

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

Name: Brendan Paul McCartan

SCR No: 2053021

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council ('the Council'), at its meeting on **13 May 2019**, 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 your conviction.

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

Particulars of the Allegation:

That on 14 June 2018, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted of the following offences at Downpatrick Magistrates Court:

1. Defendant on a date unknown between the 12th day of November 2016 and the 18th day of November 2016 whilst occupying a position in which you were expected to safeguard, or not to act against, the financial interests of [Service User A] dishonestly abused that position in that you purchased for yourself a Play Station game from Asda, to the value of £60, and claimed the money from the account of [Service User A] with the intention, by means of the abuse of that position, to make a gain for yourself or another or to cause loss to [Service User A] or to expose [Service User A] to a risk of a loss, in breach of section 4 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.
2. Defendant on a date unknown between the 12th day of October 2015 and the 18th day of October 2015 whilst occupying a position in which you were expected to safeguard, or not to act against, the financial interests of [Service User A], dishonestly abused that position in that you purchased for yourself a Play Station game from Tesco, to the value of £42, and claimed the money from the account of [Service User A] with the intention, by means of the abuse of that position, to make a gain for yourself or another or to cause

	loss to [Service User A] or to expose [Service User A] to a risk of a loss, in breach of section 4 the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.
3.	Defendant on dates unknown between the 1 st day of January 2017 and the 31 st day of January 2017 whilst occupying a position in which you were expected to safeguard, or not to act against, the financial interests of [Service User B] and [Service User A], dishonestly abused that position in that you set up a "Sky Go" Account for yourself and charged the fee of £8.55 to [Service User B] and [Service User A], by means of the abuse of that position, to make a gain for yourself or another or to cause loss to the above named individuals or to expose the above named individuals to a risk of a loss, in breach of Section 4 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.
4.	Defendant on a date unknown between the 12 th day of November 2016 and the 18 th day of November 2017 at a facility run by Autism Initiatives, dishonestly, with a view to gain for yourself or another person or with intent to cause loss to another person, defaced or falsified a certain account record or document, namely a receipt from Asda for the sum of £60 in respect of the purchase of a Play Station game which had been made or required for an accounting purpose contrary to Section 17(1)(a) of the Theft Act (Northern Ireland) 1969.
5.	Defendant on a date unknown between the 12 th day of October 2015 and the 18 th day of October 2015 at a facility run by Autism Initiatives, dishonestly, with a view to gain for yourself or another person or with intent to cause loss to another person, defaced or falsified a certain account record or document, namely a receipt from Tesco for the sum of £42 in respect of the purchase of a Play Station game, which had been made or required for an accounting purpose contrary to Section 17(1)(a) 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 convictions.	

Procedure

The hearing was held under the fitness to practise procedure.

Preliminary Matters

The Registrant was not in attendance and the Council was represented by Claire Kelly, Solicitor, DLS.

Service

In a Notice of Hearing dated 03 April 2019, sent by Special Delivery post and addressed to the Registrant at his address as it appears on the Register, the Council notified him of the date, time and venue for the hearing. Royal Mail advised that a 'Something for you' card was left at the address on 04 April 2019. However, the documentation was not collected subsequently. In addition, the Notice of Hearing was emailed to the Registrant on 03 April 2019; the encrypted information was not retrieved by the Registrant.

The Committee received legal advice from the Legal Adviser, and she referred the Committee to the requirements as set out in the Northern Ireland Social Care Council's ('the Council') Fitness to Practise Rules 2019 ('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 of the Rules, and the requirements of Paragraph 5 of Schedule 2 of the Rules.

Proceeding in the Absence of the Registrant

Miss Kelly 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 his absence. Miss Kelly 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 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 the Council 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 himself 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

Miss Kelly requested that the Hearing Bundle be admitted into evidence. The Committee accepted the bundle into evidence and marked it as Exhibit 1.

Background

Miss Kelly told the Committee that the Registrant is registered at Part 2 of the Register as a social care worker. During the period of the allegations, he was employed as a senior supporter at a facility run by Autism Initiatives. He commenced employment with them on 11 May 2009 until his suspension on 27 January 2017. On 02 February 2017, an Employer Referral Form was received by the Council indicating that the Registrant had been suspended due to allegations of financial abuse. These allegations were initially contained in an anonymous letter, dated 27 January 2017, and sent to Autism Initiatives head office. Subsequent to this, the matter was referred to the Belfast Health and Social Care Trust Adult Safeguarding and a PSNI investigation was commenced.

Evidence

Miss Kelly referred the Committee to the Certificates of Conviction in the bundle of papers, dated 05 September 2018. These Certificates of Conviction indicated that on 14 June 2018, the Registrant pleaded guilty to three complaints against him of fraud by way of abuse of position, and two complaints of false accounting contrary to the Theft Act (Northern Ireland) 1969. On 19 July 2018, the Registrant was sentenced and a Combination Order was made against him in relation to the five offences, imposing a Community Service Order for 100 hours, a Probation Order for one year and a monetary penalty of £100 compensation. Miss Kelly referred the Committee to the letter of 10 September 2018 from the Common Law Police Disclosure Unit (CLPD) to the Council. This letter provides information as regards the circumstances of each conviction, and confirms that the investigation commenced as a result of an anonymous whistle blowing letter. Miss Kelly 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 2019 Rules as detailed by Miss Kelly. In addition, she reminded the Committee not to draw any adverse inference in the 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 Miss Kelly 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 Certificates of Conviction against the Registrant proved the facts therein. The Certificates of Conviction against the Registrant relate to three offences of fraud by abuse of position and two offences of false accounting. The convictions arose during the Registrant's employment and related to his dishonest actions whilst providing support to two services users. The background to the convictions is set out in the letter from the CPLD of 10 September 2018, and involved the Registrant falsifying receipts and dishonestly accessing service users' 'Sky Go' account.

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 Miss Kelly, who advised that there were no formal admissions from the Registrant in relation to the Allegation. She submitted that the Registrant's convictions called into question his ability to work in social care services and 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 convictions breached as follows: 1 – 1.1; 2 – 2.1, 2.6 and 2.11; 5 – 5.1, 5.3 and 5.8.

She told the Committee that the Registrant's convictions and conduct fell far below the minimum standard expected of a registered social care worker, and called into question his fitness to practise. She submitted that the Registrant's actions constituted an abuse of his position of trust and that he admitted to deliberately targeting Service User A due to his vulnerability. Miss Kelly said that the Registrant displayed no understanding or insight into the effect of his actions on the service users, and that there was no evidence of remorse, regret or shame. She said that in light of the Registrant's lack of engagement and his 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 he has remediated his behaviour. Miss Kelly 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 Miss Kelly 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 convictions 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 these convictions. She referred the Committee to Paragraph 24 Schedule 2 of the Rules, and the requirements as set out in the case of the 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 maintaining of public confidence in the social care profession. She further referred the Committee to the findings of Dame Janet Smith in the 5th 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 his convictions 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 noted that the Registrant's convictions for dishonesty were serious and involved vulnerable service users. The Committee considered that the Registrant was in a position of trust and had abused that trust when he fraudulently purchased various items and claimed the money from the service user's account. In altering and defacing receipts, he further abused that trust and compounded his dishonesty when he confirmed to the Police that he targeted Service User A because of his vulnerability.

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:

1.2 Treating people with consideration, respect and compassion.

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;

- 2.6 Being reliable and dependable; and
- 2.11 Not engaging in practices which are fraudulent in respect of use of public or private monies.
- 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;
- 5.3 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 he has taken to remediate his behaviour. The Registrant was convicted on his guilty plea to five serious offences involving theft and fraud from vulnerable service users. As referred to above, the Committee considers that the Registrant's actions amounted to a very serious abuse of trust. The Committee considered 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 his offending, or that he would not repeat his dishonest conduct in the future. In all of the circumstances, the Committee therefore considers there to be a continued risk of repetition of his behaviour.

The Committee concluded that the Registrant's five convictions for fraud, false accounting and theft bring 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 considered that the Registrant's convictions were not a one off incident and took place over a period of time, and noted that during the Police interview he admitted providing false receipts and that he purposely tampered with receipts to remove dates. The Committee considered that the Registrant's actions were calculated and an abuse of his senior position of trust.

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 his criminal convictions.

Sanction

In reaching its decision on sanction, the Committee considered the submissions of Miss Kelly 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, 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) impose no sanction; or
- (b) 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
- (c) make a Conditions of Practice Order for a specified period not exceeding 3 years; or
- (d) make an Order suspending the Registrant's registration for a specified period not exceeding 2 years (a 'Suspension Order'); or
- (e) make an Order for removal of the Registrant's registration from the Register ('a Removal Order');
- (f) ...

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 and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance'), bearing in mind that the decision on sanction is one for its own independent judgement.

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 convictions for theft and fraud from vulnerable service users constituted dishonesty, which took place whilst the Registrant was providing support to service users, over an extended period of time and were not a one off incident;
- the Registrant's actions constituted an abuse of trust placed in him by his employer and by the service users;
- the Registrant, during the Police investigation, denied some of the allegations against him;
- the Registrant's actions were premeditated and deliberate in nature;
- the Registrant expressed no insight or regret for his actions;
- the Registrant's fraud and theft convictions concerned vulnerable service users with financial harm being caused;
- the Registrant has failed to engage with the Council during the investigation;
- 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 were no previous concerns raised with the Council;
- during his Police interview, the Registrant made partial admissions to some of the allegations;
- the Registrant made an admission to the criminal charges and pleaded guilty.

Having balanced the aggravating and mitigating factors, the Committee considered that a sanction was appropriate and proceeded to consider which sanction to apply in this case. The Committee had no information with regards the financial impact that they may impose.

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 convictions demonstrate 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 is 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 fraud and theft convictions constituted deliberate acts which were not isolated. He has expressed no regret for his actions, nor has he provided any evidence of insight into the harm which his behaviour has caused service users. In addition, the Committee has no evidence of rehabilitative steps taken by the Registrant, nor has he provided references or testimonials.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Registrant's convictions related to a serious abuse of trust where he fraudulently and dishonestly claimed money from service users' accounts over a prolonged period of time. The Registrant admitted that he targeted Service

User A due to his vulnerability. The Committee has no evidence as to the Registrant's current employment circumstances, or whether he would agree to any conditions if imposed. Further, the Committee does not consider conditions of practice would protect the public from the risk of repetition as identified above.

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 stage 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 pleaded guilty to five complaints of fraud and theft, all of which involved vulnerable service users and took place over a prolonged 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 his criminal behaviour in the future. The Committee considered that the Registrant has failed to express any insight or remorse, particularly in relation to the seriousness of his criminal conviction. The Committee had no evidence from the Registrant, nor has he engaged with the Council in any way. 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 convictions and his lack of insight and remediation of his 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 by way of fraud and theft from vulnerable service users, and constituted an abuse of his position of trust as a social care worker, and brought the social care profession into disrepute. The Registrant's dishonest actions were deliberate and involved attempts to conceal and with Service User A being targeted due to his vulnerability. 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 fraud and 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. You are prohibited from working in a social care role until a successful application for restoration onto the Register has been made to the Council.

P.P. Kennedy

Committee Manager

17.05.19.

Date