

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

Name: Shannon Alice Gallagher

SCR No: 6015532

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **13 January 2017**, 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 misconduct;

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

Particulars of the Allegation:

That, being registered as a social care worker under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), and whilst working as a Domiciliary Care Worker for Mears Care Ltd, and whilst providing a domiciliary care service to Service User A at her home:

1. On a date or dates between 27 June 2016 and 04 July 2016, you stole a sum of money amounting to £110 from Service User A.

And that by reason of the facts alleged, your fitness to practise is impaired by reason of your misconduct.

Preliminary Matters

Service

The Registrant was neither present nor represented. The Council was represented by Ms Louise Harvey, Solicitor, Directorate of Legal Services. In a Notice of Hearing, dated 15 December 2016, sent by Special Delivery and addressed to the Registrant at her address as it appears on the Register, the Council notified her of the date, time and venue for this hearing. The Notice was signed for on 16 December 2016. The Committee determined that the Notice of Hearing had been served in accordance with Rule 3 of the NISCC Fitness to Practise Rules 2016 ("the Rules") and the requirements of Paragraph 5 of Schedule 2 of the Rules.

Proceeding in the Absence of the Registrant

Ms Harvey made an application to proceed in the absence of the Registrant, under Paragraph 15 of Schedule 2 of the Rules. Ms Harvey advised the Committee that the Registrant had not been in contact with the Council since the Notice of Hearing was served, and invited the Committee to conclude that her absence was voluntary.

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. The Committee heard and accepted the advice of the Legal Adviser. The Committee noted that there was no evidence to indicate that the Registrant would be more likely to attend a future hearing if the matter was adjourned. The Committee concluded that the Registrant had received notice, but had voluntarily absented herself from today's hearing. After careful consideration of all the issues, the Committee decided to exercise its discretion to proceed in the absence of the Registrant, taking into account the nature of the allegation and striking a careful balance between fairness to the Registrant and the wider public interest.

Background

The Registrant is registered as a social care worker on Part 2 of the Register. She was employed as a Domiciliary Care Worker by Mears Care Ltd from 28 August 2015 until the date of her resignation on 06 July 2016. It is alleged that on a date or dates between 27 June 2016 and 04 July 2016, the Registrant stole a sum of money amounting to £110 from Service User A and that by reason of those facts alleged, the Registrant's fitness to practise is impaired by reason of misconduct.

Evidence

The Committee admitted into evidence a hearing bundle. The bundle included, inter alia, a statement dated 13 September 2016 from Witness 1, who was Branch Manager with Mears Care Ltd at the relevant time, Mears Care Ltd documents relating to Service User A's allegation of theft, Investigatory Meeting minutes relating to same, the Registrant's note of resignation, her signed acknowledgment of a deduction from wages in the sum of £110 to reflect the repayment by Mears Care Ltd to Service User A and a letter from Mears Care Ltd dated 06 July 2016 to the Registrant.

The Committee also heard evidence from Witness 1.

The Council presented evidence through Witness 1 that the service user had contacted Mears Care Ltd on 04 July 2016 to report that monies had gone missing from her home. Additionally, evidence was presented to the Committee that the Registrant admitted to Service User A and Witness 1 that she had taken the money.

Finding of Facts

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

The Committee finds that the Particulars of the Allegation are proved on the balance of probabilities.

Service User A's money was taken without her permission, in the sum of £110.

Service User A reported this to Mears Care Ltd.

Witness 1 met with three of the relevant carers, including the Registrant, and made them aware that a service user had alleged that money had gone missing. No information was volunteered in respect of this by any of the carers at that stage.

Later that same day, the Registrant contacted Service User A by telephone, arranged and then did attend at Service User A's house. Service User A subsequently told Witness 1 about this visit, and the Registrant subsequently admitted having attended the house to Witness 1 during the course of the Investigation Meeting on 05 July 2016.

When Witness 1 attended at Service User A's house on 05 July 2016, she was informed that the Registrant had admitted to Service User A that she took the money, and that she had done so as a reaction to a light having come on in her car and her concern that she would not be paid until the end of the month.

Witness 1 told the Committee that during the course of the Investigation Meeting on 05 July 2016, the Registrant had admitted to her that she had gone to Service User A's house as Service User A had outlined, and the Registrant further admitted to Witness 1 that she had taken Service User A's money. The Committee accepts that the Registrant told Witness 1 that she had taken the money as she had no money left, a light had come on in her car and she had panicked.

The Committee finds that the Registrant dishonestly took the service user's money without permission and with the intention to permanently deprive Service User A of the said money.

During the Investigation Meeting, the Registrant accepted that the amount of money taken could have been £110. The Committee further accepts the evidence of Witness 1 to the effect that during the Investigation Meeting, the Registrant indicated her intention to resign her employment with Mears Care Ltd.

The Committee further accepts the evidence of Witness 1 that the typed notes of the Investigation Meeting on 05 July 2016 (pages 17 – 19) corresponded accurately to the contemporaneous handwritten minutes which were signed by the Registrant on that date, albeit that the Council has not made those notes available to the Committee.

The Committee further accepts the evidence of Witness 1 that the Registrant provided her with a handwritten note of resignation on 06 July 2016, dated 05 July 2016 (page 21), and that on 06 July 2016, she signed an acknowledgment regarding the deduction of her wages in the sum of £110 to reflect the repayment to be made to Service User A by Mears Care Ltd. Witness 1 further confirmed that the "Mrs A" referred to in that repayment / deduction document (page 23) is Service User A.

The Committee further notes that the Registrant's resignation and the repayment was formally acknowledged by letter from Mears Care Ltd to the Registrant on 06 July 2016 (page 27).

The Committee took account of the fact that the hearing bundle containing the documents referred to above was served on the Registrant by Special Delivery to her registered address on 21 December 2016, and that same

was received and signed for by the Registrant on 22 December 2016. It is further noted that the Registrant has not taken issue with the content of any of the said documents.

Taken cumulatively, all of the available documentary evidence, the oral evidence of Witness 1, which the Committee considered to be reliable, credible and consistent with the documentary evidence, and a submission from the Council Solicitor, the Committee is satisfied, on the balance of probabilities, that the Registrant did steal a sum of money amounting to £110 from Service User A.

Fitness to Practise

The Committee heard submissions from Ms Harvey on the question of impairment.

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

The Committee considers that the Registrant's fitness to practise is impaired by reason of misconduct arising from the findings of fact set out above.

The Committee has considered the following:

1. Has the Registrant acted so as to pose a risk to service users? The Committee considers that the Registrant has so acted in stealing Service User A's money.
2. Has the Registrant brought the social care profession into disrepute? The Committee is satisfied that the Registrant has brought the profession into disrepute by way of her theft of the service user's money while in a position of trust in her role as a social care worker.
3. Has the Registrant breached one of the fundamental tenets of the social care profession? The Committee is satisfied that the Registrant has failed to display honesty and trustworthiness.
4. Can the Registrant's integrity be relied upon? The Committee is satisfied that, by her actions, the Registrant has demonstrated that reliance cannot be placed on her integrity.

The Committee has carefully considered the Northern Ireland Social Care Council publication "Standards of Conduct and Practice for Social Care Workers". The Committee takes the view that the Registrant has, by her own actions, failed to establish and maintain the trust and confidence of service users in breach of Standard 2.1 (Being honest and trustworthy). Further, the Registrant has breached public trust and confidence in social care services in that contrary to Standard 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), she abused the trust of a service user and abused the access that she had to the service user's property. In addition, by her behaviour as relating to the facts found above, the Registrant's suitability to work in social care services has been called into question as per Standard 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 has further considered, with reference to the Northern Ireland Social Care Council document "Making a Determination of Impaired Fitness to Practise: Guidance for Committees on Remediation", whether the

Registrant's conduct has been or could easily be remedied. The Committee considers that the circumstances of the Registrant's conduct, combined with the absence of any information from her, cannot be satisfied that the misconduct has been remediated.

The Committee considers that there is no evidence available to it to demonstrate that the impairment in fitness to practise demonstrated by the Registrant's behaviour has been remedied by her, or that there are steps that she will take to assuage the concerns that arise in terms of protecting the public interest and maintaining public confidence in the social care profession.

Sanction

In reaching the decision on sanction, the Committee had regard to all the evidence adduced in the case, together with the detailed submissions of Ms Harvey on behalf of the NISCC. The Committee heard and accepted the advice of the Legal Adviser.

The Committee has borne in mind that any sanction imposed must be appropriate and proportionate and, although not intended to be punitive in its effect, may have such consequences. The Committee has taken into account the Council's Indicative Sanction Guidance, bearing in mind that the decision on sanction is one for its own independent judgement.

The Committee has identified the following mitigating and aggravating factors:

Mitigating Factors

- No previous disciplinary record;
- Upon consideration by the employer, there was no evidence of similar conduct in relation to other service users with whom the Registrant was engaged;
- It was clear that prior to this incident, the Registrant was held in high regard by the employer with regards to her ability and work record;
- The Registrant admitted the theft of the money relatively quickly, thereby obviating any risk of the perpetrator not being correctly identified;
- The Registrant cooperated with her employer in respect of repayment of the stolen money;
- The Registrant clearly recognised the seriousness of the situation by dint of resignation;
- There was some limited evidence of remorse.

Aggravating Factors

- Dishonesty is self-evidently a very serious matter;
- This was a deliberate act of misconduct;
- The circumstances of this case demonstrate a breach of trust, both in terms of the theft having occurred in the service user's home and, more generally, contrary to the trust reposed in the Registrant by the

service user, the employer, and co-workers with regards to access to a vulnerable, elderly service user's property;

- Failure to cooperate with the NISCC investigation and these proceedings;
- The Registrant's actions were illustrative of a serious disregard for the NISCC Standards of Conduct and Practice.

In determining what the appropriate sanction was, the Committee has been cognisant of the impact that any sanction imposed upon the Registrant will have for her, and her future employability.

Warning – the Committee determined that the imposition of a Warning would be an insufficient sanction. The Committee considered that the misconduct caused the service user direct harm and was a deliberate act. The Committee considered that there was only limited evidence of insight into her misconduct. The Registrant has not participated in the NISCC investigation, nor in these proceedings, and, as such, the Committee cannot be satisfied that the Registrant has taken corrective steps to redress her behaviour.

Conditions of Practice Order – in the circumstances of this case, the Committee is of the view that it is not possible to identify feasible Conditions of Practice that would offer the necessary protection to the public to counterbalance the risk that is identified as arising from the Registrant's misconduct.

Additionally, there is no evidence available to the Committee that the Registrant is willing and has the ability to properly engage with any Conditions of Practice that might be imposed.

In essence, the Committee's view is that imposition of Conditions of Practice is not a workable, effective sanction in the circumstances of this case.

Suspension – in considering whether the imposition of a Suspension Order for up to two years would be a sufficient and effective sanction offering requisite protection to the public, the Committee has taken account of the potential that any such Suspension Order could be subject to review at the behest of the Council towards the expiry of same with the potential for further extension or other Order.

Notwithstanding same, the Committee, taking account of the seriousness of the circumstances of this case, combined with the fact that there was no evidence available to it that would allow it to conclude that misconduct of this nature on the part of the Registrant would not arise again following such a period of suspension, determined that suspension does not offer adequate protection to the public.

Removal – having considered the adequacy of the lesser alternative sanctions and determining not to adopt same, the Committee has come to the conclusion that a Removal Order is the appropriate, necessary and proportionate sanction to impose in the circumstances of this matter.

This is a case of deliberate breach of trust theft. The Committee further has been faced with the Registrant's non-attendance and non-cooperation with this process. While this of course is an approach entirely within the Registrant's right, it has meant, as a result, that there has been nothing to demonstrate to the Committee's

satisfaction that suspension or any other lesser sanction would be sufficient and effective to result in change of behaviour on the part of the Registrant, and to remove the risk that is demonstrated by her past conduct. Accordingly, it is the Committee's decision that the only adequate means to properly protect the public interest and to ensure public confidence in the social care profession and its regulation is maintained is to impose a Removal Order.

The Interim Suspension Order currently in place is hereby revoked.

Legal Advice Given

Service

Well it certainly would appear that the Notice of the Hearing was served by Special Delivery, posted 15 December 2016. I have been shown a copy of the receipt from the delivery service where it has been signed for by a name which certainly appears to be Shannon Gallagher, dated 16 December 2016 and, subject to the panel's consideration of the matter, it would certainly appear that service of the Notice of Hearing has been provided as required, pursuant to Rule 3 of the 2016 Rules and that the Committee can be satisfied to that effect.

Proceeding in the Absence of the Registrant

So perhaps the key understanding of the test to be applied in this situation where one is faced with a Registrant who doesn't attend, and the question is whether to proceed in the Registrant's absence, is to look to what is called the triangulation of interests. So there is the interest of the Registrant herself, the interests of the Council in terms of prosecutor, if one can put that word to it or of regulator, and then the wider public interest. Clearly the Registrant has an interest in these proceedings but it is clear that she is aware of the proceedings and indeed, as has been outlined by Ms Harvey, that she is aware of previous stages in these proceedings.

In common with those previous stages and today she has not chosen to attend and it would certainly seem open to the panel to consider that she has voluntarily decided that she is not going to engage in this process given that history. In terms of the Council's interest, clearly there is a strong interest on the part of the Council to ensure that the regulatory proceedings in a matter of this nature, given the particular allegation, is dealt with as expeditiously as possible in order to ensure the protection of the public interest and to maintain the good standing of the profession and, then finally, in relation to the public interest more generally, that is double pronged. There is a public interest in the proper administration of justice in proceedings of this nature, that fairness should be offered and not just offered but seen to be offered to all the Parties involved, but on the other hand, there is a clear public interest that issues of this nature are dealt with expeditiously and in a proportionate and cost efficient fashion. So you will have to balance all of those factors. The final point you might want to take account of is a point that has been made by Ms Harvey which is this: is there anything to indicate to you that if you were to adjourn today that it is more likely in the future that the Registrant will attend, and respectfully one might say that there would not appear to be much in that regard, if any.

Finding of Facts

Well, all I would say at this point I suppose is that prior to the private deliberations of the panel in respect of it is that Ms Harvey is correct to say the burden of proof lies on the Council and it is to the civil standard of the balance of probabilities. The evidence that has been put before you is a mixture of documentary and oral evidence. There is confirmation from Witness 1 that the Registrant admitted to her that she had taken money from the service user and that she accepted that it could have been in the amount of a £110 and that is perhaps further borne out by the documents purported to be signed by the Registrant, primarily in the context one might say the resignation note, but also perhaps more fundamentally, the document agreeing to the deduction from her wages of £110 to facilitate the repayment to the service user. Obviously those documents by themselves do not amount to actual real evidence and proof but combined with the evidence of Witness 1, you may be satisfied that that is sufficient to demonstrate an admission on the part of the Registrant of the theft. It is a matter of what weight you will put to that evidence. It certainly amounts to hearsay evidence on the part of Witness 1 rather than direct evidence of admission from the Registrant to today.

So, you should take account of that but the Rules are clear, that you are entitled to admit and take account of evidence, even if it would not be admissible in a Court of Law and I would remind you that currently in civil proceedings hearsay evidence is admissible. You just must be aware of the weight to be given to it because clearly it will not carry the same weight as direct evidence.

Fitness to Practise

Well in my experience this has really been covered by Ms Harvey and she is right to identify that the definition of impairment to practise is found at Rule 4 of the 2016 Rules and it is defined at 4 (1), Impairment of Fitness to Practise:

"A Registrant's fitness to practise may be impaired by one or more of the following reasons."

And it is relevant in this case it is 1 (a) Misconduct. The other issues under 4 (1) do not strictly arise in this particular case, the factors to be taken into account in your decision about impairment. Again, I don't take any particular issue with any of the points raised by Ms Harvey. It is correct to say that this is a case involving a finding in effect of dishonesty and of theft. There is a breach of trust element to it and the Committee will wish to carefully consider what the implications of that will be for the Registrant's Fitness to Practise in the sense not only of the risks that she might pose to service users, but also in terms of the public confidence and what impact that might have on the assessment of fitness to practise.

Sanction

The sanctions to be imposed are as you have indicated Chair. The range open to you are set out at Rule 26 of Schedule 2. In particular, then at 26 (2), it is set out what you must take into account in determining the appropriate sanction and that is as follows:

(a) the seriousness of the particulars of the allegation;

- (b) the degree to which the Registrant has fallen short of any expected standards;
- (c) the protection of the public;
- (d) the public interest in maintaining confidence in social care services; and
- (e) the issue of proportionality.

The Supreme Court of the United Kingdom has recently considered matters touching upon the type of issues you are going to have to consider this afternoon. In the case of the General Pharmaceutical Council and Habib Khan and the citation for that is 2016 UK SC64. While much of the case is not directly relevant to the issues at hand, one element of the appeal did touch upon whether the sanction imposed by the General Pharmaceutical Council on Mr Khan had been excessive and what the Supreme Court held was that, as it was in that case an appeal against the sanction of removal, the question is whether it was appropriate and necessary in the public interest to so remove or whether that was excessive and disproportionate. There is a recognition by the Supreme Court that the focus for the Committee is not so much on punishment but is on the effect of conduct on public confidence in the relevant profession and the need to identify a sanction that is proportionate to the need to ensure the protection of the public.

Some of the factors that the Supreme Court identified might be taken into account are matters such as whether there is a prior disciplinary history; whether the Registrant displays a genuine insight into the misconduct; whether there were open admissions at an early stage; whether the conduct gave rise to actual or potential harm to the public; whether there had been a genuine expression of remorse to the Committee; and whether there were steps taken to prevent reoccurrence of the conduct. The Committee will be conscious of the need to ensure the sanction imposed is proportionate to the need to protect the public and to secure public confidence in the social care profession. In that regard, the Committee should pay close attention to the guidance provided by the Northern Ireland Social Care Council in May 2016 by way of its document, Indicative Sanctions Guidance for Fitness to Practise Committees.

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:

- Care staff in a children's home, residential care home or nursing home.
- Manager of a residential care home, day care setting or 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 Register (Social Care Workers Prohibition) and Fitness of Workers Regulations (Northern Ireland) 2013.

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.

M. Stewart

Clerk to the Fitness to Practise Committee

18 January 2017

Date