

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

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**Name:** Pauline Carthy

**SCR No:** 6029843

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **09 January 2020**, 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 Caution in the United Kingdom for a criminal offence;**

**The Committee decided to make an Order for removal of your registration from the Register ('a Removal 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 Social Care Worker for Lakeland Community Care Ltd (employer):

1. On 11 December 2018 at Enniskillen PSNI Station, you were issued with an Adult Police Caution for offences of Theft. The offences relate to the theft of monies belonging to a service user, referred to as "Service User A", to the value of €270.00 and £140.00. These offences took place across a number of occasions between 13 August 2018 and 02 October 2018, contrary to Section 1 of the Theft Act (Northern Ireland) 1969.

And that by reason of the matters set out above, your fitness to practise is impaired by reason of your Caution in the United Kingdom for a criminal offence.

**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 Ms Helen Bergin, Solicitor, Directorate of Legal Services.

## **Service**

The Notice of Hearing and hearing bundle were posted by special delivery to the Registrant's registered address on 14 November 2019 and were delivered and signed for by the Registrant on 15 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**

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 the Registrant's absence. She advised that there was no evidence to suggest that the Registrant was seeking a postponement of this matter, no indication that she was seeking representation, nor did she provide any reason for her non-attendance at today's hearing. She submitted that the Registrant's absence was deliberate and that while there may be some disadvantage to the Registrant, any disadvantage was outweighed by the public interest and it was only fair to the Council to allow the case to proceed.

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 GMC v Adeogba. She reminded the Committee that the Registrant is entitled to a fair hearing, to attend, be represented, to test the Council's case and to 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 and retire to consider 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 heard and accepted the legal advice in relation to the admission of the hearing bundle. It noted that there was no objection to the bundle being admitted into evidence and, having considered the 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 submitted that the Registrant was employed by Lakeland Community Care Ltd and commenced employment as a carer on 05 October 2011. She was employed to provide care assistance to elderly service users in the Enniskillen area. An Employer Referral Form, dated 16 October 2018, was received by the Council on 17 October 2018. The contents of this form disclose that a family member of a service user alleged that 'a financial irregularity occurred on several different occasions, whilst staff member PC was in the house'. The Registrant had been spoken to by her employer on 11 October 2018 and she denied any wrong doing. The employer informed Social Services and the PSNI that a disciplinary hearing was being conducted on 18 October 2018. Miss Bergin referred the Committee to the contents of the Certificate of Caution dated 11 December 2018, in which it was noted that the Registrant accepted a Caution in respect of a number of thefts which were carried out by her during the period 13 August 2018 and 02 October 2018. The information revealed that €270 and £140 were taken from the service user's wallet during this period when she was providing care in his own home. Miss Bergin submitted that the Registrant had not engaged with the Council, had not provided any written evidence and had not raised any objections to the contents of the hearing bundle. Miss Bergin submitted that, in

accordance with Rule 4 (1) (d), the Registrant's fitness to practise was impaired as a result of the Caution in respect of the thefts.

### **Finding of Facts**

Miss Bergin submitted that the Council, in relation to finding of facts, was relying on the documentary evidence contained within the hearing bundle and in particular:

- The Certificate of Caution, which disclosed that the Registrant accepted a Police Caution in respect of a number of thefts, which were committed between 13 August 2018 and 02 October 2018;
- The contents of the interview notes with her employer; and
- Letter from the Protective Disclosure Unit, PSNI.

Miss Bergin submitted that the Registrant had been provided with a copy of these documents within the hearing bundle and that no objection had been raised to any of the contents. The Registrant had not made any formal admission to the Council. She submitted that the Committee could find the facts proven on the balance of probabilities.

The Committee heard and accepted the advice of the Legal Adviser. The Committee was reminded that the Registrant was not present and had made no formal admissions to the Council in respect of the Certificate of Caution. She advised the Committee that the burden of proof rests with the Council and that the applicable legal standard was the balance of probabilities i.e. that the events were more likely than not to have happened. She advised the Committee that in reaching its decision, it should consider all of the information and the weight to be attached to the hearsay information contained within the hearing bundle and, in doing so, consider the source and nature of the information. The Committee was reminded that a Certificate of Caution was not a criminal conviction but that a record of the Caution would be kept on Police databases for a period of time. The Committee was also reminded that the Registrant signed the Certificate of Caution on 11 December 2018 and, having been provided with a copy of the Certificate of Caution within the hearing bundle, had not raised any objection to its contents.

The Committee heard submissions from Miss Bergin. The Committee also heard and accepted the Legal Adviser's advice. The Committee noted that the burden of proof rested with the Council and that the standard to be applied was the balance of probabilities. In reaching its decision, the Committee noted that the Registrant had signed for the hearing bundle and raised no objection to the contents of the Certificate of Caution, letter from PSNI, dated 02 January 2019, setting out the background to the case and the interview notes with her employer, dated 11 and 18 October 2018. The Committee has attached considerable weight to the Certificate of Caution and the letter from PSNI, taking into account the source of the documentation. The Committee noted that the Registrant signed the Certificate of Caution, and that the Caution was in respect of theft committed on a number of dates between 13 August 2018 and 02 October 2018 and that the total stolen amounted to €270 and £140. The Committee has also taken into account the contents of the interview with her employer, dated 18 October

2018, in which the Registrant admitted to taking the money from the service user. The Committee determined that, on the balance of probabilities and on the evidence provided, the facts were found proved.

### **Fitness to Practise**

Miss Bergin submitted that the Caution, administered to the Registrant in respect of several thefts, called into question the Registrant's suitability to remain on the Register and that her fitness to practise is impaired. She referred the Committee to the legal principles identified in Cohen and submitted that the Committee must first be satisfied as to the reason for impairment. She submitted that the Registrant accepted a Caution in respect of several thefts from a vulnerable service user, and that her behaviour fell far below the standards expected from a social care worker. She submitted that the following Standards have been breached: 2: 2.1, 2.11, 3: 3.7, 5: 5.2, 5.3 and 5.8.

Miss Bergin submitted that the Registrant initially denied the allegations at a meeting with her employer on 11 October 2018, but accepted that she had stolen money at a subsequent meeting on 18 October 2018. She said that the Registrant expressed her regret and indicated that she would pay the family back 'if they are agreeable'. Miss Bergin submitted that there was no information as to remediation as there had been no engagement from the Registrant with the regulatory process. She said that the Registrant's actions had brought the profession into disrepute and that the risk of repetition remained. She said that it was a matter for the Committee to decide if the dishonesty was capable of remediation and that it was up to the Registrant to demonstrate that she was no longer impaired or posed a risk to service users. She submitted that the Registrant had chosen not to take the opportunity to engage with the regulator, had not challenged the information and has not provided any information as to current impairment. In relation to the wider public interest, she submitted that the Registrant's failure to carry out her duties and to adhere to the standards expected of a social care worker was serious, she admitted her guilt to the Police and her employer and accepted a Caution. The thefts took place in the home of an 81 year old service user (confirmed as Service User A). She submitted that appropriate action should be taken in respect of her behaviour in order to protect the public, uphold standards and maintain confidence in the profession. Miss Bergin submitted that the Registrant's actions were unacceptable and that there was no other option but to make a finding of impairment. She referred the Committee to the principles identified in Grant and submitted that all four of the principles were breached.

The Committee took into account the submissions of Miss Bergin in reaching its decision. The Committee also heard and accepted the legal advice provided by 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 NMC and Grant EWHC 927. 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 reminded that a finding of dishonesty does not automatically result in a finding of impairment. Dishonesty is capable of being remediated and covers a broad spectrum of seriousness. The Committee was reminded that it should consider dishonesty in the context of the case and take into account all three elements of the overarching objective: protection of the public, public confidence of the profession and the wider public interest in upholding and maintaining proper standards and behaviour. The Committee was advised that remediation and risk of repetition are important factors when considering impairment but that they must be weighed in the balance, taking into account the overarching objective. The Committee was advised to consider the Northern Ireland Social Care Council Guidance on Making a Determination on Impaired Fitness to Practise and to exercise its own independence, skill and judgement in considering the breaches of Standards of Conduct and Practice as submitted by Miss Bergin.

The Committee first considered whether the Registrant's fitness to practise was impaired by reason of her Caution in respect of several thefts over a period of time. The Committee had no hesitation in concluding that she was impaired at the time of the Caution. 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.
- 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 next considered whether the Registrant's fitness to practice is currently impaired on the basis of the Certificate of Caution. The Committee concluded that whilst dishonesty is difficult to remediate, it can be remediated. In relation to considering the personal component the Committee was of the view that, while noting that the Registrant expressed her regret at interview with her employer on 18 October 2018 and offered to repay the money, she has not provided any evidence as to her level of insight, remorse, regret or risk of repetition. The Registrant has not engaged with the process at all. In the absence of such evidence, the Committee concluded that the Registrant is currently impaired on the personal component and considered that the risk of repetition

remains. 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. In relation to mitigating factors, Miss Bergin submitted that the Registrant had a previous good work record and that there were no previous disciplinary proceedings against her. She submitted that the Registrant had not provided any testimonials or references to assist the Committee but that she was entitled to the benefit of a previous good character and had evidenced a level of acceptance that her behaviour was inappropriate.

In relation to aggravating factors, Miss Bergin submitted that:

- the offences were committed against a vulnerable service user over a period of time;
- she had breached and betrayed her position of trust in repeatedly stealing money from a service user in his own home whilst she was providing care;
- the thefts were pre-meditated.

Miss Bergin submitted that the Committee should consider the Indicative Sanctions Guidance 2017, and referred the Committee to the relevant sections within the Guidance. She further submitted that the Committee should consider whether the Registrant's behaviour was fundamentally incompatible with remaining on the Register, whether there was any other way to protect the public and whether public confidence would be undermined if she remained on the Register in the circumstances of this case.

The Committee heard and accepted the advice of the Legal Adviser. She advised that the purpose of sanction was not to be punitive but that it 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 advised that it should consider sanctions beginning with the least restrictive and stop when it reached a sanction which it considered appropriate and which would provide the necessary level of protection. 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 Caution in respect of several thefts, the Committee was reminded that dishonesty does not automatically lead to suspension or removal from the Register. She referred the Committee to the cases of Parkinson, Wisniewska v NMC 2016 EWHC 2672 and Abbas v GMC 2017 EWHC 51. The Committee was reminded to consider the level of

dishonesty and whether the Registrant had attended or expressed remorse or regret. The Committee was advised that it should consider aggravating and mitigating factors and properly evaluate them in reaching its decision.

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 nature of repeatedly stealing from a vulnerable service user in his own home to be a serious matter. The Committee considered both mitigating and aggravating factors. Aggravating factors were determined as follows:

- Serious and repeated breach of trust;
- Thefts were from a vulnerable service user;
- The offences were committed during working hours in the service user's home;
- Lack of engagement throughout the regulatory process; and
- Lack of insight and / or remediation.

The Committee considered the mitigating factors to be:

- A good work record prior to the thefts; and
- Prior good character.

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 level of dishonesty is at the upper end of the scale of dishonesty. The public is entitled to have confidence in registrants who are in a position of trust and who have access to their homes. The Committee has not been provided with any evidence as to the Registrant's current employment or financial position. The Committee decided that a sanction was necessary in the circumstances of 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 such a sanction would be insufficient to mark the seriousness of the Registrant's offences 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 received a Caution in respect of several thefts, committed over a period of time, against a vulnerable service user in his own home. The Registrant has not taken any steps in the period during the regulatory proceedings against her to provide evidence as to her insight or 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.

**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 being subject to a Caution. The Registrant offended on more than one occasion and the Committee was of the view that her actions were of a most serious kind. The Committee was in no doubt that she had repeatedly 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 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 receiving a Caution. 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.

It seemed to the Committee that imposing a Suspension Order, in the absence of evidence to support such a sanction, would undermine public confidence and would fail to uphold proper standards of conduct and practice in the social care workforce.

**Removal** – The Committee concluded that the Registrant's actions were fundamentally incompatible with continued registration. 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 repeatedly stealing from a vulnerable service user, for whom she was charged to provide care, and fell far short of the standards to be expected from a member of the social care workforce. The Registrant did not demonstrate insight, neither did she produce evidence of remedial action that would reassure the Committee that she would not repeat her dishonest behaviour in the future. The Committee considered that public confidence in the social care profession and the Council as its regulator would be undermined if the social care worker was permitted to remain on the Register, given the circumstances of this case.

As such, the Committee concluded that the Registrant's conduct was fundamentally incompatible with continuing registration, and that the only proportionate response 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.

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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:

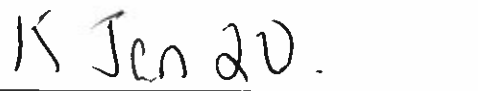
1. A member of care staff at a:
  - a.) Children's home;
  - b.) Residential care home;
  - c.) Nursing home;
  - d.) Day care setting;
  - e.) Residential family centre.
2. A person who is supplied by a domiciliary care agency to provide personal care in their own homes for persons who by reason of 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.



Regulatory Committee Manager



Date