

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

Name: Ricky Braxton

SCR No: 7005793

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **12 and 13 August 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 your 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), you:

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| 1. | On 12 February 2020, took money in the sum £100 from the purse of a vulnerable Service User, while attending her at a home care call. |
| 2. | On 21 February 2020, deliberately withheld your employment history by failing to put Trackars Healthcare as your most recent employer on your application form for employment with Primecare Ltd. |
| 3. | Between the dates of 14 May 2020 and 03 June 2020, worked shifts as a social care worker with Primecare Ltd, whilst knowingly being subject to an Interim Suspension Order imposed by a Preliminary Proceedings Committee on 14 May 2020. |

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 not in attendance and was not represented. The Council was represented by Mr Alistair Wilson, Solicitor, Tughans Solicitors.

Declarations of Interest

The Chair of the Committee advised that all Committee Members had confirmed that they did not have any conflict of interest with the case.

Service

Mr Wilson told the Committee that the Notice of Hearing and hearing bundle were posted by Special Delivery to the Registrant's registered address on 02 July 2021. Mr Wilson referred the Committee to a Royal Mail Proof of Delivery document indicating that, on 03 July 2021, the documents sent to the Registrant had been signed for.

The Committee received legal advice from the Legal Adviser, and he 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, was satisfied that the Notice of Hearing had been served in accordance with Rule 3 and Paragraph 5 of Schedule 2 of the Rules.

Proceeding in the Absence of the Registrant

Mr Wilson 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. Mr Wilson advised the Committee that the Council had spoken to the Registrant by telephone on 17 May 2021. In the call, the Registrant indicated that she would not be attending the fitness to practise hearing. In light of this information, Mr Wilson submitted that, in all of the circumstances, it was fair to proceed with the hearing in her absence. He further submitted that proceeding in her absence was in the public interest, and also was justified to ensure the timely disposal of the hearing as the Council intended to call a number of witnesses in relation to the matters set out in the Particulars of the Allegation.

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. He referred the Committee to the cases of R v Jones and GMC v Adeogba. He 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. He 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 noted the contents of the conversation between the Council and the Registrant on 17 May 2021. It was clear to the Committee that the Registrant had unequivocally stated that she was not going to attend at this hearing and that there was no reason to suppose that an adjournment of the hearing would secure the

Registrant's attendance at a later date. The Committee was satisfied that the Registrant, with notice of the hearing, had voluntarily waived her right to attend. In addition, the Committee noted the serious nature of the Allegation faced by the Registrant and that the Council intended to call witnesses in support of its case. The Committee considered that it was important to conclude the case while the memories of witnesses were still fresh and, given the seriousness of the Allegation, the public interest was also strongly engaged.

For these reasons, the Committee considered that it was fair and appropriate to proceed in the absence of the Registrant.

Application to Admit Hearing Bundle

The Committee admitted the hearing bundle, having heard and accepted the Legal Adviser's advice, and marked the bundle as 'Exhibit 1'.

Background

The Registrant was registered on 18 November 2019 on Part 2 of the Register as an adult residential care worker. She commenced employment as a care assistant with Trackars Healthcare ('Trackars') on 02 October 2019.

This matter came to the Council's attention by way of an Employer Referral Form, ('ERF') dated 18 February 2020, which was submitted to the Council by Trackars. It was alleged that on 12 February 2020, the Registrant had taken money in the sum of £100 from the purse of Service User B while attending her during a home care call. The background to this Allegation was that the sum of £100 was dropped off by Witness 1, Registered Nurse Manager at Trackars, and another member of staff who was employed as the coordinator at Trackars. The money was dropped off by them at the service user's home at 8 am on the date in question. The Registrant was due to attend at the service user's home to provide home care from 9 am to 11.30 am on that date.

Witness 1 and the coordinator carried out a spot check of the service user's home at 11 am due to concerns that staff were not staying the allocated time. When they arrived, the Registrant was not at the home. Witness 1 and the coordinator noted that the Registrant had recorded in the daily records that she had been in attendance at the service user's home until 11.55 am.

The Registrant was contacted, and she stated that she had left the service user's home to attend at a medical appointment, and that she was on her way back to the home. While she was away, Witness 1 checked the service user's purse, into which the £100 had been placed earlier that morning. Witness 1 confirmed that the money was missing from the purse.

When the Registrant attended at the home, the fact that the money was missing was put to the Registrant who, after initially denying taking the money, then handed the £100 over and asked that the Police not be contacted.

It was also alleged that following her departure from Trackars, the Registrant, in an application form for employment with Primecare Ltd. ('Primecare'), dated 21 February 2020, had deliberately failed to disclose that she had been employed by Trackars as her most recent employer.

Finally, it was alleged that on various dates between 14 May 2020 and 03 June 2020, the Registrant worked shifts as a social care worker with Primecare whilst knowing that she was prohibited from doing so, as she was subject to an Interim Suspension Order which had been imposed upon her by a Preliminary Proceedings Committee of the Council on 14 May 2020.

Evidence

At the outset of the Council's case, Mr Wilson applied for the witness statements of the coordinator at Trackars and the lead nurse at Trackars to be admitted in evidence without the witnesses being called. Mr Wilson submitted that the Registrant was not prejudiced by his application. He stated that the Notice of Hearing and hearing bundle had previously been served on the Registrant. She had not raised any objection to the evidence generally, nor to any witness upon whom the Council sought to rely at the hearing. In addition, Mr Wilson stated that the evidence of the witnesses in question was not the sole evidence to be relied upon in support of the Council's case, but rather that it was supportive of other witness evidence in respect of which the Council intended to call live witnesses. If the application was granted, Mr Wilson acknowledged that the Committee might attach less weight to any witness evidence admitted without the maker of the statement being called to give evidence.

The Committee heard and accepted the advice of the Legal Adviser. In the course of that advice, the Legal Adviser referred the Committee to the following authorities: *NMC v Ogbonna*, *R (Bonhoeffer) v GMC* and *Thornycroft v NMC*.

Having carefully considered the matter, the Committee decided to grant the application to admit the witness statements of the coordinator at Trackars and the lead nurse at Trackars without the need for them to be called as witnesses at the hearing. In doing so, the Committee noted that the Registrant did not appear to be challenging the evidence of the witnesses, nor did she raise any issue in relation to their credibility or reliability. The Committee was satisfied that the witnesses' evidence was not sole and decisive. The Committee noted that the witnesses who were to be called at the hearing, and other documentary evidence contained within the hearing bundle, were to be relied upon by the Council in support of its case before the Committee.

Finding of Facts

The Committee, before turning to consider the Particulars of the Allegation, undertook an assessment of the evidence which it had heard from Witness 1 and Witness 2.

Witness 1 gave evidence to the Committee in relation to the circumstances surrounding the alleged theft of £100 from the purse of Service User B on 12 February 2020. She attended at the home of the service user and deposited the money in the service user's purse. Later that morning, when Witness 1 attended the home again,

she checked the purse and discovered that the money was missing. The Committee found Witness 1 to be a straightforward, honest, reliable and credible witness. Her oral evidence was consistent with her witness statement and with other documentary material contained in the hearing bundle. The Committee considered that it could attach weight to Witness 1's evidence.

Witness 2 was the manager at Primecare. She gave evidence to the Committee in relation to the Registrant's application for employment with Primecare. She also gave evidence about speaking to the Registrant on 03 June 2020, when she received an email from the Council, entitled 'Employer Alert Sanctions and Restrictions', which had the Registrant's name on it. The Committee found Witness 2 to be a credible, reliable and truthful witness, whose evidence at the hearing was consistent with her witness statement and other documentary material contained in the hearing bundle.

The Committee heard and accepted the Legal Adviser's advice. In accordance with Paragraph 13 of Schedule 2 of the Rules, the burden of proving the facts set out in the Particulars of the Allegation rested upon the Council. The standard of proof to be applied was the balance of probabilities. The Legal Adviser told the Committee that an event is proved on the balance of probabilities if the Committee was satisfied that, on the evidence, the event was more likely than not to have occurred.

The Committee then turned to consider the Particulars of the Allegation.

Particular 1: On 12 February 2020, took money in the sum £100 from the purse of a vulnerable Service User, while attending her at a home care call.

The Committee noted the evidence of Witness 1. She gave a detailed account of the circumstances in which she, together with the coordinator at Trackars, left the sum of £100 in the purse of Service User B on 12 February 2020. Later that day, she described checking the purse and discovering that the money had gone missing. When she raised this with the Registrant, the Registrant denied taking the money. Witness 1 described stepping into another room to make a phone call to her head office, when the coordinator joined her and handed Witness 1 the sum of £100, which the Registrant had given to the coordinator when Witness 1 had stepped out to make a telephone call. In her evidence to the Committee, Witness 1 confirmed that the £100 left in Service User B's purse consisted of five £20 notes. The money handed to Witness 1 by the coordinator, who had been given it by the Registrant, was in the same denomination.

The coordinator, in her witness statement, gave similar evidence to Witness 1. In addition, this witness described the Registrant opening her handbag and taking from it a sum of money. The Registrant handed this money to the coordinator, who in turn gave it to Witness 1.

In the Committee's view, there was a clear chain of continuity in the evidence between Witness 1 and the coordinator to establish, on the balance of probabilities, that the Registrant had taken the sum of £100 from Service User B's purse while attending her at a home care call on 12 February 2020.

In addition, the Committee noted the contents of two meetings held between Trackars and the Registrant following the incident in question. The first meeting was an investigatory meeting which took place on 18 February 2020. In response to Witness 1 asking why the Registrant had taken £100 from Service User B's purse, the Registrant is recorded as apologising for her actions and saying 'I did, and I don't know why I did it'. The second meeting was a disciplinary hearing which took place on 25 February 2020. The minutes of the meeting were recorded by Witness 1. The Registrant again admitted taking the money from Service User B's purse, stating that she was 'silly and stupid'.

Accordingly, for these reasons, the Committee found Particular 1 proved on the balance of probabilities.

Particular 2 - On 21 February 2020, deliberately withheld your employment history by failing to put Trackars Healthcare as your most recent employer on your application form for employment with Primecare Ltd.

The Committee noted the evidence of Witness 2 and the application form dated 21 February 2020, which the Registrant completed in her application for employment with Primecare. The application form, under the heading 'Employment History', made no reference to the Registrant's former employment with Trackars. The final entry stated that between October and December 2019, the Registrant was employed as a care assistant on an agency basis at a care home. As part of RQIA requirements, Witness 2 told the Committee that the application form contained a section which required the Registrant to outline any gaps in her employment. In that regard, the Committee noted that between December 2019 and the date on which the application form was completed (February 2020), the Registrant stated that she was 'job seeking'.

It was clear to the Committee, having regard to Witness 2's evidence and the contents of the application form, that the Registrant deliberately withheld her employment history from Primecare by failing to put Trackars as her most recent employer when she completed the application form for employment with Primecare on 21 February 2020.

Accordingly, for these reasons, the Committee found Particular 2 proved on the balance of probabilities.

Particular 3 - Between the dates of 14 May 2020 and 03 June 2020, worked shifts as a social care worker with Primecare Ltd, whilst knowingly being subject to an Interim Suspension Order imposed by a Preliminary Proceedings Committee on 14 May 2020.

Witness 2, in her evidence, confirmed to the Committee that the Registrant worked shifts as a social care worker with Primecare on dates between 14 May 2020 and 03 June 2020. Witness 2 told the Committee that on 03 June 2020, when she raised the question of whether the Registrant was the subject of an Interim Suspension Order, the Registrant's reply was 'very muddled'. The Registrant claimed that she was not aware of why her name was contained in an email from the Council which stated that she was the subject of an Interim Suspension Order. The Registrant advised Witness 2 that apart from an incident in a care home in Hollywood, she did not know that she was suspended, or why she had been suspended, by the Council.

From its consideration of the hearing bundle, the Committee noted that a Preliminary Proceedings Committee of the Council met on 14 May 2020, to consider an application by the Council for the Registrant's registration to be made the subject of an Interim Order. Interim Order proceedings were served by the Council on the Registrant in advance of the Interim Order application. In response, the Committee noted a letter from the Registrant, dated 05 May 2020, in which she addressed the Allegation which were to be considered by the PPC at the Interim Order application. The Committee also noted that the Preliminary Proceedings Committee, on 14 May 2020, made an Interim Suspension Order in respect of the Registrant's registration for a period of six months. Following this decision, a copy of the Interim Suspension Order and the reasons of the Preliminary Proceedings Committee for making such an Order, were sent to the Registrant by the Council by Special Delivery post. The Committee considered a document contained in the hearing bundle, which confirmed the delivery of the Interim Suspension Order to the Registrant's registered address on 16 May 2020. It further noted that the documents had been signed for by 'BRAXTON' on that date.

Taking these pieces of evidence together, the Committee was satisfied that on dates between 14 May 2020 and 03 June 2020, the Registrant worked shifts as a social care worker with Primecare Ltd whilst knowingly being subject to an Interim Suspension Order imposed by a Preliminary Proceedings Committee of the Council on 14 May 2020.

Accordingly, for these reasons, the Committee found Particular 3 proved on the balance of probabilities.

Fitness to Practise

Mr Wilson made a submission to the Committee on the question of the Registrant's fitness to practise. He submitted that her actions as found proved amounted to misconduct, and that she had breached the following provisions of the Standards of Conduct and Practice for Social Care Workers ('the Standards'): 2, 2.1, 5, 5.1, 5.3 and 5.8. In light of the Registrant's dishonesty, disregard for the regulatory process and her abuse of trust, Mr Wilson invited the Committee to make a finding that the Registrant's fitness to practise was currently impaired by reason of her misconduct.

The Committee heard and accepted the Legal Adviser's advice. The Committee was told that the question of whether the Registrant's actions amounted to misconduct, and whether, in consequence, her fitness to practise was currently impaired, was a matter for the independent judgement of the Committee. The Legal Adviser also referred the Committee to the cases of Cohen v GMC, Meadow v GMC, and CHRE v NMC and Grant. Finally, the Committee was reminded that its approach was set out at Paragraph 24 (3) of Schedule 2 of the Rules when deciding upon the issue of current impairment of fitness to practise.

The Committee was satisfied that the Registrant had breached the following Standards:

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;
- 5.3:** Abuse the trust of service users and carers or the access you have to personal information about them or to their property, home or workplace; or
- 5.8:** Behave in a way, in work or outside work, which would call into question your suitability to work in social care services.

The Registrant's actions were serious and had fallen far short of the standards to be expected of a registered social care worker, and amounted to misconduct.

The Committee first considered whether the Registrant's actions were capable of remedy. She had stolen money from a vulnerable service user, and had acted dishonestly by omitting relevant information from an application for employment and working as a social care worker knowing that she was the subject of an Interim Suspension Order. To the Committee's mind, such behaviour would be very difficult to remedy. In this instance, the Registrant provided no evidence of insight or any steps taken by her to remedy her misconduct. As such, the Committee considered that there was a high likelihood that the Registrant would repeat the behaviour complained of.

The Committee had regard to the formulation provided by Dame Janet Smith in her 5th report to the Shipman Inquiry (cited with approval by Cox J in Grant), and determined that the Registrant: a.) had in the past, and was liable in the future, to put service users at unwarranted risk of harm; b.) had in the past, and was liable in the future, to breach fundamental tenets of the social care profession; c.) had in the past, and was liable in the future, to bring the social care profession into disrepute; and d.) had in the past, and was liable in the future, to act dishonestly.

For these reasons, the Committee was satisfied that a finding of current impairment of the Registrant's fitness to practise was required for public protection reasons.

The Committee also considered the public interest, which included the need to declare and uphold the proper standards of conduct and behaviour, and the reputation of the social care profession and the Council in its regulatory function. The Committee was satisfied that a failure to make a finding of current impairment of fitness to practise on public interest grounds would undermine the public's trust and confidence in the social care profession, and would fail to declare and uphold proper standards of conduct and behaviour.

For these reasons, the Committee was satisfied that a finding of current impairment of the Registrant's fitness to practise was required on public interest grounds.

The Committee determined that the Registrant's fitness to practise is currently impaired by reason of her misconduct.

Sanction

The Committee heard a submission from Mr Wilson on the question of what, if any, sanction to apply to the Registrant's registration. Mr Wilson's submission set out for the Committee what amounted to the aggravating and mitigating factors in the case. The Committee was also referred by Mr Wilson to the NISCC Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance'). Mr Wilson submitted that, realistically, in light of its findings of fact and its decision in relation to current impairment, the only sanction available to the Committee was a Removal Order.

The Committee heard and accepted the Legal Adviser's advice. He set out the range of available sanctions which were provided for by Paragraph 26 of Schedule 2 of the Rules. In summary, the Committee could impose no sanction; warn the Registrant for a period of up to five years; make a Conditions of Practice Order not to exceed three years; make a Suspension Order not to exceed two years or make a Removal Order. The Committee was reminded that the purpose of a sanction was not to be punitive. Instead, in its consideration of a sanction the Committee should have at the forefront of its mind the need to protect the public and the public interest. The Legal Adviser also reminded the Committee that it should act proportionately and that any measure taken to limit the fundamental right of the Registrant to practise in the social care setting should be no more than what was necessary in the public interest in all of the circumstances.

The Committee carefully considered all of the available documentary material together with Mr Wilson's submissions. It also had careful regard to the Guidance.

At the outset, the Committee considered the mitigating and aggravating features.

The Committee considered the following to be mitigating features:

- Previous good history; and
- Previous good character.

The Committee considered the following to be aggravating features:

- Dishonesty;
- Abuse of trust;
- Concealment of wrongdoing;
- Premeditated actions;
- Lack of insight;
- Partial expression of regret;
- Risk posed to service users;
- Serious disregard for applicable Council standards;
- Evidence of persistent misconduct; and
- Misconduct directly connected to the Registrant's employment.

No Sanction – The Committee first considered whether it would be appropriate to conclude the matter and impose no sanction on the Registrant. In light of its findings and the serious nature of the misconduct identified, the Committee considered that such a disposal would be insufficient to protect the public and uphold the public interest.

Warning – For the same reasons, as those given for imposing No Sanction, the Committee decided that imposing a Warning on the Registrant would not be proportionate or adequate to protect the public or uphold the public interest.

Conditions of Practice Order – The Committee noted that the Registrant was unable to work in social care because she was the subject of an Interim Suspension Order. The Committee had no up to date information in relation to the Registrant's current employment status. Notwithstanding these matters, the Committee considered that the nature of the Registrant's dishonesty was so all-embracing, and her misconduct was so serious, that the imposition of a Conditions of Practice Order would be inadequate to protect the public and uphold the public interest.

Suspension – The Committee carefully considered whether a Suspension Order was appropriate and proportionate. The Registrant had failed to demonstrate insight into the seriousness of her misconduct. In a letter to the Council dated 05 May 2020, in advance of an Interim Order application, the Registrant apologised for falsely recording that she had been in Service User B's home when she was at a medical appointment. There was no reference in the letter to her actions in relation to the taking of money from a service user's purse. There was no other communication from the Registrant in relation to the substance of the Allegation which she faced. The Committee considered that the Registrant's expression of regret for her actions was limited and self-serving. The Registrant also dishonestly withheld information from a prospective employer when she omitted relevant information about her employment history. Her actions had resulted in Primecare Ltd being unaware of the serious misconduct which the Registrant had engaged in in relation to Service User B. Her actions were deliberate and calculated and had resulted in a potential risk to service users with whom the Registrant came into contact in her duties with Primecare Ltd. The Registrant, in working shifts as a social care worker, on various dates between 14 May and 03 June 2020, while knowingly being subject to an Interim Suspension Order, had shown a flagrant disregard for the regulatory process and had exposed service users in her care to the risk of harm. To the Committee's mind, the Registrant's actions in this regard were reprehensible and seriously dishonest. As such, the Committee decided that the Registrant's misconduct was too serious and that a Suspension Order would be inadequate to protect the public and insufficient to uphold the public interest.

Removal – The Committee decided to make a Removal Order in this case. The Registrant had failed to demonstrate insight into the seriousness of her actions and there was, in the Committee's view, a high risk of repetition. Her dishonest actions were persistent and serious. The Registrant had attempted to conceal her dishonesty. The Registrant had demonstrated a blatant disregard for the regulatory regime which was in place, primarily, for the protection of vulnerable service users. By her actions, the Registrant had exposed vulnerable

service users in her care to the risk of harm and had fallen far short of the standards to be expected of a registered social care worker. In the Committee's judgement, the Registrant's actions were fundamentally incompatible with remaining on the Register. As such, the only appropriate and proportionate sanction to apply in this case was a Removal Order with immediate effect.

Interim Order – The Committee made an Order revoking, with immediate effect, the Interim Suspension Order which was imposed by a Preliminary Proceedings Committee of the Council.

The Committee concluded that a Removal Order was a suitable, appropriate, and proportionate sanction which was 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) 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.



Committee Clerk

19 August 2021

Date