

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

Name: Dorothy Noluthando Gcado

SCR No: 6013916

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at a hearing on **06 May 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 and by misconduct;

The Committee decided to make an Order for removal of your registration from the Register ('a Removal Order').

Particulars of the Allegation:

That, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended):

1. You were convicted of the following offence at the District Judge's Court on 26 September 2019, as set out below:

Defendant between the 20th day of August 2018 and the 20th day of September 2018, dishonestly and with the intention to make a gain for yourself or another or to cause loss to another or to expose another to a risk of loss, made a false representation to Staff Nursing Agency, that you had completed shifts at Dunmurry Manor Nursing Home, whereas these shifts had been completed by [REDACTED], 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 conviction.

2. On the following dates you worked shifts as a care worker at Gosna Care Agency, Russell Business Centre, 40-42 Lisburn Road, Belfast, whilst knowingly being subject to an Interim Suspension Order, originally imposed by a Preliminary Proceedings Committee on 30 January 2019:

- 30 July 2019
- 01 August 2019

- | |
|--|
| <ul style="list-style-type: none">• 06 August 2019• 08 August 2019• 15 August 2019 |
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And your actions as set out above show that your fitness to practise is impaired by reason of your misconduct.

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 Peter Carson, Solicitor, Directorate of Legal Services. Any reference in this determination to 'the Rules' relates to the Northern Ireland Social Care Council Fitness to Practise (Amendment) Rules 2019.

Application to Admit Hearing Bundle

Mr Carson applied to admit the hearing bundle and a supplementary bundle into evidence. The Committee was satisfied that the bundles provided to it complied with the requirements of relevance and fairness, and that the Registrant had made no objections to their contents. The Committee accepted the hearing bundle and supplementary bundle into evidence, and marked them respectively as Exhibit 1 and Exhibit 2.

Background

Mr Carson referred to the Committee to the hearing bundles, which set out the relevant background.

Evidence

The Committee accepted into evidence an agreed Statement of Facts, which it marked as Exhibit 3. The Statement of Facts was agreed between the Council and the Registrant on the morning of the hearing. Owing to current public health restrictions as a result of the pandemic, the hearing proceeded remotely, and it was not possible for the Registrant and the Council to sign and date the agreed Statement of Facts. However, both Mr Carson and the Registrant signified their agreement to the contents, and the Statement of Facts as agreed was read into the record of the proceedings. The agreed Statement of Facts was as follows:

1. *'The Registrant is registered on Part 2 of the Northern Ireland Social Care Council Register as a Social Care Worker.*
2. *The Registrant was admitted to Part 2 of the Register on 25 October 2017.*
3. *The Registrant was employed as a Care Assistant by Staff Nursing Agency from 31 December 2015 and Balmoral Healthcare Agency from 2 October 2017 and worked shifts in various locations.*
4. *Between the dates of 20 August 2018 and 20 September 2018 the Registrant allowed another person to complete a total of 8 shifts, on behalf of Staff Nursing Agency, posing as the Registrant.*

5. *The person who completed the shifts was not the Registrant and was not registered with the Northern Ireland Social Care Council.*
6. *On 31 July, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), the Registrant pleaded guilty in respect of the following offence at the District Judges Court;*
7. *“Defendant between the 20th day of August 2018 and the 20th day of September 2018 dishonestly and with the intention to make a gain for yourself or another or to cause loss to another or to expose another to a risk of loss, made a false representation to Staff Nursing Agency that you had completed shifts at Dunmurry Manor Nursing Home whereas there shifts has been completed by (redacted) in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006”.*
8. *On 4 July 2019 the Registrant applied for social care work with Gosna Care Agency Ltd whilst knowingly being the subject of an Interim Suspension Order imposed by a preliminary proceedings committee on 30 January 2019.*
9. *On the application form to the Gosna Care Agency under the heading “declaration” the Registrant was asked “Is there any reason why you cannot work in a regulated activity”, the Registrant ticked the box labelled “No”.*
10. *The Registrant carried out night shifts with the Gosna Care Agency on the following dates;*
 - *30 July 2019*
 - *1 August 2019*
 - *6 August 2019*
 - *8 August 2019*
 - *15 August 2019*
11. *At the time of all the shifts carried out for the Gosna Care Agency, the Registrant was knowingly subject to an Interim Suspension Order.*
12. *The Registrant accepts that her behaviours falls below of the standard expected of a social care worker.*
13. *The Registrant accepts that her actions, as set out above, amount to misconduct.’*

Finding of Facts

After the Allegation was read, the Committee announced that in accordance with Paragraph 12 (5) of Schedule 2 of the Rules, the Certificate of Conviction, which was contained in the hearing bundle, was conclusive proof of the conviction and the facts underlying it which comprised Particular 1 of the Allegation. The Committee, accordingly, found Particular 1 proved.

In relation to Particular 2 of the Allegation, the Registrant admitted the facts. The Committee accordingly found the facts of Particular 2 proved by reason of the Registrant’s admission. The Registrant also admitted, with

respect to Particular 2, that her actions amounted to misconduct. The Committee noted this admission, but reminded itself that the question of whether the Registrant's actions amounted to misconduct was a matter for the Committee in the exercise of its independent judgement.

Fitness to Practise

The Committee heard a submission from Mr Carson. He stated that the Committee could find that the Registrant's actions as set out at Particular 2 of the Allegation amounted to misconduct. Further, Mr Carson submitted that the Registrant's actions were such as to require a finding of current impairment of fitness to practise in the public interest. The Registrant made a submission to the Committee. She accepted that she had failed to promote and uphold standards, and that she had failed to protect service users in her care. The Registrant expressed disappointment in herself. She stated that she had learnt from her mistakes and would be keen, if the Committee allowed it, to return to work as a carer.

The Committee accepted the advice of the Legal Adviser. He 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 question of impairment. He reminded the Committee that it was being asked to determine whether the Registrant's fitness to practise is impaired because of her conviction and misconduct. He referred the Committee to Paragraph 24 of Schedule 2 of the Rules, and the requirements as set out in the case law. In particular, the Legal Adviser referred the Committee to GMC v Cohen and to the formulation provided by Dame Janet Smith in her 5th Report to the Shipman Inquiry (cited with approval by Cox J in CHRE v NMC & Grant).

The Committee considered whether the Registrant's fitness to practise was impaired by reason of her conviction and misconduct 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 was satisfied that the Registrant's actions with respect to Particular 2 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:

5.8 Behave in a way, in work or outside work, which would call into question your suitability to work in social care services.

The Registrant had been made the subject of an Interim Suspension Order, imposed upon her by a Preliminary Proceedings Committee of the Council on 30 January 2019. In contravention of that Order, the Registrant accepted that she had worked as a care worker, employed by an agency, on five dates in July and August 2019. The Registrant advanced, as an explanation for her actions, that she had to work out of necessity. In an email to the Council, dated 26 September 2019, the Registrant stated that she needed to work to earn money to travel to Africa to visit her daughter who was sick, and who died when the Registrant was visiting her. In acting as she did, the Registrant paid no regard to the regulatory system, which is in place to safeguard and protect some of the most vulnerable people in this society. Her actions exposed vulnerable service users in her care to the risk of harm, and had the potential to undermine public trust and confidence in the effective regulation of social care workers in the public interest. The Committee was in no doubt that the Registrant's actions fell far below the standards to be expected of a registered social care worker, and that her actions were serious. The Committee was satisfied that the Registrant's actions, which she admitted and which had been found proved in respect of Particular 2, amounted to misconduct.

The Committee next considered whether, by reason of her conviction and misconduct, the Registrant's fitness to practise was currently impaired.

The Committee noted that the Registrant had been convicted of an offence involving dishonesty. She had further admitted to dishonestly undertaking shifts when she was prevented from doing so whilst subject to an Interim Suspension Order. The Committee was of the view that dishonesty of the type undertaken by the Registrant, which was repeated and over a prolonged period, would be very difficult to remedy. The Committee noted that the Registrant, in her submissions, accepted that she had made an error in relation to her actions, which had resulted in her conviction and, further, undertaking work whilst prevented from doing so whilst she was subject to an Interim Suspension Order. The Registrant stated that she might have put vulnerable service users and work colleagues at risk as a result of her actions. She expressed the view that she was disappointed in herself, but that she wanted to be 'forgiven' and to return to work as a carer. The Committee was not satisfied that the Registrant had developed insight into the seriousness of her actions. At best, the Committee considered that the Registrant's insight was limited and superficial to a significant degree. In her written response to the Council, as set out above, the Registrant confirmed that she had breached the terms of her Interim Suspension Order so that she could earn money to travel to Africa to visit her sick daughter. The Committee had sympathy with the circumstances in which the Registrant found herself. However, it was noted by the Committee that the Registrant had shown little or no regard for the system of registration and regulation of health care workers by her actions. This was all the more striking to the Committee as it was noted that the Registrant had acted in breach of her

Interim Suspension Order. This Order had been imposed as a result of the Registrant's actions, in which she had allowed a third party to work shifts in her place at the nursing home where she was employed at the time. The Registrant's actions, which had resulted in her conviction, and her subsequent disregard for an Order imposed upon her to protect the public raised a concern in the Committee's mind that the Registrant demonstrated a deep seated attitudinal problem on her part. The Committee considered that there was a high risk of repetition of the behaviour which had resulted in the Allegation.

The Committee applied the formulation of Dame Janet Smith, cited above. The Committee was satisfied that the Registrant, by reason of her conviction and misconduct, had in the past: placed service users at unwarranted risk of harm, breached a fundamental tenet of the social care profession, had brought the reputation of the social care work force into disrepute and had acted dishonestly. In light of its findings in respect of the Registrant's limited insight and the high risk of repetition identified, the Committee was satisfied that the Registrant, by reason of her conviction and misconduct, would be liable in the future to place service users at unwarranted risk of harm, breach a fundamental tenet of the social care profession, bring the reputation of the social care work force into disrepute and act dishonestly.

It was also considered by the Committee that a finding of impairment was also required in the public interest. Having regard to the seriousness of the Registrant's actions, the Committee was satisfied that a failure to make such a finding would undermine public trust and confidence in the regulatory process and the Social Care Council in its regulatory function. In addition, a failure to make a finding of current impairment on public interest grounds would fail to maintain and uphold proper standards of conduct in the social care workforce.

For these reasons, the Committee is satisfied that the Registrant's fitness to practise is currently impaired by reason of her conviction and misconduct.

Sanction

The Committee heard a submission from Mr Carson in relation to the question of sanction. Mr Carson confirmed that the Registrant had no previous regulatory concerns raised about her. He also set out the aggravating and mitigating factors which the Committee might consider in addressing the appropriate sanction to impose. Mr Carson submitted that, ultimately, the appropriate sanction was a matter for the Committee in the exercise of its independent judgement.

The Registrant addressed the Committee in relation to sanction. She accepted that she had acted wrongly. The Registrant indicated that she did not want to repeat the same mistakes that she had made in the future. She had learned a lesson as a result of being subjected to criminal and regulatory proceedings. The Registrant stated that she wished to return to work as a carer.

The Committee accepted the advice of the Legal Adviser. He referred the Committee to the Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance'), and reminded the

Committee to consider the question of sanction in ascending order of severity, paying particular attention to the issue of proportionality.

He referred the Committee to Paragraph 26 of Schedule 2 of the Rules which provided 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');
- (f) revoke any Interim Order imposed by the Preliminary Proceedings Committee.

He further reminded the Committee that in deciding which sanction to impose, the Committee should take into account the following factors as set out in Paragraph 26 (2) of Schedule 2 of the Rules:

- (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 considered the following to be mitigating factors:

- The Registrant's previously clear regulatory history. The Committee attached limited weight to this factor considering that the Registrant was only admitted to the Register in 2017;
- The Registrant made an early admission of the facts alleged at the outset of the hearing. In addition, she had admitted her wrongdoing during police interviews and had pleaded guilty before the Court, thus avoiding the need for a hearing and the calling of witnesses; and
- The Registrant had some engagement with the Council's investigation.

The Committee considered the following to be aggravating factors:

- The Registrant acted dishonestly, on repeated occasions, over a prolonged period;
- The Registrant's actions demonstrated a serious disregard for the regulatory process;
- The Registrant has demonstrated only limited and superficial insight into the seriousness of her actions; and

- The Registrant acted in a deliberate and premeditated manner, which had the potential to cause harm to her work colleagues and vulnerable service users.

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 conviction and misconduct 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. The circumstances were not such that the Committee could be confident that a Warning 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 on an unrestricted basis.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Registrant's conviction and misconduct involved persistent dishonesty over a prolonged period. Her actions breached a fundamental tenet of the social care workforce, and had brought the social care workforce into disrepute. The Committee 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 misconduct 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 conviction and misconduct evidenced behaviour that was fundamentally incompatible with continued registration as a social care worker. The persistent and prolonged nature of the Registrant's actions, which comprised dishonesty and demonstrated a complete disregard for the regulatory process, raised in the Committee's mind that the Registrant had a deep seated attitudinal problem which was incompatible with continued registration. 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 and the trust reposed in her, in that the person to whom she delegated her shift was not subject to vetting, training or registration. The Registrant

was convicted of a serious criminal offence which was directly related to the discharge of her responsibilities as a social care worker. The seriousness of the Registrant's actions, in the Committee's view, was significantly aggravated by her complete disregard for an Interim Suspension Order which had been imposed upon her in the public interest. She falsely represented to her employer that there was no restriction on her ability to practise, thus creating the potential for harm to vulnerable service users and undermining public trust and confidence in the regulatory process. In all of the circumstances, the Committee concluded that a Suspension Order would be insufficient to mark the seriousness of the Registrant's actions, and would fail to uphold the public interest.

Removal – the Committee then considered a Removal Order. In considering this sanction, the Committee took into account the Guidance at Paragraphs 4.26 – 4.28. 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. They constituted an abuse of her position of trust as a social care worker, and brought the social care workforce into disrepute. The Registrant's actions are fundamentally incompatible with continued registration. In all of the circumstances, the Committee concluded that a Removal Order was the only sanction available to it that would adequately protect the public and uphold the public interest. The Committee considered that public confidence in the social care profession, and in the Council as its regulator, would be undermined by the imposition of a lesser sanction. The Committee also was of the view that a sanction short of removal would fail to declare and uphold proper standards of conduct in the social care workforce.

The Committee considered the potential adverse impact that the making of a Removal Order could have on the Registrant, but decided that her interests were outweighed by the public interest and the need to protect the public. 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, and the Interim Suspension Order which is in place will be revoked.

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

11 May 2021

Date