

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

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**Name:** Paul Joseph Cosgrove

**SCR No:** 2007209

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at a hearing on **01 September 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 31 March 2021, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended) as a social care worker, you were convicted of the following offences at the Magistrates' Court and the offences occurred whilst you were employed as a care assistant at Cregagh Nursing Home:

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| 1. | [You] on the 15 December 2020, stole a wedding ring to the value of not known or thereabouts belonging to [Service User 1], contrary to Section 1 of the Theft Act (Northern Ireland) 1969.                        |
| 2. | [You] on date unknown between 01 January 2020 and 01 February 2020, stole a ring to the value of £15 or thereabouts belonging to [Service User 2], 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 convictions.

**Procedure**

The hearing was held under the fitness to practise procedure.

## **Preliminary Matters**

The Registrant was not in attendance, nor was he represented. The Northern Ireland Social Care Council ('the Council') was represented by Mr Anthony Gilmore, Solicitor, Directorate of Legal Services.

## **Service**

Mr Gilmore told the Committee that the Notice of Hearing and hearing bundle were sent by Special Delivery post to the Registrant's registered address on 19 July 2021. The package was delivered and signed for on 20 July 2021.

The Committee received legal advice from the Legal Adviser. He referred the Committee to the requirements as set out in Rule 3 and Paragraph 8 of Schedule 2 of the Northern Ireland Social Care Council Fitness to Practise (Amendment) Rules 2019 ('the Rules').

The Committee, in all of the circumstances of the case, was satisfied that the Notice of Hearing had been served in accordance with the Rules.

## **Proceeding in the Absence of the Registrant**

Mr Gilmore made an application to proceed in the absence of the Registrant. Mr Gilmore told the Committee that the Committee Clerk telephoned the Registrant on 19 August 2021 to confirm his attendance at the Fitness to Practise hearing. The Registrant stated that he did not think that he would attend but that he would think about it and would contact the Clerk if he decided that he wanted to attend. He invited the Committee to conclude that the Registrant's absence was a voluntary waiver of his right to attend. Mr Gilmore further submitted that it was in the public interest for there to be an expeditious disposal of the hearing.

The Committee heard 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 telephone call between the Committee Clerk and the Registrant on 19 August 2021, in which the Registrant stated that he did not think that he would attend but would contact the Clerk if he changed his mind. The Committee noted that the Registrant had not asked for an adjournment in any communication with the Council. The Committee concluded that the Registrant, with knowledge of the proceedings, had voluntarily absented himself from the hearing. There was no reason to suppose that an adjournment of the hearing would secure the Registrant's attendance at a later stage. The Committee also noted the serious nature of the allegations faced by the Registrant. It was also of the view that the public interest was strongly engaged. Accordingly, the Committee decided that it was fair and appropriate to proceed with the hearing in the Registrant's absence.

## **Application to Admit Hearing Bundle**

Mr Gilmore 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 the record of the telephone call between the Registrant and the Committee Clerk on 19 August 2021, and marked it as Exhibit 2, and also the email between the Committee Clerk and the Registrant's union representative, dated 27 August 2021, and marked it as Exhibit 3.

## **Background**

Mr Gilmore referred the Committee to the background of the case, as set out in Exhibit 1.

He said that the Registrant was first registered on 31 March 2018, on Part 2 of the Register, as a social care worker. The Registrant commenced work with Spa Nursing Homes Ltd. on 07 October 2013 as an adult residential care worker. At the material time covered by the Allegation, the Registrant was working in that capacity at Cregagh Nursing Home.

The matter came to the Council's attention by way of an Employer Referral Form (ERF), dated 18 December 2020. The alleged circumstances were set out in the ERF by the employer, and stated that a service user alleged that on 15 December 2020 a bald man came into her room, washed her hands and took her wedding ring. The service user had been pictured the previous day wearing the ring and, on 16 December 2020, the manager confirmed that it was missing and identified the only bald man on shift as the Registrant.

The matter was reported to the PSNI, who arrested the Registrant on 17 December 2020. He was interviewed under caution while in custody on suspicion of theft of two rings which were found in his possession at his home address.

Mr Gilmore referred the Committee to the ERF, where it was noted that the Registrant told the PSNI during interview that there had been a misunderstanding. Mr Gilmore noted that the ERF reported that Service User 1 suffered a great deal of distress as a result of the theft of her wedding ring.

Mr Gilmore told the Committee that on 03 March 2021, at a Magistrates' Court, the Registrant had pleaded guilty to two charges of theft. The relevant certificates of conviction in respect of both charges were contained in the hearing bundle.

## **Evidence**

Mr Gilmore referred the Committee to the certificates of conviction in Exhibit 1. He advised that the convictions against the Registrant related to the theft of two rings from two services users. The first theft took place on 15 December 2020, and the second theft took place on a date unknown between 01 January 2020 and 01 February 2020. Mr Gilmore told the Committee that the Registrant pleaded guilty to both charges on 03 March 2021 and, on 31 March 2021, was sentenced to six months' imprisonment on both charges concurrently, which were suspended for two years.

## **Findings of Fact**

The Committee heard and accepted the advice of the Legal Adviser. He referred the Committee to Rule 4 (1) (d) and Paragraph 12 (5) and Paragraph 12 (7) of Schedule 2 of the Rules.

The Committee took into account the submissions from Mr Gilmore, and had careful regard to all of the documentary evidence contained in Exhibit 1. In particular, the Committee had regard to the certificates of conviction. Taking into account Paragraph 12 (5) of Schedule 2 of the Rules, the Committee was satisfied that the certificates of conviction against the Registrant were conclusive proof of the convictions so found and the underlying facts.

Accordingly, the Committee found proved the facts, in accordance with Rule 4 (1) (d) of the Rules.

## **Fitness to Practise**

The Committee proceeded to consider whether the Registrant's fitness to practise was currently impaired by reason of his convictions.

The Committee heard submissions from Mr Gilmore, who advised that the Registrant had made no formal admission to the Particulars of Allegation. He submitted that the Registrant's convictions called into question his ability to work in social care services and to remain on the Register without restriction, or to be registered at all. He referred the Committee to the Standards of Conduct and Practice for Social Care Workers which, in his submission, the Registrant had breached by reason of his convictions: Standards of Conduct - 1.2, 1.6, 2.1, 3.7, 5.1, 5.2, 5.3, 5.8 and 6.12 and, in relation to Standards of Practice - 3.1.

Mr Gilmore submitted that the Registrant had shown only the most limited degree of insight and that there was a risk of repetition. He also stated that a failure to make a finding of current impairment of the Registrant's fitness to practise would undermine public trust and confidence, and fail to declare proper standards of conduct and behaviour. Mr Gilmore invited the Committee to make a finding of current impairment by reason of the Registrant's convictions.

The Committee considered the submissions from Mr Gilmore and had regard to all of the evidence in the case. The Committee heard and 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 issue. In particular, he asked the Committee to take into account the nature and content of the criminal convictions against the Registrant, and reminded the Committee that it was being asked to determine whether the Registrant's fitness to practise is impaired because of the convictions. He referred the Committee to Paragraph 24 (3) of Schedule 2 of the Rules, and the guidance as set out in the case of GMC v Cohen. The Committee was charged with 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. He further referred the Committee to the

formulation provided by Dame Janet Smith in her 5<sup>th</sup> Report to the Shipman Inquiry, which was cited with approval by Cox J in CHRE v NMC & Grant.

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 was satisfied that the Registrant's actions, as evidenced by his convictions, were in breach of the following Standards of Conduct:

### **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:**

- 1.2 Treating people with consideration, respect and compassion; and
- 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.

**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 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:**

- 3.7 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;
- 5.2 Exploit service users, carers or colleagues in any way;
- 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.

**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:**

- 6.12 Co-operating with any investigation or formal inquiry into your conduct, the conduct of others, or the care or services provided to a service user where appropriate.

## Standards of Practice

**Standard 3: As a social care worker, you must deliver person-centred care and support which is safe and effective. This includes:**

3.1 Promoting and applying person-centred values in your day to day work with service users and carers.

The Committee noted that the Registrant's convictions for theft were serious, and involved two vulnerable service users on two separate dates. The Registrant was in a position of trust, and had abused that trust when he stole the rings in question in the course of providing care. There was evidence that Service User 1, who had her wedding ring stolen by the Registrant, was left distressed by his actions. The Registrant's actions were directly related to his occupation. He had received a custodial sentence from the Courts on 31 March 2021, and is the subject of a suspended sentence for two years from this date. The Committee was satisfied that the Registrant's actions were of the utmost seriousness, and had fallen significantly below the standards to be expected of a registered social care worker.

The Committee considered the question of the Registrant's insight and remedial action. There was no information or evidence from the Registrant to demonstrate that he had developed insight and had undertaken the necessary action to remedy his behaviour. The Committee considered that the Registrant's dishonest conduct was not easily remediable. In this case, the Committee was of the view that the Registrant's insight was very limited. He had pleaded guilty to two charges of theft in the Magistrates' Court. Set against this, however, the Committee noted that the Registrant had not provided any evidence of regret for his actions or offered the victims of his criminal wrongdoing any apology. He had failed to show any evidence in which he recognised the adverse impact which his actions had on Service User 1 and Service User 2. Furthermore, it was noted that the Registrant had failed to engage in the regulatory proceedings which were before the Committee.

In addition, the Registrant had failed to provide any evidence that he had remedied his wrongdoing. He had stolen items from two vulnerable service users on two separate dates in the course of his employment. The Committee considered, in light of the very limited insight on the Registrant's part and the absence of any evidence of remedial action, that there was a likelihood of repetition. The Committee concluded that a finding of current impairment was necessary to protect the public.

The Committee also concluded that a finding of current impairment of fitness to practise was also necessary in the public interest. It was considered by the Committee that public confidence in the social care profession, and the Council as its regulator, 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 his criminal convictions.

## Sanction

In reaching its decision on sanction, the Committee considered the submission of Mr Gilmore on behalf of the Council, and had regard to all of the evidence in this case. Mr Gilmore referred the Committee to mitigating factors and advised that the Registrant had a clear work record with no previous referrals to the Council. He also noted that the Registrant had pleaded guilty to two criminal charges of theft.

As regards aggravating factors, Mr Gilmore submitted that the public is entitled to expect that care workers will provide safe and effective care to the most vulnerable in society. He submitted that the Registrant's behaviour in stealing from two vulnerable service users could not be considered to be at the lower end of the spectrum of misconduct. The Registrant did not express any remorse for his behaviour and had not provided the Committee with any explanation for his actions or evidence of remediation. He submitted that, given the seriousness of the Registrant's convictions and the significant degree to which, as a result, the Registrant had fallen below the standards to be expected of a registered social care worker, only a Removal Order would protect and uphold the public interest.

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, although a sanction may have a punitive effect. 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.

The Committee carefully considered all of the available documentary material, together with Mr Gilmore's submissions. It also had careful regard to the Northern Ireland Social Care Council Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance').

The Committee considered the aggravating and mitigating factors in this case.

The Committee considered the mitigating factors to be:

- the Registrant pleaded guilty to the criminal charges, thereby avoiding the need for witnesses to attend Court.

The Committee considered the aggravating factors to be:

- the Registrant's criminal convictions for theft constituted a serious breach of trust. They were directly related to his employment, and occurred whilst the Registrant was providing care to vulnerable service users;
- the Registrant expressed very limited insight. He had provided no evidence to demonstrate that he had remedied his failings and there was a risk of repetition; and

- the Registrant had failed to express regret or remorse for his actions, and had failed to engage with the Council and the Committee during these regulatory proceedings.

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

**Warning** – the Committee considered whether to impose a Warning in this case. Having regard to its findings, the Committee considered that such a step would be inadequate to protect the public and would fail to uphold the public interest.

**Conditions of Practice Order** – the Committee next considered a Conditions of Practice Order. The Registrant's convictions related to a serious abuse of trust, which occurred on two separate occasions, whereby the Registrant stole from two vulnerable service users whilst providing care to them. As the Registrant did not attend the hearing, the Committee had no evidence as to his current employment circumstances, or whether he would agree to any conditions, if imposed. However, notwithstanding a lack of knowledge concerning the Registrant's employment status, the Committee concluded that a Conditions of Practice Order would be insufficient to protect the public and uphold the public interest, given the seriousness of the Registrant's departure from the standards expected of a registered social care worker. 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 stage 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 Standards of Conduct and Practice for Social Care Workers require a social care worker to treat each person as an individual with consideration, respect and compassion, along with maintaining their dignity.

The Committee had no evidence before it of remediation by the Registrant, nor had it any information to indicate that the Registrant was unlikely to repeat his criminal behaviour in the future. The Registrant had failed to express remorse or demonstrate insight into the seriousness of his criminal convictions and the risk of harm which his behaviour presented to each service user. The Committee considered the public interest. The Committee considered that the public would perceive the Registrant's criminal behaviour as falling far short of what would be expected of a registered social care worker. The Committee concluded that a Suspension Order would be insufficient to protect the public and to address the seriousness and unacceptability of the Registrant's criminal convictions.

**Removal** – the Committee, therefore, decided to impose a Removal Order. The Committee took into account the Guidance at Paragraphs 4.26 – 4.28. It concluded that given the seriousness of the Registrant's criminal convictions and his lack of insight and remediation of his failings, a Removal Order was the only appropriate sanction to protect the public and to maintain public confidence in the social care profession and the Council as



its regulator. The Registrant's actions were deplorable, and constituted a very serious departure from the professional standards as set out in the Standards of Conduct and Practice for Social Care Workers. The Registrant had abused his position of trust as a social care worker and brought the social care profession into disrepute. Although the Registrant's motivation for his criminal behaviour was unclear, there was evidence that his actions had caused alarm and distress. He had stolen items from vulnerable and elderly service users which were of sentimental value to them. He had failed to recognise the seriousness of his wrongdoing. As such, the Committee was satisfied that the Registrant's actions were fundamentally incompatible with continued registration. The Committee also considered that public confidence in the social care profession, and the Council as its regulator, would be undermined if a social care worker who was criminally convicted of theft, and who failed to show appropriate insight or remediation, was allowed to remain on the Register. The Committee considered that a sanction short of a Removal Order would fail to declare and uphold proper standards of conduct and behaviour.

The Committee decided, in order to protect the public and in the public interest, to make a Removal Order, with immediate effect, in respect of the Registrant's registration.

The Committee also directed that the Interim Suspension Order currently in place should be revoked with immediate effect.

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**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.**

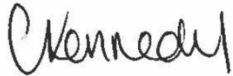
The effect of this decision is that your entry in the Register has been removed.

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.



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Committee Clerk

02 September 2021

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Date