

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

Name: Clare Kelly

SCR No: 6001754

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **07 August 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 convictions;

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

Particulars of the Allegation:

That on the dates or during the time periods as set out below whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), and whilst employed as a care assistant by Down Community Care Limited, you were convicted of the following offences at the District Judge's Court.

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|----|---|
| 1. | Defendant on dates between 08/08/2018 and 15/09/2018 stole cash to the total value of £80.00 belonging to (Aggrieved Party 2 "AP2") contrary to Section 1 of the Theft Act (Northern Ireland) 1969. |
| 2. | Defendant on dates between 17/09/2018 and 18/09/2018 stole cash to the total value of £20.00 belonging to (Aggrieved Party 1 "AP1") contrary to Section 1 of the Theft Act (Northern Ireland) 1969. |
| 3. | Defendant on 25/09/2018 stole cash to the value of £80.00 belonging to (Aggrieved Party 2 "AP2") contrary to Section 1 of the Theft Act (Northern Ireland) 1969. |

And your actions as set out above show that your fitness to practise is impaired by reason of your convictions.

Procedure:

The hearing was held under the fitness to practise procedure.

Preliminary Matters

Service

The Registrant was neither present nor represented. The Council was represented by Mr Anthony Gilmore, Solicitor, Directorate of Legal Services.

Service

In a Notice of Hearing dated 28 June 2019, 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 hearing. The package was delivered and signed for by the Registrant on 29 June 2019. The Committee Clerk telephoned the Registrant's Solicitor on 01 August 2019 to ask if she had been instructed to represent the Registrant on 07 August 2019. The Registrant's Solicitor confirmed that she had had no contact with the Registrant and that she had not made her aware of the hearing date. The Committee Clerk issued an email to the Registrant on 01 August 2019, to a known email address, to seek confirmation of her attendance at the hearing being held on 07 August 2019. To date, no response has been received from 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 (Amendment) Rules 2019 ('the Rules') and, in particular, Rule 3 which states that proof of service shall be treated as being effected on the day after it was properly posted.

The Committee, in all of the circumstances of the case, is satisfied that the Notice of Hearing has been served in accordance with Rule 3 of the Rules, and the requirements of Paragraph 5 of Schedule 2 of the Rules.

Proceeding in the Absence of the Registrant

Mr Gilmore 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 her absence. Mr Gilmore advised the Committee that the Registrant has not responded in any way to the Notice of Hearing nor the hearing bundle of evidence. He 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. He 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 herself from today's hearing. However, the Committee reminded itself that it must avoid reaching any improper conclusion about the Registrant's absence, nor treat the absence as an admission of guilt.

Application to Admit Hearing Bundle

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

Background

Mr Gilmore told the Committee that the Registrant is registered on Part 2 of the Register as a social care worker. She was first registered in September 2012 and was employed by Down Community Care Limited as a care assistant from 10 March 2011. The Council received an employer referral form from her employer, dated 29 September 2018. This document confirmed that the employer had been advised by the PSNI that the Registrant had been arrested on 25 September 2018. Her employer further advised that the Registrant was due to leave their employment on 26 September 2018, with the intention of moving to work in Ringdufferin Nursing Home, Killyleagh, as a care worker.

Mr Gilmore referred the Committee to the three Certificates of Conviction in the bundle of papers, which confirm that the Registrant was convicted of three separate offences of theft which took place during a period from 08 August 2018 to 25 September 2018. He referred the Committee to the correspondence from the PSNI Protective Disclosure Unit, dated 12 December 2018, which provided details of the convictions against the Registrant. The PSNI confirmed that they attended the home of Aggrieved Party 1 ('AP1') and her elderly mother-in-law ('AP2') on 25 September 2018, concerning three alleged thefts of money from their home. The thefts of money were alleged to have taken place in AP1's home, with the money taken from AP2's purse and AP1's bedroom. It was alleged that a total amount of £180 was stolen, and the PSNI viewed CCTV footage as regards the theft on 25 September 2018. The PSNI subsequently interviewed the Registrant later that evening, when she admitted to the thefts between 08 and 15 September 2018, and on 25 September 2018. At this stage, the Registrant denied the theft on 17 – 18 September 2018. The Registrant was subsequently charged and convicted for theft on three

separate occasions as set out in the Notice of Hearing, when she pleaded guilty to three charges, for which she received a Community Service Order of 200 hours and monetary penalties totalling £180.

Mr Gilmore applied under Paragraph 12 (5) of Schedule 2 of the Rules for the findings of fact as set out in the Certificates of Conviction to constitute conclusive proof of the convictions 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. 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 Mr Gilmore 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 theft. The convictions arose during the Registrant's employment and related to her dishonest actions whilst providing support and care to two services users in their home.

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 Mr Gilmore, who advised that there were no formal admissions from the Registrant in relation to the Allegation. He submitted that the Registrant's convictions called into question her ability to work in social care services, and to remain on the Register without restriction or to be registered at all. He referred the Committee to the Standards of Conduct and Practice for Social Care Workers, which he submitted the Registrant's criminal convictions breached as follows: 2 – 2.1 and 5 – 5.2, 5.3 and 5.8.

He 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 her fitness to practise. He submitted that the Registrant's actions constituted a breach of her position of trust, taking place when the Registrant was a

trusted visitor in the home of AP1 and AP2. Mr Gilmore said that the Registrant has displayed no understanding or insight into the effect of her actions on AP1 and AP2, and that there was no evidence of remorse, regret or shame. He said that in light of the Registrant's lack of engagement and her failure to attend the hearing, there is nothing to persuade the Committee that the Registrant's behaviour would not be repeated in the future. There is also no evidence from the Registrant that she has remediated her behaviour. Mr Gilmore 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 Mr Gilmore, 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 on impairment. 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 her 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 who were receiving care from the Registrant in their home. The Committee therefore considered that the Registrant was in a position of trust and had abused that trust when, on three separate occasions, she stole cash amounting to £180 from AP2's purse and AP1's bedroom.

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 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:

5.2 Exploit service users, carers or colleagues in any way;

5.3 Abuse the trust of service users and carers or the access you have to personal information about them or to their property, home or workplace; or

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

The Committee has no information or evidence from the Registrant as regards any action which she has taken to remediate her behaviour. The Registrant was convicted on her guilty plea to three serious offences involving theft from vulnerable service users, which took place when she was providing care in their home. As referred to above, the Committee considers that the Registrant's actions amounted to a very serious breach of trust. The Committee considered that such conduct is not easily remediable. However, in view of the Registrant's lack of engagement, the Committee has no basis on which it can be satisfied that the Registrant has any insight into her offending, or that she would not repeat her dishonest conduct in the future. In all of the circumstances, the Committee therefore considers there to be a continued risk of repetition of her behaviour.

The Committee concluded that the Registrant's three convictions for 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.

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

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

Sanction

In reaching its decision on sanction, the Committee considered the submissions of Mr Gilmore 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 ('the Guidance'), and reminded the Committee to consider the question of sanction in ascending order of severity, paying particular attention to the issue of proportionality.

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

- (a) 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) revoke any Interim Order imposed by the Preliminary Proceedings Committee.

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, 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 from vulnerable service users constituted dishonesty, which took place in the service users' home, whilst she was providing support to two service users and were not a one off incident;
- the Registrant's actions constituted an abuse of trust placed in her by her employer and by the service users;
- the Registrant, during the police investigation, denied one of the allegations against her;
- the Registrant expressed no insight or regret for her actions;
- the Registrant's 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 her police interview, the Registrant made admissions to two of the allegations. On questioning by the police, she said that she had taken the money due to 'financial hardship' and that her actions were 'stupid'. She said that she did not know why she had done so and that her actions were not 'like me'.
- the Registrant pleaded guilty to the three criminal charges.

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 are the circumstances such that the Committee would be confident that this sanction would provide adequate public protection as far as the Registrant's suitability is concerned, bearing in mind that a Warning would entitle the Registrant to work as a social care worker. The Registrant's theft convictions constituted deliberate acts which were not isolated. She has expressed no regret for her actions, nor has she provided any evidence of insight into the harm which her behaviour has caused service users. In addition, the Committee has no evidence of rehabilitative steps taken by the Registrant, nor has she provided references or testimonials.

Conditions of Practice Order - the Committee next considered a Conditions of Practice Order. The Registrant's convictions related to a serious abuse of trust where she dishonestly stole money on three separate occasions from two service users between August and September 2018. The Committee has no evidence as to the Registrant's current employment circumstances, or whether she 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 stages of the proceedings which were of a very serious nature, and related to the Registrant's breaching of fundamental tenets of the social care profession. The Standards of Conduct and Practice for Social Care Workers require a social care worker to treat each person as an individual with consideration, respect and compassion, along with respecting and maintaining their dignity. In particular, the Registrant in this matter pleaded guilty to three complaints of theft, involving two service users. In addition, the theft took place when the Registrant was providing care to the service users in their home.

The Committee has no evidence before it of remediation by the Registrant, nor has it any information to indicate that the Registrant is unlikely to repeat her criminal behaviour in the future. The Committee considered that the Registrant has failed to express any insight or remorse, particularly in relation to the seriousness of her criminal convictions. The Committee had no evidence from the Registrant, nor has she engaged with this fitness to practise hearing. 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 convictions.

Removal

The Committee then considered a Removal Order. In considering this, the Committee took into account the Guidance at 4.26 – 4.28 and 5.10 – 5.13. It concludes that given the seriousness of the Registrant's criminal convictions and her lack of insight and remediation of her failings, a Removal Order is the only sanction appropriate to protect the public and to maintain public confidence in the social care profession and the Council as its regulator. The Committee considers the Registrant's actions to constitute a serious departure from the professional standards as set out in the Standards of Conduct and Practice for Social Care Workers. The Committee took into account Paragraph 5.13 of the Guidance, which states:

"Dishonesty, particularly when associated with professional practice, is so damaging to a Registrant's suitability and to public confidence in social care services that removal may be considered to be appropriate outcome".

The Registrant's criminal behaviour involved dishonesty by way of theft from vulnerable service users, and constituted an abuse of her position of trust as a social care worker, and brought the social care profession into disrepute. The Registrant has shown no insight or remorse, has taken no remedial action and has failed to engage with the Committee in relation to today's hearing. In all of the circumstances, the Committee concludes that a Removal Order is the only sanction available to it that would protect the public and meet the public interest in upholding confidence in the social care profession and its regulator, by marking the seriousness and unacceptability of the Registrant's actions. The Committee considers that public confidence in the social care profession, and the Council as its regulator, would be undermined if a social care worker who was criminally convicted of theft, and who failed to show any insight or remediation, was allowed to remain on the Register. The Committee considered a Removal Order to be a suitable, appropriate and proportionate sanction which will be imposed on the Registrant's registration with immediate effect.

You have the right to appeal this decision to the Care Tribunal. Any appeal must be lodged in writing within 28 days from the date of this Notice of Decision.

You should note that the Fitness to Practise Committee's decision takes effect from the date upon which it was made.

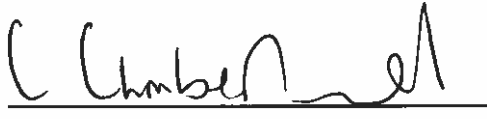
The effect of this decision is that your entry in the Register has been removed.

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

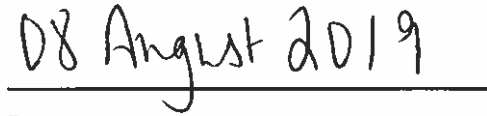
1. A member of care staff at a:
 - a.) Children's home;
 - b.) Residential care home;
 - c.) Nursing home;
 - d.) Day care setting;
 - e.) Residential family centre.
2. A person who is supplied by a domiciliary care agency to provide personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
3. A manager of a:
 - a.) Residential care home;
 - b.) Day care setting;
 - c.) Residential family care centre; or
 - d.) Domiciliary care agency.

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

In accordance with Schedule 3, Paragraph 9 of the Northern Ireland Social Care Council 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.



Committee Manager



Date