



Notice of Decision of the Northern Ireland Social Care Council's Conduct Committee

Name: Rosemary Margaret McCrory

SCR No: 2015758

NOTICE IS HEREBY GIVEN THAT the Conduct Committee of the Northern Ireland Social Care Council, at its meeting on **04 September 2014**, made the following decision about your registration with the Northern Ireland Social Care Council:

The Committee found the facts proved;

The Committee found that you have committed misconduct;

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

Charge:

That, being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended):

1. On 23 September 2013, you pleaded guilty and were convicted on 21 October 2013, at Newtownards Magistrates' Court of:

- (i) Defendant on dates unknown between the 12th day of October 2012 and the 11th day of January 2013 in the County Court Division of ARDS, whilst occupying a position in which you were expected to safeguard, or not to act against, the financial interests of the tenants of Triangle Housing Association dishonestly abused that position in that you stole money, with the intention, by means of the abuse of that position to make a gain for yourself or another or to cause loss to the tenants of Triangle Housing Association or to expose the tenants of Triangle Housing Association to a risk of a loss, in breach of Section 4 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.

And your actions as set out above amount to Misconduct, such as to call into question your suitability to remain on the Social Care Register.

Preliminary Matters

Service

The Registrant was neither present nor represented at this hearing. In a Notice of Hearing dated 06 August 2014, sent by Special Delivery and addressed to the Registrant at her address as it appears on the Register, the NISCC notified her of the day, time and venue for this hearing. The Notice was signed for on 07 August 2014. The Committee is satisfied that the Notice has been served in accordance with Rule 3 of Part 1 and Paragraph 4 of Schedule 2 of the NISCC (Conduct) Rules 2014.

Proceeding in the Absence of the Registrant

An application was made to proceed in the absence of the Registrant under Paragraph 14 of Schedule 2 of the 2014 Rules. The Committee received legal advice from the Legal Adviser on the question of whether to proceed in the Registrant's absence. The Committee has considered the factors identified by the Courts in the case of *R v Jones* [2003] 1 AC 1 and has accepted the advice given by the Legal Adviser. The Committee is aware that the discretion to proceed in the absence of a Registrant is one which should be exercised with the utmost care and caution, that the crucial question is whether the Registrant has voluntarily waived her right to be present or represented at these proceedings, and that it must strike a careful balance between fairness to the Registrant, to the NISCC and the wider public interest.

The Committee notes that the Registrant has not engaged with the Council since service of the Notice of Hearing. Mr Wilson submitted that the Registrant, with knowledge of the hearing, has voluntarily absented herself. He indicated there has been no request by the Registrant for an adjournment of this matter and it is in the public interest for the issues to be dealt with as expeditiously as possible.

The Committee has decided that the Registrant, with full knowledge of these proceedings, has voluntarily waived her right to be present, and notes that there is nothing to indicate that she would be more likely to attend at a future hearing if the matter was adjourned today. The Committee must strike a careful balance between fairness to the Registrant, the NISCC and the wider public interest. In the circumstances of this case, the Committee has decided that the balance of fairness is in favour of proceeding in the Registrant's absence.

Background

The Registrant is a Service Manager with Triangle Housing Association Limited. On 23 September 2013 she pleaded guilty at Newtownards Magistrates' Court of Fraud by Abuse of Position.

Evidence

Mr Wilson provided the Committee with a copy of the certificate of conviction in relation to this Registrant. This confirmed that the Registrant pleaded guilty to the Charge, as set out below, on 23 September 2013 and was convicted at Newtownards Magistrates' Court on 21 October 2013.

Defendant on dates unknown between the 12th day of October 2012 and the 11th day of January 2013 in the County Court Division of ARDS, whilst occupying a position in which you were expected to safeguard, or not to act against, the financial interests of the tenants of Triangle Housing Association dishonestly abused that position in that you stole money, with the intention, by means of the abuse of that position to make a gain for yourself or another or to cause loss to the tenants of Triangle Housing Association or to expose the tenants of Triangle Housing Association to a risk of a loss, in breach of Section 4 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006.

Finding of Facts

The Committee carefully considered the certificate of conviction dated 09 January 2014 and noted that the Registrant pleaded guilty to the Charge as set out above and received a sentence of imprisonment for five months, which was suspended for two years. In addition she was fined an amount of £400 with an Offender Levy of £15.

Based on the evidence presented, the Committee is satisfied that the facts stated in the Charge have been proven on the balance of probabilities. The Committee notes that the Registrant pleaded guilty to the Charge. The certificate of conviction presented in accordance with Paragraph 11 (5) of the 2014 Rules is conclusive proof of the facts therein. The Committee further notes that this offence includes an element of dishonesty.

Misconduct

Having found the facts proved, the Committee proceeded to consider the issue of misconduct. The Committee heard a submission from Mr Wilson, during which he referred the Committee to the NISCC Codes of Practice for Social Care Workers at Code 2 – 2.1 and Code 5 – 5.1, 5.2, 5.3 and 5.8. Mr Wilson, to assist the Committee, submitted a document described as minutes of a meeting between the Registrant and her employer, which took place on 27 June 2013. Mr Wilson indicated that the contents of this document would provide background information in relation to the circumstances of the Charge.

The Committee considered this document and in accordance with Paragraph 11 of Schedule 2 of the 2014 Rules admitted the document in evidence. The Committee noted that this document had been served on the Registrant on 19 August 2014 by way of recorded delivery post, with service being effected on 20 August 2014. The Committee considered that this evidence was relevant to the Charge and it would not be unfair to the Registrant if it were admitted.

The documentation presented confirmed that the Registrant, who is registered at Part 2 of the Register, was employed by Triangle Housing Association Limited (Triangle Housing) as a Service Manager at Sandown Road and Rochester Court, Belfast. Part of her role was to protect the monies of tenants of Triangle Housing, described as vulnerable adults, by implementing proper procedures and ensuring staff followed these procedures. The Registrant commenced employment with Triangle Housing in June 2010 and was dismissed on 30 July 2013. The Registrant's duties included explaining financial transactions to Triangle Housing tenants,

based on their level of understanding, and advising them on how to spend their money. The Registrant was tasked with lodging tenants' monies and assisting in the payment of invoices. The circumstances of the Charge arose when the Registrant withdrew tenants' monies for the purpose of payment of invoices to Triangle Housing. The Registrant, on various occasions between 12 October 2012 and 11 January 2013, failed to lodge monies she had withdrawn from various tenants' bank accounts for the purpose of payment of invoices to Triangle Housing. Subsequent to an audit carried out by Triangle Housing, discrepancies were discovered as regards the non-payment of these invoices and after investigation, the Registrant admitted she had stolen the money. Mr Wilson advised the Committee that full re-payment of these amounts had been made by the Registrant.

Mr Wilson submitted to the Committee that honesty is a key requirement for anyone working with vulnerable people and the Registrant's actions had caused harm, or the risk of harm, to the tenants for whom she was responsible. He indicated that although the Registrant had maintained an admission to the charges throughout the process of the investigation and expressed remorse, her actions constituted serious misconduct.

The Committee also heard and accepted the advice of the Legal Adviser.

The Committee reminded itself that misconduct is defined in the NISCC (Conduct) Rules 2014 as '*conduct which calls into question the Registrant's suitability to remain on the Register*'. The Committee also derived assistance from the definition of misconduct recited in *Roylance v the GMC (No.2) [2000] 1 AC 311 at 330*. In that case, the Privy Council said that '*misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances...it is not any professional misconduct which would qualify. The professional misconduct must be serious.*'

The Committee reminded itself of the requirements of Paragraph 12 (1) of Schedule 2 of the Rules. The Council has brought these proceedings against the Registrant and the burden rests upon them to prove that the Registrant has acted in a manner which amounts to misconduct.

The Committee gave careful consideration to Mr Wilson's submission and the documentary evidence presented to it, by way of the certificate of conviction and the minutes from the investigation meeting on 27 June 2013. The Committee first considered whether the facts as proved in the Charge amounted to misconduct. The Committee consider that the Registrant's actions constituted a serious breach of the trust placed in her by both the Housing Association's tenants and her employer. The Committee found the Registrant's theft of money from vulnerable service users constituted serious misconduct.

The Committee find that the Registrant's actions were in breach of the following provisions of the NISCC Codes of Practice:

Code 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;

2.4 Being reliable and dependable;

Code 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;

5.3 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;

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 had no evidence as to the impact of the Registrant's action on Triangle Housing tenants, however it took the view that the Registrant was working in a position of trust and that her actions constituted both an abuse of this trust and her position and that she behaved in a manner that is totally incompatible of the caring role she was expected to perform. This Registrant was responsible for the monies of vulnerable adults and her actions evidenced serious dishonesty on her behalf.

Sanction

In deciding what sanction to impose, the Committee has taken into account:

- a. The seriousness of the Registrant's misconduct;
- b. The protection of the public;
- c. The public interest in maintaining confidence in social care services; and
- d. The issue of proportionality.

The Committee has had regard to the principle of proportionality, and the need to strike a careful balance between the interests of the Registrant, protection of the public and the public interest in maintaining confidence in social care services. The Committee has given due consideration to the NISCC Indicative Sanctions Guidance and has accepted the advice of the Legal Adviser.

The Committee was advised that the Registrant has no previous disciplinary record with the Council. In addition, the Committee has not been provided with any references or testimonials as regards the Registrant. The Committee had no evidence of the potential financial effect of any sanction on the Registrant. The Committee heard a submission from Mr Wilson, who referred it to the NISCC Indicative Sanctions Guidance. He further submitted that the Registrant's actions were of the 'utmost seriousness' and that both the Committee's findings of fact, and the Criminal Court's findings, support the serious nature of the Registrant's breach of trust. He indicated that service users must be able to trust social care workers, especially where they are vulnerable and require assistance with their financial affairs. He submitted that the Registrant's actions exposed service users to risk of harm and damaged the trust of the public in the social care profession.

The Committee is mindful that the purpose of sanction is not punitive. Sanctions are imposed to the extent that it is necessary to protect the public. Other relevant factors include maintaining public confidence in the profession, maintaining confidence in the NISCC regulatory process and the deterrent effect on other Registrants. In order to ensure that no more severe sanction is imposed than is required by these demands, the available sanctions in Paragraph 25 of Schedule 2 were considered in ascending order of gravity as follows:

Admonishment – the Committee first considered whether it was appropriate to admonish the Registrant. The Committee noted the Registrant's previous good history and her employment in the social care profession from 1996 through to 2013. In addition the Committee took account of the Registrant's early admission of her actions and her cooperation with her employer's investigation. The Committee further note the Registrant's expression of regret and her plea of guilty to the criminal charge in 2013. However, the Committee note the Registrant's actions took place within the workplace, and involved a serious abuse of trust. The Registrant dishonestly appropriated a large amount of service users' monies over a prolonged period of time and concealed her actions. In addition, the Registrant appeared to have limited insight of the effect of her actions on both Triangle Housing Association tenants and her employer. Therefore the Committee considers there remains a risk that the Registrant's behaviour would be repeated and admonishment is not appropriate and would not protect service users or the public.

Suspension – the Committee did not think that Suspension was a fair or proportionate sanction to impose in all the circumstances of this case. The Committee had no evidence to show that the Registrant had either resolved or remedied the cause of her misconduct. In addition the Registrant made no submission to the Committee regarding these events. Therefore the Committee had no evidence to convince them that the Registrant's behaviour would not be repeated in the future. Although the Registrant expressed remorse for her actions and repaid the monies stolen, the Committee consider this to be serious behaviour that is fundamentally incompatible with continuing to be a registered social care worker in the long term.

Removal – the Committee next considered whether it was appropriate to make an Order removing the Registrant from the Social Care Register. The Committee found the Registrant's actions in dishonestly appropriating vulnerable service users' monies to be a serious abuse of her position of trust. In addition, the Registrant had responsibility to supervise other employees when handling tenants' monies and her own dishonest actions in this regard were therefore particularly serious and of concern to the Committee. The Codes of Practice clearly state that social care workers must be honest and trustworthy and the public have the right to rely on their personal integrity, especially when dealing with the care of vulnerable service users. Therefore dishonesty is particularly serious because it undermines this trust. The public must be able to place complete reliance on the integrity of registrants and in this matter the Registrant's conduct was a serious departure from the standards to be expected of a registered social care worker. The Committee has considered the consequences of removal for the Registrant but consider removal to be a fair and proportionate sanction in all the circumstances. The Committee has determined that there is no other way to protect the public and the public interest.

The Committee therefore makes a Removal Order under Paragraph 25 (1) (c) of Schedule 2 of the Rules.

Legal Advice Given

Service

I had an opportunity, and prior to the Hearing I have also had an opportunity, to examine the documentation and as you have indicated the documentation has been served on the Registrant, by way of correspondence dated 06 August 2014, with service, as you have indicated, effected on 07 August 2014 and this has taken place in compliance with the Rules.

Proceeding in the Absence of the Registrant

In view of the Registrant's absence you, as Mr Wilson has indicated, must now consider whether or not to proceed in the Registrant's absence and Mr Wilson has made an application under Paragraph 14 of Schedule 2 of the Rules for the matter to proceed in the Registrant's absence. He has indicated to you that service of the Notice did not provoke any response from the Registrant, nor has there been any request for an adjournment. Where you are satisfied that the Notice of Hearing has been duly served you may either hear and determine the case in the Registrant's absence or you may adjourn the matter and give directions and this is a matter of discretion for yourselves. You will be familiar with the case of R v Jones, and that's a 2013 case, and it is a criminal matter but it is applicable in regulatory cases and in that case Lord Bingham stated, and I quote:

"The discretion to commence a trial in the absence of a defendant should be exercised with the utmost care and caution."

Therefore, you should consider whether an adjournment may result in the Registrant attending the proceedings at a later date, the time involved in an adjournment, and the extent of disadvantage to her in not being able to present her account of events. You should also look and consider the seriousness of the allegations, the general public interest in this matter being dealt with and also the interests of any victims, and Mr Wilson has referred you to that. I would remind you this Registrant is entitled to a fair Hearing, also to attend and to be represented, to test the Council's case, and present evidence on her own behalf.

However, if she has knowledge or the means of knowledge of today's proceedings you may conclude that she has voluntarily absented herself and proceed in her absence. In considering this you should look at whether the information provided to the Registrant was sufficient to advise her of the importance of attending today. You have before you a copy of the Notice that was sent to the Registrant which has detailed information regarding the Hearing today.

You should also consider whether the allegation against the Registrant has been particularised so that she understands the case against her and the importance of attending today. This principle of fairness equally applies to the presentation of the Council's case, therefore in exercising your discretion you must balance on the

one hand the rights of the Registrant, against the wider public interest in the expeditious disposal of the matter. If you do consider this Hearing should continue in the absence of the Registrant, you must avoid reaching any improper conclusions about her absence and must not treat her absence as an acceptance of guilt in any way.

Finding of Facts

You must consider all the evidence received, bearing in mind that the burden of proof lies with the Council and that the standard of proof is on the balance of probabilities. The Council has brought these proceedings and it is up to them to prove its case.

I would remind you that the Registrant doesn't have to prove she is innocent of these charges and I would direct you to Schedule 2 of the NISCC Conduct Rules in relation to this. Therefore, your decision must be based on the evidence presented to you. Mr Wilson has presented to you, by way of Exhibit 1, the certificate of conviction in relation to this Registrant. He has quite correctly referred you to Paragraph 11 (5) of Schedule 2 of the Conduct Rules 2014 and this, as he has indicated, refers to the submission of a certificate of conviction stating that 'the finding of fact and the certificate of conviction of any UK Criminal Court shall be conclusive proof of the facts or convictions so found'. I would direct you to read the contents of the certificate of conviction carefully and to pay particular attention to the wording of the charge and as this is a certificate and the conviction is a matter of public record it would be proper and safe for you as a Committee to accept this certificate.

Misconduct

Paragraph 11 of Schedule 2 of the Conduct Rules allows you as a Committee to admit evidence, either oral or documentary, whether or not it would be admissible in a court of law subject to the requirements of relevance and fairness and Mr Wilson has submitted to you what appears to be headed as: 'Investigation record of meetings with the Registrant, Rosemary McCrory' and the meeting appears to have occurred on Thursday 27 June 2013. Therefore, in relation to relevance and fairness this document would appear to be relevant to the Charge that is in front of you today. Generally in relation to relevance that means that it must have a reasonable connection with the evidence in the case and that the value or tendency to prove a matter of fact significant to the case and it would appear that the contents of this documentation would be significant to the case. When you are looking at the fairness of this document you have to direct yourselves to the issue of quality, reasonableness, public interest, the interests of justice, and Mr Wilson has indicated that this documentation would already have been served on the Registrant. Therefore, this is relevant to the charge before you and I would advise you there would be no apparent unfairness to the Registrant in admitting this document.

As regards the issue of misconduct, you have found the facts proved in the Charge and you have now to proceed to consider whether these facts amount to misconduct. As Mr Wilson has indicated, misconduct has been defined in the Northern Ireland Social Care Conduct Rules as 'conduct which calls into question the suitability of a Registrant to remain on the Register'. In considering this question of misconduct, reference must be made by you to the Northern Ireland Social Care Council Codes of Practice and Mr Wilson has specifically referred you to

Sections 2 and 5, and to specific subsection 4 and subsection 5. Therefore, you have to consider whether any breaches of the Codes have occurred and you must be satisfied that it is more likely than not that the conduct which you found occurred in your finding of facts amounted to misconduct in contravention of the Code. You should take into account the documentary evidence, as presented in Exhibit 2, the submissions of Mr Wilson, and also the certificate of conviction at Exhibit 1. Guidance is found for you in the case of *Roylance v the GMC*. In this case the Judicial Committee of the Privy Council indicated that:

"Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standards of propriety may often be found by reference to the rules ..." a practitioner is required to follow.

You have been referred to the Codes of Practice in this matter. In addition, the professional conduct in question, which in this case is that of a social care worker, must be of a serious nature. Importantly when considering the issue of misconduct you will bring your own professional expertise to bear.

You will also be aware that it is the Council's responsibility to discharge this burden of proving misconduct and you must bear in mind that the more serious the allegation, the more cogent the evidence required to prove it.

I would remind you as a Committee that there is no admission of misconduct in this case. In the case of *Meadows v the GMC*, that is a 2007 case, the Court of Appeal indicated that:

"Misconduct should not be viewed as anything less than 'serious professional misconduct' ...that the conduct in any given case must be serious before being branded as 'misconduct' in a professional context."

Mr Wilson has directed you to the element of dishonesty in the Charge and has made specific submissions as regards this. You will be aware that dishonesty, and I think this has been referred to in previous matters, requires knowledge by the defendant that what she was doing would be regarded as dishonest by honest people. In a recent case of *Fish v the GMC*, which is a 2012 case, it was emphasised that:

"The starting point with regard to dishonesty should be that a Registrant of good character is most unlikely to act dishonestly."

Therefore, a Committee should take care when considering that allegation, as serious as this matter before you, and put your minds to any evidence of the Registrant's motive and what other evidence before them they have as regards this.

Sanction

Paragraph 25 Schedule 2 of the NISCC Conduct Rules 2014 sets out the available sanctions open to you as a Committee at this stage, and you have previously referred to these. Where there is a finding of misconduct you may:

Firstly, admonish the Registrant and direct that a record of admonishment should be placed upon her entry in the Register for a period of up to 5 years; or make an Order suspending the Registrant's registration for a period not exceeding two years; or make an Order for removal of the Registrant's registration from the Register.

In determining the appropriate sanction you are obliged to take into account a number of factors:

Firstly, the seriousness of the Registrant's misconduct, the protection of the public, the public interest in maintaining confidence in social care services, and the issue of proportionality. That means weighing, on one part, the Registrant's interest against, on the other part, the interests of the public. I would also refer you to the Northern Ireland Social Care Council Indicative Sanctions Guidance and remind you that the purpose of sanctions is not punitive. Paragraphs 2 subsection 4, 2 subsection 5, 2 subsection 6 of the Guidance deals with the considerations of fairness and proportionality.

You should consider the question of sanction in ascending order of severity and begin your deliberations by considering admonishment first. The primary purpose of sanctions is protection of the public and the reputation of the Social Care profession. I would refer you in particular to paragraphs 2.2 and 2.3 of the Guidance. These direct that the public should have confidence that the NISCC will uphold proper standards of behaviour and conduct in regulating social care workers. Public interest requires that both the public and social care users are protected from unsafe practice and confidence in the social care workforce is maintained. In serving the public interest the purpose of sanctions is to ensure the social care worker does not have an opportunity to repeat the misconduct and also to maintain the reputation of the profession.

I would refer you to paragraphs 2.4 and 2.6 which remind you that any limitation of the right to practise one's profession should be no more than is necessary in the circumstances and that you have a duty to act fairly. Consideration must be given to any aggravating or mitigating factors, and Mr Wilson has referred you to these. You have heard evidence of remorse by the Registrant, her admissions throughout the investigatory procedure, and also the repayment of monies.

You have also been referred to the case of Parkinson v the NMC, which is a 2010 case, with which you are familiar and the general guidelines out of that case which direct you to consider any evidence of insight, remorse, assurances of no repetition, engagement with the proceedings and without this type of evidence a Registrant, and I would quote, "... forfeits the small chance of persuading a Panel to adopt a more lenient sanction." However, as a balance to this, and as highlighted in the case of CHRE v the GMC, Southall 2005 'lack of remorse should not result in a higher sanction as punishment'. Punishment must not be an element in deciding what is an appropriate sanction.

In this case, the findings of fact and certificate of conviction and Charge include a finding of dishonesty. Accordingly, as referred to in the case Atkinson v the GMC, and that's a 2009 case, there are a number of factors you have to consider and see whether there is any evidence that would help you. Again I would repeat you should consider any evidence of insight, whether the dishonesty was out of character, whether you have evidence to show that the dishonesty was isolated in duration of range and consider whether permitting the Registrant to return to practice would not damage the reputation of the profession and, finally, whether there is merit in not depriving the public of an otherwise honest and competent practitioner.

Right of Appeal

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 Conduct Committee's decision takes effect from the date upon which it was made.

The effect of this decision is that your entry on the Register has been removed with immediate effect and you should not work as a social care worker.

Nelissa

Clerk to the Conduct Committee

05 September 2014

Date