

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

**Name:** Kimberly Caroline Cusack

**SCR No:** 6020295

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **Thursday 07 July 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 convictions;**

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

**Particulars of the Allegation:**

That, being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended):	
1.	You were convicted on 18 March 2022 of the following offences at the Magistrates' Court:
(i)	Defendant on the 17 <sup>th</sup> day of December 2020 dishonestly made a false representation, namely, used a Danske bank card in the name of [Service User A] without his permission to purchase goods at Argos Limited, with the intention, by making the representation, to make a gain for yourself or another or to cause a loss to [Service User A] or to expose [Service User A] to a risk of loss, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006. (Charge 1)
(ii)	Defendant on 17 <sup>th</sup> day of December 2020 dishonestly made a false representation, namely, used a Danske bank card in the name of [Service User A] without his permission to purchase petrol, with the intention, by making the representation, to make a gain for yourself or another or to cause loss to [Service User A] or to expose [Service User A] to a risk of loss, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006. (Charge 2)
(iii)	Defendant on 17 <sup>th</sup> day of December 2020 dishonestly made a false representation, namely, used a bank card in the name of [Service User A] and withdrew £300 from his account without his permission, with the intention, by making the representation, to make a gain for yourself or another or to cause loss to [Service

	User A] or to expose [Service User A] to a risk of loss, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006. (Charge 3)
(iv)	Defendant on 18 <sup>th</sup> day of December 2020 dishonestly made a false representation, namely, used a Danske bank card in the name of [Service User A] and withdrew money from his account without his permission, with the intention, by making the representation, to make a gain for yourself or another or to cause loss to [Service User A] or to expose [Service User A] to a risk of loss, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006. (Charge 4)
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 and the Council was represented by Ms Sinead Owens, Solicitor, Directorate of Legal Services.

### **Service**

Ms Owens told the Committee that the Notice of Hearing and hearing bundle were emailed to the Registrant's registered email address on 24 May 2022. A delivery receipt was received on the same day. Further correspondence was shared with the Registrant on 21 June 2022, inviting her to make submissions on the postponement application submitted by the Council. The Committee Clerk sent an updated Notice of Hearing to the Registrant's registered email address, and proof of delivery was received on the same date. No communication has been received by the Registrant to date. The Committee Clerk attempted to call the Registrant on 30 June 2022 to confirm if she would be in attendance at the fitness to practise hearing and that she had received her hearing documents, but the number listed was not valid.

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 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 took into account that the Notice of Hearing provided details of the date and time of the hearing and that it was to be held virtually. In addition, it contained information about the Registrant's right to attend, be represented and call evidence, as well as the power to proceed in her absence.

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 of the Rules, and the requirements of Paragraph 5 of Schedule 2 of the Rules.

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

Ms Owens 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. She invited the Committee to conclude that the Registrant's absence and lack of engagement with the Council was a voluntary waiver of her right to attend. She further suggested that it was in the public interest for the case to proceed, as this would ensure a fair and expedient disposal of the hearing.

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.

In reaching its decision, the Committee had particular regard to the factors as set out in the case of R v Jones 2003 1 AC and noted that:

- The Registrant had not made an application for an adjournment;
- There was no reason to suppose that adjourning the case would secure her attendance at a future date;
- The Registrant had not sought to be legally represented;
- The Notice of Hearing provided details of the allegation, the time, dates and method of the hearing and, amongst other things, information about the Registrant's right to attend, be represented and call evidence, as well as the Committee's power to proceed in her absence. The Committee, therefore, concluded that the Registrant's absence was deliberate and a waiver of her right to appear; and
- There was a strong public interest in the expeditious disposal of this case.

Therefore, after careful consideration of all of the issues, the Committee decided to exercise its discretion to proceed in the absence of the Registrant, striking a careful balance between fairness to the Registrant and the wider public interest. However, the Committee reminded itself that it must avoid reaching any improper conclusion about the Registrant's absence.

## **Declaration of Conflicts of Interest**

The Chair of the Committee advised that none of the Committee Members have any conflict of interest with this case.

## **Application to Admit Hearing Bundle**

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

## **Background**

The Registrant was registered on Part 2 of the Register.

Ms Owens told the Committee that this matter came to the attention of the Council as a result of an Employer Referral Form ('ERF'), dated 08 January 2021. The ERF confirmed that the Registrant had been reported to the Adult Safeguarding Team and the PSNI following an alleged instance of theft of a service user's bank card, and using it on three occasions over a two-day period to purchase items and withdraw cash without the service user's consent. The ERF also stated that the employer had been unable to make contact with the Registrant since the time of disclosure.

## **Evidence**

Ms Owens submitted that it was the Council's case that the Registrant's fitness to practise was impaired by reason of her convictions.

She directed the Committee to the evidence contained within the hearing bundle, and submitted that the Council sought to rely on this evidence to prove the case.

Ms Owens directed the Committee to the transcript of the PACE interview with the Registrant, dated 26 May 2021. The Committee heard that when questioned by the Police, the Registrant stated that she had been given permission by the service user to take the money and that she would pay him back when she had received her January pay packet.

Ms Owens asked the Committee to pay careful attention to the certificates of conviction. She submitted that this document provided evidence that the Registrant pleaded guilty on 18 February 2022 to four offences. On 18 March 2022, she was sentenced to a Community Service Order over a period of 12 months, requiring her to perform unpaid work for 120 hours and ordered to pay monetary compensation to the amount of £661.18. Ms Owens submitted that the certificates of conviction were conclusive proof of the facts, and that the Council had discharged the burden of proof in establishing the facts in this case.

## **Finding of Facts**

The Legal Adviser reminded the Committee that under Paragraph 12 (5) of Schedule 2 of the Rules, a certificate of conviction issued in any UK Criminal Court '*shall be conclusive proof of the facts or conviction so found*'. She advised the Committee that a registrant could challenge a certificate of conviction if it did not refer to the Registrant or where the conviction had been challenged successfully on appeal. She informed the Committee that it must be satisfied that the certificates of conviction in this case were issued by a competent Court of jurisdiction and that, in the absence of any other evidence, the Committee was entitled to rely on the certificates of conviction to establish conclusively that the Registrant was convicted of the offences as set out in the

Particulars of the Allegation. She also advised the Committee that the certificates of conviction could be relied upon to establish the facts underlying the convictions.

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 Ms Owens on behalf of the Council, and had careful regard to all of the documentary evidence submitted. The Committee noted the facts contained in the certificates of conviction. The Committee concluded that the certificates of conviction were conclusive proof of the convictions. The Committee, therefore, found the facts proved.

### **Fitness to Practise**

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

Ms Owens submitted that the Registrant's actions, which led to her convictions and a sentence of 120 hours' unpaid work, 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. Ms Owens submitted that the Registrant ultimately pleaded guilty to fraud offences, and the Council would state that her actions had fallen far below what is expected of a registered social care worker. She directed the Committee to the Standards of Conduct and Practice (Standard 2: 2:1 and Standard 5: 5:3 and 5:8), and invited the Committee to determine that the Registrant's convictions, and the actions which led to her convictions, were in breach of these Standards.

Ms Owens directed the Committee to the decision of CHRE V Grant, which is a 2011 case, and submitted that this case established that the level of insight is central to any determination on remediation. She submitted that the Registrant had shown no insight or remorse for how her actions impacted on her victim. Throughout her Police interview, the Registrant maintained that her actions were in keeping with the service user's wishes. Whilst the Registrant did ultimately plead guilty, she had not engaged with the Council to demonstrate insight, remorse or an acceptance that her actions were fundamentally wrong. Ms Owens submitted that whilst the sentence included a requirement to pay monetary compensation, the Registrant had not volunteered any information to the Council to confirm that this had been done.

In respect of the risk of repetition, Ms Owens submitted that there was nothing to satisfy the Council that the Registrant understood the seriousness of her actions and, therefore, that a risk of repetition remained.

Ms Owens submitted that the public should have confidence in the Council as a regulator to protect the public, and to ensure that those who care for the most vulnerable in society uphold proper standards of behaviour. She submitted that any option other than a finding of current impairment would impact on public confidence in the Council and in social care services.

The Committee considered the submissions from Ms Owens on behalf of the Council, and had regard to all of the evidence in the case. The Committee accepted the advice of the Legal Adviser. She referred the Committee to Paragraph 24 (3) of Schedule 2 of the Rules and the requirements as set out in the case of the GMC v Cohen, looking at the current competence and behaviour of the Registrant along with the need to protect service users, members of the public, the upholding of proper standards of behaviour and maintaining of public confidence in social care services. 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 [2001] EWHC 927.

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 Rule 4 (d) of the Rules, which states that fitness to practise may be impaired by a conviction. The Committee was satisfied that the Registrant's convictions for four serious offences constituted the reason for the alleged impairment of fitness to practise. The convictions related to use of a service user's bank card and, in the view of the Committee, would call into question the Registrant's suitability to work in social care services without restriction or at all.

The Committee had regard to the Standards of Conduct and Practice for Social Care Workers. The Committee was 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:**

5.3 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 Committee went on to consider if the impairment was capable of remediation. In the view of the Committee, the Registrant's behaviour, which led to her convictions, fell far below the standards which would be expected of a registered social care worker. The Committee noted that at the time of the offences, the Registrant was a team leader which heightened the breach of trust. Whilst the Committee was of the view that dishonesty can be difficult to remediate, the Committee concluded that the events which led to the convictions could, in some circumstances, be capable of remediation.

However, the Committee determined that there was no information before the Committee to satisfy it that the Registrant had remediated her impairment. Regarding insight, the Committee noted that there had been no meaningful engagement with the Council. The Committee noted that the Registrant had ultimately pleaded guilty and accepted the Court findings, but she did not reflect on her wrongdoing or express any remorse for her actions to the Council. Therefore, the Committee found that the Registrant had not shown any insight into her convictions. Similarly, she did not demonstrate any remorse for her actions, or how they had affected her victim, other family members or social care services generally. Without insight, remorse or remediation, the Committee considered there to be a risk of repetition in this case. Due to the serious nature of the offences, the Committee was concerned that the Registrant continued to pose a risk to vulnerable service users.

The Committee also concluded that a finding of current impairment of fitness to practise was necessary in the public interest. It was considered by the Committee that public confidence in social care services, and the Council as its regulator, would be undermined if a finding of impaired fitness to practise was not made in light of the serious convictions in this case.

Therefore, the Committee concluded that the Registrant's fitness to practise was currently impaired by reason of her criminal convictions.

## **Sanction**

In reaching its decision on sanction, the Committee considered the submission from Ms Owens on behalf of the Council, and had regard to all of the evidence in the case. Ms Owens referred the Committee to various mitigating and aggravating factors, and the NISCC Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance'). She submitted that in the view of the Council, the Registrant's actions were fundamentally incompatible with registration as a social care worker.

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, 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:

- The Registrant had the benefit of previous good character and, in particular, the Committee noted that no previous issues had been raised about her work as a social care worker.

The Committee considered the aggravating factors to be:

- The convictions arose from fraud charges, which were matters of dishonesty;
- This was not an isolated incident;
- The Registrant was a team leader, and should have been setting an example as an autonomous practitioner. This was a serious breach of her trusted position as a social care worker;
- The Registrant had demonstrated limited insight. Whilst she did enter guilty pleas to the offences, during the Police interview she denied any wrongdoing, and she did not engage with the Council in relation to these proceedings;



- There was no evidence of regret or remorse; and
- The Registrant showed a serious disregard for the Social Care Council's Standards of Conduct and Practice. The Committee had previously found that her convictions meant her actions fell far below the standards which could be expected of a registered social care worker.

Having balanced the aggravating and mitigating factors, and taking into account the interests of public protection and the public interest, the Committee proceeded to consider which sanction to apply in this case.

**No sanction** - the Committee had no doubt that it would be entirely inappropriate to impose no sanction in this case. To impose no sanction would be inappropriate in view of the seriousness of the case, and would not protect the public or address the public interest.

**Warning** – the Committee considered whether to impose a Warning. Having regard to its previous findings, the Committee considered that such a step would be inadequate to protect the public, and would fail to uphold the public interest. The Committee considered that the Registrant's convictions were not at the lower end of the spectrum, and that a Warning would not address the risk of repetition.

**Conditions of Practice Order** – the Committee next considered a Conditions of Practice Order. The Registrant's convictions were for serious fraud offences committed at work, and this was not something which could be addressed through re-training or conditions. The Registrant did not attend the hearing, and the Committee had no evidence as to whether or not she would agree to any conditions, if imposed. Furthermore, 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 behaviour, adequately protect the public and address the wider public interest.

**Suspension Order** – the Committee next considered a Suspension Order. The Committee noted that it had made findings that the convictions in this case were very serious and fell far below the standards to be expected of a registered social care worker.

The Committee carefully considered the issue of proportionality, and whether suspension would address the concerns which it had identified. The Committee noted Paragraph 4.19 of the Guidance, 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 had no evidence before it that the Registrant acknowledged her failings in so far as they impacted on her victim or her registration as a social care worker. The Registrant had demonstrated virtually no

insight and had provided no evidence of remediation. The Committee had earlier determined that there was a risk of repetition in the future. The Registrant had not satisfied the Committee that she would realistically remedy her behaviour during a period of suspension. Furthermore, the Committee was not satisfied that a Suspension Order would protect the public once the period of suspension had concluded.

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 of the Registrant's criminal convictions.

**Removal Order** – the Committee, therefore, decided to impose a Removal Order. The Committee took into account the Guidance at Paragraphs 4.26 – 4.28. In particular, the Committee paid careful regard to Paragraph 4.26, which states:

*'This is the most serious sanction which a Committee can impose. A Removal Order is likely to be appropriate when the Registrant's behaviour is fundamentally incompatible with being a social care worker. Removal should be used where there is no other way to protect the public, for example, where there is a lack of insight, continuing problems and a pattern of unacceptable behaviour or denial, where there is no evidence that there is likely to be satisfactory remediation and where confidence in the social care profession would be undermined by allowing the Registrant to remain on the Register.'*

The Committee concluded that given the seriousness of the Registrant's criminal convictions, and her lack of insight and remediation of her 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 constituted a very serious departure from the professional standards as set out in the Standards of Conduct and Practice for Social Care Workers. The public was entitled to expect that social care workers will be honest and trustworthy, to be trusted to provide care to the most vulnerable in society. The Committee determined that the Registrant's criminal behaviour, which was a serious abuse of the trust placed in her, identified her as being unfit to be a member of a caring and responsible profession.

The Committee was satisfied that the Registrant's convictions for fraud were so serious that they were fundamentally incompatible with continued registration. Public confidence in the Council, and in social care services, would be undermined if a social care worker who was convicted of such serious offences involving using a service user's bank card on four occasions 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 did take into account the Registrant's previous good work history. However, balancing all of the factors in this case, and after taking into account all of the evidence, the Committee determined that the appropriate and proportionate sanction is that of a Removal Order. Having regard to the effect of the Registrant's

actions in bringing the profession into disrepute by adversely affecting the public's view of how a registered social care worker should conduct herself, the Committee concluded that nothing short of this would be sufficient.

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 Interim Suspension Order which is in place will be revoked.

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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.



13 July 2022

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Committee Clerk

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Date