

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

Name: Cheryl Julia Boyd

SCR No: 6000225

NOTICE IS HEREBY GIVEN THAT the Conduct Committee of the Northern Ireland Social Care Council, at its meeting on **17 September 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 care assistant by Dromore Community Care Limited, you committed the following offence whilst on duty:

1. Defendant on dates unknown between 1st day of September 2012 and 20th December 2013 in the County Court Division of Fermanagh and Tyrone, stole cash to the value of £700 or thereabouts belonging to [Service User A] contrary to Section 1 of the Theft Act (Northern Ireland) 1969.

You pleaded guilty to the above-stated offence at Omagh Magistrates' Court on 12th May 2015, and were convicted on 9th June 2015.

And your actions as set out at 1 above were dishonest.

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 the hearing. Mr Conrad Dixon appeared on behalf of the Council. Notice of today's hearing was sent to the Registrant by Special Delivery to her registered address on 17 August 2015. This was received and signed for by her on 18 August 2015. Disclosure and Hearing bundles were sent by Special Delivery to the Registrant at her registered address on 01 September 2015 and signed for on 02 September 2015. In addition, the Registrant completed the attendance form to indicate that she did not intend to attend the hearing and did not wish to seek a postponement. This form was received by the Council on 02 September 2015. The Committee is satisfied that the Notice of Hearing has been served on the Registrant in accordance with the NISCC (Conduct) Rules 2014 (the Rules).

Proceeding in the Absence of the Registrant

Mr Conrad Dixon made an application to proceed in the absence of the Registrant, pursuant to Paragraph 14 of Schedule 2 of the Rules. The Committee was advised that it had discretion as to whether to proceed in the Registrant's absence. The Legal Adviser emphasised that this was a discretion which should only be exercised with the utmost care and caution. The Committee noted that the Registrant had not made any application to postpone the proceedings. Having considered the issue, the Committee reached the unanimous decision that it was appropriate to proceed in the Registrant's absence. The Committee was satisfied the Registrant had voluntarily waived her right to attend the hearing, and took the view that there was a public interest in proceeding without further delay. The Committee observed that if it was to postpone the hearing, there was no reason to believe that the Registrant was any more likely to attend on a future date.

Application to Admit Hearing Bundle

The Council Solicitor applied, pursuant to Paragraph 11 of Schedule 2 of the Rules, to admit, by way of evidence, a bundle of documents comprising of 14 pages and two emails, dated 16 September 2015, between the Registrant's Solicitor and the Council's Solicitor. The bundle of documents contained:

1. Statement of Witness 1, dated 05 August 2015;
2. Certificate of Conviction;
3. Letter from the Registrant to the NISCC, dated 26 September 2014; and
4. PSNI interview notes of 07 March 2014.

The Council Solicitor advised that the bundle had been served on the Registrant and that no objections had been raised with regard to the content.

The Committee accepted the advice of the Legal Adviser and decided that it would be appropriate to accept the bundle of documents into evidence. The documents were relevant to the issues which gave rise to the Charge, and the Registrant had had the opportunity to object to the bundle but had elected not to do so.

Background

The Registrant is registered on Part 2 of the Social Care Register. The Registrant had been employed by Dromore Community Care Limited as a Domiciliary Care Assistant.

On 21 December 2013, her employer received a phone call from the nephew of a service user advising that money had gone missing from his uncle's home, and that he had camera footage to show that the money had been stolen by one of the "Angel Watch" night staff. The CCTV footage was shown to the Registrant's employer who identified the Registrant as the person removing the money. The Registrant was interviewed by her employer and admitted to having stolen the money, and was suspended with immediate effect. The Registrant was interviewed by the police and a prosecution was brought before Omagh Magistrates' Court. The Registrant was charged that, between 1st day of September 2012 and 20th December 2013, in the County Court Division of Fermanagh and Tyrone, she stole cash to the value of £700 or thereabouts belonging to [Service User A] contrary to Section 1 of the Theft Act (Northern Ireland) 1969. The Registrant pleaded guilty to the Charge on 12 May 2015 and, on 09 June 2015, was sentenced to four months' imprisonment. This sentence was appealed and replaced with a Community Service Order.

Evidence

The Committee considered the bundle of documents and noted the details set out in the Certificate of Conviction. The Committee received evidence from Witness 1 and found her to be a credible witness. Witness 1 confirmed that she knew the Registrant as an employee and, as set out in her witness statement, had been notified by the nephew of a service user that money had been taken from the service user's home. Witness 1 confirmed that she had identified the Registrant taking the money on the CCTV footage and gave evidence that, when she asked the Registrant, the Registrant had admitted to having stolen the money.

Finding of Facts

The Committee considered the Certificate of Conviction and accepted the advice of the Legal Adviser. The Committee received and accepted the submission from the Council's Solicitor that, in accordance with Paragraph 11 of Schedule 2 of the Rules, the Certificate of Conviction was conclusive proof of the conviction so found. Furthermore, the Committee notes that the Registrant pleaded guilty to the offence on 12 May 2015.

The Committee is satisfied that, on the balance of probabilities, the actions which led to the conviction were dishonest. The Committee notes that the Registrant has been convicted of theft, contrary to Section 1 of the Theft Act (NI) 1969. A person is guilty of theft, in accordance with the Theft Act, if she "dishonestly appropriates

property belonging to another with the intention of permanently depriving the other of it". The definition of the offence includes an element of dishonesty.

Accordingly, the Committee is satisfied that the facts stated in the Charge have been proven.

Misconduct

Having found the facts proved, the Committee proceeded to consider the issue of misconduct. The Committee received a submission from Mr Dixon in which he argued that misconduct had been established in this case. He emphasised that the Registrant was in a position of trust and had abused this trust for her own gain. Mr Dixon submitted that this was not a one off incident, but rather took place for over a year. The Committee took into account the definition of misconduct as set out in the Rules, namely 'conduct which calls into question the suitability of a Registrant to remain on the Register'.

The Committee has determined that the actions of the Registrant fall far below the standards to be expected of a registered social care worker. The Committee took into account the fact that the Registrant stole money from a vulnerable service user while operating in a position of trust and having access to the service user's home and property.

In reaching its decision, the Committee took into account the Code of Practice for Social Care Workers. The Committee is satisfied that the Registrant, by her actions, has breached the following provisions of the Code:

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

1.4 Respecting and maintaining the dignity and privacy of service users.

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.

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; and

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 took the view that honesty is fundamental to the social care profession. Stealing the property of a service user is entirely unacceptable. Service users have the right to receive care in their own home without

any risk to their property or personal effects. The Registrant went through the private belongings of a service user and stole money, and failed to treat the service user with the dignity or respect which he deserved. The service user suffered harm as a result of the Registrant's actions. Accordingly, the Committee is entirely satisfied that the Registrant's actions amounted to misconduct.

Sanction

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.

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 is mindful that its sanction should not be imposed as a punishment. The Committee considered the mitigating and aggravating factors in this case. In terms of mitigation, the Committee noted the Registrant had cooperated with the NISCC investigation and had provided written submissions, although she did not attend the hearing. She admitted the facts at an early stage and her letter demonstrated insight into the serious nature of her offence, as well as a genuine expression of regret. The Committee also noted that she had paid back the money in full and had a good previous work history of almost 20 years, with no previous disciplinary record. However, in terms of aggravating factors, the Committee noted that the Registrant's actions were dishonest and a serious abuse of trust. There was a direct impact on the service user who not only had money stolen, but also was left to feel vulnerable in his own home. The Registrant was convicted of a serious criminal offence and should have been aware that her actions were contrary to the Code of Practice. The offence was committed at work and there was evidence that it had taken place over a period of over a year.

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 misconduct, on the part of the Registrant, was serious and would have caused direct harm to a service user. Whilst the Registrant did demonstrate some insight and genuine regret, there is no evidence before the Committee of corrective steps or relevant or appropriate testimonials. The Committee is concerned that an admonishment would not protect other service users.

Suspension – the Committee next considered whether it would be appropriate to make an Order for suspension. The Committee considered the NISCC Indicative Sanctions Guidance, and notes that suspension is intended to give a clear message to the public and the profession about what is or is not appropriate conduct for a social care

worker. The Committee finds that the Registrant's actions, as set out in the Charge, do constitute a serious incident of misconduct. Honesty is fundamental to the work of a registered social care worker. The dishonesty on the part of the Registrant is fundamentally incompatible with continuing to be a registered social care worker in the long term. The Committee has no evidence to suggest that there is no real risk of repeating the behaviour following a period of suspension, and no evidence that the Registrant would be able to resolve or remedy the cause of the misconduct during a period of suspension.

Removal – the Committee, taking into account the seriousness of the misconduct, the need to protect the public and the public interest in maintaining confidence in the social care profession, considers removal to be the most appropriate sanction. A lesser sanction would not be proportionate. In reaching its decision, the Committee has considered the Indicative Sanctions Guidance and, in particular, the provisions at Paragraphs 5.10, 5.11 and 5.13.

A social care worker must be honest and trustworthy. The Registrant was dishonest and abused the trust placed in her by a vulnerable service user. Her actions were serious and caused harm to the service user, both with the loss of money and the loss of confidence in social care services. A service user has the right to rely on the integrity of a social care worker and the Registrant denied him this right. The Registrant's dishonesty took place during the course of her professional duties and, in addition to the impact on the service user, the Committee finds that her actions had a detrimental impact on public confidence in social care services.

The Committee has considered the consequences of a Removal Order, which will prevent the Registrant from working in her chosen professional field. However, the Committee has determined that there is no other way to protect the public and protect the reputation of the social care workforce.

The Committee therefore makes a Removal Order, under Paragraph 25 (1) (c) of Schedule 2 of the Rules, and the Interim Suspension Order currently in place is hereby revoked with immediate effect.

Legal Advice Given

Service

The Committee Clerk has shown me the appropriate documents and I can confirm to you that the Notice of Hearing dated 17th August 2015 was served on the Registrant and signed for by the Registrant on 18th August 2015. Likewise, she signed for a bundle of documents on 2nd September 2015 and she completed an attendance form, which was received by the Council on 2nd September 2015 indicating that she did not wish to attend today's hearing or to call witnesses and she did not seek a postponement. Paragraph 4 of Schedule 2 of the Northern Ireland Social Care Council Conduct Rules governs the requirement that a Notice of Hearing should not be fixed for hearing earlier than 28 days after the posting of the Notice except with the agreement of the Registrant and I can confirm that the

service of the Notice in this case complies with the time requirements. The electronic proof of service, dated 18th August 2015, provides proof that the documents were signed for and received by the Registrant in accordance with the 2014 Rules. Service refers to the sending of the Notice to the Registrant by registered post. The Rules specify that the Notice shall be treated as having been served on the day after it was posted and therefore satisfied that service complies with the requirements of the Rules and it would be safe for you to proceed at the first stage and to accept that service has been properly effected.

Proceeding in the Absence of the Registrant

You have heard an application by Mr Dixon that you should proceed with this hearing today in the absence of the Registrant. When you as a Committee are satisfied that the Notice of Hearing has been duly served, the options before you are either to hear and determine the case or to adjourn the case and give directions. This is a matter of discretion for you as a Committee. You have to exercise the discretion lawfully.

In the case of R v Jones, which is a criminal case, the House of Lords specified that such discretion, to continue in the absence of a defendant, should be exercised with the utmost care and caution.

I would remind you that the Registrant is entitled to a fair hearing, to attend the hearing, to be represented, to test the Council's case and to present evidence on her behalf. However, if the Registrant had knowledge or the means of knowledge of today's proceedings, you may consider that she has voluntarily absented herself and proceed in her absence. You should look at the information provided to the Registrant in the Notice of Hearing and consider whether this was sufficient to advise her of the importance of attending today. You should consider any information that you have before you to assist why she is not presented and we have a green form confirming that she did not seek any postponement or adjournment of the proceedings. You should take all these factors into account in reaching your view, bearing in mind, of course, that the discretion has to be exercised with caution. I would advise that you should retire to consider your decision.

Application to Admit Hearing Bundle

You have received this application to submit a bundle of documentation and the Council's Solicitor has referred to Paragraph 11 of Schedule 2 of the 2014 Conduct Rules. Paragraph 11 of Schedule 2 specifies that the Committee is allowed to admit evidence, either oral or documentary or other evidence, whether or not it would be admissible in a Court of Law subject to the requirements of relevance and fairness. Relevance means having some reasonable connection with the evidence in the case and having a value or a tendency to prove a matter significant in the case. When you consider fairness you should direct yourselves to the issues of quality, reasonableness, the public interest and the interests of justice.

The documents in the hearing bundle have been served on the Registrant and were received by her on 2nd September 2015. She is fully aware of the contents of the documents and you have heard from the Council's Solicitor that she has raised no objection to them.

We have been told that within the bundle there is a statement from [Witness 1], who is here today to give live evidence to you; there is the certificate of conviction and there are also notes of a police interview which took place in March 2014. There is no witness here to prove the police interview notes and I would advise you that that document will, therefore, form hearsay evidence. It is, however, a matter for you if you choose to admit the documents on the grounds that they are relevant and there is no unfairness to the Registrant in so doing, it is a matter for you to determine the weight that you would place on that hearsay evidence.

Finding of the Facts

At this stage, the finding of fact stage, you, as a Committee must consider the evidence received, bearing in mind that the burden of proof lies with the Council and the standard of proof is on the balance of probabilities. The Council has brought these proceedings and it is a matter for the Council to prove their case.

The Council's solicitor, Mr Dixon, has correctly referred you to paragraph 11(5) of Schedule 2 which provides that, where a Registrant has been convicted of a criminal offence, the findings of fact and certification of any UK criminal court shall be conclusive proof of the facts or conviction so found. We have heard that there was an appeal, but the evidence before you is that the Registrant pleaded guilty to the offence; and the appeal, therefore, relates solely to the sentence and the certificate of conviction is still good evidence before you of the conviction.

You have other documents which you should consider within your bundle and I have already advised you about the weight which you may give to those documents.

You have also heard live evidence from [Witness 1] in relation to her involvement. She has described, in some detail, what she viewed on the video footage taken at the time of the events. You have not been presented with the video footage and I would advise you that her description, therefore, is a form of hearsay evidence and it's a matter for you, what weight you would place on that evidence. Given, however, that you do have the certificate of conviction before you, that may not cause you any undue trouble.

The final point that I would raise is in relation to the dishonesty charge and you have heard the submission from Mr Dixon that the offence of theft contains within it an element of dishonesty. I concur and can advise you, that he is correct on that point. The offence of theft does contain that specific element of dishonesty.

Misconduct

We are now at the second stage of these proceedings and, as a Committee, you must consider whether the facts as proved amount to misconduct.

There is no admission of misconduct in this case. Misconduct is defined in the Rules as conduct which calls into question the suitability of a registrant to remain on the Register. You are familiar with, and I remind you once again, of the Privy Council decision in *Roylance v General Medical Council*. It's a 2000 case and in that case the Privy Council defined misconduct as, '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 might often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances'.

The same principles apply to a social care worker and it is correct and proper for you to have consideration of the standards of practice set out in the Northern Ireland Social Care Council Codes of Practice.

You have been referred by the Council's Solicitor to various sections of the Code. It is, however, a matter for you as a Committee to consider the Code and to form your own views on whether any breaches of the Code have occurred and whether the facts which have been found proven amount to misconduct in contravention of the Code.

Sanction

The position is that paragraph 25 of Schedule 2 of the Rules sets out the sanctions available to you. You have already outlined those and referred to those as the available sanctions. So it falls to me simply to remind you at this stage that in determining the appropriate sanction you should consider the question of sanction in ascending order of severity and you must begin your deliberations by considering admonishment first and then moving up from admonishment. I would commend to you a detailed consideration of the Indicative Sanctions Guidance and would refer you to paragraphs 2.4, 2.5 and 2.6 of the Guidance which deal with the considerations of fairness and proportionality.

In determining the appropriate sanction, you are obliged to take into account the seriousness of the Registrant's misconduct, the protection of the public and the public interest in maintaining confidence in social care services.

You have received the submission from Mr Dixon. He has referred you to paragraphs 5.10 and 5.13 of the Code which deal with offences of dishonesty. He has also appropriately referred you to the case of *Parkinson v NMC*, and he is correct on that point.

I would remind the Committee that the primary purpose of sanction is to protect the public and not to be punitive, although indirectly, a sanction may have that effect. You should consider all the evidence before you and you should take into account the mitigating and aggravating factors and weigh these up to reach your decision. I remind you that you must, within your decision, set out clear reasoning and clear reasons for reaching the view that you ultimately form.

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.

Chamberlain

Committee Manager

23-09-15

Date