



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

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**Name:** Emily-Jane Livingstone

**SCR No:** 7017265

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **20 January 2023**, 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 convictions 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, whilst being registered as a social care worker under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted at the Magistrates' Court on 20 July 2022 of the following offences:

1. [You] on a date unknown between the 8<sup>th</sup> day of May 2021 and the 14<sup>th</sup> day of May 2021 stole a purse to the value of £22 or thereabouts belonging to [REDACTED] contrary to Section 1 of the Theft Act (Northern Ireland) 1969.
2. [You] on 9<sup>th</sup> day of May 2021 dishonestly made a false representation, namely, that you were entitled to use a bank card which did not belong to you with the intention, by making the representation, to make a gain for yourself or another or to cause loss to [REDACTED] or to expose [REDACTED] to a risk of loss, in breach of section 2 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.

And your actions as set out above show that your fitness to practise is impaired by reason of your convictions.

## **Procedure:**

The hearing was held under the fitness to practise procedure.

## **Preliminary Matters**

### **Service**

Mr Gilmore told the Committee that the Notice of Hearing and hearing bundle were issued by email on 30 November 2022 to the Registrant's registered email address. An electronic delivery receipt was received on the same date. He said that the Committee Clerk attempted to call the Registrant on 18 January 2023. However, the registered mobile number for the Registrant was no longer valid. When the Clerk called the registered landline number, the person who answered said that it was the wrong number as no one called Emily-Jane lived there.

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 stated that service shall be treated as being effected on the day after the Notice was 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**

Mr Gilmore 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, and lack of engagement with the Council, was a voluntary waiver of her right to attend. He 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 should also be taken into account. She reminded the Committee to avoid reaching any improper conclusion about the Registrant's absence.

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, date 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 some disadvantage to the Registrant in not attending and giving evidence to the Committee, but this was outweighed by the 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.

### **Application to Admit Hearing Bundle**

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

### **Declarations of Conflict of Interest**

The Chair of the Committee advised that none of the Committee Members had a conflict of interest with this case.

### **Background**

Mr Gilmore provided the Committee with a background to the case. He told the Committee that the Registrant was registered on Part 2 of the Register. Mr Gilmore submitted that this matter came to the attention of the Council as a result of an Employer Referral Form ('ERF'), dated 29 April 2022. The ERF stated:

*'[Registrant] was charged in June 2021 of Fraud, Theft... Case is now in Court and outcome pending'*

The ERF also stated:

*'[Registrant] has admitted that the purse of a friend had been left in her car and she knowingly used the card from the purse. Emily-Jane has disclosed that she has submitted a plea of guilty to the charge.*

*Emily-Jane has admitted that this was a stupid, childish mistake.'*

Mr Gilmore told the Committee that the Registrant provided Kingdom Healthcare with a statement, dated 29 April 2022, in which the Registrant said that she had been charged with fraud and theft and that she had pleaded

guilty to this charge in Court. She said that a friend had left her purse in her car and, at that time, she had no money and she used her friend's card to purchase a teddy bear. She said that 'this was a young stupid mistake' and that she wholeheartedly regretted it, and also regretted not informing her employer sooner.

## **Evidence**

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

He 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.

Mr Gilmore asked the Committee to pay careful attention to the certificates of conviction. He submitted that these documents provide evidence that the Registrant pleaded guilty on 08 June 2022 to the offences of Theft and Fraud. On 20 July 2022, she was given a three-month custodial sentence for each offence to run concurrently, suspended for two years. Mr Gilmore submitted that the certificates of conviction were conclusive proof of the facts.

Mr Gilmore referred the Committee to the Council's Offence Proforma completed by the Registrant. Mr Gilmore submitted that in this form, the Registrant did not state that she was not the person referred to in the certificates of conviction, nor did she refer to an appeal. Mr Gilmore told the Committee that when asked about the convictions, the Registrant responded that:

*'It is something I regret deeply I used an ex friends bank card at a store and so I got charged of theft and fraud it happened last year I don't remember the exact time but I was not aware that I was meant to inform anyone at work and sentence imposed was 20/07/2022'*

Mr Gilmore asked the Committee to take into consideration the Case Summary provided by the police, and the transcript of the police interview with the Registrant. He directed the Committee to the admissions made by the Registrant to the police.

Mr Gilmore submitted 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) 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, in the absence of any other evidence, that the Committee was entitled to rely on the certificates of conviction to establish conclusively that the Registrant was convicted of the offence as set out in the Particulars of the Allegation.

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 was more likely than not to have occurred.

The Committee took into account the submissions from Mr Gilmore 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 noted that the convictions had not been appealed, and that the Registrant had not submitted that she was not the person named on the certificates of conviction. The Committee also noted the admissions made by the Registrant to her employer, to the police and to the Council. 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 Mr Gilmore.

Mr Gilmore submitted that the Registrant's actions which led to her convictions called into question her suitability to work in social care services, and to remain on the Register without restriction, or to be registered at all. Mr Gilmore submitted that the Registrant pleaded guilty to fraud and theft offences, and the Council would state that her actions fell far below what is expected of a registered social care worker. He directed the Committee to the Standards of Conduct and Practice (Standard 2: 2:1 and Standard 5: 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.

Mr Gilmore accepted that the Registrant had demonstrated some insight and remorse in her criminal case. He submitted that in the view of the Council, the Registrant has achieved the first stage in remediation as she admitted that what she did was wrong. However, he submitted that her actions have not been fully remediated and she has not engaged with the process today.

Mr Gilmore submitted that there was a risk of repetition, in particular as the Council is concerned that the Registrant during her police interview did not seem to comprehend that what she did was theft. Mr Gilmore told the Committee that the primary concern of the Council is that a vulnerable person in her care could be at risk of theft or financial abuse.

Mr Gilmore 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. He submitted that while the Registrant remains subject to a suspended sentence, 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 Mr Gilmore 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 position with 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 and GMC V Chaudhary [2017] EWHC 2561 (Admin).

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 serious offences constituted the reason for the alleged impairment of fitness to practise. The convictions related to theft of a purse and fraudulently using a bank card that did not belong to her. In the view of the Committee, these serious convictions 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:**

5.8 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 conviction, fell far below the standards which would be expected of a registered social care worker. Whilst the Committee was of the view that dishonesty can be difficult to

remediate, the Committee concluded that the events which led to the conviction could, in some circumstances, be capable of remediation. However, the Committee concluded that the impairment could not be remediated while the Registrant remained subject to a suspended custodial sentence.

The Committee therefore determined that the Registrant had not remediated her impairment. The Committee accepted the submission from Mr Gilmore that the first stage of remediation had been achieved by the Registrant admitting that what she did was wrong. The Committee noted that the Registrant had pleaded guilty and accepted the Court findings. Regarding insight, the Committee noted that there had been no meaningful engagement with the Council. The Committee paid careful regard to the statement that the Registrant made to Kingdom Healthcare, in which she stated that her actions were 'a young stupid mistake'. However, she had not demonstrated any insight into how her actions had affected her victim or social care services generally. The Committee was concerned by the comments made by the Registrant during her police interview, which suggested that she did not comprehend that what she had done was theft. Without insight, remorse or remediation, the Committee considered there to be some 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, and the current suspended sentence.

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

## **Sanction**

In reaching its decision on sanction, the Committee considered the submission from Mr Gilmore on behalf of the Council, and had regard to all of the evidence in the case. Mr Gilmore 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'). He 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 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 includes 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 a previous good work history and, in particular, the Committee noted that no issues had been raised with the Council about her work as a social care worker;
- The Registrant made admissions and pleaded guilty to the charges she faced;
- The offences did not take place in work and did not involve service users; and
- The Registrant displayed a degree of naivety. The fraud offence arose as a result of her using someone else's bank card to buy herself a teddy bear.

The Committee considered the aggravating factors to be:

- The Registrant's offences involve dishonesty;
- The Registrant had demonstrated limited insight;
- There was limited evidence of regret and remorse;



- The Registrant has demonstrated a disregard for the Social Care Council's Standards of Conduct and Practice by failing to be honest and trustworthy; and
- The Registrant is subject to a suspended custodial sentence. The public interest is therefore engaged and the public must have confidence that the Council, as the regulator of social care workers, will uphold proper standards of behaviour and conduct.

Having balanced the aggravating and mitigating factors, and having taken 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 for theft and fraud could not 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, particularly while the Registrant remains subject to a suspended custodial sentence for theft and fraud. 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. In the view of the Committee, social care workers have to be honest and trustworthy. The public must be able to place complete reliance on the integrity of registrants.

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 found that if the Registrant had attended today, or provided written submissions to demonstrate insight or remediation, the Registrant's convictions may well have come within the type of case envisaged at Paragraph 4.19. The Registrant chose not to do so. On the evidence before the Committee, the Registrant did not satisfy the Committee that she would realistically remedy her behaviour during a period of suspension.

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 limited insight and remediation, 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 trusted to provide care to the most vulnerable in society. The Committee determined that the Registrant's criminal behaviour 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 and theft were so serious that she was 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, and subject to a suspended custodial sentence, 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, her guilty plea and the admissions she made to her employer, the police and the Council. 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 was 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.

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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.**

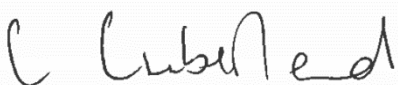
**The effect of this decision is that your entry in the Register has been removed.**

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.



26 January 2023

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Committee Manager

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Date