

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

Name: Danielle Marie Graham

SCR No: 6032826

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **25 February 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 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 30 July 2019, whilst being registered as a social care worker, under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), and whilst employed as a Care Attendant by Crossroads Care, you were convicted of the following offence at the Magistrates' Court:

1. Defendant on 16th day of September 2018, stole cash to the total value of £20.00 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.

Service

Mr Gilmore told the Committee that the Notice of Hearing and hearing bundle were served on the Registrant at her address as it appears on the Register via Special Delivery Post on 15 January 2020. The package was delivered and signed for on 17 January 2020. A letter, dated 27 January 2020, was issued to the Registrant explaining that redactions had been made to the hearing bundle and enclosed the final version of the bundle, this was also received and signed for by the Registrant on 28 January 2020.

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. 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.

Background

Mr Gilmore submitted that the Registrant was employed as a care attendant at Crossroads Care, having commenced employment on 20 January 2017. The Registrant is registered on Part 2 of the Register as a domiciliary care worker. On 02 October 2018, the Council received an Employer Referral Form from Crossroads Care, which stated that the PSNI contacted the Safeguarding Team on 01 October 2018, to advise that a client had contacted the PSNI on 28 September 2018, to report the theft of £20 from the client's wallet. CCTV was installed in the living room, which showed the Registrant lifting the wallet and taking it out of the room. The Registrant was suspended on 01 October 2018.

Mr Gilmore told the Committee that on 21 May 2019, the Registrant pleaded 'not guilty' to the charge of Theft of £20 from Service User A. The Committee heard that on 30 July 2019, a conviction was made and the Registrant was sentenced to 200 hours Community Service Order over a period of 12 months.

Evidence

Mr Gilmore referred the Committee to the Certificate of Conviction in the bundle of papers, dated 28 August 2019. This Certificate of Conviction discloses that on 21 May 2019, the Registrant pleaded not guilty to one count of theft from a service user. She was convicted and sentenced on 30 July 2019. 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 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. Mr Gilmore referred the Committee to the Standards of Conduct and Practise for Social Care Workers and submitted that the Registrant's convictions breached the following standards: Standard 1, 1.2, Standard 2, 2.1, Standard 5, 5.1, 5.3 and 5.8.

Mr Gilmore told the Committee that the Registrant's actions fell far below the minimum standard to be expected of a registered social care worker. He submitted that there is an element of dishonesty in any conviction for theft case and in this instance, there has been an abuse of trust, as the theft occurred from Service User A in his own home. Mr Gilmore submitted that the Council is of the clear view that the Registrant's fitness to practise was impaired at the time of the theft and remains impaired. He told the Committee that the Registrant denied her actions and maintained the denial when confronted with CCTV footage. Her steadfast denial causes the Council to question whether her impairment can ever be remediated. Mr Gilmore submitted that there is a strong public interest in ensuring that the most vulnerable in society are not subject to theft at the hands of those who are paid to care for them.

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 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 and the Committee is satisfied as to the reason for the alleged current impairment.

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

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;
- 5.3 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;
- 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 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 from a vulnerable service user, who was entitled to rely on the integrity and trust of those providing care in his own home. With insight, remorse, evidence of acceptance, learning and understanding of the impact that her actions had on Service User A, remediation could take place.

The Committee had no evidence that the impairment had been remediated. The Committee received no evidence of insight and noted that throughout the criminal process, the Registrant denied any wrong doing. The Committee took into consideration, that during the Police interview, the Registrant continued to deny her actions, even after viewing the CCTV footage. After viewing the footage, the Registrant changed her story to allege that Service User A would always say that someone had taken money from his wallet. Therefore, the Committee

concluded that there is no evidence of insight on the part of the Registrant. The Committee also noted that there was no evidence of an apology or any remorse on the part of the Registrant.

The Committee was concerned that there remained a risk of repetition and noted that this offence occurred whilst providing care in Service User A's own home. When providing care in someone's home, the service user is entitled to place reliance on the integrity of a registered social care worker. The Committee concluded that with no demonstrable evidence of learning a risk of repetition must remain.

The Committee found the public interest in this case to be engaged. The public would find it totally unacceptable if a finding of impairment of fitness to practise was not made, in circumstances where a carer had been convicted of theft from a vulnerable service user. The Committee determined that the public require assurance that proper standards of conduct are upheld.

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 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 both mitigating and aggravating factors.

The Committee considered the mitigating factors to be:

- The Registrant had no previous allegations raised against her in the workplace
- The Registrant has the benefit of previous good character
- This was a single incident
- The amount involved was limited to £20

Aggravating factors were determined as follows:

- The Registrant was dishonest
- She abused her position of trust
- She denied her wrongdoing throughout the criminal process
- The incident happened in Service User A's own home
- Service User A was vulnerable and entitled to rely on the care which the Registrant was providing
- There is no evidence of insight
- There has been no expression of regret
- The Registrant did not engage with the Council's regulatory process
- The Registrant had demonstrated a serious disregard of the Council's Standards of Conduct and Practise for Social Care Workers

The Committee had careful regard to the Indicative Sanctions and Use of Interim Order Guidance ('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.

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 criminal conviction that the Registrant received in the Magistrate's Court. She had stolen a 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. Although the amount of money was small, the Registrant stole money from a service user. The Committee was shocked by this as service users receiving care in their own home must be entitled to leave money safely in their home. The Committee was of the view that her actions were serious and constituted an abuse of trust. The Committee received no evidence that the Registrant acknowledged her

failings. The Committee considered that in the absence of remediation, a risk remained that the Registrant could repeat the conduct which had resulted in her conviction. The Committee concluded that a Suspension Order would not afford an opportunity for the Registrant to learn or remedy her failings and would not protect the public or meet the public interest.

Removal – the Committee therefore decided that a Removal Order was the only appropriate and proportionate sanction to impose in the particular circumstances of this case. The Registrant's actions fell far below the standards expected from a member of the social care workforce. Her actions constitute unacceptable behaviour and the Registrant has not produced evidence of remedial action that would persuade the Committee that she would act any differently in the future. The Committee considered that the only proportionate and appropriate sanction that would adequately protect the public and uphold the public interest would be to remove the Registrant from the Register. The Committee had careful regard to Paragraphs 5.10, 5.11 and 5.13 of the Guidance and noted that; "dishonesty is particularly serious because it may undermine trust in social services. Examples could include cases of theft..... The public must be able to place complete reliance on the integrity of Registrants".

The Committee considered the potential impact of a Removal Order on the Registrant but concluded that protection of service users and the public interest outweighed the impact on the Registrant.

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.

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.

PP

Kennedy
Committee Manager

28.02.20
Date