

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

Name: Nwabisa Njizane

SCR No: 6014084

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at a hearing on **15 April 2021**, 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 a conviction 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 on 09 September 2020, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), and whilst employed as a care assistant by Trackars HealthCare, you were convicted of the following offences at the District Judge's Court:

1. You, on the 17th day of April 2019, dishonestly made a false representation, namely, that you had completed a shift at Annadale Private Nursing Home, with the intention, by making the representation, to make a gain for yourself or another or to cause loss to Trackars HealthCare or to expose them to a risk of loss, in breach of Section 2 of the Fraud Act 2006 contrary to Section 1 of the Fraud Act 2006.
2. You, on the 16th day of May 2019, dishonestly made a false representation, namely, that you had completed a shift at Dunmurry Manor Nursing Home, with the intention, by making the representation, to make a gain for yourself or another or to cause loss to Trackars HealthCare or to expose them to a risk of loss, in breach of Section 2 of the Fraud Act 2006 contrary to Section 1 of the Fraud Act 2006.

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 in attendance and represented herself. The Council was represented by Mr Anthony Gilmore, Solicitor, Directorate of Legal Services.

Application to Admit Hearing Bundle

Mr Gilmore confirmed to the Committee that the hearing bundle provided to it complied with the requirements of relevance and fairness, and that the Registrant had made no objections to its contents. The Committee accepted the bundle into evidence, and marked it as Exhibit 1.

Submissions

Mr Gilmore applied, under Paragraph 12 (5) of Schedule 2 of the Rules, for the findings of fact as set out in the Certificates of Conviction to constitute conclusive proof of the convictions therein. He referred the Committee to the Certificates of Conviction within the bundle of papers and the supporting documentation.

He told the Committee that the Registrant was first registered on 26 September 2016 on Part 2 of the Register as a social care worker. He said that at the time of the incidents in April and May 2019, the Registrant was working as a care assistant with Trackars Health Care Agency.

He referred the Committee to the first incident, which related to a shift at Annadale Private Nursing Home ('Annadale') on 16 - 17 April 2019. He said that the Registrant was scheduled to cover this shift, but that whoever actually covered the shift caused concern as they were unable to use a hoist, and Annadale asked that this person not return to work there. As a result of these issues, Trackars Agency notified the Registrant that she was not to return to Annadale.

Mr Gilmore told the Committee that the Registrant was convicted of fraud in relation to this shift, and that she had pleaded guilty to the charge. He referred the Committee to the Certificate of Conviction within the bundle, which confirmed that the Registrant was convicted on 09 September 2020 for dishonestly making a false representation, and was given a sentence of imprisonment for two months, suspended for one year, and was given a monetary penalty of £126.

Mr Gilmore further referred the Committee to a second incident at Dunmurry Manor Care Home ('Dunmurry') on 15 - 16 May 2019. On this date, he said that another agency worker noticed that the Registrant was on the rota, and when she approached her in the expectation that it was the Registrant, she found that it was someone else entirely who identified herself as Lola. This agency worker reported her concerns to her employer.

On questioning by her employer, Mr Gilmore said, the Registrant initially said that in respect of the Dunmurry shift, she had carried out the shift, and that her cousin had covered the shift at Annadale. Mr Gilmore told the Committee that the Registrant was also convicted of fraud in relation to this shift at Dunmurry, and that she had pleaded guilty to the charge. He referred the Committee to the Certificate of Conviction within the bundle, which

confirmed that the Registrant was convicted on 09 September 2020 for dishonestly making a false representation, and was given a sentence of imprisonment for two months, suspended for one year.

He referred the Committee to the Police case summary within the bundle of papers, and to the Registrant's PACE interview notes.

He submitted that, in accordance with Schedule 2 Paragraph 12 (5) of the Rules, the Certificates of Conviction constituted conclusive proof of the convictions therein.

Registrant's Submission on Facts

The Registrant told the Committee that she had no memory of the incident at Annadale, and that she said the person who attended Annadale for the shift never identified herself as the Registrant. She suggested that it was up to the Homes to ask for identification. She said that what happened was not for her own gain as she never received any money in relation to this.

Findings of Fact

The Committee heard and accepted the advice of the Legal Adviser. She reminded the Committee that it must apply the standard of proof as applicable in civil proceedings, which is the balance of probabilities. She further referred the Committee to Schedule 2, Paragraph 12 (5) of the 2019 Rules. She reminded the Committee that some of the documents within the bundle may contain hearsay evidence, requiring careful assessment and the application of appropriate weight.

The Committee reminded itself that the burden is on the Council to prove the facts as set out in the Particulars of the Allegation, and that to find the facts proved the Committee must be satisfied on the balance of probabilities. This means that for any fact to be found proved, the Committee must be satisfied that it is more likely than not to have occurred.

The Committee took into account the submissions from Mr Gilmore, on behalf of the Council, and the oral submissions provided by the Registrant, and had careful regard to all of the documentary evidence submitted. The Committee finds that, on the balance of probabilities, the facts contained in the Particulars of the Allegation have been established. Taking into account Paragraph 12 (5) of Schedule 2 of the Rules, the Committee was satisfied that the Certificates of Conviction against the Registrant proved the facts therein. The Certificates of Conviction against the Registrant related to incidents which occurred on 17 April 2019 and 16 May 2019. Arising out of each of these dates, the Registrant pleaded guilty to dishonestly making a false representation, in completing a shift at Annadale and Dunmurry respectively, with the intention of making a gain or causing loss to Trackars Health Care, contrary to section one of the Fraud Act 2006. The Committee noted that the Registrant received the same sentence, on 09 September 2020, for each offence, namely, imprisonment for two months, suspended for one year. In addition the Registrant, in respect of the incident at Annadale, received a monetary penalty for £126.

Taking all of this into account, the Committee found proved, on the balance of probabilities, the facts in accordance with Rule 4 (1) (d) of the Rules.

Fitness to Practise

The Committee proceeded to consider if the Registrant's fitness to practise is impaired. The Committee heard submissions from Mr Gilmore, and heard a submission from the Registrant, who made no admission to her fitness to practise being impaired.

Mr Gilmore submitted that the Registrant's convictions called into question her ability to work in social care services, such as to bring into question her suitability to remain on the Register without restriction, or to be registered at all. Arising out of the Registrant's criminal convictions, he referred the Committee to breaches of the Standards of Conduct and Practice for Social Care Workers as follows: 1: 1.6, 1.7 and 1.8; 2: 2.1, 2.4, 2.6, 2.7, and 2.11; 3: 3.7; 5: 5.1, 5.3, 5.7 and 5.8; 6: 6.1 and 6.5. He submitted that there is a basic need for social care workers to act honestly, and that the Registrant's serious criminal convictions fell well below the minimum standards expected of a registered social care worker, calling into question her right to practise. He submitted to the Committee that the Registrant was involved in arranging for someone to provide care in her place, without first obtaining consent. He submitted that the Registrant's actions were an abuse of power, and put service users at unnecessary risk of harm. He suggested that the Registrant's actions, as evidenced by her convictions, were fundamentally dishonest, and had not been remediated. He suggested that there was a risk of repetition, and noted that the Registrant's actions were repeated on two occasions. He submitted that there was a public interest in the Council upholding proper standards of behaviour, with the public having the right to be assured that the registration process for social care workers was not undermined. He said that the public interest demanded that those caring for service users should not present a risk to vulnerable individuals.

The Registrant addressed the Committee as regards the issue of current impairment. She told the Committee that she accepted that what she had done was wrong, and referred the Committee to her reflective account and her letter of apology, which was recorded as Exhibit 2. She said that these events occurred three years ago, and that she had learnt a lot from the experience and had now moved on. She apologised for what happened, and said that she would never dream of doing anything like this again, and said that she was now of good character. She said that the events had destroyed her and her family, and had affected her health. She told the Committee that she is currently studying real estate and is looking for work. She said that she is currently receiving benefits. She told the Committee that social care was the only work that she had carried out since the age of 18, and that she really enjoyed working in the nursing homes.

The Committee considered the submissions from Mr Gilmore, on behalf of the Council, and the submissions from the Registrant, and had regard to all of the evidence in the case. The Committee accepted the advice of the Legal Adviser. She referred the Committee to the Standards of Conduct and Practice for Social Care Workers, and advised it to adopt a sequential approach when considering the application. In particular, she asked it to take into account the nature and content of the criminal convictions against the Registrant, and reminded the

Committee that it is being asked to determine whether the Registrant's fitness to practise is impaired because of these convictions. She referred the Committee to Paragraph 24 Schedule 2 of the Rules, and the requirements as set out in the case of the GMC v Cohen, looking at the current competence and behaviour of the Registrant along with the need to protect service users, members of the public, the upholding of proper standards of behaviour and maintaining of public confidence in the social care profession. She further referred the Committee to the findings of Dame Janet Smith in the 5th Shipman Report as regards the potential causes of impairment. She also referred the Committee to the cases of GMC v Meadows 2006 and CHRE v NMC & Grant 2011.

The Committee considered whether the Registrant's fitness to practise is impaired by reason of her convictions as set out in the Particulars of the Allegation.

The Committee, in considering the issue of impairment of fitness to practise, took account of Paragraph 24 (3) of Schedule 2 of the Rules which states that it should have regard to:

- (a) whether it is satisfied as to the reason for the alleged impairment of fitness to practise;
- (b) the Standards of Conduct and Practice issued by the Council under Section 9 of the Act;
- (c) whether the impairment is capable of remediation;
- (d) whether the impairment has been remediated;
- (e) the risk of repetition; and
- (f) the public interest.

The Committee had regard to the Standards of Conduct and Practice for Social Care Workers, and the Council guidance titled 'Making a Determination of Impaired Fitness to Practise: Guidance for Committees on Remediation'. The Committee is satisfied that the Registrant's actions were in breach of the following Standards of Conduct:

Standard 1: As a social care worker, you must protect the rights and promote the interests and wellbeing of service users and carers. This includes:

- 1.6 Gaining consent as appropriate from service users before you provide care or services, in line with your employer's procedures and any statutory requirements;
- 1.7 Explaining your role, the purpose of your involvement and the reasons for any decision you make; and
- 1.8 Respecting and maintaining the dignity and privacy of service users.

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;
- 2.2 Communicating in an appropriate, open, accurate and straightforward way;

- 2.4 Respecting confidential information and clearly explaining agency policies about confidentiality to service users and carers;
- 2.6 Being reliable and dependable;
- 2.7 Honouring work commitments, agreements and arrangements and, when it is not possible to do so, explaining why to service users and carers; and
- 2.11 Not engaging in practices which are fraudulent in respect of use of public or private monies.

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:

- 3.3 Following practice and procedures designed to keep you and other people safe from violent and abusive behaviour at work;
- 3.4 Bringing to the attention of your employer or the appropriate authority, without delay, resource or operational difficulties that might get in the way of the delivery of safe care; and
- 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;
- 5.3 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;
- 5.7 Put yourself or other people at unnecessary risk; 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.

Standard 6: As a social care worker, you must be accountable for the quality of your work and take responsibility for maintaining and improving your knowledge and skills. This includes:

- 6.1 Meeting relevant standards of practice and working in a lawful, safe and effective way;
- 6.3 Being personally accountable for your actions and able to explain and account for your actions and decisions; and
- 6.5 Informing your employer or the appropriate authority in a timely manner about any personal difficulties that might affect your ability to do your job competently and safely.

The Committee noted the Registrant's two convictions for dishonestly making false representations, which took place on 17 April 2019 and 16 May 2019. On both of these occasions, the Registrant delegated her shifts as a social care worker in nursing homes to another person, without consent. The Committee noted that the

convictions were serious and related to the Registrant's employment. The Committee considered the issue of remediation. The Committee considered that remediation in these circumstances was possible. However, the Committee noted that what occurred was not a one off incident and concerned fundamental dishonesty. The Committee took into account the Registrant's expressions of apology and her detailed written reflections. In considering the Registrant's reflections, the Committee did not consider that the Registrant recognised the impact of her behaviour on service users in both Annadale and Dunmurry, and the risk to which they were exposed. Accordingly, the Committee was not convinced that the Registrant would act differently in the future, and considered there to be a continued risk of repetition by the Registrant of her behaviour.

The Committee concluded that the Registrant's convictions bring the social care profession into disrepute, and that the public would find it totally unacceptable that a registrant convicted in these circumstances remained on the Register without restriction.

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

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

Sanction

In reaching its decision on sanction, the Committee considered the submissions of Mr Gilmore, on behalf of the Council, and from the Registrant, and had regard to all of the evidence in this case. Mr Gilmore referred the Committee to the issue of mitigating matters, and said that there were no previous referrals to the Council. He referred the Committee to the information in the ERF from Trackars Health Care, which indicated that the Registrant had no previous disciplinary concerns since commencing work with them in 2013. He noted the Registrant's references and confirmation as to her current educational status, and various reflective pieces submitted by her.

As regards to aggravating factors, he submitted that the public are entitled to expect that care workers will provide safe and effective care to the most vulnerable in society. He submitted that the Registrant's actions constituted gross breaches of trust, and that her recent dishonesty convictions were deemed serious enough to require a suspended custodial sentence. He submitted that there was a clear risk of harm to service users, and that no explanation had been given by the Registrant as to who had attended Annadale and Dunmurry in her place. He further submitted that the Registrant's actions were a fundamental abuse of the regulatory system, which is in place to ensure the suitability of social care workers by way of vetting, registration and training. He referred the Committee to the NISCC Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance'). He submitted that the Registrant's criminal convictions showed that she was fundamentally unsuitable to remain on the Register unrestricted, and that no amount of apology could

mitigate against the serious impact of her behaviour. He submitted that, in all of the circumstances, the sanction of a Removal Order should be considered, being relevant and proportionate.

The Committee heard from the Registrant as regards to consideration of sanction. She told the Committee that she understood the issues raised regarding dishonesty, and said that what had happened will never happen again. She asked for forgiveness for what she had done, and requested an opportunity to continue working as a social care worker. She said that she would never put service users at risk, and asked the Committee not to remove her from the Register.

The Committee accepted the advice of the Legal Adviser. She referred the Committee to the Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees, and reminded the Committee to consider the question of sanction in ascending order of severity, paying particular attention to the issue of proportionality.

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

- (a) impose no sanction; or
- (b) warn the Registrant and direct that a record of the warning should be placed on the Registrant's entry in the Register for a specified period of up to 5 years; or
- (c) make a Conditions of Practice Order for a specified period not exceeding 3 years; or
- (d) make an Order suspending the Registrant's registration for a specified period not exceeding 2 years (a 'Suspension Order'); or
- (e) make an Order for removal of the Registrant's registration from the Register ('a Removal Order').

She further reminded the Committee that, in deciding which sanction to impose, the Committee should take into account:

- (a) the seriousness of the Particulars of the Allegation;
- (b) the degree to which the Registrant has fallen short of any expected standards;
- (c) the protection of the public;
- (d) the public interest in maintaining confidence in social care services; and
- (e) the issue of proportionality.

The Committee applied the principles of fairness, reasonableness and proportionality, weighing the public interest with the Registrant's interests, and taking into account any aggravating and mitigating factors in the case. The public interest includes the protection of members of the public, including service users, the maintenance of public confidence in the profession, and the declaring and upholding of proper standards of conduct and behaviour within the profession. The Committee took into account its powers under Paragraph 26 of Schedule 2 of the Rules in relation to the sanctions available to it, and also had regard to the Council's Indicative Sanctions

and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance'), bearing in mind that the decision on sanction is one for its own independent judgement.

The Committee recognises that the purpose of sanction is not to be punitive, although a sanction may have a punitive effect. The Committee considered the aggravating and mitigating factors in this case.

The Committee considered the mitigating factors to be:

- there were no previous concerns raised with the Council and no issues raised during the Registrant's previous work history;
- the Registrant has co-operated with the Council's investigation;
- the Registrant made an early admission of facts and pleaded guilty to the criminal charges;
- the Registrant expressed regret for what had happened; and
- the Registrant provided a positive reference and reflective pieces.

The Committee considered the aggravating factors to be:

- the Registrant's criminal convictions for dishonest false representations, on two separate occasions, for which she received a suspended custodial sentence. The suspension was put in place on 09 September 2020 for a period of one year;
- the Registrant's convictions constituted an abuse of trust, relevant to both service users and her employer;
- the Registrant's actions were premeditated, with attempts made to conceal her behaviour;
- the Registrant's criminal convictions evidenced a serious disregard for the standards of practice for social care workers; and
- the Registrant has failed to provide sufficient insight into the impact of her actions on service users and the associated risk. Her actions were compounded by repetition in the second incident, when she was aware of the concerns raised in the first incident.

Having balanced the aggravating and mitigating factors, and taking into account the interests of public protection and the public interest, the Committee considered that a sanction was appropriate, and proceeded to consider which sanction to apply in this case.

Warning – the Committee considered the issue of a Warning in this case. It bore in mind that the imposition of a Warning for a period of time would not protect the public from the risk of repetition, and consequent risk of serious harm to service users and members of the public. The Committee considered that the Registrant's criminal convictions demonstrated a serious disregard for the Standards of Conduct and Practice for Social Care Workers. The Registrant's impairment of fitness to practise is not at the lower end of the spectrum. The circumstances are not such that the Committee would be confident that this sanction would provide adequate public protection as far as the Registrant's suitability to work in social care is concerned, bearing in mind that a

Warning would entitle the Registrant to work as a social care worker. The Registrant has not provided sufficient evidence of insight into the harm which her behaviour could have caused service users.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Registrant's convictions related to dishonest false representations, on two separate occasions. The Committee noted that the Registrant is currently unemployed and is in further education, not related to social care. The Committee noted that the Registrant's criminal convictions were relatively recent, and that she is still the subject of a suspended prison sentence.

The Committee, therefore, concluded that a Conditions of Practice Order would not be sufficient to meet the public interest in this matter, given the seriousness of the Registrant's departure from the standards expected of a registered social care worker. In these circumstances, the Committee could not formulate workable, enforceable or verifiable conditions which would address the Registrant's criminal behaviour and adequately protect the public.

Suspension – the Committee next considered a Suspension Order. The Committee noted that it had made findings at the fact and impairment stages of the proceedings which were of a very serious nature, and related to the Registrant's breaching of fundamental tenets of the social care profession.

The Committee considered that the Registrant's two criminal convictions evidenced behaviour that is fundamentally incompatible with unrestricted registration as a social care worker. The Committee determined that a Suspension Order would not address the risk of repetition as identified above. The Committee had limited evidence of insight and no evidence of remediation from the Registrant. The Committee considered that a social care worker should be honest and trustworthy and not engage in false representations, particularly in relation to the provision of social care. The Registrant's actions constituted an abuse of the regulatory system, in that the person to whom she delegated her shift was not subject to vetting, training or registration. The Registrant committed these offences on two occasions, with the second offence occurring in the knowledge that difficulties had arisen previously during the first incident. The Committee considered that the public would view the Registrant's criminal behaviour as falling short of what would be expected of a registered social care worker. In all of the circumstances, the Committee concluded that a Suspension Order would not be sufficient to mark the seriousness and unacceptable nature of the Registrant's criminal convictions.

Removal – the Committee then considered a Removal Order. In considering this, the Committee took into account the Guidance at 4.26 – 4.28. It concluded that given the seriousness of the Registrant's criminal convictions and her lack of sufficient insight and remediation of her failings, a Removal Order is the only sanction appropriate to protect the public and to maintain public confidence in the social care profession, and the Council as its regulator. The Committee considered that the Registrant's actions constituted a serious departure from the professional standards as set out in the Standards of Conduct and Practice for Social Care Workers. The Registrant's criminal behaviour involved dishonest false representations on two occasions, in relation to shift work at two separate nursing homes. This constituted an abuse of her position of trust as a social care worker,

and brought the social care profession into disrepute. In all of the circumstances, the Committee concluded that a Removal Order is the only sanction available to it that would protect the public, and meet the public interest in upholding confidence in the social care profession and its regulator, by marking the seriousness and unacceptability of the Registrant's actions. The Committee considered that public confidence in the social care profession, and in the Council as its regulator, would be undermined if a social care worker who was criminally convicted of dishonest false representations, and who failed to show appropriate insight or remediation, was allowed to remain on the Register. The Committee considered the potential devastating impact of a Removal Order on the Registrant, but concluded that the safety and interest of service users was more important than the impact on the Registrant. The Committee considered a Removal Order to be a suitable, appropriate and proportionate sanction, which will be imposed on the Registrant's registration with immediate effect.

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

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

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

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

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

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

In accordance with Schedule 3, Paragraph 9 of the NISCC 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.

