

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

Name: Mhegan McCaffrey

SCR No: 6012573

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council ('the Council'), at its meeting on **02 October 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 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 employed by Peacehaven Care Services Ltd, you were convicted of the following offences at the Magistrates' Court:

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|----|---|
| 1. | Defendant on 16/06/2018, stole cash to the value of £10 or thereabouts belonging to [Service User A], contrary to Section 1 of the Theft Act (Northern Ireland) 1969; |
| 2. | Defendant on the 17/06/2018, stole Cash to the value of £10 or thereabouts belonging to [Service User A], contrary to Section 1 of the Theft Act (Northern Ireland) 1969; |
| 3. | Defendant on the 11/07/2018, stole Cash to the value of £10 or thereabouts belonging to [Service User A], contrary to Section 1 of the Theft Act (Northern Ireland) 1969; |
| 4. | Defendant on the 24/06/2018, stole Cash to the value of £20 or thereabouts belonging to [Service User B], contrary to Section 1 of the Theft Act (Northern Ireland) 1969; |

5.	Defendant on the 25/06/2018, stole Cash to the value of £10 or thereabouts belonging to [Service User B], contrary to Section 1 of the Theft Act (Northern Ireland) 1969;
6.	Defendant on the 26/06/2018, stole Cash to the value of £20 or thereabouts belonging to [Service User B], contrary to Section 1 of the Theft Act (Northern Ireland) 1969;
7.	Defendant on the 27/06/2018, Stole Cash to the value of £90 or thereabouts belonging to [Service User B], contrary to Section 1 of the Theft Act (Northern Ireland) 1969;
8.	Defendant on the 01/05/2018, stole Cash to the value of £20 or thereabouts belonging to [Service User A], contrary to Section 1 of the Theft Act (Northern Ireland) 1969;
9.	Defendant on the 01/05/18, stole Cash to the value of £20 or thereabouts belonging to [Service User A], 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

The Registrant was neither present nor represented. The Council was represented by Miss Bergin, Solicitor, Directorate of Legal Services.

Service

In a Notice of Hearing dated 21 August 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 received and signed for by the Registrant on 22 August 2019. The Committee heard and accepted the advice from the Legal Adviser. She referred the Committee to Rule 3 of Part 1 of the Rules and Paragraph 5 (2) of Schedule 2 of the Northern Ireland Social Care Council Fitness to Practise (Amendment) Rules 2019 ('the Rules').

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 Bergin made an application to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules, that the Committee should hear and determine the case in her absence. She advised that there was no evidence to suggest that the Registrant was seeking a postponement of this matter, nor did she provide any reason for her non-attendance at today's hearing.

The Committee heard and accepted the advice from the Legal Adviser, who referred it to the need to exercise its discretion with the utmost care and caution. She referred the Committee to the principles identified in the cases of R v Jones and Adeogba v GMC. She reminded the Committee that the Registrant is entitled to a fair hearing, to attend, be represented, test the Council's case and present evidence on her own behalf. She reminded the Committee that it must consider not only fairness to the Registrant but fairness to the Regulator in exercising its discretion. She said that the Committee should consider whether the Registrant was voluntarily absent and whether an adjournment would secure her attendance at a later date. She advised the Committee that it should not draw any adverse inference from the Registrant's absence, and to consider any disadvantage to the Registrant if the Committee decided to proceed in her absence. The Committee should also consider the general public interest in progressing the case in an expeditious manner. She advised the Committee that it should strike a careful balance between the competing interests in reaching its decision.

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. The Committee reminded itself that fairness to the Registrant should be a prime consideration, but that fairness to the regulatory body should also be taken into account.

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. The Committee, in all of the circumstances, considered that the Registrant has voluntarily absented herself from today's hearing, and that there is no information to the Committee to suggest that an adjournment would secure her attendance at a later date. The Committee reminded itself that it must avoid reaching any improper conclusion about the Registrant's absence. 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 allegation and striking a careful balance between fairness to the Registrant, the Regulator and the wider public interest.

Hearing Bundle

Miss Bergin requested that the Hearing Bundle be admitted into evidence. The Committee heard and accepted the advice of the Legal Adviser. The Committee noted that the Registrant had been served with a copy of the bundle and that the accompanying letter informed the Registrant of her right to raise an objection to the contents of the bundle. The Registrant was also informed of the timeline in providing any documents on her behalf. The Committee noted that there was no objection to the bundle being admitted into evidence and having considered relevance of the documents and fairness to the Registrant and to the Regulator, accepted the bundle into evidence and marked it as Exhibit 1.

Background

Miss Bergin told the Committee that the Registrant is registered at Part 2 of the Register and was employed by Peacehaven Care Services Limited ('Peacehaven') as a residential care worker and a domiciliary care worker, having commenced employment on 24 November 2017. Miss Bergin confirmed to the Committee that the Council had received a letter from the PSNI Protective Disclosure Unit, dated 22 August 2018, in which it was noted that the Registrant was arrested and interviewed by the Police on 17 July 2018, in relation to allegations of theft from two service users. Miss Bergin informed the Committee that the Registrant had been convicted of nine counts of Theft on 24 January 2019 after pleading guilty and was sentenced in respect of the convictions on 21 February 2019. She received a Community Service Order of 100 hours unpaid work in respect of each of the nine charges to run concurrently. The Registrant was also sentenced to pay a monetary penalty in respect of two of the convictions, totalling £210.

Miss Bergin referred the Committee to the Employer Referral Form from Peacehaven received by the Council on 19 July 2018. This document outlines the nature of the allegations against the Registrant and the investigations by Peacehaven into the alleged financial abuse of service users by the Registrant. Miss Bergin noted that Peacehaven became aware on 11 July 2018 of concerns raised by Service User A's family. The Employer Referral Form disclosed that the Manager at Peacehaven, attended Service User A's home and was provided with several video clips taken by a covert camera, which appeared to show the Registrant alone in the Service User A's home, lifting the service user's handbag and putting something in her pocket. Service User A's family allege that money had been recorded as missing from the service user's purse over a period of time. Subsequent to this, further allegations came to light in relation to the Registrant's use of Service User B's ATM card. Miss Bergin told the Committee that Peacehaven reported the matter to the PSNI and the Trust's safeguarding department became involved.

Evidence

Miss Bergin referred the Committee to the nine Certificates of Conviction in the bundle of papers, dated 02 May 2019. These Certificates of Convictions disclose that, on 24 January 2019, the Registrant pleaded guilty to nine counts of Theft against two service users. Miss Bergin 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 convictions therein.

Finding of Facts

The Committee took into account the submissions made on behalf of the Council, the Certificates of Convictions and the legal advice from the Legal Adviser. The Legal Adviser reminded the Committee that under Paragraph 12 (5) Schedule 2 of the Rules, a Certificate of Conviction issued in any UK criminal Court, "*shall be conclusive proof of the facts of convictions so found*". She advised the Committee that the Registrant may challenge a Certificate of Conviction if it does not refer to the Registrant or has been challenged successfully on appeal. She

informed the Committee that the Certificates of Conviction were issued before a competent Court of jurisdiction and, in the absence of any other evidence, the Committee is entitled to rely upon them to establish conclusively that the Registrant was convicted of the offences. She advised the Committee that it is also able to rely on the Certificates to establish conclusively the facts so found.

The Committee, having considered the submissions and having taking into account the legal advice, concluded that the Certificates of Conviction are conclusive proof of the facts set out in the Certificates, and therefore the Committee finds the facts proven.

Fitness to Practise

The Committee moved to consider if the Registrant's fitness to practise is currently impaired. The Committee heard submissions from Miss Bergin on the question of the Registrant's current impairment. She submitted that the Registrant's fitness to practise is currently impaired in light of her convictions for theft. She submitted that the evidence before the Committee, and the facts found proved, have established that her actions fell far short of the standards expected of a social care worker. Her behaviour demonstrated a complete lack of respect for the service users and abuse of her position. She referred the Committee to the principles identified in CHRE v Grant 2011, and submitted that the level of the Registrant's insight was central to the assessment of this case. She submitted that the Registrant pleaded guilty at Court. She further submitted that the Registrant's action brought the profession into disrepute and undermined public confidence. She said that the Registrant had not engaged with the Council or the regulatory process, and had not provided any evidence for the Committee to consider. She submitted that there was a serious breach of the following standards: Standard 2: 2.1, Standard 3: 3.7 and Standard 5: 5.1, 5.2, 5.3 and 5.8. She submitted that the Registrant had demonstrated some remorse and insight during the Police interview. However, she had not provided any evidence of insight, remorse or remediation to the Council and in the absence of such evidence, the Committee should find that the Registrant's fitness to practise is currently impaired.

The Committee had careful regard to all of the evidence and the submissions from Miss Bergin. The Committee accepted the advice of the Legal Adviser. The Committee was reminded that the purpose of fitness to practise proceedings is for the protection of the public from harm, and includes the wider public interest in upholding and maintaining standards of professional conduct. The Committee was advised that it must assess the Registrant's fitness to practise in the present tense and take account of the principles identified in the CHRE v Grant. The Legal Adviser informed the Committee that the assessment of fitness to practise was a matter for the Committee, exercising its independent judgement and that there was no burden or standard of proof. The Committee was reminded of the need to consider both the personal and public components in reaching its decision on impairment and, in particular, whether the Registrant had provided evidence of insight or remediation, and if there is a risk of repetition. The Committee was also informed that dishonesty is capable of remediation but, for a Committee to find no impairment on the ground of dishonesty, would require the Committee to make a finding that it is highly unlikely to be repeated.

The Committee first considered whether the Registrant's fitness to practise was impaired, by reason of her convictions for theft, as clear evidence of dishonesty. The Committee had no hesitation in concluding that she was impaired at the time of the convictions. The Committee determined that the Registrant had breached the following Standards of Conduct:

2. **As a social worker, you must strive to establish and maintain the trust and confidence of service users and carers. This includes:**
 - 2.1 Being honest and trustworthy; and
5. **As a social worker, you must uphold public trust and confidence in social work services. In particular you must not:**
 - 5.1 Abuse, neglect or harm service users, carers or colleagues;
 - 5.2 Exploit service users, [carers or colleagues] in any way;
 - 5.3 Abuse the trust of service users [and carers] or the access you have to personal information about them or to their property, home or workplace; or
 - 5.8 Behave in a way, in work or outside work, which would call into question your suitability to work in social care services.

The Committee considered that the Registrant had breached a fundamental tenet of the profession and had brought the profession into disrepute by her actions in stealing sums of money from two vulnerable service users over a period of time.

The Committee next considered whether the Registrant's fitness to practice is currently impaired on the basis of the Certificates of Conviction. The Committee concluded that whilst dishonesty is difficult to remediate, it can be remediated. In relation to considering the personal component, the Committee has not been provided with any evidence from the Registrant as to her level of insight, remorse, regret or risk of repetition and the Registrant has not engaged with the process. In the absence of any evidence, the Committee concluded that the Registrant is likely to put a service user at risk of unwarranted harm in the future, is likely to behave in a way that would bring the profession into disrepute, is liable to breach one of the fundamental tenets of the social care profession and is liable in the future to behave dishonestly. The Committee therefore are of the view that the Registrant is currently impaired on the personal component.

In relation to the public component, the Committee is satisfied that without evidence of remediation, remorse or level of insight, public confidence in the profession would be undermined if a finding of current impairment was not made. The Committee therefore finds that the Registrant's fitness to practise is currently impaired.

Sanction

In reaching its decision on sanction, the Committee had careful regard to all of the evidence in the case as well as the submissions from Miss Bergin. The Committee heard and accepted the advice of the Legal Adviser. She advised that the purpose of sanction was not to be punitive but may have a punitive effect. The Committee was reminded that it should exercise its professional judgement in reaching a decision on sanction, and should keep at the forefront of its decision making the need to protect the public, the wider public interest and the principles of fairness and proportionality. The Committee was reminded that it should take into account the Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees 2017 ('the Guidance'), and consider the range of sanctions as set out in Paragraph 26 Schedule 2. The Committee was reminded that if it decided on a Conditions of Practice Order, that it should be specific, measurable, appropriate, relevant and time bound. In relation to the conviction for theft, the Committee was referred to the cases of Parkinson, Bolton, Wisniewska v NMC 2016 EWHC 2672 and Lusinga v NMC 2017 EWHC 1458, and was reminded to consider the level of dishonesty and whether the Registrant had attended or expressed remorse or regret.

In reaching its decision, the Committee considered 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 considered the offences to be serious and took place over a period of time. The Committee considered both mitigating and aggravating factors. Aggravating factors were determined as follows:

- Breach of trust;
- Theft from two vulnerable service users;
- The offences were premeditated, were committed during working hours and were carried out over a period of three months;
- Lack of engagement throughout the regulatory process;
- Lack of insight and understanding of the impact of her behaviour on vulnerable service users; and
- Lack of remediation.

The Committee considered the mitigating factors to be:

- A clear work record and good work history with Peacehaven from November 2017 until the thefts took place between May and July 2018;
- Prior good character; and
- Early admission of the offences during police interview.

The Committee had careful regard to the Guidance which highlights dishonesty as particularly serious. The Committee is of the view that the Registrant's actions were serious and that the public is entitled to have confidence in registrants who are in position of trust. The Committee had not been provided with any evidence as to the Registrant's current financial or employment position.

Warning – the Committee considered that none of the factors that would justify the imposition of a Warning were present in this case. The Committee was also of the view that such a sanction would be insufficient to mark the seriousness of the Registrant's offence and that the public in general, and vulnerable service users in particular, would be placed at risk if the Registrant was permitted to practise on an unrestricted basis.

Conditions of Practice Order – the Committee reminded itself of the serious nature of the conduct, in respect of which the Registrant was convicted of theft before a Magistrates' Court. She had stolen money from vulnerable service users in the course of her duties. The Registrant has not taken any steps in the period during the regulatory proceedings against her to demonstrate remorse for her actions, nor has she attended the hearing to persuade the Committee that such actions would not be repeated in the future. In addition, the Committee had no evidence of the Registrant's current employment status. Given these factors, the Committee determined that no workable, enforceable or verifiable conditions could be identified that could be attached to the Registrant's registration that would adequately protect the public and provide public confidence in the regulatory process.

Suspension – the Committee then considered whether it would be proportionate to apply a Suspension Order. The factors as set out in the Guidance were examined closely by the Committee. The Committee noted that the Registrant had not sought to engage with the regulatory proceedings against her. She has not demonstrated any evidence of insight or remedial actions that would address the serious issue as evidenced by her convictions. The Registrant stole from two service users on a number of occasions over a period of time. The Committee was of the view that her actions were of a most serious kind. The Committee was in no doubt that she had abused her position of trust as a social care worker in order to steal money from vulnerable service users in her care.

The Committee considered that in the absence of demonstrable evidence touching upon insight and remedial action, a real risk remained that the Registrant could repeat the conduct complained of which had resulted in her convictions. The Committee also had regard to Paragraph 5.15 of the Guidance, in particular, 'Users of services rely upon the professional's trustworthiness, which they are entitled to assume because of the professional's training and registration. People who use services have the right to be protected from a social care worker who seriously abuses the trust placed in them...for financial gain...contrary to the interests of the person using the services.' That Guidance, to the Committee's mind, seems to be particularly apt in the circumstances of this case.

The Committee concluded that the Registrant's actions were fundamentally incompatible with continued registration. It is the view of the Committee that imposing a Suspension Order, in the absence of evidence to support such a sanction, would fail to protect the public from harm, would undermine public confidence and fail to declare and maintain proper standards of conduct and performance in the social care workforce.

Removal – the Committee therefore decided that the only appropriate and proportionate sanction to impose in the particular circumstances of this case was a Removal Order. The Registrant acted in a reprehensible fashion in stealing from vulnerable service users, for whom she was charged to provide care, and had fallen far short of the standards to be expected from a member of the social care workforce. The Registrant has not demonstrated

insight, neither had she produced evidence of remedial action that would reassure the Committee that she would not repeat her dishonest behaviour in the future. The Registrant has failed to engage at all with the regulatory process and in these circumstances, the Committee considered that the only proportionate sanction that would adequately protect the public and uphold the public interest would be to remove the Registrant from the Register.

The Committee also ordered that the Interim Suspension Order in place in respect of the Registrant's registration be revoked with immediate effect and replaced with the Removal Order.

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 Social Care Council's 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

04.10.19.
Date