

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

REDACTED

Name: Jacqueline Molyneux

SCR No: 6009787

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **11 May 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 your health;

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 Care Assistant at Brooklands Healthcare:

1. On or around 27 / 28 December 2015, whilst on duty, you consumed alcohol;
2. On or around 27 / 28 December 2015, whilst on duty, you became intoxicated;
3. [REDACTED]

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

Preliminary Matters

Service

The Registrant was neither present nor represented. The Council was represented by Ms Louise Harvey, Solicitor, Directorate of Legal Services, Business Services Organisation. In a Notice of Hearing dated 10 April 2017, 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 postal package was signed as received by the Registrant on 11 April 2017.

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 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, and that the Committee should hear and determine the case in her absence. Ms Harvey referred the Committee to the case of R v Jones 2003. She submitted that the Council considers that the Registrant has voluntarily absented herself from the hearing today. She advised the Committee that the Registrant has admitted the allegations and there is substantial and detailed mitigation evidence for the Committee to consider. She further submitted that the allegations against the Registrant are serious and that it is in the public interest that this matter proceeds without further delay.

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, and accepted the advice of the Legal Adviser. She referred the Committee to the case of R v Jones 2003, and the general principles arising which would be of assistance in considering the application. The Committee further noted that the Registrant returned the attendance form on 19 April 2017, in which she indicated that she did not intend to attend the hearing or be represented in her absence. She did not request a postponement of the hearing.

The Committee paid careful consideration to the submission from the Council and the attendance form completed by the Registrant. The Committee first gave consideration to the nature and circumstances of the Registrant's absence and, in particular, whether this was deliberate and voluntary, constituting a waiver of her right to appear. The Committee noted that the Registrant has engaged with the Council and that she has indicated that she will not be attending the hearing. The Committee therefore considers that the Registrant with the full knowledge that this matter has been listed for hearing has voluntarily absented herself from today's hearing. The Committee next considered whether an adjournment might result in the Registrant attending the proceedings at a later date and the likely length of such an adjournment. However, the Committee had no evidence to assist it as regards this consideration.

The Committee considered the extent of the disadvantage to the Registrant in not being able to give evidence and present her account of events relating to the allegations. However, taking into account the seriousness of the allegations and the general public interest in this hearing taking place, the Committee considers that the public interest in having the matter heard outweighs the interests of the Registrant.

Taking all of the above factors into account, and after careful consideration, the Committee decided to exercise its discretion to proceed in the absence of the Registrant. The Committee exercised this discretion with the utmost care and caution, balancing the rights of the Registrant against the wider public interest in the expeditious disposal of the matter. In all of the circumstances, the Committee considers that the Registrant has voluntarily

absented herself from today's hearing. However, the Committee reminded itself that it must avoid reaching any improper conclusions, nor treat the absence as an admission in any way.

Application to Admit Hearing Bundle

The Committee heard an application from Ms Harvey under Paragraph 12 of Schedule 2 of the Rules to admit a bundle of papers into evidence. She advised the Committee that this bundle of papers had been served on the Registrant by way of Special Delivery post. On receiving advice from the Legal Adviser, and there being no objection from the Registrant, the Committee was satisfied that the bundle met with the requirements of fairness and relevance and should be admitted.

Background

The Registrant is registered on Part 2 of the NISCC Register as an Adult Residential Care Worker and was employed as a care assistant by Brooklands Healthcare ('Brooklands') between January 2014 and January 2016. It is alleged that on the evening of 27 December 2015 through to 28 December 2015, the Registrant consumed alcohol whilst on duty and became intoxicated. It is further alleged that the Registrant [REDACTED]. On this occasion, the Registrant was observed during her shift as acting strangely. She was also noted as being missing for a period during the shift and, on her return to the workplace, was complaining of pain in her hip. Her colleagues, at this time, reported to the Nurse in Charge that she was smelling of alcohol and was refusing pain relief for her sore hip. As a result of the Registrant's complaints, the Nurse in Charge phoned for an ambulance and, at this stage, two vodka bottles were found, one of which, a quarter bottle, was empty and the other partially empty. The Registrant attended Daisy Hill Hospital and it is alleged that she was rude and abusive to the ambulance crew. Daisy Hill Hospital advised Brooklands that the Registrant had a possible fracture to her right hip and registered a high alcohol level on testing. The Registrant was subsequently suspended from her employment.

During the investigation of this matter, carried out by Brooklands, the Registrant indicated that, at this time, [REDACTED]. She admitted to consuming alcohol on duty and apologised for her behaviour.

On 03 February 2017, the Registrant was examined by a medical expert, Dr [A], on behalf of the NISCC. With the consent of the Registrant, Dr [A] was provided with copies of extracts from the Registrant's General Practitioner's notes and records. Dr [A] was of an opinion that the Registrant was suffering from a health condition at the time of the incident as referred to in Particulars 1 and 2, and that she continues to suffer from a health condition.

Finding of Facts

Ms Harvey, on behalf of the Council, advised the Committee that the Registrant admitted all of the facts as set out in the Particulars of the Allegation. In accordance with Paragraph 19 of Schedule 2 of the Rules, the Registrant signed an agreed Statement of Facts on 10 March 2017, as follows:

1. The Registrant is registered on Part 2 of the Northern Ireland Social Care Council Register.

2. The Registrant admits that whilst working as a Care Assistant at Brooklands Healthcare, Kilkeel that:
 - (i) On or around 27 / 28 December 2015, whilst on duty, the Registrant consumed alcohol
 - (ii) On or around 27 / 28 December 2015, whilst on duty, the Registrant became intoxicated
3. The Registrant accepts that her actions above fall below the standard expected of a registered social care worker.
4. At the request of the Northern Ireland Social Care Council, the Registrant attended a medical expert on 03 February 2017.
5. [PARAGRAPH REDACTED].
6. [PARAGRAPH REDACTED].
7. The Registrant's current fitness to practise is therefore deemed impaired by reason of her adverse health condition.
8. The Registrant has been advised to seek independent legal advice.

In accordance with this agreed Statement of Facts, the Committee finds the facts as set out in the Particulars of the Allegation as proved.

Fitness to Practise

Having found the facts proved, the Committee then proceeded to consider if the Registrant's fitness to practise is impaired. Before reaching its decision, the Committee had regard to the submissions made on behalf of the Council by Ms Harvey and the medical evidence produced. In addition, the Committee heard and accepted the advice from both the Medical Adviser and the Legal Adviser.

In her submission, Ms Harvey reminded the Committee that the Registrant, in the agreed Statement of Facts, has admitted that her fitness to practise is impaired. She referred the Committee to the Standards of Conduct and Practice for Social Care Workers and submitted that the Registrant was in breach of Standards of Conduct 2: 2.1; 5: 5.7 and 5.8; and 6: 6.1. She submitted that the Registrant's actions in consuming alcohol whilst on duty and becoming intoxicated placed service users for whom she was caring at an unnecessary risk of harm. She stated that the Registrant's colleagues were required to look after her which took them away from the care of service users. She told the Committee there is no evidence that the Registrant has remediated her actions and that in accordance with Dr [A]'s report, she continues to [REDACTED]. She further submitted that, in these circumstances, it would not be in the public interest for the Registrant to remain on the Register without restriction.

The Committee received the advice of the Medical Adviser. He referred the Committee to the findings of Dr [A] and the analysis of the Registrant's GP notes from the period of 30 December 2015 to 04 November 2016. He noted that Dr [A] considers that the Registrant experienced [REDACTED]. He advised the Committee that the Registrant developed [REDACTED] after moving to Northern Ireland in 2013 and that her health deteriorated

from a period mid-2015. He referred the Committee to Dr [A]'s opinion that the Registrant continues to [REDACTED] and that her current fitness to practise is impaired by reason of her health.

The Committee reminded itself that, in accordance with Paragraph 29 (3) of Schedule 2 of the Rules, where it is considering whether a Registrant's fitness to practise is impaired by reason of health, it must take into account the requirements as set out at Paragraph 29 (3) (d). The Committee, therefore, must take into account all of the medical evidence produced and consider whether the alleged impairment of fitness to practise has been caused, or substantially contributed to, by the Registrant's ill health.

The Committee finds that the Registrant's actions as set out in the Particulars of the Allegation were in breach of the following Standards of Conduct:

Standard 2: As a social care worker, you must strive to establish and maintain the trust and confidence of service users and carers. This includes:

2.6 Being reliable and dependable.

Standard 5: As a social care worker, you must uphold public trust and confidence in social care services. In particular you must not:

5.7 Put yourself or other people at unnecessary risk; 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.

Standard 6: As a social care worker, you must be accountable for the quality of your work and take responsibility for maintaining and improving your knowledge and skills. This includes:

6.1 Meeting relevant standards of practice and working in a lawful, safe and effective way.

The Committee determined that the Registrant's health issues were a significant factor in her conduct during her shift on 27 / 28 December 2015. Dr [A], in his report of 07 February 2017, provides a clear summary of the Registrant's health issues from 2015 to date. In the 'Summary and Opinions' part of his report, he finds as follows:

'13.5 [PARAGRAPH REDACTED].

13.6 [PARAGRAPH REDACTED]'

Taking Dr [A]'s findings into account, the Committee considers that the Registrant's conduct, as described in the Particulars of the Allegation, was caused by her ill health.

The Committee finds that the Registrant's behaviour posed a risk to both service users and her colleagues. Although the Committee notes that no harm was caused to service users by the Registrant, the Committee accepts that her behaviour required considerable attention from her colleagues at a time when they should have been caring for service users. The Committee is therefore satisfied that the Registrant's fitness to practise was impaired at the time of the incident and was caused by her ill health.

The Committee has no evidence concerning remediation. The Committee notes the Registrant's letters to the Council where she indicates that she does not intend to work for private homes again. The Committee notes Dr [A]'s findings that the Registrant continues to [REDACTED], and the Committee has no evidence to show that her health condition has changed or of her compliance with medical treatment for her condition.

Whilst the Committee notes that the Registrant has admitted the facts of the Particulars of the Allegation and expressed remorse for what happened, the Committee has no evidence from the Registrant concerning insight into the risk of harm her behaviour could cause to service users. In addition, the Committee has no evidence, [REDACTED], to confirm the Registrant's current status in relation to [REDACTED]. Accordingly, the Committee considers there is a risk that the Registrant's conduct could be repeated.

The Committee considers the Registrant's actions, in consuming alcohol and becoming intoxicated whilst attending work, bring the social care profession into disrepute and concludes that the public's confidence in the social care profession would be undermined if a finding of impaired fitness to practise was not made.

Accordingly, the Committee finds that the Registrant's current fitness to practise is impaired by reason of her health.

Sanction

In reaching the decision on sanction, the Committee had regard to all of 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 first considered the aggravating and mitigating factors in the case. The Committee determined that the aggravating factors are:

- The Registrant consumed alcohol at work, became intoxicated and was unable to perform her duties;
- The service users at Brooklands were elderly and vulnerable and the Registrant's actions placed them at risk of potential harm;
- The Registrant demonstrated no insight into the effects of her behaviour on service users, her colleagues who were required to look after her or the health service personnel who cared for her subsequent to this incident;
- The Registrant provided no evidence to the Committee that she has addressed [REDACTED], nor has she provided any reassurance that her behaviour will not be repeated;

- The Registrant has demonstrated a serious disregard for the Standards of Conduct and Practice for Social Care Workers;
- The Registrant appears to lack insight into her ongoing health condition and its effect on her ability to practice as a social care worker;
- The Registrant did not supply any references or testimonials.

The Committee determined that the mitigating factors are:

- The Registrant accepted her behaviour as set out in the Particulars of the Allegation and cooperated with her employer's investigation;
- The Registrant apologised for her behaviour to her work colleagues;
- The Registrant admitted, in correspondence to the Council, that she had consumed alcohol at work;
- The Registrant admitted the Particulars of the Allegation and that her current fitness to practise was impaired by reason of her health condition;
- The Registrant was described by colleagues as a hard worker, and this appears to have been a one off incident with no evidence of previous difficulties of this nature;
- The Registrant has no previous disciplinary history with the NISCC.

The Committee then went on to consider the appropriate sanction. The Committee considers that the Registrant's actions fell well below the standard expected of a registered social care worker. In determining which sanction to impose, the Committee took into account the following:

- a) The seriousness of the particulars of the allegation;
- 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 sanctions are imposed to the extent it is necessary to protect the public. Other relevant considerations include maintaining public confidence in the profession concerned, maintaining confidence in the NISCC regulatory process and the deterrent effect on other registrants.

The Committee has given careful consideration to the NISCC Indicative Sanctions Guidance.

Taking all of the above into account, and having balanced the aggravating and mitigating factors, the Committee went on to consider which sanction to apply in this case:

Warning – the Committee considered the issue of a Warning in this case. It bore in mind that the imposition of a Warning for a period of time would not protect the public from the risk of repetition and consequent risk of harm to service users. The Registrant's impairment of fitness to practise is not at the lower end of the spectrum, nor are the circumstances such that the Committee would be confident that this sanction would provide adequate public protection as far as the Registrant's suitability is concerned, bearing in mind that a Warning would entitle the

Registrant to work unrestricted as a social care worker. The Committee has no evidence of corrective steps being taken by the Registrant, nor does it have any references or testimonials as to her character and current circumstances. In addition, the Committee notes the professional opinion of Dr [A] in February 2017 that the Registrant continues to suffer from a health condition and that her current fitness to practise is impaired by reason of her health.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Committee noted the NISCC Indicative Sanctions Guidance at Paragraph 4.13, which states that conditions may be appropriate in cases involving particular areas of a registrant's performance and where a Committee is satisfied that it is appropriate for an individual to remain on the Register. However, the Committee cannot be satisfied that this Registrant has displayed insight into her health condition and its impact on her social care practice. The Committee concluded that a Conditions of Practice Order would not be sufficient to meet the public interest in this matter given the seriousness of the Registrant's departure from the standards expected of a registered social care worker. The Committee has no information as regards the Registrant's current employment and therefore could not formulate conditions which would adequately protect the public.

Suspension – the Committee did not consider that a Suspension Order would be an appropriate or proportionate sanction in this case. The Committee determined that this was a serious incident and took into account the NISCC Indicative Sanctions Guidance at Paragraph 4.19, which states:

'Suspension from the Register may be an appropriate sanction for impairment which while very serious, is not so serious as to justify removal from the Register; for example, where there has been an acknowledgment of failings and where a Committee is satisfied that the behaviour is unlikely to be repeated, and the Registrant has no psychological or other difficulties preventing them from understanding and seeking to remedy the failings and the failings are realistically capable of being remedied, then suspension may be appropriate.'

The Committee determined that a Suspension Order would not address the risk of repetition nor the Registrant's health condition. In the view of the Committee, the interests of service users and the public would not be sufficiently protected by suspension. The Registrant has not presented any evidence to the Committee that she could resolve or remedy the cause of her ill health during a period of suspension.

Removal – the Committee concluded that given the seriousness of the Registrant's impaired fitness to practise, the lack of evidence of remediation and the risk of her repeating her actions, a Removal Order is the only sanction sufficient to protect the public and maintain public confidence in the social care profession and the NISCC as its regulator. The Committee considered that the Registrant's actions constitute a serious departure from the expected standards. Her actions in consuming alcohol and becoming intoxicated at work were serious. The Committee concluded that, in the absence of any evidence of remediation, allied with the findings of Dr [A] as regards the Registrant's health, there is a continuing risk to service users. The Committee notes that the Registrant is described as a hard worker and that there is no previous disciplinary history with the Council. The

Committee considered the potential devastating impact of a Removal Order on the Registrant, but concluded that the safety of service users was more important than the impact on the Registrant.

The Committee also considered that public confidence in the social care profession would be undermined if a social care worker who behaved in such an inappropriate way in work and who continues to suffer from a health condition impairing her fitness to practise and appears to lack awareness of an issue with [REDACTED], was allowed to remain on the Register.

The Committee concluded that a Removal Order was a suitable, appropriate and proportionate sanction which will be imposed on the Registrant's registration with immediate effect.

Legal Advice Given

Service

Just to confirm, I've had an opportunity to consider the documents and the documents are in accordance with the details and the dates that you have heard from the Council's Solicitor. You will be aware that Paragraph 5 of Schedule 2 of the Fitness to Practise 2016 Rules, govern the requirement that a 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 in this case, the Notice was sent on 10 April 2017 and you have heard, and I have had an opportunity to confirm, it was accepted by the Registrant on 11 April 2017. In view of that, you must now accept that service has been effected in accordance with the Rules.

Proceeding in the Absence of the Registrant

In view of the Registrant's absence today and in light of the submission you have just heard, you must now consider whether to continue or proceed with this matter in this Registrant's absence, and this application before you is made under Paragraph 15 of Schedule 2 of the Rules for the matter to do so. You will be aware that where a Committee is satisfied that a Notice of Hearing has been duly served on the Registrant, you have a number of options. You may either hear and determine the case in the absence of the Registrant, or adjourn the hearing and give directions, and this is totally a matter of discretion for you. I would refer you also to the case, and you are familiar with this, of *R v Jones 2003*, and this is a criminal case but it has been approved as applicable in regulatory matters. In this case, Lord Bingham stated that, and I quote:

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

Therefore, now, you should consider whether an adjournment today may result in this Registrant attending the proceedings at a later date. You should look at the time involved in such an adjournment and the extent of the disadvantage to this Registrant in not being able to present her account of events before you today. You should also look at the seriousness of the allegations before you, the general public interest in this matter being dealt

with and also any evidence you have before you as regards the interests of any victims.

I would remind you that this Registrant is entitled to a fair hearing, to attend, be represented, to test the Council's case and present evidence on her own behalf. However, if you consider she has knowledge, or means of knowledge, of today's proceedings, you may conclude that she has voluntarily absented herself and proceed in her absence. In considering this, you should consider any information you have before you in relation to advice and details that have been given to the Registrant sufficient to advise her of the importance of attending here today. You should also consider whether she is duly informed as to the nature of the proceedings today and the allegations which are being made against her and these have been particularised in the Notice that was sent to her. This Notice of Hearing has specific and clear information as regards the allegations, the date of hearing and also your powers to proceed in her absence, and this principle of fairness applies equally to the presentation of the Council's case. Therefore, in exercising your discretion, you must balance the rights of the Registrant against the wider public interest in the expeditious disposal of the matter.

You have heard from the Council's solicitor that she has been in contact with this Registrant and you have heard her submission in relation to the Registrant's views and wishes as regards attending here today. If you consider this hearing should continue in her absence, I would ask you to avoid reaching any improper conclusions about this absence and also ensure that the hearing is fair, as all the circumstances permit.

Private Hearing

Well as you have indicated the fall-back position is these matters are always heard in private and in light of the fact there has been no application by the Registrant, this matter should proceed by way of the health route, as such, and, in light of that, all proceedings henceforth should be in private.

Admission of Hearing Bundle

You have heard the application from Ms Harvey in relation to the submission of a bundle of documents. This is under Paragraph 12 of Schedule 2 of the 2016 Rules, and you will be aware that this allows you to admit evidence either oral or documentary or other, whether or not it would be admissible in a Court of Law, subject to the requirements of relevance and fairness. Relevance means having a reasonable connection with the evidence in the case and having a value or tendency to prove a matter significant to the case, and when you are considering fairness, you should direct yourselves to the issue of quality, reasonableness, public interest and the interest of justice. This is a bundle of documents that has been served on the Registrant and I have had an opportunity to consider it and can confirm the bundle contains documentation that is relevant to the allegations that are before you today. In addition, there has been no objection from the Registrant in relation to the documents and I would advise you that there, therefore, does not appear to be any unfairness to the Registrant in you considering admitting this bundle.

Finding of Facts

Under Paragraph 19 of Schedule 2 of the 2016 Fitness to Practise Rules, a Registrant has the option of admitting

facts and if these facts are admitted, they may be read out by the Case Presenter and that is the case in this particular instance. At this stage of the proceedings you are considering facts. You have not moved on to the second stage of the proceedings which relates to consideration of impairment of fitness to practise. You have heard from the agreed Statement of Facts that Ms Harvey has read out to you, that the facts have been admitted by the Registrant, and the Rules do allow you to announce that these are proved by admission.

Fitness to Practise

In addition to the detailed submissions from Ms Harvey and also her references to the Standards of Conduct and Practice for Social Care Workers, you, as a Committee, will know that in determining whether fitness to practise is impaired you should adopt a sequential approach and I would refer you to the case of *Cohen v GMC* in 2008 in support of this. In this particular matter, you have heard that the Registrant has accepted the facts as alleged, that the allegations are proved and this has been announced by yourselves. In accordance with Rule 4 of the 2016 Rules, a Registrant's fitness to practise may be impaired by one or more of specific reasons and one of those reasons is before you today, and that relates to the Registrant's physical or mental health. Schedule 2, Paragraph 24 of the Rules states that:

"In deciding on the issue of impairment of fitness to practise you should have regard to the following:

- *Your being satisfied as to the reasons for the alleged impairment to fitness to practise;*
- *Consideration of the Standards of Conduct and Practice;*
- *Whether the impairment is capable of remediation; and*
- *Whether you have any evidence that that has happened."*

And as regards this, I would refer you to the Northern Ireland Social Care Council Guidance for Committees on Remediation and it would not be my intention to highlight the contents of this for you today, as this documentation is available for your consideration. In addition, you should consider any evidence as regards the risk of repetition and most importantly the public interest. In the case of *Cohen v GMC*, the High Court directed you to consider the current competence and behaviour of the Registrant and this is referred to as the personal component and then take account of the need to protect service users and members of the public, proper standards of behaviour and maintain public confidence in the social care profession and this being the public component of this test. You should therefore consider any evidence you have before you, of any degree of harm caused by this Registrant. You have before you a bundle of documents and included in those documents are statements taken from the witnesses to the events in relation to Particulars one and two, which you have found proved. You have no further evidence from the Registrant. However, you have two letters from her, which I would ask you to pay particular attention to when considering this part of the proceedings. I would emphasise that as regards impairment and as set out by the Court of Appeal in the case of *GMC v Meadows* in 2006, you are exercising your professional judgement. There is no applicable burden or standard of proof here. I would refer you to the case of *CHRE v NMC and Grant* in 2011 and, in particular, the findings of Mrs Justice Cox at Paragraphs 74 and

75, where she indicates:

"In determining whether a Registrant's fitness to practise is impaired by reason", and in this matter it is physical or mental health, "you should consider whether the Registrant continues to present a risk to members of the public in her role and whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.

It is also relevant that you take into account the fact that current fitness to practise may be founded on past matters and by reference to how a Registrant is likely to behave in the future. Impaired fitness to practise is defined as circumstances which call into question the suitability of a Registrant to remain on the Register without restriction or to be registered at all, and you have heard advice from the Medical Adviser in relation to this and in accordance with Rule 13 of the 2016 Rules, which you can have access to at page 11, you will be aware that any advice that the Medical Adviser gives to you in private should also be repeated subsequently in public for representations to be made.

Paragraph 29 (3) (d) indicates:

"that where a Committee is considering whether a Registrant's fitness to practise is impaired by reason of health you should consider all the medical evidence before you on which the alleged impairment of fitness to practise has been caused or substantially contributed to, by the Registrant's physical or mental ill health."

And you will be aware that the Medical Adviser's advice can only be accepted when answering or dealing with this particular consideration. You have before you the report from Dr [A], and I would ask you to consider the Registrant's professional and personal circumstances at the time of these allegations and look at whether the Registrant's health provides mitigation as to her level of culpability at that stage. The wording caused or substantially contributed to should be given common-sense understanding. Substantially is defined as to a greater or significant extent and you should also consider whether the conduct as described in the allegations arose to a greater or significant extent because of the Registrant's health. Therefore, in addition, I would ask you to look at the two letters you have received from the Registrant, allied with the findings of Dr [A], and consider whether you have evidence before you which shows a degree of insight the Registrant has now in relation to her failings. You'll be aware of the case of Bolton v Law Society which suggests that the reputation of the profession or a profession is more important than the fortunes of any individual member.

Sanction

Paragraph 26 of Schedule 2 of the Northern Ireland Social Care Council Fitness to Practise Rules 2016 sets out the available sanctions open to you as a Committee at this stage and the Chair has already referred to these at the outset of this stage of the proceedings, and I would not intend repeating them. However, in determining the appropriate sanction, you are obliged to take into account the following factors. Firstly, the seriousness of the Registrant's impaired fitness to practise. Secondly, the degree to which this Registrant has fallen short of any expected standard. Thirdly, the protection of the public. Fourthly, the public interest in maintaining confidence in social care services and lastly, and quite importantly in this matter, the issue of proportionality which Ms Harvey

has already referred you to, and this means weighing on one part the Registrant's interests against on the other part the interests of the public.

I would also refer you to the Northern Ireland Social Care Council Indicative Sanctions Guidance 2017 and remind you that the purpose of sanctions is not punitive. Paragraphs 2.5, 2.6 and 2.7 of the Guidance deals with considerations of fairness and proportionality. You should recall, and you will be familiar with this, that in considering sanction you must look at them in ascending order of severity, beginning your deliberations by considering Warning first. As the primary purpose of sanctions is the protection of the public and also maintaining the reputation of the profession, I would ask you to pay particular attention to the Guidance and the guidelines in relation to this aspect of your considerations and this directs you that the public should have confidence that the Northern Ireland Social Care Council will uphold proper standards of behaviour and conduct in regulating social care workers.

The public interest requires that both the public and social care users are protected from unsafe practices and should have confidence in the social care workforce and, in serving that public interest, the purpose of sanction is to ensure that the social care worker does not have an opportunity to repeat the conduct and also maintain the reputation of the profession. I would refer you to Paragraphs 2.2 and 2.5, which remind you that any limitation of the right to practise one's profession should be no more than is necessary in the circumstances, and that over-arching consideration is that you have to act fairly in all the circumstances.

You must also give consideration to any aggravating or mitigating factors and you will be aware that, in particular, you have the findings of Dr [A] in his medical report where the Registrant answers queries put to her by Dr [A] in relation to her current condition and also her personal circumstances at the time of these incidents. I would ask you also to pay particular attention to the two handwritten letters you have in the bundle before you, which indicates very clearly the Registrant's remorse, where she indicates "*I'm so so very ashamed of my actions*" and she said at the incident in question "*there was no harm caused to the residents*" and she also apologises to her work colleagues for leaving them to cope. She further points out "*I am a caring person and wouldn't do harm to anyone.*" So that forms part of her submissions which I would ask you to consider at this stage.

You should be aware also of the potentially devastating effect, financially and personally, a sanction has on a Registrant.

Medical Advice Given

Fitness to Practise

[REDACTED].

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

17 May 2017

Date