

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

Name: Helen Brown

SCR No: 2091135

NOTICE IS HEREBY GIVEN THAT the Conduct Committee of the Northern Ireland Social Care Council, at its meeting on **28 April 2015**, 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), and whilst employed as a Community Care Assistant with Rose Lodge Community Care Services:

1. On 19 January 2015, you pleaded guilty and were convicted on 16 February 2015 at Craigavon Courthouse of:

Charge 1: Defendant on the 02/09/2014 in the County Court Division of Craigavon, stole Money to the value of £10 or thereabouts belonging to Service User A, contrary to Section 1 of the Theft Act (Northern Ireland) 1969.

And your actions as set out above were dishonest and 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 the hearing. The Council was represented by Mr Conrad Dixon. In a Notice of Hearing dated 26 March 2015, 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 27 March 2015. The Disclosure and Hearing Bundles were sent to the Registrant on 10 April 2015 and signed for on 11 April 2015. 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 (the Rules).

Proceeding in the Absence of the Registrant

The Committee then considered whether to proceed in the absence of the Registrant. The Committee heard submissions made by Mr Dixon on behalf of the NISCC, and took into account the legal advice from the Legal Adviser. Mr Dixon invited the Committee to proceed in the absence of the Registrant. He informed the Committee that the Registrant had made no response and no request for an adjournment. He submitted that she had voluntarily absented herself from the hearing, and that the public interest required that the hearing proceed today. There was nothing to suggest that the Registrant would be more likely to attend on a future date if the hearing adjourned and was relisted.

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, and judicially.

In deciding whether to proceed in the absence of the Registrant, the Committee weighed its responsibilities with regard to the public interest and the expeditious disposal of the case, with the Registrant's right to a fair hearing. The Registrant had been sent notice of today's hearing and had not responded to say that she would not attend. The Committee decided that the Registrant, with full knowledge of these proceedings, voluntarily waived her right to be present. Furthermore, the Registrant had not made a request for a postponement. There is nothing to indicate that she would be more likely to attend at a future hearing if the matter was adjourned today. In the circumstances, the Committee has decided that the balance of interests is in favour of proceeding in the Registrant's absence.

Application to admit Hearing Bundle

The Committee received an application, pursuant to Paragraph 11 of Schedule 2 of the Rules, to admit a bundle of papers into evidence. The Committee was satisfied that the bundle should be admitted and met the requirements of a fair hearing and of relevance. The bundle contained:

- Certificate of Conviction, dated 11 March 2015;
- Letter from PSNI, dated 24 March 2015;
- Interview transcript from interview on 02 September 2014; and
- Interview transcript from interview on 07 October 2014.

Background

The Registrant is registered on Part 2 of the Register, with registration granted on 14 November 2011.

The Registrant was employed by Rose Lodge Community Care Services from 21 July 2014 to her date of dismissal on 05 September 2014.

Service User A receives assistance from care assistants at her home due to disability. She became concerned that money was going missing from her purse when care assistants had been in her house. It was decided to place a small camera in the house. On 02 September 2014, after care assistants had been in the house, Service User A checked her purse and discovered a sum of money was missing. A check of the CCTV showed the Registrant removing the money.

The Police investigated the matter, and in her second interview under caution the Registrant admitted stealing the money from Service User A on 02 September 2014. The Registrant was subsequently prosecuted and pleaded guilty, and was convicted of theft.

Finding of Facts

In considering finding of facts, the Committee was mindful of Schedule 2 Paragraph 11 (5), which states that a Certificate of Conviction is conclusive proof of the facts or convictions so found. Accordingly, the Committee accepts that the Registrant committed the theft of £10 or thereabouts from Service User A on 02 September 2014.

Misconduct

The Committee then moved to consider if the facts found proved amounted to misconduct. The Committee heard and accepted the advice of the Legal Adviser. The Committee took account of the definition of misconduct in Rule 2 of the 2014 Rules as meaning 'conduct which calls into question the suitability of a Registrant to remain on the Register'.

In considering this matter, the Committee took account of the fact that the Registrant stole money from a vulnerable service user, while operating in a position of trust, and having had access to her home and her property.

The Committee finds that the theft of money from Service User A clearly abused the trust placed in her by the service user, her employer and the community. The Registrant's theft of the money clearly amounts to dishonesty.

The Committee is satisfied that in acting in this fashion, the Registrant has acted beneath the standard required of a social care worker and has brought the reputation of the profession into disrepute.

In reaching its decision, the Committee took account of the Code of Practice for Social Care Workers, which describes the standards of conduct and practice required of social care workers as they go about their daily work.

In considering the Code, the Committee is satisfied that the Registrant has breached the following provisions:

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; and
- 2.4 Being reliable and dependable.

Code 3: As a social care worker, you must promote the independence of service users while protecting them as far as possible from danger or harm. This includes:

3.8 Recognising and using responsibly the power that comes from your work with service users and carers.

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;

5.2 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;

5.8 Behave in a way, in work or outside work, which would call into question your suitability to work in social care services.

Accordingly, the Committee is entirely satisfied that the Registrant has committed misconduct.

Sanction

In deciding which 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 given due consideration to the submission of Mr Dixon on sanction. The Committee has had regard to the NISCC Indicative Sanctions Guidance, and has accepted the advice of the Legal Adviser.

The Committee has taken account of the need to protect the public interest, to uphold the confidence in the social care workforce, to act fairly, and to impose a sanction which is proportionate to the risk of harm to the public and service users.

The Committee is mindful that its sanction should not be imposed as a punishment. In order to ensure that no more severe sanction is imposed than is required by these demands, the available sanctions were considered in ascending order of gravity as follows:

Admonishment – applying the foregoing, the Committee does not consider that admonishment is sufficient to protect the public. The Committee has considered the provisions at Paragraphs 5.10 – 5.13 of the Indicative Sanctions document and accepts that dishonesty, particularly as here involving a breach of trust in a work setting, is particularly serious. The Committee is mindful that service users and the public generally should be able to place complete reliance on the honesty and integrity of registrants. The Committee takes the view that dishonesty in the professional setting is so damaging to the Registrant's suitability, and to the public confidence

in social care services, and the regulation of social care services, that admonishment in these circumstances would not be a proportionate sanction. The Committee has had regard to the examples of mitigating factors and aggravating factors at Paragraphs 3.2 and 3.3 of the Indicative Sanctions document and to the non-exhaustive factors set out at 4.10 of that document as to when admonishment might be appropriate.

The Committee found no evidence of insight on the part of the Registrant into her failure to abide by the standards required of social care workers. The Committee noted that the Registrant did not admit her misconduct to the Police at the earliest opportunity, and, in fact, only did so in advance of being shown the CCTV in interview. The Committee accepts that the theft / dishonesty on the part of the Registrant was deliberate. It further noted that there is no real submission of regret (other than during the course of her police interviews, the Registrant refers to remorse at having let her mother down) and no undertaking as to future conduct.

Suspension – the Committee recognises that a Suspension Order would prevent the Registrant from practising in this field of employment for an appointed period of time, and that this has the potential to carry serious implications for her.

The Committee has specifically considered the provisions of the Indicative Sanctions document relating to Suspension Orders at Paragraphs 4.11 to 4.15.

The Committee recognises that at the end of any period of suspension, there would be no provision in place to protect the public. In all of the circumstances of this case, the Committee finds that it cannot be satisfied that similar conduct would not reoccur with serious implications for the protection of the public.

The Committee further takes the view that the fact that the amount of money taken was relatively small is immaterial. The Committee has considered the non-exhaustive list of factors as to when suspension might be appropriate as set out at Paragraph 4.14. The Committee is not satisfied that there is no real risk of the behaviour being repeated. The Committee further noted that the Registrant has not provided evidence of mitigation as to the reasons behind the theft and, in that regard, further noted that the Registrant has chosen not to participate in these proceedings.

As a consequence of the foregoing, there is no basis upon which the Committee could find that this behaviour will not reoccur and, accordingly, that there is no future risk to the public. The Committee has considered the factors pointing towards the potential of a Removal Order as identified at 4.18. In particular, the Committee noted that the circumstances of this case clearly demonstrate an abuse of position/trust involving a vulnerable person, dishonesty, and a blatant disregard for the system of registration designed to safeguard the interests of service users, and the reputation and standards of the social care profession. The Committee is satisfied that the Registrant's misconduct marks a serious departure from the relevant professional standards set out in the Code of Practice for Social Care Workers.

As against this, the Committee recognises that the making of a Removal Order will prevent the Registrant from working in her chosen professional field, but it forms the view, in consideration of all of the circumstances, that a

Suspension Order is not a sufficient and proportionate sanction. A Removal Order is the sanction necessary in order to protect the public, ensure public confidence in the system of social care worker regulation and protection of the reputation of the social care workforce.

Removal – the Committee finds that the making of a Removal Order is the appropriate and proportionate sanction in the circumstances of this case. The reasoning for same is as set out in the section above relating to the consideration of a Suspension Order.

Legal Advice Given

Service

I can confirm to the Committee that the requisite documents appear to have been served in compliance with Rule 3 of the NISCC (Conduct) Rules 2014 and Schedule 2, Paragraph 4 of the same Rules.

It would further appear that they were received by somebody at that address and signed for.

Proceeding in the Absence of the Registrant

So where the committee is satisfied, as it is, that the Notice of Hearing has been duly served, it is open to the Committee to hear and determine the case in the absence of the Registrant, or alternatively it is open to you to adjourn the hearing and give further directions.

When considering which course of action to take, the Committee should be aware that it is a matter of your discretion as to how you should proceed in that regard. It is obviously a discretion that should be exercised with the utmost care and caution and exercised, in effect, judicially.

I would remind you that it is open to you to consider whether the circumstances point towards the Registrant having decided to absent herself from the hearing. You may also wish to consider whether there is anything to suggest that if you were to adjourn the hearing today, she would be more likely to attend on a future occasion.

I would also suggest that you should be cognisant of the other interests engaged in this hearing today, that being not only the interests of the Council, as in effect standing in the shoes of the Prosecutor in this case, but also the wider public interest, that is served by a balance between fairness in proceedings to all concerned, and at the same time having an eye to the need for expedition. These proceedings have a peripheral use of public resources and the need to ensure the protection of the public.

Admission of Evidence

The only thing I would say to you is that I can see no reason why this could not be admitted in evidence. Paragraph 11 of Schedule 2 provides that subject to my advice, the requirements of a fair hearing and of relevance, the Committee may admit evidence whether or not it would be admissible in a Court of Law or exclude evidence in order to ensure fairness to the Registrant and between the Parties. Having reviewed the hearing

bundle, it would seem to me to be unobjectionable for you to admit it under that Rule.

Finding of Facts & Misconduct

I agree with Mr Dixon that Paragraph 11 (5) of Schedule 2 provides the mechanism by which a Certificate of Conviction shall be seen as conclusive proof of the facts therein. So for your purposes today, you can take it that the Registrant is guilty of theft of Service User A's money in the sum of £10 or thereabouts, and that that occurred on 02 September 2014.

It is then really a question for this Committee to decide whether that amounts to misconduct and you may wish to consider that together in private. In so doing, I would suggest that you should take consideration of the Northern Ireland Social Care Council Code of Practice for Social Care Workers, which sets the standard of practice of conduct expected of a social care worker.

I would also further say that misconduct is defined in the NISCC (Conduct) Rules 2014 at Rule 2 as meaning 'conduct which calls into question the suitability of a Registrant to remain on the Register'.

Sanction

So you have now reached the stage in the process where you have to take account, having found that misconduct has occurred, of the various factors placed before you and to decide the appropriate sanction to apply.

Mr Dixon has outlined the aggravating features. He has pointed out, of course correctly, the Registrant has not attended today before you and has not therefore submitted in person, or by written representations, in advance any mitigating factors on her own behalf, that is clearly a matter that you can take into consideration in deciding what the appropriate sanction would be.

I specifically draw the Committee's attention to Schedule 2 of the 2014 Conduct Rules and, in particular, Paragraph 25 of that under the heading 'Sanctions'. It sets out the sanctions that are available to you and they have already been referred to today as: Admonishment, Suspension Order or a Removal Order.

In deciding which sanction to be imposed under Paragraph 25 (2), the Committee is required, by the wording being 'shall', to take into account, in other words you must look, at these four factors as follows:

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.

I also draw the Committee's attention to the Indicative Sanctions document provided by the Northern Ireland Social Care Council dated April 2014, and the Committee should have cognisance of the Guidance herein. I stress it is only guidance and it is not a statutory requirement that you must follow and adopt what it says, but where you do not follow this Guidance you should, as an act of caution, set out why you do not follow this Guidance. I draw, in particular, your attention to Paragraph 2 of that document, 'General Principles regarding Sanctions'. It provides some further detail as to what is meant by the phrases of 'public interest', 'fairness' and

'proportionality'.

If I could focus on the last of those just for the moment. Proportionality requires that there must be a connection between the consequences of the sanction that you seek to impose and the mischief or harm you are seeking to guard against in imposing a sanction. In other words, it is not a matter of punishment, it is a matter of protecting various interests at play that should be the key to deciding what is the appropriate sanction.

In this case, in particular, it is of course highly relevant that the Registrant has already been convicted of an offence relating to the matter of misconduct for which she is before this Committee; she has been subject to punishment by the criminal Court in that regard.

You should not be unduly swayed by the sentence or sanction imposed by the Court, this will not necessarily in every case be a definitive guide to the seriousness of the offence. Certain Judges may differ in their approach to sentencing when compared to others. You should also be aware of the fact that your sentencing powers, the range of sanctions available to you are very different from the sentencing powers available to the Court. Your role is different from the role of the Court, and your role is to balance the nature and gravity of the misconduct offence against the mitigating factors so far as you can see them, and taking account of the aggravating factors, the bearing on the Registrant's suitability to practice as a social care worker, and reach a proportionate conclusion as to which sanction is appropriate in order to protect the interests of service users and the interests of the public.

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 are prohibited from working as a social care worker.

Melissa O

Clerk to the Conduct Committee

01 May 2015

Date