



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

Name: Patricia Lucy Donaldson

SCR No: 6043713

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **Wednesday 09 March 2022**, 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 Caution;

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

Particulars of the Allegation:

That, on 15 January 2021, as set out below, whilst being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you:

1. Received an adult caution for Theft, in relation to the taking of a purse from a vulnerable 83 year old who had attended a pharmacy in which you were employed.

And your actions as set out above show that your fitness to practise is impaired by reason of your caution received in the United Kingdom for a criminal offence.

Procedure

The hearing was held under the fitness to practise procedure.

Preliminary Matters

The Registrant was not in attendance, nor was she represented. 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 01 February 2022. A delivery receipt was received on the same day. He referred the Committee to the email from the Registrant on 16 February 2022, where she advised that she would not be attending the hearing.

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. He again referred the Committee to the Registrant's email of 16 February 2022, which confirmed that the Registrant would not be attending the hearing and did not contain a request for an adjournment. He suggested that it was in the public interest for there to be an expeditious disposal of the hearing and any disadvantage to the Registrant was outweighed in all of the circumstances.

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 took into account the Registrant's email of 16 February 2022, where she stated:

"I won't be attending I don't think I could face it I've been trying to move on..." [sic]

After careful consideration of all of the information and 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 had voluntarily absented herself from the 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

The Committee accepted the hearing bundle into evidence and marked it as Exhibit 1.

Declaration of Conflict of Interest

The Chair of the Committee confirmed that all Committee Members had no conflicts of interest with this case.

Background

On 08 January 2021, the Common Law Police Disclosure Unit ('CLPD') advised the Council that the Registrant was being investigated as regards an allegation of theft, which was alleged to have occurred on 21 December 2020 at Portaferry Pharmacy, Co. Down. In addition, the Police disclosed their investigation to the Registrant's employers at Barnhall Residential Home.

On 15 January 2021, the Registrant accepted a Certificate of Caution arising out of this incident. The Caution related to the theft, by the Registrant, of a wallet containing £100 and numerous bank cards. The theft took place on 21 December 2020, at the Registrant's place of work, Portaferry Pharmacy. The wallet belonged to an 83 year old lady and the Registrant subsequently repaid £100 and £40 for the wallet.

Evidence

Mr Carson referred the Committee to the Certificate of Caution and the structured outline of the case, as provided by the PSNI. He noted that the structured outline of the case provided details around the incident which took place on 21 December 2020. He noted that, according to this outline, on this date the Registrant, who was a pharmacy employee, lifted a purse that had been left at a sanitiser station and placed it in her coat pocket. The events of this day were recorded on CCTV and Mr Carson noted that the Registrant was observed assisting the person who had lost the purse in attempts to locate the purse.

He submitted that the Certificate of Caution was conclusive proof of the Particulars of the Allegation against the Registrant, in accordance with Schedule 2 Rule 12 (5).

Finding of Facts

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.

The Committee reminded itself that the burden was 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, in particular, the Certificate of Caution and the PSNI structured outline of the case.

The Committee noted that the Registrant signed the Certificate of Caution and did not dispute any of the supporting information contained in the outline of the case.

Taking into account Paragraph 12 (5) of Schedule 2 of the Rules, the Committee was satisfied that the Certificate of Caution against the Registrant proved the facts therein. The Committee therefore found that, on the balance of probabilities, the facts contained in the Particulars of the Allegation had been established.

Fitness to Practise

The Committee proceeded to consider if the Registrant's fitness to practise was impaired. The Committee heard submissions from Mr Carson.

Mr Carson told the Committee that the Registrant had not made any admission that her fitness to practise was currently impaired. He submitted that the Registrant's Caution 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. He noted that the Registrant had admitted to the offence and signed the Police Caution. Arising out of the Registrant's Caution, he referred the Committee to potential breaches of the Standards of Conduct and Practice for Social Care Workers as follows: 2 - 2.1 and 5 - 5.8.

He submitted that there was a basic need for social care workers to act honestly, and that the Registrant's serious Caution for Theft of a purse containing £100 and numerous bank cards, 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 made a full admission when questioned by the PSNI, he questioned her insight. He said that the Registrant had not provided meaningful engagement with the Council and that there was a risk of repetition. He noted that the Registrant referred to this incident as a "moment of madness" and had expressed remorse for what had happened. However, he submitted the Registrant did not meaningfully engage with the Council and that her actions had brought the social care profession into disrepute.

Mr Carson submitted that a risk of repetition remained and that the Registrant has failed to appear before this Committee to reassure it that her behaviour would not be repeated. He submitted that the public should have confidence in those who care for vulnerable service users. He said that although the Registrant's theft took place outside her work as a social care worker, she was still expected to abide by the Standards of Conduct and Practice.

The Committee considered the submissions from Mr Carson on behalf of the Council and the email from the Registrant, dated 16 February 2022. In addition, the Committee took into account the details provided in the PSNI structured outline of 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 Certificate of Caution 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 Caution. She referred the Committee to Paragraph 24 Schedule 2 of the Rules, and the requirements as set out in the case of the GMC v Cohen, looking at the current competence and behaviour of the Registrant along with the need to protect service users, members of the public, the upholding of proper standards of behaviour and maintaining of public confidence in the social care profession. She further referred the Committee to the findings of Dame Janet Smith in the 5th Shipman Report as regards the potential causes of impairment. She also referred the Committee to the cases of GMC v Meadows 2006 and CHRE v NMC & Grant 2011.

The Committee considered whether the Registrant's fitness to practise is impaired by reason of her Caution 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 Guidance'). 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:

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

The Committee concluded that the Certificate of Caution against the Registrant referred to a serious theft which took place during the Registrant's secondary employment and not whilst she was providing care. The PSNI case outline stated as follows:

"On Monday the 21st of December 2020 at approximately 16:17 hours [REDACTED], 83 years, attended Portaferry Pharmacy. She had in her hand a purse. She is observed to wash her hands at the hand sanitiser station and place her purse on the counter area of that station. She then left that area and appears to forget to lift her purse.

At 16:21 hours Patricia Donaldson, a Pharmacy employee enters the shop, as an employee and approaches the sanitiser station. She is observed to lift the purse with her right hand and place it in the right sided pocket of her coat. She then walks to the rear of the store. Pharmacy staff including Mrs Donaldson assisted [REDACTED] in looking for the purse. Mrs Donaldson makes no attempt to return the purse to [REDACTED].

In the days following the theft [REDACTED] had to borrow money from her son. There was also a photograph of her brother in the wallet which was of sentimental value."

The PSNI case outline further stated that the victim did not want the matter to proceed to court and was happy for this to be dealt with by way of an Adult Caution. It was further noted that the Registrant was fully cooperative with the Police investigation and was fully remorseful. The Registrant was noted as having repaid a cash amount of £100 that was in the stolen purse, and repaid £40 for the value of the purse. The Committee concluded that the Registrant's actions were deliberate, and it had no evidence to suggest that the Registrant would act differently in the future. The Registrant did not attend the hearing and the Committee took into account her email of 16 February 2022, where she stated as follows:

"I won't be attending I don't think I could face it I've been trying to move on but find it very difficult both mentally and physically...I've already lost so much my home my husband my daughter doesn't bring my granddaughter to see me anymore I lost both my jobsI know what I did .but I did not walk into that shop that day and think I'm gonna steal I lifted the purse off the sanitising station and put it In my pocket so I could sanitize my hands I went down the back took my coat off and never thought about the purse until the lady was asking about it ...I just panicked and thought how bad it would look if I sed it was in my pocket ..I feel I'm now being persecuted I cannot go down the street ...people looking and staring this is a small town everyone knows everyone's business I'm so sorry I have to live with it everyday the lady in question whose purse it was says I've suffered enough but I cannot move on with all this hanging over me" [sic]

Although the Registrant accepted the Police Caution, the Committee had no information or evidence from her as regards any actions she has taken to remediate her behaviour. The Committee considered there to be a continued risk of repetition by the Registrant of her behaviour. The Committee noted that there was limited information before it to show that the Registrant acknowledged the impact of her behaviour on the victim. The

Committee concluded that the Registrant's Caution brought the social care profession into disrepute and that the public would find it totally unacceptable that a Registrant cautioned 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 was, therefore, necessary for the maintenance of public confidence in the social care profession and the Council as its regulator, and 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 was currently impaired by reason of her Caution.

Sanction

In reaching its decision on sanction, the Committee considered the submission from Mr Carson on behalf of the Council. Mr Carson referred the Committee to various mitigating and aggravating factors and the Guidance. He told the Committee that the Registrant had no previous disciplinary record with the Council. He noted the Registrant was remorseful during the Police interview, and accepted the Caution as well as returning the monies she had taken, along with £40 towards the value of the purse. However, he submitted the Registrant's dishonesty was particularly serious and noted her attempts at concealment by assisting her colleagues and the victim in searching for the purse. He noted the Registrant did not make admissions to the theft until nine days later, and was unable to recall where she had disposed of the purse. He further submitted that the Registrant had failed to appropriately engage with the Council.

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, although he submitted that the Registrant's behaviour on this occasion was on the high end of seriousness. He said that the victim was vulnerable and that the Registrant had not shown any insight into the impact of her theft on this victim. 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 Caution 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 limited acknowledgment of the impact of her behaviour. He submitted that the Registrant's dishonesty was fundamentally incompatible with her continuing registration as a social care worker. He suggested the Committee may wish to consider a sanction of a Removal Order in all of the circumstances.

The Committee accepted the advice of the Legal Adviser. She referred the Committee to 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.

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 included 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 Guidance, bearing in mind that the decision on sanction was one for its own independent judgement.

The Committee recognised that the purpose of sanction was 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 nine days after the theft, along with expressions of remorse;
- This was an isolated incident; and
- Restitution to the victim of £140.

The Committee considered the aggravating factors to be:

- Dishonesty, aggravated by attempts to conceal the Registrant's actions, by assisting in the search for the victim's purse;

- Despite admissions during the Police investigation, the Registrant had limited insight into the impact of her actions on the victim;
- Failure to return the victim's purse during the search at the pharmacy, with an inadequate explanation for not doing so; and
- Very limited engagement with the Council.

Having balanced the aggravating and mitigating factors, the Committee proceeded to consider which sanction to apply in this case.

No Sanction - the Committee had no hesitation in concluding that it would be neither appropriate nor proportionate if no sanction were imposed in this case. In the view of the Committee, if no sanction were imposed this would not mark the seriousness of the misconduct or meet the public interest 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 to service users or colleagues. The Committee considered that the Registrant's Caution for Theft from the PSNI 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 was 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 remediation by the Registrant, and it did not have any references or testimonials as to her character and current circumstances. The Committee noted that there was 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 address the risk of repetition, and 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 had not demonstrated to this Committee any insight into the impact of her dishonest actions, nor expressed a desire to remediate her wrongdoing.

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 dishonesty and adequately protect the public.

Suspension – the Committee next considered a Suspension Order. The Committee noted that the Registrant's Caution for theft was 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 Caution evidenced behaviour that is fundamentally incompatible with unrestricted registration as a social care worker. The Committee took into account the Registrant’s attempted to conceal her dishonesty by assisting her colleagues and the victim in searching for the missing purse. Although the Registrant made admissions during the Police investigation and after the CCTV evidence had been viewed, this took place nine days after the theft. The Committee noted the loss of sentimental items in the victim’s purse, and that as a result of the theft the victim was required to borrow money from a relative to replace the cash stolen by the Registrant. Whilst the theft took place outside of the Registrant’s social care workplace, it took place in a pharmacy where the public have expectations that they will be treated with care and respect.

In all of the circumstances, the Committee determined that a Suspension Order would not address the risk of repetition as identified above. The Committee had no evidence of sufficient insight or remediation from the Registrant, and had no information to indicate that the Registrant was unlikely to repeat her dishonesty in the future. The Committee considered a social care worker should be honest and trustworthy. The Committee considered that the public would view the Registrant’s wrongdoing 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 Caution.

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 took into account the Registrant’s admissions during the Police investigation, her expression of remorse at that time and her email to the Council on 16 February 2022. However, the Committee concluded that given the seriousness of the Registrant’s dishonesty for which she received a Caution, her lack of insight into the impact on the victim, and no evidence of remediation, a Removal Order was the only sufficient sanction. The Committee considered the Registrant’s wrongdoing was a deliberate and fundamental breach of trust in her position as a pharmacy worker. In all of the circumstances, the Committee concluded that a Removal Order was 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 wrongdoing. 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. The Committee revoked the Interim Suspension Order currently on the Registrant’s registration and replaced it with a Removal Order 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.



15 March 2022

Committee Clerk

Date