



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

Name: Katheryn Alexandra Ferreira Martins

SCR No: 7020395

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **Thursday 31 August 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 your misconduct;

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

Particulars of the Allegation:

That, whilst being registered as a Social Care Worker under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), and whilst employed by Connected Health as a Care Assistant, you:	
1.	During a commissioned Connected Health sit on 5 th August 2022 with a vulnerable service user, committed the theft of £80 cash, which you found within the service user's home. In doing so, you caused harm to the vulnerable service user, in the form of financial abuse.
2.	Your actions as set out at 1 above were dishonest.
And your actions, as set out in 1 and 2, show that your fitness to practise is impaired by reason of your misconduct.	

Procedure

The hearing was held under the fitness to practise procedure.

Preliminary Matters

The fitness to practise hearing was held remotely by way of video-link. The Registrant was not in attendance, nor was she represented. 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 26 July 2023. A delivery receipt was received on the same day.

The Committee received legal advice from the Legal Adviser, and he referred the Committee to the requirements as set out in the Northern Ireland Social Care Council's ('the Council') Fitness to Practise (Amendment) Rules 2019 ('the Rules').

The Committee, in all of the circumstances of the case, was satisfied that the Notice of Hearing had been served in accordance with Rule 3 and 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. Ms Owens told the Committee that the Registrant had confirmed by email, on 26 July 2023, that she would not be in attendance at the fitness to practise hearing. On 26 July 2023, the Committee Clerk responded to the Registrant's email, offering her the opportunity to provide a written submission for the Committee to take into consideration when making its determination, but no further communication was received from the Registrant.

In light of the background, Ms Owens invited the Committee to conclude that the Registrant's absence was a voluntary waiver of her right to attend. Ms Owens submitted that, in all of the circumstances, it was fair to proceed with the hearing in the Registrant's absence. She further submitted that proceeding in absence was in the public interest, and also was justified to ensure the timely disposal of the hearing as the Council intended to call a number of witnesses in relation to the matters set out in the Allegation.

The Committee was mindful that the discretion to proceed in the absence of the Registrant should only be exercised with the utmost care and caution. In considering the application, the Committee sought to satisfy itself that all reasonable efforts had been made to notify the Registrant of the hearing, and accepted the advice of the Legal Adviser. He referred the Committee to the cases of R v Jones and GMC v Adeogba. He reminded the Committee that in exercising its discretion to proceed in the Registrant's absence, it must have regard to all of the circumstances, with fairness to the Registrant being of prime consideration, although fairness to the Council and the public interest must also be taken into account. He reminded the Committee to avoid reaching any improper conclusion about the Registrant's absence, and not to accept it as an admission in any way.

Having regard to the contents of the Registrant's email dated 26 July 2023, and the fact that she had not corresponded further with the Council in relation to the invitation to provide written submissions, the Committee was satisfied that the Registrant had voluntarily waived her right to attend the hearing. There was no reason to suppose that an adjournment of the hearing would secure the Registrant's attendance at a later date. Accordingly, the Committee was satisfied that the Registrant, with notice of the hearing, had voluntarily waived her right to attend. In addition, the Committee noted the serious nature of the allegation faced by the Registrant

and that the Council intended to call witnesses in support of its case. The Committee considered that it was important to conclude the case while the memories of witnesses were still fresh and, given the seriousness of the allegation, the public interest was also strongly engaged.

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

Declarations of Conflict of Interest

The Chair confirmed with the Committee that none of the Members had any conflict of interest with this case.

Application to Admit Hearing Bundle

The Committee admitted the hearing bundle into evidence, and marked it as 'Exhibit 1'.

Background

The Registrant is registered on Part 2 of the Register as a domiciliary care worker. The Registrant commenced work as a care assistant for Connected Health on 05 February 2022.

This matter was first brought to the Council's attention by way of an Employer Referral Form ('ERF') from Connected Health, dated 05 August 2022. The ERF stated that the Registrant had been suspended from her role on 05 August 2022, following allegations of theft of money from a vulnerable service user's home on three separate occasions, namely: 15 July 2022, 22 July 2022 and 05 August 2022. The service user's daughter alleged that £80 to pay a private cleaner had been left in an envelope inside a diary on each of the dates above, and went missing each time the Registrant was providing care in her capacity as a care assistant at her mother's home. The service user's daughter alleged that on 05 August 2022, she confronted the Registrant, who denied taking money, but after checking the Registrant's bag she found the £80 which the service user's daughter had left in the diary a short time beforehand. The ERF recorded that the service user's daughter had alleged that the Registrant admitted her actions in relation to the theft which had occurred on 05 August 2022, but had denied taking money on the other occasions.

The referral was investigated by the Council, which in turn resulted in the proceedings before the Committee.

Evidence

The Committee received into evidence Exhibit 1 and heard oral evidence from Witness 1, who was Regional Manager for Connected Health at the material time, and Witness 2, who was Operations and Safeguarding Team Lead for Connected Health at the material time.

Witness 1 gave evidence to the Committee in relation to her actions which resulted in the Registrant's precautionary suspension from her employment following the allegation being made to Connected Health on 05 August 2022 by the service user's daughter. Witness 1 confirmed that she was not involved in the investigation of the referral.

Witness 2 gave evidence to the Committee in relation to the investigation undertaken by Connected Health following receipt of the referral from the service user's daughter on 05 August 2022. Witness 2 was the investigating officer. She told the Committee that she chaired an investigation meeting on 18 October 2022, at which the Registrant was in attendance. The notes of the meeting were contained in the hearing bundle.

Application to Admit Hearsay Evidence

Prior to closing the case on behalf of the Council, Ms Owens applied for the admission of a document as hearsay evidence. The document in question, entitled 'Katheryn's Statement', purported to be a statement made by the Registrant on 05 August 2022 which dealt with the allegation that, on that date, she had stolen £80 from the service user in question. The author of the document was not available to be called as a witness at the hearing.

Ms Owens submitted that the document ought to be admitted as hearsay evidence. Ms Owens submitted that this document was not the sole piece of evidence in support of the allegation against the Registrant, but was necessary for proper consideration by the Committee and should be admitted into evidence by way of hearsay. It was plainly relevant, in Ms Owens' submission. The hearing bundle which contained the document had been served on the Registrant in good time in advance of the hearing, and the Registrant had made no objection to the contents.

The Committee heard and accepted advice from the Legal Adviser. In the course of that advice, the Legal Adviser referred the Committee to the case of Thorneycroft v NMC.

Having carefully considered the application, the Committee decided to admit the aforementioned document in accordance with Paragraph 12 (1) (a) and (b) of Schedule 2 of the Rules. In admitting the document as hearsay evidence, the Committee noted that this was not the only evidence in respect of the allegation. Witness 2, in her evidence to the Committee, had confirmed that the statement made by the Registrant on 05 August 2022 had been given to Witness 2 by the Registrant on the same date. At the investigatory meeting, which took place on 18 October 2022, the Registrant confirmed that she had made a statement on 05 August 2022. At the hearing, Witness 2 confirmed that the statement which was the subject of the hearsay application was the same statement as that given to her by the Registrant on 05 August 2022, and confirmed as her statement at the investigatory meeting on 18 October 2022. As such, the hearsay evidence was not sole and decisive and was supported by other evidence, both oral and documentary, which was presented at the hearing. The Registrant had been provided with a hearing bundle in good time prior to the hearing, and had raised no objection to its contents. The hearsay evidence was relevant to the Allegation and, having carefully considered the matter, the Committee could identify no unfairness to the Registrant by admitting the evidence at the hearing.

Accordingly, the Committee granted Ms Owens' application to admit the hearsay document, and marked it as Exhibit 2.

Finding of Facts

The Committee carefully considered the available oral and documentary evidence. The Committee accepted the Legal Adviser's advice at the fact-finding stage of the proceedings.

The Committee then turned to consider the allegation.

Particular 1: During a commissioned Connected Health sit on 5th August 2022 with a vulnerable service user, committed the theft of £80 cash, which you found within the service user's home. In doing so, you caused harm to the vulnerable service user, in the form of financial abuse.

The Committee considered the evidence given by Witness 2, who conducted the investigatory meeting with the Registrant, on 18 October 2022. Witness 2's evidence was that the Registrant had confirmed that she had made a statement about the matter on 05 August 2022, in which she admitted the theft of £80 from the service user on the same date. Witness 2 prepared a summary of the meeting, which was contained in the hearing bundle, and recorded the Registrant's explanation for her actions on the date in question. The summary contained an admission by the Registrant, which was in accordance with Particular 1. Witness 2's oral evidence was consistent with the documentary evidence presented at the hearing.

The Committee also had regard to Exhibit 2, which contained an admission by the Registrant that she had taken £80 belonging to the service user on the date in question. Accordingly, the Committee was satisfied that on 05 August 2022, in the course of her duties, the Registrant stole £80 in cash from the service user.

The Committee had regard to the joint protocol investigation report contained in the hearing bundle, in which it is stated:

'Financial abuse is defined in the Trust Adult Safeguarding Policy as, 'actual or attempted theft, fraud or burglary. It is the misappropriation or misuse of money, property, benefits, material goods or other asset transactions which the person did not or could not consent to, or which were invalidated by intimidation, coercion or deception. This may include exploitation, embezzlement, withholding pension or benefits or pressure exerted around wills, property or inheritance. In this case, financial abuse has been confirmed due to the care worker's admission of theft of £80.00 from [the service user's] home.'

On the balance of probability, in this case, it can be confirmed that harm has occurred due to the care worker's admission of her theft of the amount of £80.00, whilst caring for [the service user] in her own home.'

The Committee placed weight on the joint protocol investigation report to establish that the Registrant's actions, in stealing cash from the service user, had caused harm in the form of financial abuse.

For these reasons, the Committee found Particular 1 proved.

Particular 2: Your actions as set out at 1 above were dishonest.

The Committee considered the oral and documentary evidence given by Witness 2, together with the contents of Exhibit 2. The Registrant admitted taking money from the service user to which she was not entitled. She

explained that she gave it back to the service user's daughter, having been 'confronted' by the service user's daughter that she had stolen the money. The money had been found in the Registrant's bag prior to it being handed back. The Committee was satisfied that the Registrant's actions would be considered dishonest by the standards of ordinary, decent people.

For these reasons, the Committee found Particular 2 proved.

Fitness to Practise

The Committee heard submissions from Ms Owens. She referred the Committee to Paragraph 24 (3) of Schedule 2 of the Rules. She submitted, on the evidence, that the Registrant's fitness to practise was impaired by reason of her misconduct.

The Committee heard and accepted the advice of the Legal Adviser. He referred the Committee to Paragraph 24 of Schedule 2 of the Rules and the requirements as set out in the case of GMC v Cohen. He directed the Committee to the findings of Dame Janet Smith in her 5th report to the Shipman Inquiry and her guidance on the causes of impairment. He also referred the Committee to the cases of GMC v Roylance and CHRE v Grant.

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 the Committee shall 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 first considered whether the facts found proved amounted to misconduct. The Registrant was found to have stolen, from a vulnerable service user in her care, the sum of £80.

In the judgement of the Committee, the Registrant's actions were deplorable and represented a significant falling short of what the public expect of a registered social care worker. The Committee decided that the Registrant's actions, which were serious, amounted to misconduct.

The Registrant has breached the following Standards:

Standard 2: As a social care worker, you must strive to establish and maintain the trust and confidence of service users and carers. This includes:

2.1 Being honest and trustworthy.

Standard 5: As a social care worker, you must uphold public trust and confidence in social care services. In particular you must not:

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

The Committee first considered whether the Registrant's misconduct was capable of remedy. The Committee noted that a finding of dishonesty raised an attitudinal issue on the Registrant's part. However, in principle, with full insight and evidence of remediation, the Committee accepted that the Registrant's misconduct, although difficult to remedy, was capable of remedy.

The Committee next considered whether the Registrant's misconduct had, in fact, been remedied. The Registrant had been found by the Committee to have stolen money from a vulnerable service user, and had acted dishonestly in doing so. The Committee found that the Registrant's misconduct arose as a direct result of her duties. Her employment in the social care sector gave her privileged access to the service user from whom she stole the money in question. In acting in this manner, which she accepted doing, the Registrant abused the trust placed in her by the public and caused harm to the service user in question. There was some limited evidence in the notes of the investigatory meeting conducted with the Registrant on 18 October 2022 that the Registrant accepted the seriousness of her actions. However, given her lack of engagement with these proceedings, it was difficult for the Committee to discern whether the Registrant's remorse related to the consequences of her actions on the service user and in the public interest generally, or whether it was self-focused having been caught 'red handed' in the theft of money from someone she was charged with looking after. After careful consideration, the Committee decided that there was, at best, only very limited insight shown by the Registrant in relation to her misconduct. Further, the Registrant had not placed before the Committee evidence of reflection or remediation. Accordingly, the Committee considered that if similar circumstances presented themselves in the future, there was a high likelihood that the Registrant would repeat her misconduct.

For these reasons, the Committee decided that a finding of impairment of the Registrant's fitness to practise was required to protect the public.

The Committee next considered whether a finding of impairment of the Registrant's fitness to practise was required on public interest grounds. In that regard, the Committee reminded itself that the public interest included the need to protect service users, but also comprised broader concepts such as the need to declare and uphold proper standards and the need to maintain the reputation of the social care workforce. The Registrant's misconduct, her lack of insight and the absence of remediation, was of the utmost seriousness. The Committee concluded that a failure by the Committee to make a finding of impairment on public interest grounds would fail to declare and uphold proper standards. Further, such a failure to make a finding of impairment on public interest grounds would undermine the public's trust and confidence in the social care workforce.

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

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

Accordingly, the Committee decided that the Registrant's fitness to practise is currently impaired by reason of her misconduct on public protection and public interest grounds.

Sanction

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

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

The Committee carefully considered all of the available documentary evidence, together with Ms Owens' submissions and the oral evidence from Witnesses 1 and 2. It also had careful regard to the Guidance.

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

The Committee considered the following to be mitigating factors:

- Previous clear history.

The Committee considered the following to be aggravating factors:

- Abuse of trust;
- Premeditated action;

- Lack of insight;
- Lack of regret;
- Dishonesty;
- Harm to service user; and
- Misconduct committed at work in the discharge of her duties in a social care setting.

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

Warning – The Committee considered the issue of a Warning in this case. The Committee considered that the Registrant's misconduct demonstrated a serious disregard for the Standards expected of a registered social care worker. The Registrant's impairment of fitness to practise was not at the lower end of the spectrum in relation to her theft of money from a vulnerable service user. In addition, the circumstances were not 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 noted that there was no evidence before it as regards the Registrant's remorse or insight into her behaviour and its impact on the service user. Therefore, a Warning would not be appropriate or proportionate to the serious misconduct identified in this case.

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 has demonstrated only very limited insight into her misconduct. There was no expression of remorse, nor evidence that the Registrant had taken any steps to remediate her misconduct. The Committee had no evidence as regards the Registrant's current employment but considered, in any event, that when dealing with an attitudinal issue such as dishonesty it would be very difficult to devise conditions which would be workable and that would adequately protect the public. Therefore, the Committee 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 serious misconduct and adequately protect the public.

Suspension Order – The Committee next considered a Suspension Order. In considering this, the Committee took into account the Guidance at Paragraph 4.19 and 4.20.

The Committee considered that the Registrant's serious misconduct represented behaviour that was fundamentally incompatible with continued registration as a social care worker. The Committee, in the particular

circumstances of this matter, had no evidence that demonstrated that the Registrant had remedied her misconduct or would do so in the future. There was no evidence of remediation, and the Committee had identified a high risk of repetition. The Committee, therefore, determined that a Suspension Order would not adequately protect the public and uphold the public interest.

Removal Order – The Committee next considered a Removal Order. In considering this, the Committee took into account the Guidance as follows:

4.26 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.

5.10 The Standards state that social care workers must be honest and trustworthy (Standard of Conduct 2.1) and must recognise and use responsibly the power that comes from their work with people who use services and their carers (Standard of Conduct 3.7).

The Committee concluded that given the very serious nature of the Registrant's misconduct and her lack of insight and remediation, a Removal Order was the only sufficient and proportionate sanction. The Committee determined that the Registrant's behaviour was fundamentally incompatible with being a registered social care worker. The Registrant's misconduct took place in her role as a social care worker, and there was evidence that her actions had caused harm to a vulnerable service user. The Committee found the Registrant's misconduct, involving theft from a vulnerable service user, to be at the most serious end of the spectrum. The Registrant abused the trust and confidence placed in her by the public, and acted in a seriously reprehensible manner by stealing money from a vulnerable service user she was charged with looking after. In all of the circumstances, the Committee concluded that a Removal Order was the only sanction available to it to protect the public, to meet the public interest and to mark the seriousness and unacceptability of the Registrant's misconduct. The Committee considered the potential impact of a Removal Order on the Registrant, but concluded that the protection of service users and the wider public interest in the system of regulation outweighed the impact on the Registrant.

The Committee concluded that a Removal Order was a suitable, appropriate, and proportionate sanction which will be imposed on the Registrant's registration with immediate effect, and that the Interim Suspension Order currently in place should be revoked.

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.



Committee Clerk

05 September 2023

Date