

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

Name: Nicola McGivern

SCR No: 2001973

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council ('the Council'), at its meeting on **30 April 2019**, made the following decision about your registration with the Northern Ireland Social Care Council:

The Committee found the facts proved;

The Committee found that your fitness to practise is impaired by reason of your conviction.

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

Particulars of the Allegation:

That, being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), and whilst working as a Care Assistant at Nazareth House Care Village, you were convicted of the following offence at Laganside Magistrates Court:

1. Defendant on the 19th day of October 2017 stole £25.00 cash belonging to [Service User A], contrary to Section 1 of the Theft Act (Northern Ireland) 1969.

And your actions as set out above show that your fitness to practise is impaired by reason of your conviction.

Procedure:

The hearing was held under the fitness to practise procedure.

Preliminary Matters

The Registrant was neither present nor represented. The Council was represented by Ms Kelso, Solicitor, DLS.

Service

In a Notice of Hearing dated 21 February 2019, sent by Special Delivery post 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 package was received and signed for by the Registrant on 22 February 2019. A further amended bundle was issued to the Registrant at her registered address on 21 March 2019 and the package was signed for on 22 March 2019. The Committee heard and accepted the advice from the Legal Adviser. She referred the Committee to Rule 3 of Part 1 of the Rules and Paragraph 5 (2) of Schedule 2 of the NISCC Fitness to Practise Rules 2019 ('the Rules').

The Committee, in all of the circumstances of the case, is satisfied that the Notice of Hearing has been served in accordance with Rule 3 of the Rules and the requirements of Paragraph 5 of Schedule 2 of the Rules.

Proceeding in the Absence of the Registrant

Ms Kelso made an application to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules, and that the Committee should hear and determine the case in her absence. She advised that there was no evidence to suggest that the Registrant was seeking a postponement of this matter, nor did she provide any reason for her non-attendance at today's hearing.

The Committee heard and accepted the advice from the Legal Adviser, who referred it to the need to exercise its discretion with the utmost care and caution. She referred the Committee to the principles identified in the cases of R v Jones and Adeogba v GMC. She reminded the Committee that the Registrant is entitled to a fair hearing, to attend, be represented, test the Council's case and present evidence on her own behalf. She reminded the Committee that it must consider not only fairness to the Registrant but fairness to the Regulator in exercising its discretion. She said that the Committee should consider whether the Registrant was voluntarily absent and whether an adjournment would secure her attendance at a later date. She advised the Committee that it should not draw any adverse inference from the Registrant's absence, and to consider any disadvantage to the Registrant if the Committee decided to proceed in her absence. The Committee should also consider the general public interest in progressing the case in an expeditious manner. She reminded the Committee to take account of the interests of any victims and witnesses and any delay on their recollection. She advised the Committee that it should strike a careful balance between the competing interests.

The Committee was mindful that the discretion to proceed in the absence of the Registrant should only be exercised with the utmost care and caution. In considering the application, the Committee sought to satisfy itself that all reasonable efforts had been made to notify the Registrant of the hearing. The Committee reminded itself that fairness to the Registrant should be a prime consideration, but that fairness to the regulatory body should also be taken into account.

The Committee bore in mind the public interest in the expeditious disposal of the hearing, and 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, in all of the circumstances, considered that the Registrant has voluntarily absented herself from today's hearing, and that there is no information to the Committee to suggest that an adjournment would secure her attendance at a later date. The Committee reminded itself that it must avoid reaching any improper conclusion about the Registrant's absence. After careful consideration of all of 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, the Regulator and the wider public interest.

Hearing Bundle

Ms Kelso referred the Committee to the hearing bundle provided and, in particular, to the statement of the investigating Police Officer. She advised the Committee that she was applying for the witness statement of the investigating officer to be admitted as hearsay evidence without formal proof. She explained to the Committee that there was an error in the recording of the Registrant's date of birth on the Certificate of Conviction. The date of birth recorded on the Certificate of Conviction is 24 January 1972, whereas her actual date of birth is 24 November 1972. She submitted that the contents of the statement confirmed that the named person on the Certificate was the Registrant, and that the error arose as a result of a mistake in inputting the data onto the system. The investigating officer explained in his statement that the date of birth recorded on the PSNI IT system was 24.1.72, whereas the Registrant confirmed her date of birth at interview as 24.11.72. The contents of the statement confirm that all other details including the Registrant's address and telephone number relate to the Registrant. Ms Kelso requested that the statement be formally admitted into evidence under the hearsay rule. She referred the Committee to the legal principles identified in Thorneycroft v NMC and said that the statement of the investigating officer should be admitted into evidence as both relevant and fair.

The Committee heard and accepted the Legal Adviser's advice. She referred the Committee to the cases of Thorneycroft v NMC 2014 EWHC 1565, NMC v Ogbonna 2010 EWCA civ1216, Nijje v NMC and Bonhoffer v GMC, along with Paragraph 12 of Schedule 2 of the Rules. She reminded the Committee that it is entitled to admit evidence, either oral or documentary or other, whether or not it would be admissible in a court of law, subject only to the requirements of relevance and fairness. She reminded the Committee to consider carefully the reasons for the non-attendance of the witness, and whether his evidence is the sole or decisive evidence in support of the conviction or whether there is any other supporting material relating to the conviction. She reminded the Committee that the overall fairness of the proceedings is an essential consideration. She referred the Committee to Lord Bingham's comments in the Thorneycroft case in relation to the voluntary absence of a Registrant. She advised the Committee that it had three options to consider:

1. Admit the evidence and give it the appropriate weight, bearing in mind the lack of opportunity to test it;
2. Adjourn the hearing to enable the witness to attend;
3. Refuse to admit the evidence on the basis of unfairness to the Registrant.

The Legal Adviser informed the Committee that in order to assess relevance and admissibility, it would have to consider the contents of the material before reaching a fully informed conclusion as to its admissibility.

The Committee gave careful consideration to the submissions, the legal advice and the bundle of documents. The Committee noted that the witness statement from the investigating officer contains the sole evidence in relation to the error on the Certificate of Conviction. The Committee was satisfied that the Council had taken reasonable steps to secure the attendance of the witness, and that a copy of the witness statement had been served twice on the Registrant and that no objection was received. The Committee considered that the statement does contain relevant evidence. The Committee therefore, concluded that the admission of the investigating officer's statement without formal proof would not cause injustice to the Registrant. Therefore, the Committee accepts into evidence the entirety of the bundle of documents as Exhibit 1.

Background

Ms Kelso submitted to the Committee that the Registrant was employed by Nazareth Care House Village from 15 March 1999 until her suspension on 24 October 2017. Ms Kelso referred the Committee to the Employer Referral Form, dated 26 October 2017, in which it was recorded that an allegation had been made that the Registrant had stolen £25 from a service user's wallet which was in his bedside drawer. She submitted that the theft came to light as there was a concealed camera in the service user's bedroom which captured the incident. The Registrant was convicted at Laganside Magistrates' Court, Belfast, on 25 October 2018 of stealing the sum of £25 cash from a service user on 19 October 2017. On 15 November 2018, the Registrant was sentenced to 220 hours of community service.

Finding of Facts

The Committee took into account the submissions made on behalf of the Council, the Certificate of Conviction and the legal advice from the Legal Adviser. The Legal Adviser reminded the Committee that a Certificate of Conviction is proof of the factual contents of the conviction. She advised the Committee that the Registrant may challenge a Certificate of Conviction if it does not refer to the Registrant or has been challenged successfully on appeal. She informed the Committee that the Certificate of Conviction was issued before a competent Court of jurisdiction and, in the absence of any other evidence, the Committee is entitled to rely upon it to establish conclusively that the Registrant was convicted of the offence. She advised the Committee that it is also able to rely on the Certificate to establish conclusively the facts underlying this conviction. The Legal Adviser referred the Committee to the error in the date of birth noted on the Certificate of Conviction. She referred the Committee to the statement of the Police Officer in charge of the investigation, who confirmed that it was a data inputting error. She advised the Committee that it was a matter for it to assess the weight to be attached to the investigating officer's statement, having admitted the statement into evidence without formal proof.

The Committee accepts, on the balance of probabilities, the reason given by the investigating officer for the incorrect date of birth being recorded, and acknowledges that all other information on the Certificate was

accurate and related to the Registrant. The Committee also took into account that the Registrant signed for the documents twice and did not raise any objections. The Committee, having considered the submissions and having taking into account the legal advice, concludes that the Certificate of Conviction is conclusive proof of the facts set out in the Certificate, and therefore the Committee finds the facts proven.

Fitness to Practise

The Committee moved to consider if the Registrant's fitness to practise is currently impaired. The Committee heard submissions from Ms Kelso on the question of the Registrant's current impairment. She submitted that the Registrant's fitness to practise is currently impaired in light of her conviction for theft. She submitted that the evidence before the Committee, and the facts found proved, have established that her actions fell far short of the standards expected of a social care worker. She submitted that the Registrant abused her position, entered the bedroom of a sleeping service user and went through his belongings. She removed £25 cash from his bedside drawer. Her behaviour demonstrated a complete lack of respect for the service user and was an invasion of his privacy. She referred the Committee to the principles identified in CHRE v Grant 2011, and submitted that the level of the Registrant's insight was central to the assessment of this case. She submitted that the Registrant pleaded not guilty at Court despite CCTV footage of the theft, and has not demonstrated any remorse or insight. She further submitted that the Registrant's action brought the profession into disrepute and undermined public confidence. She said that the Registrant had not engaged with the Council or the regulatory process, and had not provided any evidence for the Committee to consider. She submitted that there was a serious breach of the following standards: Standard 1: 1.2, Standard 2: 2.2 and 2.6, Standard 5: 5.2, 5.3 and 5.8 and Standard 6: 6.1, 6.3 and 6.12. She submitted that, in the absence of any evidence of insight, remorse or remediation, the Committee should find that the Registrant is currently impaired.

The Committee had careful regard to all of the evidence and the submissions from Ms Kelso. The Committee accepted the advice of the Legal Adviser. The Committee was reminded that the purpose of fitness to practise proceedings is for the protection of the public from harm, and includes the wider public interest in upholding and maintaining standards of professional conduct. The Committee was advised that it must assess the Registrant's fitness to practise in the present tense and take account of the principles identified in the CHRE v Grant. The Legal Adviser informed the Committee that the assessment of fitness to practise was a matter for the Committee, exercising its independent judgement and that there was no burden or standard of proof. The Committee was reminded of the need to consider both the personal and public components in reaching its decision on impairment and, in particular, whether the Registrant had provided evidence of insight or remediation, and if there is a risk of repetition.

The Committee first considered whether the Registrant's fitness to practise was impaired by reason of her conviction for theft. The Committee had no hesitation in concluding that she was impaired at the time of the conviction. The Committee determined that the Registrant had breached the following Standards of Conduct:

1. **As a social worker, you must protect the rights and promote the interests and wellbeing of service users and carers. This includes:**
 - 1.2 Treating people with consideration, respect and compassion.
2. **As a social 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
 - 2.6 Being reliable and dependable.
5. **As a social worker, you must uphold public trust and confidence in social work services. In particular you must not:**
 - 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; or
 - 5.8 Behave in a way, in work or outside work, which would call into question your suitability to work in social care services.
6. **As a social worker, you must be accountable for the quality of your work and take responsibility for maintaining and improving your knowledge and skills. This includes:**
 - 6.3 Being personally accountable for your actions and able to explain and account for your actions and decisions; and
 - 6.12 Co-operating with any investigation or formal inquiry into your conduct, [the conduct of others], or the care or services provided to a service user where appropriate.

The Committee next considered whether the Registrant's fitness to practice is currently impaired on the basis of the Certificate of Conviction. The Committee concluded that whilst dishonesty is difficult to remediate, it can be remediated. In relation to considering the personal component, the Committee has not been provided with any evidence from the Registrant as to her level of insight, remorse, regret or risk of repetition and the Registrant has not engaged with the process. In the absence of any evidence, the Committee concludes that the Registrant is currently impaired on the personal component. In relation to the public component, the Committee is satisfied that without evidence of remediation, remorse or level of insight, public confidence in the profession would be undermined if a finding of current impairment was not made.

The Committee therefore finds that the Registrant's fitness to practise is currently impaired.

Sanction

In reaching its decision on sanction, the Committee had careful regard to all of the evidence in the case as well as the submissions from Ms Kelso. The Committee heard and accepted the advice of the Legal Adviser. She advised that the purpose of sanction was not to be punitive but may have a punitive effect. The Committee was

reminded that it should exercise its professional judgement in reaching a decision on sanction, and should keep at the forefront of its decision making the need to protect the public, the wider public interest and the principles of fairness and proportionality. The Committee was reminded that it should take into account the Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees 2017 ('the Guidance'), and consider the range of sanctions as set out in Paragraph 26 Schedule 2. The Committee was reminded that if it decided on a Conditions of Practice Order, that it should be specific, measurable, appropriate, relevant and time bound. In relation to the conviction for theft, the Committee was referred to the cases of Parkinson, Bolton, Wisniewska v NMC 2016 EWHC 2672 and Lusinga v NMC 2017 EWHC 1458, and was reminded to consider the level of dishonesty and whether the Registrant had attended or expressed remorse or regret.

In reaching its decision, the Committee considered 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 considered the offence to be serious even though the amount of money involved was small. The Committee considered both mitigating and aggravating factors. Aggravating factors were determined as follows:

- Breach of trust;
- Theft from a vulnerable service user;
- The offence was committed during working hours when the service user was asleep;
- Lack of engagement throughout the regulatory process; and
- Lack of insight and / or remediation.

The Committee considered the mitigating factors to be:

- A clear work record and good work history with Nazareth House Care Village; and
- Prior good character.

The Committee had careful regard to the Guidance which highlights dishonesty as particularly serious. The Committee is of the view that the Registrant's actions were serious and that the public is entitled to have confidence in registrants who are in position of trust. The Committee had not been provided with any evidence as to the Registrant's current financial position.

Warning – the Committee considered that none of the factors that would justify the imposition of a Warning were present in this case. The Committee was also of the view that such a sanction would be insufficient to mark the seriousness of the Registrant's offence and that the public in general, and vulnerable service users in particular, would be placed at risk if the Registrant was permitted to practise on an unrestricted basis.

Conditions of Practice Order – the Committee reminded itself of the serious nature of the conduct, in respect of which the Registrant was convicted of theft before a Magistrates' Court. She had entered the bedroom of a vulnerable service user and had taken £25 cash in the course of her duties. The Registrant has not taken any steps in the period during the regulatory proceedings against her to demonstrate remorse for her actions, nor has

she attended the hearing to persuade the Committee that such actions would not be repeated in the future. In addition, the Committee had no evidence of the Registrant's current employment status. Given these factors, the Committee determined that no workable, enforceable or verifiable conditions could be identified that could be attached to the Registrant's registration that would adequately protect the public.

Suspension – the Committee then considered whether it would be proportionate to apply a Suspension Order. The factors as set out in the Guidance were examined closely by the Committee. The Committee noted that the Registrant had not sought to engage with the regulatory proceedings against her. She has not demonstrated any evidence of insight or remedial actions that would address the serious issue as evidenced by her conviction. While the Registrant offended on one occasion, the Committee was of the view that, nonetheless, her actions were of a most serious kind. The Committee was in no doubt that she had abused her position of trust as a social care worker in order to steal money from a vulnerable service user in her care.

The Committee considered that in the absence of demonstrable evidence touching upon insight and remedial action, a real risk remained that the Registrant could repeat the conduct complained of which had resulted in her conviction. The Committee also had regard to Paragraph 5.15 of the Guidance, in particular, 'Users of services rely upon the professional's trustworthiness, which they are entitled to assume because of the professional's training and registration. People who use services have the right to be protected from a social care worker who seriously abuses the trust placed in them...for financial gain...contrary to the interests of the person using the services.' That Guidance, to the Committee's mind, seems to be particularly apt in the circumstances of this case.

The Committee concluded that the Registrant's actions were fundamentally incompatible with continued registration. It seemed to the Committee that imposing a Suspension Order, in the absence of evidence to support such a sanction, would undermine public confidence and would fail to declare and maintain proper standards of conduct and performance in the social care workforce.

Removal – the Committee therefore decided that the only appropriate and proportionate sanction to impose in the particular circumstances of this case was a Removal Order. The Registrant had acted in a reprehensible fashion in stealing from a vulnerable service user, for whom she was charged to provide care, and had fallen far short of the standards to be expected from a member of the social care workforce. The Registrant had not demonstrated insight, neither had she produced evidence of remedial action that would reassure the Committee that she would not repeat her dishonest behaviour in the future. As such, the Committee considered that the Registrant's conduct was fundamentally incompatible with continuing registration and that the only proportionate response that would adequately protect the public and uphold the public interest would be to remove the Registrant from the Register.

The Committee also ordered that the Interim Suspension Order in place in respect of the Registrant's registration be revoked with immediate effect and replaced with the Removal Order.

You have the right to appeal this decision to the Care Tribunal. Any appeal must be lodged in writing within 28 days from the date of this Notice of Decision.

You should note that the Fitness to Practise Committee's decision takes effect from the date upon which it was made.

The effect of this decision is that your entry in the Register has been removed.

You are prohibited from working as a social care worker in any of the following positions:

1. A member of care staff at a:
 - a.) Children's home;
 - b.) Residential care home;
 - c.) Nursing home;
 - d.) Day care setting;
 - e.) Residential family centre.
2. A person who is supplied by a domiciliary care agency to provide personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
3. A manager of a:
 - a.) Residential care home;
 - b.) Day care setting;
 - c.) Residential family care centre; or
 - d.) Domiciliary care agency.

It is **compulsory** for the above social care workers to be registered with the Northern Ireland Social Care Council in order to work. This is pursuant to the Northern Ireland Social Care Council (Social Care Workers Prohibition) and Fitness of Workers Regulations (Northern Ireland) 2013 and the Northern Ireland Social Care Council (Social Care Workers Prohibition) and Fitness of Workers (Amendment) Regulations (Northern Ireland) 2017.

In accordance with Schedule 3, Paragraph 9 of the NISCC Fitness to Practise Rules, you may not apply to be restored to the Register within five years from the date of removal. This does not affect your right to appeal the Committee's decision to the Care Tribunal. You are prohibited from working in a social care role until a successful application for restoration onto the Register has been made to the Council.

P.P. Kennedy

Committee Manager

03.05.19.

Date