

Notice of Decision of the Northern Ireland Social Care Council's Fitness to Practise Committee**REDACTED****Name: Laura Irene Shaw****SCR No: 6009718**

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council ('the Council'), at its meeting on **19 and 20 June 2019**, made the following decision about your registration with the Northern Ireland Social Care Council:

The Committee found the facts proved in Particulars 2 and 3;

The Committee found the facts not proved in Particular 1;

The Committee found that your fitness to practise is impaired by reason of your health;

The Committee decided to make an Order suspending your registration for a specified period of 18 MONTHS ('a Suspension Order').

Particulars of the Allegation:

That, being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), and whilst working as a project worker for Inspire at Moylena Court Supported Housing:-

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|----|---|
| 1. | On or around the 05 September 2017, you misappropriated items from the communal shopping for Moylena Court. |
| 2. | On or around 11 September 2017, you misappropriated items from the communal shopping for Moylena Court. |
| 3. | [REDACTED] |

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

Procedure:

- The hearing was held under the health procedure.

Preliminary Matters

The Registrant was neither present nor represented. The Council was represented by Anthony Gilmore, Solicitor, Directorate of Legal Services and attended by Fitness to Practise Officer, Jaimie Harvey.

Service

The Notice of Hearing dated 09 May 2019, along with the hearing bundle, was sent by encrypted email to a known email address for the Registrant. The Council notified her of the date, time and venue for this hearing. The Registrant replied, via email, on 09 May 2019 stating that she would not be attending.

Accordingly, the Committee is satisfied that reasonable efforts have been made to notify the Registrant of this matter, and that the Notice of Hearing has been served in accordance with Rule 3 and Paragraph 5 (2) of Schedule 2 of the NISCC Fitness to Practise (Amendment) Rules 2019 ('the Rules').

Proceeding in the Absence of the Registrant

An application was made to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules. Mr Gilmore submitted that it was clear that the Registrant was aware of the hearing and had provided an email stating that she would not be attending. In his view, she had voluntarily absented herself from the hearing, she had not requested an adjournment and it would be appropriate to proceed in her absence.

The Committee heard and accepted the advice of the Legal Adviser, who reminded the Committee that the decision to proceed in the absence of the Registrant should be exercised with the utmost care and caution. The Committee was satisfied that the Registrant had been served with the Notice of Hearing, which notified her of the date, time and venue for this hearing, details of the Allegation and her right to attend the hearing.

The Committee decided to proceed in the absence of the Registrant. In reaching this decision, the Committee had particular regard to the factors set out in the decision of R v Jones, and to the overall interests of justice and fairness to all parties. It noted that:

- no application for a postponement or adjournment has been made by the Registrant;
- the Registrant has indicated that she would not be attending the hearing in an email;
- there is no reason to suppose that an adjournment would secure her attendance at a future date. Indeed, the Registrant had notified the Council that she had no intention of attending regardless of the date;
- two witnesses have attended to give live evidence and not proceeding may inconvenience the witnesses;
- there is a strong public interest in the expeditious disposal of the case; and
- the Committee accepted that there is some disadvantage to the Registrant in proceeding in her absence. However, the Committee determined that this disadvantage can be mitigated.

In these circumstances, the Committee decided that it is fair, appropriate and proportionate to proceed in the absence of the Registrant. The Committee will draw no adverse inference from the Registrant's absence in its findings of fact.

Application to Admit Hearing Bundle

Mr Gilmore confirmed to the Committee that the hearing bundle provided complied with the requirements of relevance and fairness, and that the Registrant had made no objections to its contents. The Committee accepted the bundle into evidence and marked it Exhibit 1. Mr Gilmore advised the Committee that the Council had requested the attendance of Witness 2, who was the acting manager of Moylena Court Supported Housing ('Moylena'), in 2017. Witness 2 has been in contact with the Council and indicated that he is currently unwell and as a result is off work. Mr Gilmore made an application for Witness 2's statement to be admitted into evidence as hearsay evidence under Paragraph 12, Schedule 2 of the Rules. Mr Gilmore submitted that the evidence touches on the same issues as the live evidence of Witness 1, it is not the sole decisive evidence in the case and there is a good reason for the witness' non-attendance. Mr Gilmore told the Committee that the Council notified the Registrant by email yesterday of his intention to make this application. The Committee sought a copy of the email, which was entered into evidence and marked as Exhibit 2.

Application to Admit Statement into Evidence

The Committee heard and accepted the Legal Adviser's advice. She referred it to the cases of Thornycroft v NMC and Ogbonna v NMC EWHC 272, along with Paragraph 12 of Schedule 2 of the Rules. She reminded the Committee that it is entitled to admit evidence, either oral or documentary or other, whether or not it would be admissible in a Court of Law, subject only to the requirements of relevance and fairness. She reminded the Committee to consider carefully the reasons for the non-attendance of the witness, and whether his evidence is the sole or decisive evidence in support of the Allegation. She reminded the Committee that the overall fairness of the proceedings is an essential consideration. She referred the Committee to Lord Bingham's comments in the Thornycroft case in relation to the absence of a witness. She advised the Committee that it had three options to consider:

1. Admit the evidence and give it the appropriate weight, bearing in mind the lack of opportunity to test it;
2. Adjourn the hearing to enable the witness to attend; or
3. Refuse to admit the evidence on the basis of unfairness to the Registrant.

The Committee gave careful consideration to the submissions, the legal advice and the documents. As regards to the statement from Witness 2, the Committee noted that the Registrant has not objected to this statement in the bundle, and has been notified that the Council intended to make an application for the statement to be admitted without formal proof. The Committee noted that this statement is not the sole and decisive evidence in support of the Allegation, the Council had taken steps to secure the attendance of Witness 2 and there was a good reason for his non-attendance. The Committee accepted the submission of the Council that there was no

reason to suggest that Witness 2 had any reason to fabricate his witness statement or had any “axe to grind”. The Committee took into account the overall fairness of the proceedings, and is satisfied that the statement can be admitted without formal proof and that this would not cause injustice to the Registrant.

Background

Mr Gilmore provided the Committee with a background to this case. The Committee heard that the Registrant was first registered on Part 2 of the Register on 09 January 2017. The Registrant was employed by Inspire as Project Worker at Moylena in Antrim from 04 August 2014 until she resigned on 13 September 2017. The current Allegation first came to the attention of the Council in an Employer Referral Form received from Inspire, dated 18 September 2017.

Mr Gilmore explained that the Employer Referral Form contained concerns raised by staff within Moylena that the Registrant had misappropriated items from the communal shop, which service users contributed to for their day to day items. In particular, it was alleged that the Registrant had misappropriated items on 05 and 11 September 2017. This was the basis of the first two Particulars of the Allegation brought by the Council.

Mr Gilmore told the Committee that the case was initially dealt with under the Fitness to Practise procedure. However, the third Particular arose as a result of the Council obtaining a report subsequent to an examination of the Registrant by [REDACTED]. Mr Gilmore submitted that this report relates to the Registrant's medical condition, which is [REDACTED], and the finding of [REDACTED] was that as a result of her condition, the Registrant's fitness to practise was impaired, based on his examination in February 2019. The Committee heard that the Council then asked [REDACTED] to consider whether the first two Particulars of the Allegation were caused, or substantially contributed to, by the health of the Registrant. As a result of the addendum to the report from [REDACTED] addressing this question, the Council then took the decision to deal with this case under the Health Procedure.

Evidence

The Committee received into evidence a bundle of documents, an email from the Council to the Registrant, dated 18 June 2019, and heard oral evidence from Witness 1 and [REDACTED], on behalf of the Council.

Witness 1 is the manager of Moylena. The Committee found Witness 1 to be a credible witness with significant experience of social care services. He told the Committee that when allegations in relation to the Registrant were first raised with him in respect of a communal shop that took place on 05 September 2017, he was careful to ensure that these were not false allegations. He felt that too much time had passed since the shop on 05 September 2017 and he was uncomfortable with the timescale. He attended Moylena on the date of the next communal shop when the Registrant was on shift, so that he could conduct an audit. The Committee heard how he and Witness 2 checked the items in the shopping bags against the receipt and found that there were discrepancies. Witness 1 and Witness 2 met with the Registrant the next day. Witness 1 was clear in his recollection that the Registrant had admitted taking the items from the communal shopping on several occasions.

He explained the concerns which he had about the Registrant's well-being during this meeting and the protective steps he took as a result. He told the Committee that he met with the Registrant, who gave him her resignation letter, and she put £40 in an envelope which was paid into the communal kitty. Witness 1 was willing to say when he could not recall something, and as a result the Committee found him to be reliable.

The Committee gave less weight to the witness statement of Witness 2 as the Committee did not have the opportunity to hear live evidence from Witness 2 or ask him questions. However, the Committee noted that the statement did support the evidence provided by Witness 1.

[REDACTED]

Finding of Facts

In reaching its decision on the facts, the Committee considered all of the evidence adduced in this case together with the submissions made by Mr Gilmore. The Committee heard and accepted the advice of the Legal Adviser, who reminded the Committee that the burden of proof rests with the Council and that the standard of proof is the civil standard, namely the balance of probabilities.

The Committee then considered the Particulars of the Allegation.

Particular 1: On or around 05 September 2017, you misappropriated items from the communal shopping for Moylena Court.

Mr Gilmore asked Witness 1 if the Registrant had admitted taking the items on 05 September 2017 and 11 September 2017. Witness 1 confirmed that she had admitted taking items on several occasions. Witness 1 did not give evidence that the Registrant admitted taking items on 05 September 2017.

Witness 1 told the Committee that he could not do an audit of the shop on 05 September 2017 as too much time had passed before he was notified of the allegations. He told the Committee that he was 'uncomfortable with the timeframe that had passed' and that 'there was no real way of auditing it'. The Committee was not satisfied that the Council had established that it was more likely than not that the Registrant misappropriated items from the communal shopping on 05 September 2017.

Accordingly, the Committee finds that this Particular of the Allegation has not been proved on the balance of probabilities.

Particular 2: On or around 11 September 2017, you misappropriated items from the communal shopping for Moylena Court.

Witness 1 explained to the Committee that after the communal shop had been done on 11 September 2017, the items were left in the shopping bags in a locked room until the Registrant had finished her shift. Witness 1 told the Committee how he attended with Witness 2 and that they checked the items on the receipt against the items in the bags and found discrepancies, which related to food and essential items. The Committee was provided with copies of the receipts marked by Witness 1 and Witness 2. The Committee found that it was difficult to

follow the way in which missing items on the receipts had been marked. Witness 1 clarified the process in response to the Committee's questions.

The Committee heard that Witness 1 then took advice from HR and they provided him with a prepared statement to read to the Registrant, notifying her that an investigation had commenced and that her ability to handle money would be restricted as a result. Witness 1 gave evidence that he and Witness 2 met with the Registrant on 12 September and that the Registrant became very upset. Witness 2 left to make a cup of tea and the Registrant admitted the taking of items to Witness 1. Witness 1 asked her to repeat this admission when Witness 2 came back into the room. In light of her admission, his investigation did not proceed further.

Based on the evidence of Witness 1 and the admissions of the Registrant recorded in the bundle, the Committee finds that on or around 11 September 2017, the Registrant misappropriated items from the communal shopping for Moylena Court.

Particular 3: [REDACTED] [The Committee found the facts in Particular 3 proved]

Fitness to Practise

The Committee received an application from Mr Gilmore that the Registrant's fitness to practise is impaired by reason of her physical or mental health. Mr Gilmore referred the Committee to Paragraph 24 (3) of Schedule 2 of the Rules. Mr Gilmore submitted that in the opinion of the Council, the following Standards of Conduct and Practice have been breached: Standard 1: 1.2, 1.9, Standard 2: 2.1. Standard 3: 3.7, Standard 5: 5.3, 5.8 and Standard 6: 6.5.

The Committee heard and accepted the advice of the Legal Adviser. She referred the Committee to Paragraph 29 of Schedule 2 of the Rules, which sets out the test for a Committee when considering whether a Registrant's fitness to practise is impaired by reason of health.

In reaching its decision, the Committee took into account Paragraph 29 (3) of Schedule 2 of the Rules which states that:

- (3) Where the Committee is considering whether a Registrant's fitness to practise is impaired by reason of health, the Committee:
 - (a) Shall take into account whether the Registrant is physically and mentally fit to perform the whole or part of the work of a person registered on the Register;
 - (b) May take into account any failure of the Registrant to agree to any reasonable invitation by the Council to be examined by a registered medical practitioner nominated by the Council; and
 - (c) May take into account:
 - (i) The Registrant's current physical or mental condition;
 - (ii) Any continuing or episodic condition suffered by the Registrant; and

- (iii) A condition suffered by the Registrant which, although currently in remission, may be expected to cause a recurrence of impairment of fitness to practise;
- (d) Shall, subject to sub-paragraph (e) below consider any medical reports or other medical evidence on which the alleged impairment of fitness to practise has been caused or substantially contributed to, by the Registrant's physical or mental ill health;
- (e) Shall not receive any medical reports or other medical evidence unless the Registrant has consented to be examined and all such reports to be provided to the Committee.

The Committee determined that Paragraph 29 (3) (b) and (e) were not relevant to this matter, as the Registrant had agreed to be examined by [REDACTED] and for his report and evidence to be provided to the Committee.

After careful consideration of all of the evidence, the Committee addressed whether the Registrant is physically and mentally fit to perform the whole or part of the work of a person registered on the Register.

The Committee was in no doubt that the Registrant's fitness to practise was impaired by reason of her health at the time when the items were misappropriated from the communal shop at Moylena. The Committee accepted the opinion of [REDACTED] set out in his letter to the Council, dated 11 March 2019, that the Registrant's [REDACTED]. The Committee determined that the Registrant was not [REDACTED], to perform her role as a social care worker at the time when the goods were misappropriated.

[REDACTED]

The Committee concluded that in February 2019, the Registrant was not [REDACTED], to perform her role as a social care worker.

[REDACTED]

The Committee concluded, [REDACTED] the position today remains the same as it was in February 2019, namely that the Registrant is not [REDACTED] to perform her role as a social care worker.

The Committee noted that the Registrant had demonstrated insight, both into her illness and her actions. The evidence of Witness 1 and [REDACTED] was that she had admitted her actions and handed in her resignation along with £40 which was paid into the communal kitty at Moylena. [REDACTED]

On balance, the Committee concluded that the Registrant's fitness to practise remains impaired by reason of her [REDACTED],

Sanction

In reaching its decision on sanction, the Committee had careful regard to all of the evidence in the case, together with the submissions from Mr Gilmore on behalf of the Council. The Committee heard and accepted the advice of the Legal Adviser. The Committee took into account that any sanction must be appropriate and proportionate and, although not intended to be punitive, its effect may have such consequences.

In deciding which sanction to impose, the Committee took 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 first considered the mitigating and aggravating factors in this case and found the mitigating factors to be:

- the Registrant has no previous disciplinary findings against her;
- she has the benefit of good character and work history;
- the Registrant worked within social care for at least six and a half years and was described by Witness 1 as a committed, diligent and compassionate carer. Witness 1 told the Committee that she was a professional carer and a valued member of the team. The Committee heard that she was 'warm and empathetic'. The Committee noted that the statement of Witness 2 described the Registrant as being very good to the clients, compassionate and very supportive;
- the Registrant has demonstrated insight, both into her condition and her actions;
- when the allegations were put to the Registrant, she admitted what she had done, apologised and resigned. She also paid £40 as compensation for the misappropriated items, which was then paid back into the communal fund;
- she engaged with the Council and co-operated by attending the examination arranged by the Council as part of this case; and
- her actions were substantially contributed to by reason of her health, and the report of [REDACTED] described pressures at work and domestic pressure to return to work prior to the time of the index incidents. [REDACTED]

The Committee considered the aggravating factors to be:

- the Registrant misappropriated communal goods from Moylena while she was working as a carer;
- this was an abuse of trust; and
- the Registrant told [REDACTED] that her actions had been motivated by a wish to get out of her work and that she wanted a reason to be sacked. The Committee felt that she had other options to end her employment.

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

No Sanction - the Committee had no hesitation in concluding that it would neither be appropriate nor proportionate if no sanction were imposed in this case. In the view of the Committee, if no sanction was imposed this would not mark the seriousness of her actions or meet the public interest in this case.

Warning - the Committee considered a Warning. The Committee did not consider a Warning to be appropriate as it would allow the Registrant to work unrestricted as a social care worker. A Warning would not meet the risk of repetition identified by [REDACTED] and would not address the concerns relating to the Registrant's ongoing health condition.

Conditions of Practice Order - the Committee next considered a Conditions of Practice Order. The Registrant is not present today. The Committee has no evidence that the Registrant has the support in place to allow health conditions to work effectively. In these circumstances, the Committee was unable to formulate workable conditions which would allow the Registrant to deal with her health issues. Furthermore, the Registrant had told [REDACTED] that she did not feel able to return to work, and the Committee concluded that Conditions of Practice were therefore not appropriate.

Suspension - the Committee determined that a Suspension Order would be both appropriate and proportionate in this case. Suspension gives a clear message to the public and to the social care profession that, irrespective of her health condition, the Registrant's actions were serious and inappropriate. The Registrant has demonstrated some insight and the Committee is of the view that with continued treatment during the course of her suspension she could be fit to return to practise as a social care worker. The Committee noted that the Registrant had communicated with the Council, and indicated that she wished to be considered for permanent removal from the Register. The Committee also noted that the Registrant had told [REDACTED] that she did not consider herself well enough to practise at present but that she would like to think that she might become so in the future. Whilst the Committee took these factors into account, the role of the Committee is to consider the appropriate sanction to meet the fitness to practise concerns which it has identified. The Committee is satisfied that suspension is the appropriate sanction and meets the concerns of risk of repetition and the public interest in this matter.

The Committee carefully considered the period of time required, and determined to make a Suspension Order for a period of 18 months. The time period is not intended to be punitive but rather to allow the Registrant sufficient time to restore her health. In reaching this decision, the Committee took into account the evidence of [REDACTED] that the Registrant would need to demonstrate a period of wellbeing and coping before she could return to this type of work. In the view of the Committee, a period of 18 months would allow the Registrant a realistic opportunity to prove that she has had a period of stability with regards to her health and is ready to return to work.

Removal - the Committee did consider a Removal Order. However, in light of the positive evidence from her previous managers, the Committee concluded that the Registrant had been a valued social care worker. The Committee had already determined that the misappropriation of communal goods was caused or significantly

contributed to by her health condition. As a result, the Committee concluded that her actions were not fundamentally incompatible with being a registered social care worker. The Committee heard evidence that the Registrant is a compassionate carer and that her values are right. The Committee heard that she had worked well for a prolonged period and had made a positive contribution to the social care profession. In the view of the Committee, a Removal Order would prevent a good social care worker from returning to work when she is well enough to do so.

The Committee concluded that a Suspension Order for a period of 18 months was the most suitable, appropriate and proportionate sanction.

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 suspended for a specified period of 18 months and you may not practise as a social care worker during the period **20 June 2019 to 19 December 2020** inclusive.

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.

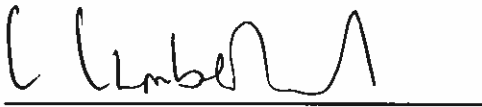
It is **compulsory** for the above social care workers to be registered with the Northern Ireland Social Care Council in order to work. This is pursuant to the Northern Ireland Social Care Council (Social Care Workers Prohibition) and Fitness of Workers Regulations (Northern Ireland) 2013 and the Northern Ireland Social Care Council (Social Care Workers Prohibition) and Fitness of Workers (Amendment) Regulations (Northern Ireland) 2017.

Early Review

The Fitness to Practise Committee may, at your request, review the Order before the end of the period for which the suspension has been imposed if there has been a material change of circumstances since the Order was imposed. The Committee may, after reviewing a Suspension Order, revoke that Order or replace that Order with a Conditions of Practice Order.

Review at Conclusion of Sanction

The Council will seek information from you towards the end of the period for which the suspension has been imposed, and may refer the matter for review by the Fitness to Practise Committee. If the Committee reviews the Order and it is satisfied that your fitness to practise remains impaired, it may impose a further Order to commence upon expiry of the existing Order, or it may impose a Conditions of Practice Order to commence upon expiry of the existing Order, or it may revoke the existing Order and impose a Removal Order. You will be contacted by the Council towards the end of your period of suspension.



Committee Manager



Date