

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

Name: Emma Jane Devine

SCR No: 7010086

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **29 January 2024**, 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 conviction;

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 07 July 2023 of the following offence:

1. [You] on 26/10/2022 stole MONEY to the value of £200.00 belonging to [NAME REDACTED] contrary to Section 1 of the Theft Act (Northern Ireland) 1969

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

Procedure

The hearing was held under the fitness to practise procedure.

Preliminary Issues

The hearing was held remotely by video-link. The Registrant was neither present, nor represented. The Council was represented by Mr Anthony Gilmore, Solicitor, Directorate of Legal Services.

Declarations of Conflict of Interest

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

Service

The Notice of Hearing and hearing bundle were sent to the Registrant's registered email address on 18 December 2023. An electronic proof of delivery receipt was received on the same date.

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') and, in particular, Rule 3 which states that proof of service shall be treated as being effected on the day after it was properly sent.

The Committee, in all of the circumstances of the case, was satisfied that the Notice of Hearing had been served in accordance with Rule 3 and 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 was a voluntary waiver of her right to attend. He outlined to the Committee that on 22 January 2024, the Committee Clerk had attempted to call the Registrant and left a voicemail message asking her to confirm if she would be in attendance at the hearing. There was no contact from the Registrant in response to the email or the telephone call. In light of this information, Mr Gilmore submitted that, in all of the circumstances, it was fair to proceed with the hearing in her absence. He further submitted that proceeding in absence was in the public interest, and also was justified to ensure the timely 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. He referred the Committee to the cases of R v Jones and GMC v Adeogba. He reminded the Committee that in exercising its discretion to proceed in the Registrant's absence, it must have regard to all of the circumstances, with fairness to the Registrant being of prime consideration, although fairness to the Council and the public interest must also be taken into account. He reminded the Committee to avoid reaching any improper conclusion about the Registrant's absence, and not to accept it as an admission in any way.

The Committee noted the attempted telephone call by the Committee Clerk to the Registrant on 22 January 2024. The Committee further noted that a voicemail was left for the Registrant but that no response was received. 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 allegations faced by the Registrant, and concluded that the public interest was strongly engaged in this case.

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

Application to Admit Hearing Bundle

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

Background

At the material time, the Registrant was employed as a care worker by Bryson Care until 26 October 2022, when she was suspended from her employment. The Council received an Employer Referral Form ('ERF') from the Registrant's employer, dated 31 October 2022, which stated as follows:

'Manager on call on 26/10/2022 received a telephone call from PSNI at 18.36 informing her that a investigation was taking place into a carer (Named above) of a theft of money from a service user home.

The Manager on call on 26/10/2022 also received a telephone call from the daughter of a service user at 19.30 stating that money had been stolen from her dads house and that they have video evidence, the daughter had named the above carer.

The Manager on call on 26/10/2022 received a telpehone call from PSNI at 20.54 confirming that the carer had been arrested and was on street bail to attend the policed station at a later date. The police officer admitted that he had seen the video evidence.

Carer was suspended straight away.

Investigtion taking place within Bryson Care' [sic]

The Registrant was bailed and further attended the police station on 13 April 2023 for interview, and admitted to the theft of £200 from the service user after being shown the CCTV evidence from inside the service user's home.

The Registrant was subsequently prosecuted and convicted of one count of theft, and the Certificate of Conviction was contained in the hearing bundle.

Evidence and Submissions

Mr Gilmore directed the Committee to the evidence contained within the hearing bundle and, in particular, the Certificate of Conviction. He submitted that the Council sought to rely on the Certificate as proof that the Registrant had been convicted of the offence that was set out in the Allegation. Mr Gilmore submitted that the Certificate proves that, on 07 July 2023, the Registrant pleaded guilty to the offence. The Court imposed a monetary penalty of £200 and an offender levy of £15, to be paid by 05 January 2024. She was also required to pay £200 in compensation.

Mr Gilmore directed the Committee to the Case Summary and interview records disclosed by the PSNI. Mr Gilmore submitted that this evidence was important as it confirmed that this offence occurred in the course of the Registrant's employment as a social care worker. The Committee heard that, when questioned by the police, the Registrant declined to make any comment on the matter, and only made full admissions to the theft after being shown CCTV evidence from inside the service user's home.

Mr Gilmore submitted that the Certificate of Conviction was conclusive proof of the facts, and that the Council had discharged the burden of proof in establishing the facts in this case.

Findings of Fact

The Committee took into account the submissions made on behalf of the Council, and heard and accepted advice from the Legal Adviser. In accordance with Paragraph 13 of Schedule 2 of the Rules, the burden of proving the facts set out in the Allegation rested upon the Council. In addition, Paragraph 12 of Schedule 2 of the Rules specifies the approach which the Committee should take when considering the Allegation. The Committee was advised that the Certificate of Conviction should be treated as conclusive proof of the conviction and the facts underlying the conviction. The Registrant could rebut that presumption only where she could show that she was not the person named on the face of the Certificate, or that she had successfully appealed her convictions to a Court of competent jurisdiction.

The Committee then considered the Allegation.

Particular 1: [You] on 26/10/2022 stole MONEY to the value of £200.00 belonging to [NAME REDACTED] contrary to Section 1 of the Theft Act (Northern Ireland) 1969

Applying the provisions of Paragraph 12 of Schedule 2 of the Rules, the Committee was satisfied that the Certificate of Conviction presented by the Council in respect of the Registrant was such as to prove conclusively that she had been convicted as set out. The Registrant did not present any evidence to rebut that conclusion.

Fitness to Practise

Mr Gilmore made a submission to the Committee on the question of the Registrant's current fitness to practise. Mr Gilmore submitted that the Registrant's actions, which led to her criminal conviction, 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's actions constituted serious wrongdoing on her part. He referred the Committee to breaches of the Standards of Conduct and Practice for Social Care Workers ('the Standards') by the Registrant as follows: 1, 1.2, 5, 5.1, and 5.8.

The Committee heard and accepted the Legal Adviser's advice. The Committee was told that the question of whether the Registrant's actions, as evidenced by the Certificate of Conviction, was such as to entitle the

Committee to find that the Registrant's fitness to practise was currently impaired, was a matter for the independent judgement of the Committee.

The Legal Adviser also referred the Committee to the case of Meadow v GMC. The Committee was reminded that its approach was set out at Paragraph 24 (3) of Schedule 2 of the Rules when deciding upon the issue of current impairment of fitness to practise:

- (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.

When considering the Registrant's actions, by reason of her conviction, the Committee was satisfied that she had breached the following Standards:

Standard 1: As a social care worker, you must protect the rights and promote the interests and wellbeing of service users and carers. This includes:

1.2 Treating people with consideration, respect and compassion.

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; 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 actions were capable of remedy. To the Committee's mind, such behaviour could be remedied but it would be a very difficult task. The Registrant had stolen money from a vulnerable service user while she cared for them in their own home. In this instance, the Registrant had provided no evidence of insight, remorse or any steps taken by her to remedy her wrongdoing. As such, the Committee considered that there was a high likelihood that the Registrant would repeat the behaviour giving rise to the conviction.

The Committee had regard to the formulation provided by Dame Janet Smith in her 5th report to the Shipman Inquiry (cited with approval by Cox J in Grant), 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.

For these reasons, the Committee was satisfied that a finding of current impairment of the Registrant's fitness to practise was required for public protection reasons.

The Committee also considered the public interest, which included the need to declare and uphold the proper standards of conduct and behaviour, and to maintain the reputation of the social care profession and the Council in its regulatory function. The Committee was satisfied that a failure to make a finding of current impairment of fitness to practise on public interest grounds would undermine the public's trust and confidence in the social care profession, and would fail to declare and uphold proper standards of conduct and behaviour.

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

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

Sanction

The Committee heard a submission from Mr Gilmore on the question of what, if any, sanction to impose. The Committee was informed that the Registrant had no previous regulatory findings against her.

The Committee heard and accepted the Legal Adviser's advice. He set out the range of available sanctions which were provided for by Paragraph 26 of Schedule 2 of the Rules. In summary, the Committee could impose no sanction, warn the Registrant for a period of up to five years, make a Conditions of Practice Order not to exceed three years, make a Suspension Order not to exceed two years or make a Removal Order.

The Committee was reminded that the purpose of a sanction was not to be punitive, although a sanction may have a punitive effect. Instead, in its consideration of a sanction, the Committee should have at the forefront of its mind the need to protect the public and the public interest. The Legal Adviser also reminded the Committee that it should act proportionately, and that any measure taken to limit the fundamental right of the Registrant to practise in the social care setting should be no more than what was necessary in the public interest.

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

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

The Committee considered the mitigating factors to be as follows:

- The Registrant's admission, albeit only after sight of the CCTV evidence;
- She had no previous disciplinary record; and
- It was a single offence.

The Committee considered the aggravating factors to be as follows:

- The actions giving rise to the conviction included dishonesty;
- An abuse of trust of a vulnerable service user and the public;
- It was a premeditated act;
- Lack of insight, remorse and remediation;
- It happened at work; and
- The risk of repetition remained.

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

No Sanction – having regard to its findings, the Committee considered that to conclude this matter and to take no further action would be a wholly inadequate response, and would fail to protect the public and uphold the public interest.

Warning – for similar reasons as those advanced under 'No Sanction', the Committee concluded that to issue the Registrant with a warning would fail to protect the public and uphold the public interest.

Conditions of Practice Order – the Committee had no evidence as to the Registrant's current employment and was not aware as to whether an employer would co-operate with the imposition of conditions. In any event, the Committee concluded that a Conditions of Practice Order was insufficient to protect the public and uphold the public interest. The wrongdoing was too serious for such a disposal, in the Committee's view.

Suspension Order – the Committee gave careful consideration to this sanction. However, the Committee noted that the Registrant had failed to engage with the regulatory proceedings against her and had not shown insight or remorse for her actions. The Registrant had engaged in deplorable behaviour towards a vulnerable service user. The Registrant abused her privileged position as a social care worker for her financial gain. She made admissions to police only after seeing the CCTV evidence. As such, the Committee concluded that the Registrant's behaviour, combined with her lack of insight and remediation, was fundamentally incompatible with her remaining on the Social Care Register.

Removal Order – As a result, the Committee decided that the only appropriate and proportionate sanction to impose, with immediate effect, was to make a Removal Order in respect of the Registrant's registration. In

addition, the Committee decided, with immediate effect, to revoke the Interim Suspension Order, to which the Registrant has been subject until this hearing.

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.



Hearings Officer
(Clerk to the Fitness to Practise Committee)

31 January 2024

Date