

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

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**Name:** Emma Henderson

**SCR No:** 6035294

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **28 November 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 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 11 April 2019, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted of the following offence at Downpatrick Crown Court:

1. Defendant between the 10<sup>th</sup> day of April 2017 and the 20<sup>th</sup> day of September 2017, stole cash to the value of £16,250 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 conviction.

**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 Mr Anthony Gilmore, Solicitor, Directorate of Legal Services.

## **Service**

In a Notice of Hearing dated 17 October 2019, sent by Special Delivery post and addressed to the Registrant at her address as it appears on the Register and to her last known address, the Council notified her of the date, time and venue for this hearing. The package was received and signed for by the Registrant on 24 October 2019. An amended bundle was also issued to the Registrant on 20 November 2019; this was also received and signed for by the Registrant on 25 November 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**

Mr Gilmore 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. He 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**

Mr Gilmore requested that the Hearing Bundle be admitted into evidence together with three other documents, namely two emails from the Registrant and a record of the Registrant's Police interview in April 2018. The Committee heard and accepted the advice of the Legal Adviser. She directed the Committee to Paragraph 12 (1) of Schedule 2 of the Rules and advised the Committee that subject to the requirements of a fair hearing and of relevance the Committee could admit evidence, whether or not it would be admissible in a Court of Law. The Legal Adviser reminded the Committee that the correct approach was to address admissibility first and then, if the decision was to admit the evidence, to consider the weight which would be attached to the evidence. 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 was satisfied that the evidence met the requirements of relevance and fairness and was admissible. The Committee determined to admit the bundle into evidence as Exhibit 1. The emails from the Registrant were admitted as Exhibit 2 and the record of the Police interview as Exhibit 3. The Committee was advised that redactions had been made to the record of the Police interview by the Police, but was satisfied that the document could be admitted into evidence, and the Committee would address the weight to be given to the document as a result of the redactions.

### **Background**

Mr Gilmore told the Committee that the Registrant is registered at Part 2 of the Register as a social care worker. During the period relevant to the allegation, she was employed as a care and support worker for Caremark, having commenced with them on 05 January 2017. Caremark were made aware that the Registrant was being investigated and arrested in relation to an allegation of theft. An Employers Referral form was submitted to the Council on 17 October 2017. Mr Gilmore told that Committee that on 11 April 2019, the Registrant pleaded guilty to the theft charge and that on 03 June 2019, she was sentenced and remains under a suspended sentence

### **Evidence**

Mr Gilmore referred the Committee to the Certificate of Conviction in the bundle of papers, dated 09 July 2019. This Certificate of Conviction discloses that on 11 April 2019, the Registrant pleaded guilty to one count of theft

against a service user. Mr Gilmore 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 Certificate of Conviction 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 Certificate of Conviction was issued before a competent Court of jurisdiction and, in the absence of any other evidence, the Committee is entitled to rely on the Certificate of Conviction to establish conclusively that the Registrant was convicted of the offence. She advised the Committee that it is also able to rely on the Certificate to establish conclusively the facts.

The Committee, having considered the submissions and having taken into account the legal advice, concluded that the Certificate of Conviction is conclusive proof of the facts set out in the Certificate, 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 Mr Gilmore on the question of the Registrant's current impairment. Mr Gilmore submitted that the Registrant's conviction calls into question her ability to work in social care services. He referred the Committee to the Standards of Conduct and Practice for Social Care Workers and submitted that the Registrant's conviction breaches the following standards: Standard 1- 1.2, Standard 2- 2:1, 2;6, Standard 3- 3:7, Standard 6- 5:1, 5:2 and 5:8.

Mr Gilmore told the Committee that the Registrant's conviction fell far below the minimum standard to be expected of a registered social care worker and called into question her fitness to practise. He noted that the Registrant admitted her actions when interviewed by the police, she pleaded guilty at the Crown Court and her emails to the Council have demonstrated some insight into the seriousness of her actions. Mr Gilmore submitted that the Council remained concerned about the risk of repetition, and noted that the Registrant remains subject to a suspended sentence. Mr Gilmore submitted that there is a strong public interest in the care of the most vulnerable in society, and that includes ensuring that they are not subject to theft or financial abuse by those who are paid to care for them. He told the Committee that the public are entitled to be assured that theft from a service user will be dealt with by the regulator and the risk removed.

The Committee considered the submissions from Mr Gilmore on behalf of the Council and had careful regard to all of the evidence in the case. The Committee accepted the advice of the Legal Adviser. She reminded the

Committee that it is being asked to determine whether the Registrant's fitness to practise is impaired by reason of her conviction. She referred the Committee to Paragraph 24 of Schedule 2 of the Rules and to the cases of GMC v Meadows 2006 and CHRE v Grant 2011.

The Committee considered whether the Registrant's fitness to practise is impaired by reason of her conviction as set out in the Particulars of the Allegation. The Committee, in considering the issue of impairment of fitness to practise, took into account Paragraph 24 (3) of the Rules which states that the Committee shall have regard to:

- a) whether it is satisfied as to the reasons 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 has been convicted of theft of a substantial amount of money from a service user in her care. The Committee had no hesitation in concluding that the Registrant was impaired at the time of her conviction.

Then the Committee had regard to the Standards of Conduct and Practice for Social Care Workers. The Committee found that the Registrant was in breach of:

**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; and

2.6 Being reliable and dependable.

**Standard 3: As a social care worker, you must promote the autonomy of service users while safeguarding them as far as possible from danger or harm. This includes:**

3.7 Recognising and using responsibly with service users and carers, the power that comes from your work role.

**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;

5.2 Exploit service users, carers or colleagues in any way; 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 determined that the Registrant had brought the social care profession into disrepute. She has breached one of the fundamental tenets of the social care profession by abusing her position of trust and stealing over £16,000 from a vulnerable service user in her care.

The Committee considered whether an offence of this kind could ever be remediated. The Committee concluded that only in the most exceptional circumstances could an offence of this kind be remediated. The conviction arose from theft of a substantial amount of money, taken over a period of several months from a vulnerable service user, who was entitled to rely on the integrity and trust of those providing care in her own home. The Committee also felt that the impairment could not be remediated while the Registrant was subject to a suspended sentence.

The Committee was in no doubt that the impairment had not been remediated. The Committee found that there was a degree of insight on the part of the Registrant. In the emails to the Council, she had expressed remorse and demonstrated an understanding of the seriousness of her actions. The Committee noted that the Registrant has stated that the money had been repaid. However, the Committee was not satisfied that full remediation had taken place. The Committee was concerned that there remained a risk of repetition and noted that this offence occurred after a relatively short period of time working in this field.

The Committee found the public interest in this case to be engaged. The public would find it totally unacceptable that a carer, who had been convicted of theft in these circumstances, was allowed to remain on the Register without restriction or at all. The Committee was satisfied that the public require assurance that her dishonest actions have been dealt with and the risk removed. Therefore, the Committee concluded that public confidence 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 conviction.

### **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 Mr Gilmore. 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'). The Legal Adviser directed the Committee to the cases of Parkinson v NMC [2010], Watters v NMC [2017],

Wisniewska v NMC 2016 EWHC 2672 and Lusinga v NMC 2017 EWHC 1458, and was reminded in its deliberations to consider 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 offence to be serious. The Committee considered both mitigating and aggravating factors.

The Committee considered the mitigating factors to be:

- No previous concerns have been raised with the Council;
- No previous allegations have been raised about the Registrant at work;
- The Registrant made an admission to the criminal charge and pleaded guilty. She expressed deep sorrow for her actions.

Aggravating factors were determined as follows:

- This was a serious criminal conviction;
- The theft took place over the course of some months and was a series of incidents, not a one off;
- The Registrant's actions were premeditated and deliberate;
- The Registrant was convicted of theft from a service user. Her actions were dishonest;
- The Registrant's actions constituted an abuse of trust placed in her by her employer and by the service user;
- The Registrant stole a substantial amount of money;
- The Registrant's actions constituted a serious disregard for the Council's Standards of Conduct and Practice.

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 a position of trust. The Committee has not been provided with any evidence as to the Registrant's current financial or employment position.

**No Sanction** - the Committee was in no doubt that it would be entirely inappropriate to apply no sanction in this case.

**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 a Warning 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 criminal conviction that the Registrant received in the Crown Court. She had stolen a significant sum of money from a vulnerable service user in the course of her duties. The Registrant has not attended the hearing to persuade the Committee that her 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 attended today to persuade the Committee that she had remediated her actions or that there was no risk of repetition in the future. The Registrant stole a large amount of money from a service user. The Committee was of the view that her actions were abhorrent. 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 a vulnerable service user in her care. The Committee considered that in the absence of full remediation, a risk remained that the Registrant could repeat the conduct which had resulted in her conviction. 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.

**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 a vulnerable service user, 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 Committee concluded that her conduct was evidence of a harmful attitudinal problem which is incompatible with being a registered social care worker. Her actions constitute a pattern of unacceptable behaviour and the Registrant has not produced evidence of remedial action that would reassure the Committee that she would act any differently in the future. 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 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.

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**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.

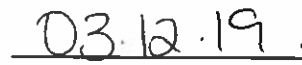
You are prohibited from working as a social care worker in any of the following positions:

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