

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

Name: Una Mairead McCormick

SCR No: 6031347

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at a hearing on **20 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 21 September 2020, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted of the following offence at the District Judges Court:

1. "Defendant on a [sic] dates 22/07/2020 and 15/08/2020, stole Money to the value of £2760 or thereabouts belonging to [REDACTED], 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 not in attendance and the Council was represented by Mr Peter Carson, Solicitor, Directorate of Legal Services.

Service

Mr Carson told the Committee that the Notice of Hearing and hearing bundle were emailed to the Registrant's registered email address on 10 March 2021. A delivery receipt was received on the same day. The Committee Administrator telephoned the Registrant on 12 March 2021, and left a voice mail for her to contact the Council regarding the fitness to practise hearing and to receive the password to access the hearing bundle. The Registrant did not return the call. A further phone call was made to the Registrant on 19 April 2021, and another voicemail was left asking the Registrant to confirm her attendance at the fitness to practise hearing and she was given the password to access the documents. An email was received from the Registrant on 19 April 2021, in which she stated that she would not be attending the hearing as she had to take her aunt to a hospital appointment. The Committee Clerk replied to this email on the same date, and asked the Registrant to confirm if she would like to make an application to postpone the hearing. The Registrant requested that the fitness to practise hearing be postponed until 21 April 2021. The application was considered by the Chair of the Committee on 19 April 2021, and was refused.

The Committee received legal advice from the Legal Adviser, and she referred the Committee to the requirements as set out in the Northern Ireland Social Care Council's ('the Council') Fitness to Practise (Amendment) Rules 2019 ('the Rules') and, in particular, Rule 3 which states that proof of service shall be treated as being effected on the day after it was properly sent.

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 Carson made an application to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules, and submitted that the Committee should hear and determine the case in her absence. He invited the Committee to conclude that the Registrant's absence was a voluntary waiver of her right to attend, and that her application for postponement was made at a very late stage of the proceedings. He submitted that the Registrant had provided no supporting evidence as regards her inability to attend the hearing, and that in all of the circumstances it was fair to proceed with the hearing. He further suggested that it was in the public interest for there to be an expeditious disposal of the hearing, and noted that the Registrant had admitted the alleged facts.

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, and accepted the advice of the Legal Adviser. She referred the Committee to the cases of R v Jones 2003 1 AC, Adeogba and Visvardis v GMC 2016. She reminded the Committee that in exercising its discretion to proceed in the Registrant's absence, it must have regard to all of the circumstances with fairness to the Registrant being of prime consideration, although fairness to the Council and the public interest must also be taken into account. She reminded the

Committee to avoid reaching any improper conclusion about the Registrant's absence, and not to accept it as an admission in any way.

The Committee reminded itself that fairness to the Registrant should be a prime consideration. The Committee bore in mind the public interest in the expeditious disposal of the hearing. The Committee, today, took into account the Registrant's application for a postponement on the grounds that she was accompanying an aunt to a hospital appointment. However, the Registrant provided no documentary evidence to support her position, and the Committee noted that she has been on notice of this hearing since 10 March 2021. Therefore, 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 serious nature of the allegation, and striking a careful balance between fairness to the Registrant and the wider public interest. The Committee, in all of the circumstances, considered that the Registrant has voluntarily absented herself from today's hearing. However, the Committee reminded itself that it must avoid reaching any improper conclusion about the Registrant's absence, nor treat the absence as an admission.

Application to Admit Hearing Bundle

Mr Carson requested that the hearing bundle be admitted into evidence. The Committee accepted the bundle into evidence and marked it as Exhibit 1. The Committee also accepted into evidence, and marked as Exhibit 2, the email correspondence between the Registrant and the Council on 19 April 2021.

Background

The Registrant is registered on Part 2 of the Register as a domiciliary care worker, and was employed at Crossroads Care NI Charitable Group as a care attendant. She commenced this employment on 14 March 2016, and voluntarily resigned on 24 August 2020.

This matter came to the attention of the Council by way of an Employer Referral Form ('ERF'), received by the Council on 17 August 2020, from Miss Alison Heaney, HR Manager at Crossroads Care. The ERF stated:

'There is an allegation of theft against the social (*care*) worker in that they have stolen a sum of money from a service user'.

The ERF described the direct harm to the service user as 'alleged financial abuse'.

The Council telephoned Crossroads Care on 03 September 2020 and spoke to Shannon Campbell, and was provided with the following additional information:

- The service user's next-of-kin contacted the line manager at Crossroads Care to report allegations of theft;
- Full amount of money alleged to have been taken is in the region of £3000 over different occasions;
- The next-of-kin informed Crossroads Care that the Registrant had been interviewed by the PSNI in relation to these allegations;
- Ms Campbell confirmed that the Registrant remained on precautionary suspension at that time.

Evidence

Mr Carson referred the Committee to the Certificate of Conviction in the bundle of papers. He advised that the conviction against the Registrant related to theft of £2760 from a vulnerable service user, between 22 July 2020 and 15 August 2020, contrary to the Theft Act (Northern Ireland) 1969. He noted that the Registrant pleaded guilty to the criminal charge, and received a nine month prison sentence, suspended for three years. He referred the Committee to the background to the conviction as set out in the bundle of papers and, in particular, to the PSNI case summary and next of kin police statement. He noted that when interviewed by the police, the Registrant was remorseful and made admissions to theft of the monies. He further referred the Committee to the Agreed Statement of Facts, which stated as follows:

1. The Registrant is registered on Part 2 of the Northern Ireland Social Care Council Register as a Domiciliary Care Worker.
2. On 22 July 2020 and 15 August 2020, as set out below, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you:
3. Stole cash from an ornament in a services user's bedroom, whilst attending at that service user's morning call, and concealed that money on your person.
4. Confirmed to the PSNI that you had carried out 2 previous thefts, from the same victim, on dates between 22 July 2020 and 15 August 2020.
5. Consequently, on 21 September 2020, you were convicted of the following offence at the District Judges Court:
6. 'Defendant on a dates 22/07/2020 and 15/08/2020, stole Money to the value of £2760 or thereabouts belonging to REDACTED, contrary to Section 1 of the Theft Act (Northern Ireland) 1969'.

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 Carson on behalf of the Council, and had careful regard to all of the documentary evidence submitted. The Committee noted the facts contained in the Certificate of Conviction and the contents of the Agreed Statement of Facts. The Committee therefore 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 Certificate of Conviction against the Registrant proved the facts therein.

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 Carson.

Mr Carson submitted that the Registrant's conviction called into question her ability to work in social care services, and to remain on the Register without restriction, or to be registered at all. Arising out of the Registrant's criminal conviction, he referred the Committee to breaches of the Standards of Conduct and Practice for Social Care Workers as follows: 2, 2.1 and 2.11; 5, 5.1, 5.2 and 5.8. He submitted that there is a basic need for social care workers to act honestly, and that the Registrant's serious criminal conviction for theft of £2760 fell far below the minimum standards expected of a registered social care worker, calling into question her right to practise without restriction or to be registered at all. He submitted that although the Registrant pleaded guilty to the criminal charge of theft, he questioned her insight. He said that the Registrant had not provided meaningful engagement with the Council and, in view of the Registrant committing theft on a number of occasions, there was a risk of repetition. He submitted that the Committee had no evidence before it to show that the Registrant has attempted to remediate her criminal behaviour, and that the public must have confidence that the Council, as a regulator of social care workers, will protect the most vulnerable in society when they are receiving care.

The Committee considered the submissions from Mr Carson on behalf of the Council, 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 case. In particular, she asked it to take into account the nature and content of the criminal conviction 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 this conviction. She referred the Committee to Paragraph 24 of 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 conviction, 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 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.

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 noted that the Registrant's conviction for theft took place during a period from 22 July 2020 to 15 August 2020, and involved theft from a vulnerable service user, which occurred in her home. The Committee concluded that this was a very serious conviction, which took place during the Registrant's employment and whilst she was providing care. Although the Registrant pleaded guilty to the charge against her, the Committee has no information or evidence from her as regards any actions she has taken to remediate her behaviour. The Committee concluded that the Registrant's actions were deliberate, and it has no evidence to suggest that the Registrant would act differently in the future. Accordingly, the Committee considered there to be a continued risk of repetition by the Registrant of her behaviour.

The Committee noted that the theft of service user's monies by the Registrant took place when she was providing care, at a time when she was responsible for protecting the service user and providing support. The Committee further noted in the bundle of papers that the service user was saving the monies stolen by the Registrant to purchase a lighter wheelchair. The Committee noted that there was no information before it to show that the

Registrant acknowledged the impact of her behaviour on the service user, and her serious breach of trust. The Committee took into account that the Registrant stole monies from the service user on more than one occasion. The Committee concluded that the Registrant's conviction brought 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 submission from Mr Carson on behalf of the Council, and had regard to all of the evidence in this case. Mr Carson referred the Committee to various mitigating and aggravating factors, and to the NISCC Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees. As regards sanctions, he submitted that a Warning would be totally inappropriate and inadequate in all of the circumstances, and would not provide protection for the public. He noted the Registrant's prior good working history. However, he submitted that the serious criminal conviction was not conduct at the lower end of the spectrum. He submitted that a Conditions of Practice Order was also not relevant, proportionate or workable, taking into account the serious nature of the Registrant's criminal conviction and her lack of engagement. He submitted that a Suspension Order would not meet the risks of repetition, particularly in light of the Registrant's failure to acknowledge the impact of her behaviour. He submitted that the Registrant's criminal behaviour was fundamentally incompatible with her continuing registration as a social care worker.

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 recognised 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:

- No evidence of previous misconduct issues;
- Admissions made to the PSNI, along with expressions of remorse;
- Pleaded guilty to the criminal charge;
- Stolen monies recovered; and
- Agreed Statement of Facts.

The Committee considered the aggravating factors to be:

- Substantial monies stolen from a vulnerable service user in the amount £2760, whilst the Registrant was providing care in the service user's home;
- Theft of monies took place on a number of occasions;
- Abuse of position of trust;
- Limited engagement with the Council; and

- No evidence of insight, and limited expressions of remorse.

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 or colleagues. The Committee considered that the Registrant's criminal conviction demonstrated a serious disregard for the Standards of Conduct and Practice for Social Care Workers. The Registrant's impairment of fitness to practise was not at the lower end of the spectrum, nor were the circumstances such that the Committee would be confident that this sanction would provide adequate public protection as far as the Registrant's suitability is concerned, bearing in mind that a Warning would entitle the Registrant to work unrestricted as a social care worker. The Committee had no evidence of corrective steps taken by the Registrant, nor did it have any references or testimonials as to her character and current circumstances. The Committee noted that there is no evidence before it as regards the Registrant's insight into her behaviour, or its impact on the service user. Therefore, a Warning would not be appropriate or proportionate in these circumstances.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Committee noted the Guidance at Paragraph 4.13, which states that conditions may be appropriate in cases involving particular areas of a registrant's performance, and where a Committee is satisfied that it is appropriate for an individual to remain on the Register. The Registrant has demonstrated no insight into her dishonest actions, nor expressed a desire to remediate her criminal behaviour. The Committee noted that, as a result of the serious criminal conviction for theft, on 21 September 2020, the Registrant was sentenced to nine months' imprisonment, suspended for three years, along with a monetary penalty of £490.

The Committee, therefore, concluded that a Conditions of Practice Order was not 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 the criminal convictions of the Registrant are of a very serious nature, and related to the Registrant's breaching of fundamental principles of honesty and trust. The Committee took into account the guidance at Para 4.19, which states: 'Suspension from the Register may be an appropriate sanction for impairment which while very serious, is not so serious as to justify removal from the Register; for example, where there has been an acknowledgment of failings and where a Committee is satisfied that the behaviour is unlikely to be repeated, and the Registrant has no psychological or other difficulties preventing them from understanding and seeking to remedy the failings and the failings are realistically capable of being remedied, then suspension may be appropriate.'

The Committee considered that the Registrant's criminal conviction 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 has no evidence of insight or remediation from the Registrant, nor has it any information to indicate that the Registrant is unlikely to repeat her criminal behaviour in the future. The Committee considered that a social care worker should be honest and trustworthy, particularly where a service user is dependent on a social care worker to provide protection and support. 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 conviction.

Removal – the Committee next considered a Removal Order. In considering this, the Committee took into account the Guidance at Para 4.26 – 4.28. The Committee concluded that given the seriousness of the Registrant's criminal conviction, and her lack of insight and remediation of her failings, a Removal Order is the only sufficient sanction. The Committee considered that the Registrant's criminal behaviour was a deliberate and fundamental breach of trust in her position as a social care worker, involving a vulnerable service user, from whom she stole a large amount of money on a number of occasions. In all of the circumstances, the Committee concluded that a Removal Order is the only sanction available to it to protect the public and to meet the public interest, and to mark the seriousness and unacceptability of the Registrant's criminal behaviour. 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 concluded that a Removal Order was 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.

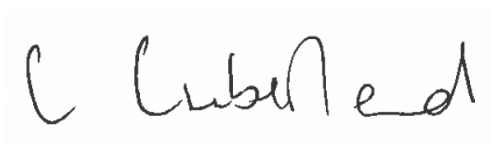
You are prohibited from working as a social care worker in any of the following positions:

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.



Regulatory Committee Manager

21 April 2021

Date