland) 1969'.
4. On 11 February 2016, you were convicted in the Petty Sessions District of Ballymena, County Court Division of Antrim, of the following charge:
'Defendant on a date between 1st August 2015 – 31st August 2015 in the County Court Division of Antrim stole perfume to the value of £170.00 or thereabouts belonging to Boots, contrary to Section 1 of the Theft Act (Northern Ireland) 1969'.
5. On 11 February 2016, you were convicted in the Petty Sessions District of Ballymena, County Court Division of Antrim, of the following charge:
'Defendant on the 31st of July 2015 in the County Court Division of Antrim, stole beauty products to the value of £63.00 or thereabouts belonging to Marks and Spencers, contrary to Section 1 of the Theft Act (Northern Ireland) 1969'.
6. On 11 February 2016, you were convicted in the Petty Sessions District of Ballymena County Court Division of Antrim, of the following charge:
'Defendant on the 4th December 2015 in the County Court Division of Antrim, stole watches to the value of £148.00 belonging to Marks and Spencers, contrary to Section 1 of the Theft Act (Northern Ireland) 1969'.
7. You withheld information regarding your offending from NISCC which you knew / ought to have known would likely affect your registration.
8. By letter received by the Council on 26 August 2015, you stated that you had informed your manager of your conviction of 12 June 2015 when in fact you had not.

The original Committee determined the following with regard to impairment:

The Committee then moved on to consider if the Registrant's fitness to practise is impaired.

The Committee heard submissions from Mr Johnston on the question of impairment. Mr Johnston submitted that the Registrant's fitness to practise is impaired because of her convictions and misconduct. He submitted that the

evidence heard by the Committee, and the facts found proved, have established that the Registrant's actions fell well short of the standard to be expected.

Mr Johnston invited the Committee to conclude that the Registrant's actions amount to misconduct, and outlined the relevant parts that, in his submission, breached the Code of Practice for Social Care Workers 2002 and the Standards of Conduct and Practice for Social Care Workers 2015. He invited the Committee to consider Code 2: 2.1; Code 5: 5.8; and Standards of Conduct 6: 6.6.

When considering the issue of remediation, Mr Johnston submitted that the Registrant had demonstrated some insight and had pleaded guilty at the first occasion to her criminal charges. He directed the Committee to the Probation Report contained within the bundle, which provided evidence of insight and remorse. In his submission, without engagement from the Registrant, the Committee could not conclude that the conduct which led to the convictions had been remediated. Mr Johnston questioned whether the misconduct found proved at Particulars 7 and 8 could be remediated. The Registrant had dishonestly withheld information from the NISCC and provided false information in respect of contact with her manager at work. Mr Johnston submitted that no training could remediate these issues which brought her character very much into issue.

Mr Johnston submitted that, in light of the facts found proved, public confidence in the NISCC to maintain proper standards and in the NISCC as a regulatory body would be undermined if a finding of impaired fitness to practice was not made.

The Committee had careful regard to all the evidence in the case and the submissions of Mr Johnston. The Committee accepted the advice of the Legal Adviser. The Committee took into account that this is a matter for the Committee to determine exercising its own independent judgement with no burden or standard of proof.

The Committee first considered whether the Registrant's fitness to practise was impaired by reason of her convictions.

The Committee had no hesitation in concluding that the Registrant's fitness to practise was impaired at the time the offences were committed. The Committee determined that the Registrant had breached the NISCC Code of Practice for Social Care Workers (September 2002), which applied at the time of the offences in Particulars 1, 4 and 5 as follows:

Code 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.

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

5.8 Behave in a way, in work or outside work, which would call into question your suitability to work in social care services.

In respect of Particulars 2, 3 and 6, the Committee determined that the Registrant had breached the NISCC Standards of Conduct for Social Care Workers at:

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.*

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

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 then considered whether her fitness to practise is currently impaired by reason of her convictions. The Committee had regard to the Standards of Conduct and Practice for Social Care Workers. The Committee noted that the offences took place on a number of occasions from February 2015 until December 2015. The Committee considered that the Registrant's convictions were serious because of the repeated offences over a prolonged period of time. The Committee noted that the Registrant had expressed remorse, and had pleaded guilty to each offence on the first occasion. The Committee took into account that the Probation Report described her as an insightful woman who accepts responsibility for her offending. The Committee also considered that the Registrant had continued to work at Karina Lodge until it closed in September 2016, and gave consideration to the appraisals within the bundle of evidence. However, the Registrant did not engage with the Committee and in the absence of any current evidence before the Committee, the Committee could not be assured that the Registrant has remediated the cause of her criminal offending or that there is a low risk it being repeated.

Throughout its deliberations, the Committee considered the public interest, which includes protection of the public, the declaring and upholding of proper standards of conduct and behaviour and the maintenance of public confidence in the profession. The Committee is satisfied that, in light of the serious nature of her criminal offences, public confidence in the profession would be undermined if no finding of impairment was made.

For these reasons, the Committee concluded that the Registrant's fitness to practise is impaired by reason of her convictions.

The Committee then went on to consider whether the Registrant's conduct as set out in the Particulars of the Allegation at Particulars 7 and 8 constituted misconduct. The Committee had regard to the Code of Practice for Social Care Workers (September 2002), in force at the time. The Committee determined that the Registrant's actions fell short of the standards expected of a social care worker as follows:

Code 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;*

2.2 *Communicating in an appropriate, open, accurate and straightforward way.*

Although Mr Johnston had directed the Committee to Standard 6: 6.6, which sets out the requirement that social care workers must notify NISCC and their employers if their fitness to practise is called into question by reason of a criminal conviction, the Committee determined that the Standards would not have been in force when the Registrant wrote her letter of the 26 August 2015, and the Committee could not be sure that the Standards were applicable during the entire period of time when the Registrant withheld information from the NISCC about her offending.

The Committee determined that the Registrant's actions in withholding information from the NISCC about her offending, and in misinforming the NISCC that she notified her manager of her conviction of 12 June 2015, amount to misconduct. The Committee next considered the issue of impairment. The Committee concluded that her fitness to practise was impaired, at that time, because of her actions in failing to notify the NISCC and in stating that she had advised her manager of her conviction when she had not. The Committee determined that she had brought the profession into disrepute, breached a fundamental tenet of the social care profession and acted dishonestly.

When considering current impairment, the Committee considered the evidence presented to it in respect of insight or remorse on the part of the Registrant. The Committee noted that the Registrant had attended before a previous Committee and given evidence that she knew she did not tell her employers the truth about her convictions and was sorry for this. She also gave evidence that she was aware of the need to notify the NISCC as regards her convictions and she was sorry that she had not done so. However, there is no evidence that the Registrant's misconduct has been remediated. The Committee had regard to the Standards of Conduct and Practice for Social Care Workers 2015 and found that the Registrant is in breach of the following Standards of Conduct:

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;*

2.2 *Communicating in an appropriate, open, accurate and straightforward way.*

The Committee considered the public interest, which includes the public confidence in the social care profession and in the Council to uphold proper standards of behaviour. The public must have confidence in social care workers to communicate honestly and openly with the Council, and the Committee concluded that public confidence in the profession could be undermined if a finding of current impairment is not made.

Accordingly, and for the reasons above, the Committee has determined that the Registrant's fitness to practise is impaired by reason of her misconduct.

The original Committee determined the following with regard to sanction:

In reaching the decision on sanction, the Committee had regard to all the evidence adduced in the case, together with the detailed submissions of Mr Johnston on behalf of the NISCC. The Committee heard and accepted the advice of the Legal Adviser.

The Committee has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The Committee has taken into account the Council's Indicative Sanction Guidance, bearing in mind that the decision on sanction is one for its own independent judgement.

The Committee first considered the aggravating and mitigating factors in the case. The Committee determined that the mitigating factors are:

- The Registrant admitted her offences to the police at an early stage;*
- The Registrant's actions did not cause any direct or indirect harm to service users;*
- The offences were all committed outside work;*
- The Registrant has showed some insight. She has accepted that her offending was wrong and the Probation Report says she was insightful;*
- There is no evidence of re-offending since the last offence in December 2015, almost 12 months ago;*
- The Registrant co-operated to an extent with the NISCC and attended at previous stages;*
- The Registrant has complied with the Interim Conditions of Practice Order; and*
- There is evidence that these events all occurred against a backdrop of difficult personal circumstances, and the Committee noted that the Registrant explained that she did not keep the items she stole and made no financial gain from her offences.*

The Committee determined that the aggravating factors are:

- The Registrant's actions were dishonest;*
- The thefts were not isolated and were repeated even in light of assurances to the NISCC that it would not happen again;*
- The Registrant had been specifically told by the NISCC that her registration was granted subject to understanding that she was required to tell the NISCC of any changes to the information in her application form. She was advised that further disclosures would have the potential to affect her registration, but she deliberately ignored this advice and withheld information;*
- The letter written by the Registrant to the NISCC on 26 August 2015, stating that she had told her manager of the conviction of 12 June 2015 was incorrect, and the Committee considers that the Registrant's actions were deliberate and premeditated;*
- Her actions constitute a serious disregard for the NISCC Standards of Conduct and Practice.*

The Committee had careful regard to the Indicative Sanctions Guidance, which highlights dishonesty as particularly serious. The Committee did take into account the evidence available of the context surrounding the Registrant's dishonesty.

The Committee went on to consider the appropriate sanction. The Committee took the view that the Registrant's actions had fallen well below the standard of a registered social care worker. As such, it was the Committee's duty to protect the public from the risk of harm and to uphold proper standards of conduct, so as to maintain public confidence in the profession.

Warning - *the Committee considered the issue of a Warning in the case. The Committee determined that a Warning was not appropriate. The Committee noted that there is no evidence that the Registrant's actions caused any harm to service users or prevented her from being a competent social care worker. However, the Committee does not consider that the Registrant's behaviour is at the lower end of the spectrum of impairment. The Committee was concerned by the extent of the Registrant's criminal convictions which arose out of offences over a prolonged period of time and her level of insight into the dishonesty surrounding her communication with the NISCC. As a result, the Committee was not confident that a Warning would provide adequate public protection as far as the Registrant's suitability to work as a social care worker is concerned.*

Conditions of Practice Order - *the Committee next considered a Conditions of Practice Order. The Committee noted that she had been working under an Interim Conditions of Practice Order until Karina Lodge closed in September 2016. The Committee could not rely on the Interim Conditions of Practice Order as evidence that a Conditions of Practice Order would be workable. The Committee determined that, given the lack of engagement from the Registrant at this hearing, Conditions of Practice could not be determined which were relevant, proportionate and workable. There was no current information to allow the Committee to form an informed view that conditions could be formulated which would be achievable and acceptable. The Committee also concluded that a Conditions of Practice Order would not be sufficient to meet the public interest, given the significant departure by the Registrant from the standards expected of a registered social care worker.*

Suspension - *the Committee was of the unanimous view that, in the circumstances of this case, a Suspension Order for a period of two years is the most appropriate and proportionate sanction. Suspension gives a clear message to the public and the profession that the Registrant's conduct is not appropriate conduct for a social care worker. The dishonesty in this case did not impact on service users, and the criminal offences occurred outside of work. The Committee noted that the events occurred in the context of difficult personal circumstances and problems with the Registrant's family life. The probation service assessed her as a low risk of re-offending. The Registrant has not re-offended in the past 12 months and was working at Karina Lodge without cause for concern until September 2016 when the home closed. The Committee noted that Witness 1 described her as caring and competent in her duties. The evidence that she has not re-offended and her good work record since these events have reassured the Committee that removal is not warranted and that the Registrant will be able resolve the cause of her misconduct.*

The Committee also noted that the Registrant had [REDACTED]. These interventions demonstrate to the Committee that the Registrant will be able to take steps to remedy the cause of her misconduct during the course of her suspension.

There is no doubt that the Registrant's convictions and her misconduct are serious but, in the circumstances of this case, removal is not warranted. The Committee considered that the Registrant's behaviour is not fundamentally incompatible with continuing to be a registered social care worker in the long term. The Committee is satisfied that suspension would sufficiently protect the interests of service users and the public.

The Committee next considered the public interest. The public must be able to place complete reliance on the integrity of registrants, and a finding of dishonesty against any social care worker is serious. In all the circumstances of this case, the Committee has determined that the reputation of the profession and of the NISCC to maintain standards will be met by a Suspension Order.

The Committee concluded that a Suspension Order was the most suitable, appropriate and proportionate sanction to be imposed on the Registrant's registration with immediate effect.

Decision on Current Fitness to Practise

Mr Gilmore provided a background to the Suspension Order and referred to the decision of the previous Committee. He informed the Committee that the Registrant was not present and had not provided any information. He further submitted that there had been no contact of any kind since the Order had been made. The previous Committee had found that the Registrant's fitness to practise was impaired, and the findings in relation to the convictions were not incompatible with working as a social care worker. This Committee took account of the reasons provided by the original Committee at the hearing in relation to the Registrant's fitness to practise. The Committee considered the submissions made by Mr Gilmore, and the legal advice provided. The Committee accepted the legal advice and noted that it is not required to review facts or go behind the previous Committee decision. The review hearing provides the Committee with an opportunity to consider any new evidence from the Registrant and assess whether the Registrant's fitness to practise remains currently impaired. The Committee reminded itself that there is no standard or burden of proof, and that the decision as to current impairment is a matter for the Committee, exercising its professional judgement.

The Committee notes that the Registrant was written to by NISCC on 29 March 2017 and 07 September 2018, and was given information in relation to what she could provide in advance of a review. The Committee noted the absence of any information from the Registrant in relation to insight, remediation or risk of repetition. The Committee also noted that the Registrant has not provided any reflective piece, references, testimonials or other information in relation to her current employment status. In the absence of any information or evidence as to insight or whether the issues have been remediated, are being remediated, or any information as to the level of risk currently present, the Committee is satisfied that the Registrant's fitness to practise remains currently impaired.

Sanction

The Committee has taken into account the submissions of Mr Gilmore and has heard and accepted the advice of the Legal Adviser. The Committee has also taken into account the Indicative Sanctions Guidance, as well as the previous Committee findings in relation to mitigating and aggravating factors. The Committee notes that the Registrant was provided with detailed letters identifying what documentary or other evidence could be provided to assist the Committee in its deliberations. The Committee is cognisant that there is no burden or standard of proof, and that the decision in relation to sanction is a matter for the Committee, exercising its professional judgement. The Committee has also taken account of the need to act proportionately, and to consider the least restrictive sanction necessary to protect the public and maintain and uphold confidence in the regulatory process.

The Committee notes that the Registrant was written to by NISCC on 29 March 2017 and 07 September 2018, and was given information in relation to what she could provide in advance of a review. The Committee has no evidence as to the Registrant's insight and no assurance that the conduct would not be repeated. The Committee has no information as to the current risk presented. The Committee considered whether to allow the Suspension Order to lapse, and concluded that this would not be appropriate in the circumstances of this case. To allow the Order to lapse would be inconsistent with a finding of current impairment, and would not provide the level of protection for the public required. The Committee considered whether to replace the Suspension Order with a Conditions of Practice Order. The Committee concluded that, while the identified issues were not incompatible with remaining on the Register, no workable, verifiable, proportionate, relevant conditions could be formulated to provide the necessary level of protection for the public and to maintain public confidence in the regulatory process. In this context, the Committee has no evidence or information as to her current employment, and no information or evidence as to her willingness to comply with Conditions of Practice. In addition, the Committee notes that the issues related to events outside her work place, and in those circumstances could not devise suitable conditions.

The Committee then considered whether to continue the Suspension Order. The Committee notes, as indicated above, that no information has been provided since the original Order was made, and there has been no engagement from the Registrant. The Committee concluded that it would not be appropriate to impose a further period of suspension. The Committee was of the view that the misconduct could be remediated or resolved but, since the initial Order was imposed, the Registrant has not demonstrated any increased insight or evidence that she has resolved the cause of her misconduct. The suspension provided the Registrant with an opportunity to reflect on the cause of her misconduct. However, the Registrant has provided no evidence to the Committee to show any insight. The Committee, in the absence of any information, cannot be satisfied that there is likely to be satisfactory remediation. After a full and careful consideration of all of the information provided and submissions made before the Committee today, the Committee concluded that there is nothing to suggest that the Registrant would take any action to resolve or remedy the cause of her misconduct during a further period of suspension.

The Committee determined to revoke the Suspension Order and impose a Removal Order. The Committee concluded that the Registrant's misconduct, lack of evidence as to her insight, and lack of any evidence as to the likelihood of her remedying the behaviour which led to the Suspension Order is fundamentally incompatible with remaining a registered social care worker. The Committee considered that public confidence in the social care profession, and NISCC as a regulator, could be undermined if a social care worker who was found to have been involved in misconduct involving dishonesty where there had been a failure to evidence remediation, and where there was no evidence as to the level of risk of repetition, was allowed to remain on the Register.

The Committee considered the potential devastating impact of a Removal Order on the Registrant, but concluded that the protection of the public and the public interest outweighed the impact on the Registrant.

The Committee determined that a Removal Order was 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.

P-P 

Committee Manager

30/11/18

Date