

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

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**Name:** Maggie Magdalene Frost

**SCR No:** 6012504

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **17 May 2018**, 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 suspending your registration for a specified period of SIX MONTHS ('a Suspension 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 Madelayne Court Nursing Home, 2 Nursery Avenue, Portstewart:

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| 1. | On or around 03 April 2017, you roughly led Resident A by both arms to the lounge area.  |
| 2. | On or around 03 April 2017, you inappropriately restrained Resident A by placing her in a recliner chair and tipping it back so far that she could not get up. |

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

**Procedure:**

The hearing was held under the fitness to practise procedure.

**Preliminary Matters**

**Service**

The Registrant was neither present nor represented. The Council was represented by Ms Rachel Kelso.

In a Notice of Hearing dated 11 April 2018, 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 12 April 2018. 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 Kelso made an application to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules, and submitted that the Committee should hear and determine the case in the absence of the Registrant. Ms Kelso referred the Committee to the cases of *General Medical Council v Adeogba 2016* and *R v Jones 2003*, and submitted that the Council's position was that the Registrant had voluntarily absented herself from the hearing today. Ms Kelso submitted that the Council had received no communication from the Registrant, and was not aware of any reason to suggest that she would be any more likely to attend on another date if the case was adjourned today. Ms Kelso accepted that the Registrant may be disadvantaged by not being in attendance but submitted that, in her view, this factor is outweighed by the seriousness of the allegation. Ms Kelso stated that it was in the public interest for the case to proceed today, and explained that the Council had one witness in attendance and that an adjournment could have a detrimental impact on the recall of this witness.

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

The Committee paid careful consideration to the submission from the Council. The Committee took into account the detailed information contained within the Notice of Hearing, which provided the Registrant with details of the allegations, the time, date and the venue of the hearing and, amongst other things, the Registrant's right to attend and to be represented, as well as the Committee's power to proceed in her absence. 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 allegation and the general public interest in this hearing taking place, the Committee considered that the public interest in having the matter heard outweighed the interests of the Registrant. The Committee had no information to suggest that the Registrant would be any more likely to attend on another date if the case was adjourned.

Taking all these 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 case. The Committee decided that the Registrant has voluntarily absented herself from today's hearing.

## **Background**

The Registrant is registered on Part 2 of the Register and, at the relevant time, was employed as a care assistant at Madelayne Court Nursing Home in Portstewart. The Registrant was first registered with the Council on 07 January 2015.

On 25 April 2017, the Council received an Employer Referral Form which set out that on 03 April 2017, on the Dementia Unit in Madelayne Court, a visitor raised an allegation about the way in which the Registrant dealt with a resident (Resident A).

### **Application to Admit Hearing Bundle**

The Committee received an application to admit the hearing bundle into evidence and to admit the statement of Witness 2 into evidence as hearsay. The Committee heard that for health reasons the witness was unable to attend today. The Committee heard that Witness 2 was the Registrant's direct manager and was working on the evening of 03 April 2017.

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

The Committee accepted that the statement of Witness 2 was likely to contain relevant information. The Committee was satisfied that the Council had taken reasonable steps to secure the attendance of the witness. A copy of the statement had been served on the Registrant and she had not objected to the content of the statement. The Committee was of the view that the statement was not the sole and decisive evidence in relation to the allegation as the Committee was to receive live evidence from Witness 1. The Committee concluded that the admission of the statement would not cause injustice to the Registrant and it would be a matter for the Committee the degree of weight which could be applied to the statement.

The Committee noted that there was reference to another witness or potential witness in the bundle and in the statement of Witness 2 but gave no weight to this, as no direct evidence was placed before the Committee in respect of this witness.

The Committee admitted the entirety of the bundle into evidence, referred to as Exhibit 1.

### **Findings of Fact**

The Committee carefully considered the documentary and oral evidence, and accepted the advice of the Legal Adviser.

The Committee found Witness 1 to be a credible and honest witness. The Committee heard that she was visiting her grandmother who is a resident at Madelayne Court on 03 April 2017. Witness 1 told the Committee that she observed the Registrant slam a door in Resident A's face and pull Resident A by the arm along a corridor towards the sitting room. The Committee heard that Witness 1 saw Resident A in a recliner chair which was almost in a horizontal position and that she found this distressing. Witness 1 told the Committee that she reported the matter to the nurse on duty that evening. The Committee accepted the evidence of Witness 1.

The Committee next considered the witness statement of Witness 2. The Committee noted that Witness 2 is a staff nurse who has been employed at Madelayne Court for three years and that she had a good working relationship with the Registrant. The statement of Witness 2 records that on 03 April 2017 she was working on night duty with the Registrant. The Registrant was preparing the tea trolley in the kitchen and Resident A was

beside her. The Registrant asked Witness 2 if she could take Resident A to the lounge area and Witness 2 replied "yes". The Committee noted that Witness 2 records that while she was in the process of administering medication she noticed Resident A lying in a recliner chair which was nearly fully reclined and she removed Resident A from the chair. The Committee did not have the benefit of live evidence from Witness 2.

The Committee noted the statement made by the Registrant as part of her employer's disciplinary process and the notes of the disciplinary hearing held on 19 June 2017. The Registrant denied slamming a door in the Resident's face or handling her roughly and described how she encouraged the Resident to move towards the lounge. In this statement, the Registrant accepted that she "settled Resident A in the reclining chair".

**Particular 1: On or about 03 April 2017, you roughly led Resident A by both arms to the lounge area**

The Committee heard that Witness 1 was sitting alongside her grandmother in the foyer of the home when she observed the Registrant roughly lead Resident A towards the lounge area. Witness 1 demonstrated how the Registrant placed both her arms on the right arm of the Resident and described this not as dragging, but as pulling with force. She observed this for approximately five meters. Witness 1 said that when she made eye contact with the Registrant, the Registrant changed to the appropriate method of support by placing one hand around the Resident's waist and one hand on the Resident's hand. The Committee heard that the Resident was mobile and able to move independently without support. Witness 1 explained that while visiting her grandmother she often saw Resident A who was content moving about at her own leisure. On this evening, Resident A was being forced to move at a faster pace than normal.

The Committee gave careful consideration to the statement of the Registrant and noted that she has denied this particular. The Committee took into account that there was no evidence that Resident A had any marks when examined by Witness 2. The Committee did not consider that the absence of any injury to Resident A supports the Registrant's assertion that she did not lead Resident A roughly to the lounge area. The Committee preferred the evidence of Witness 1 who was clear, credible and consistent in the evidence she gave when she reported her concerns, in her statement to the Council and in her evidence before the Committee today. The Committee heard that she was unsettled and disgusted by what she saw and it brought her to tears. The Committee heard that if it was someone she worked with, she would have 'pulled them up' on the level of care.

The Committee determined that this allegation was proved on the balance of probabilities.

**Particular 2: On or about 03 April 2017, you inappropriately restrained Resident A by placing her in a recliner chair and tipping it back so far that she could not get up.**

The Committee first considered whether the Registrant had placed Resident A in the recliner. The Committee heard that Witness 1 did not see the Registrant place Resident A in the recliner. The Committee heard that when Witness 1 got up to go to the toilet she walked past the door to the lounge and saw Resident A in a recliner chair which was fully reclined.

In the statement to her employer, the Registrant admitted that she had put Resident A in the recliner. The Committee concluded that the minutes of the disciplinary hearing contained within the bundle also contained admissions that the Registrant had placed Resident A in the recliner, although she stated that she was following orders.

The Committee noted that the witness statement of Witness 2 also records that the Registrant admitted that she had placed Resident A in the recliner chair. Witness 2 stated that the Registrant said she had told her to do it, to which she responded "I did not".

The Committee is therefore satisfied that it is more likely than not that the Registrant did place Resident A in the recliner chair.

The Committee next considered whether the Registrant inappropriately restrained Resident A in the recliner by tipping it so far back that Resident A could not get up.

The Committee accepted the evidence of Witness 1 that when she saw the chair it was fully reclined. The Committee heard that Resident A was almost in a horizontal lying position and leaning to one side, creating a risk of falling. Witness 1 stated that she did consider this to be a form of restraint.

The Committee also determined that the Registrant had made some admissions during the disciplinary hearing but stated that she had been following orders. During the disciplinary hearing it was put to the Registrant that you cannot put a resident in a chair in this way as it amounted to restraint. The minutes record that the Registrant replied "sorry, I know I did wrong, it was a mistake". The Committee noted that the Registrant had undergone training and knew that she was not allowed to restrain a resident. The Committee determined that in the context of a patient with dementia, placing Resident A in a chair which was fully reclined and she could not get out of would constitute a restraint.

The Committee therefore was satisfied, on the balance of probabilities, that the facts giving rise to this Particular were proved.

### **Fitness to Practise**

The Committee moved on to consider if the Registrant's fitness to practise is impaired.

The Committee heard submissions from Ms Kelso. She submitted that the Registrant's fitness to practise is impaired by reason of misconduct. Ms Kelso stated that impairment was defined in the Rules as circumstances which call into question the suitability of a registrant to remain on the Register without restriction or at all. She referred the Committee to the case of Cohen and to the requirements of Paragraph 24 (3) of Schedule 2 of the Rules. Ms Kelso submitted that in the opinion of the Council the following Standards of Conduct have been breached: Standard 1: 1.2, Standard 5: 5.1, 5.8 and Standard 6: 6.1.

Ms Kelso referred the Committee to the case of CHRE v Grant 2011 and submitted that when considering whether the Registrant's fitness to practise is impaired her level of insight is central. Ms Kelso submitted that there had not been a full explanation of what occurred and there was no evidence of insight.

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

The Committee first considered whether the facts found proved amount to misconduct. The Committee had regard to the Standards of Conduct for Social Care Workers and found the Registrant's actions to be in breach of the following provisions:

**Standard 1: As a social care 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.

**Standard 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;

5.8 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 heard evidence from Witness 1 that the Registrant pulled Resident A roughly along the corridor towards the lounge area. The Committee heard that the Resident was shouting at the Registrant to stop or let her go. The Registrant accepted that she placed Resident A in a recliner chair and the Committee heard that the chair was reclined to the extent that Resident A was unable to get up by herself. The Committee noted that the Registrant admitted that this was a mistake but stated that she was told to do it. The Committee noted that this went against her training and that she had received training never to use restraint in this way. As a result of all the evidence considered both oral and in the hearing bundle, the Committee concluded that the Registrant's actions fell below the standard expected of a social care worker and were serious enough to amount to misconduct.

The Committee next considered whether as a result of the misconduct the Registrant's fitness to practise is impaired. The Committee kept at the forefront of its mind the duty to protect the public, uphold proper standards of conduct and behaviour and maintain public confidence in the social care profession.

Social care workers in a dementia unit are working with some of the most vulnerable residents. These residents and their families must be able to trust those that provide care to do so with dignity and respect. The Committee concluded that the Registrant's actions on 03 April 2017 did pose a risk of harm to Resident A. In the view of the Committee, the Registrant's actions brought the profession into disrepute and did breach a fundamental tenet of

the social care profession. Resident A was vulnerable and the Committee heard how Witness 1 described her disgust when she saw how she was treated.

However, the Committee concluded that her misconduct is capable of remediation but has not yet been remedied. The Registrant's misconduct could be remedied through further training and supervision. The Registrant has accepted that she put Resident A in the recliner chair and that this was a mistake but that she was told to do so. The Committee concluded that the Registrant has demonstrated limited insight. Without full insight and further training, the Committee remains concerned that there is a risk of repetition. For that reason, the Committee concluded that the Registrant's fitness to practise is impaired on grounds of public protection.

The Committee also addressed the public interest and concluded that public confidence in the profession would be undermined if a finding of impairment were not made. In particular, the Committee noted the evidence of Witness 1 that she was distressed by the Registrant's actions on 03 April 2017. Witness 1 was in the nursing home visiting another resident and the Committee considered her views to be reflective of any member of the public. On this basis, the Committee concluded that public confidence in the profession would be undermined if a finding of impairment were not made.

Therefore, the Committee determined that the Registrant's fitness to practise is currently impaired.

### **Sanction**

The Committee heard a submission from Ms Kelso on the question of sanction. Ms Kelso confirmed that the Registrant had no previous findings of misconduct and was entitled to a good work history. Ms Kelso submitted that this was an isolated incident and that there was no evidence that the Registrant's actions were premeditated. The Committee heard that the Council's position was that the Registrant had demonstrated a lack of insight and her actions fell far short of what would be expected of a registered social care worker.

The Committee had regard to the Indicative Sanctions Guidance (June 2017) issued by NISCC and accepted the advice of the Legal Adviser.

The Committee considered the mitigating and aggravating factors in this case.

**Warning** - the Committee took into account that there was no evidence of physical harm to Resident A, that this was an isolated incident and that the Registrant has a good work history. However, the Committee concluded that the misconduct was serious because of the vulnerable nature of the residents under the Registrant's care. Without insight and appropriate evidence of corrective steps, the Committee concluded that there remains a risk of repetition. A Warning would allow the Registrant to work without restriction and would not be sufficient to protect the public in these circumstances. The Committee was not satisfied that a Warning would meet the public interest in this case.

**Conditions of Practice Order** - the Registrant failed to attend the hearing and failed to engage with NISCC. The Registrant did not make any representations to the Committee which demonstrate full insight or remorse for what she did. The Committee did consider that there was the potential for the Registrant to respond positively to

retraining and to supervision of her work. She had completed training previously but had not provided any evidence to the Committee that she was willing to undergo further training at this point. The Registrant was not present and was unable to confirm whether conditions of practice were achievable and accepted. The Committee had no information about the Registrant's employment status or evidence that it would be possible for her to avail of further training. In these circumstances, the Committee was unable to formulate conditions of practice that would be workable and measurable and would adequately protect the public. This sanction would not afford service users the appropriate level of protection.

**Suspension** - the Committee determined that the Registrant's misconduct was serious but concluded that this was not a case when removal was warranted. The Committee did not find evidence that the Registrant's behaviour is fundamentally incompatible with continuing to be a registered social care worker. The Committee is clear that the Registrant's misconduct is capable of remediation and there is no evidence of any other similar incident. There is no evidence of repetition since the date of the incident. The Committee was satisfied that the public would be sufficiently protected by a period of suspension. The Registrant should be aware that a review of her fitness to resume practice will be undertaken towards the end of her Suspension Order. At any review she will have the opportunity to present evidence of insight and a willingness to undergo further training.

The Committee determined that a Suspension Order for the maximum period of two years would be disproportionate. Suspension for a period of six months would be appropriate to protect the public and service users from the risks identified during the period of suspension and would allow the Registrant time to reflect and demonstrate further insight. In reaching this decision, the Committee took into account the Registrant's previous good character and work history, the fact that this was an isolated incident and that her actions did not cause harm to a service user. Suspension for a period of six months would send a clear message that the misconduct is serious and that the Registrant's actions fell short of what is accepted of a social care worker.

The Committee considered the public interest. The public must be able to have confidence in those who provide care to the most vulnerable. In all the circumstances of the case, the Committee determined that the reputation of the profession and the role of NISCC to uphold proper standards of behaviour will be met by a Suspension Order. The Committee was satisfied that a Suspension Order is proportionate, having weighed the public interest with the interests of the Registrant.

The Committee concluded that a Suspension Order for a period of six months is the most suitable, appropriate and proportionate sanction to be imposed on the Registrant's registration with immediate effect.

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## **Legal Advice Given**

### **Service**

The position is as follows: I have been shown the Notice of Hearing which was served on the Registrant on her address as it appears on the Register by Special Delivery post on 11 April 2018. In accordance with Paragraph 5



of Schedule 2 of the Fitness to Practise Rules 2016, a hearing should not be fixed earlier than 28 days after service of the Notice of Hearing. So the first point for you to take into your consideration is that the Notice of Hearing in this case was served on 11 April 2018 which is more than 28 days before today's hearing.

As Ms Kelso has outlined for you, Rule 3 sets out that service is defined as sending a notice to the Registrant's home address or electronic address as it appears on the Register, and the Notice is deemed to be so served on the day after it was posted. We have been told, and I have been shown, documentation to confirm that the Notice of Hearing was sent by Special Delivery to the Registrant's address as it appears on the Register on 11 April 2018 and signed for as received on 12 April 2018. It is therefore my advice to you as a Committee that it is safe for you to proceed on the basis that service has been effected in accordance with the requirements of the Fitness to Practise Rules 2016.

### **Proceeding in the Absence of the Registrant**

The position, as confirmed by Ms Kelso, is set out within Paragraph 15 of Schedule 2 of the Rules and where the Committee is satisfied that the Notice of Hearing has been duly served, and you have already reached that decision, it may direct that the allegations should be heard and determined notwithstanding the absence of the Registrant or, alternatively, you may adjourn the hearing and issue directions, so those are the two choices before you. Ms Kelso has referred you to the case of GMC v Adeogba, which is a Court of Appeal case from March 2016, and she has quite correctly identified that that case sets out the basis upon which a Panel such as this should exercise its discretion in deciding whether or not to go ahead in the absence of the Registrant, that decision to be one that you should only reach with exercising your discretion with the utmost care and caution.

Lord Bingham said that the principles set out in the well-known case of R v Hayward and R v Jones provide a useful starting point and they give direction to the approach of the Panel and Ms Kelso has highlighted those factors for you, and I don't believe you need me to repeat them to you at this particular point. Lord Bingham did go on to say that it is important to bear in mind that there is a difference between a criminal trial proceeding in the absence of a defendant and the decision of a Regulator continuing a disciplinary hearing. Steps can be taken to enforce attendance by a defendant who can be arrested and brought to court in a criminal case, but no such remedy is available to a Regulator. The Regulator represents the public interest in relation to the standards of healthcare and Lord Bingham's point was that it would run entirely counter to the protection of the public and promotion of the health and safety of the public if a Registrant could effectively frustrate the process and challenge a refusal to adjourn by deliberately failing to engage. He went on to say that there is a burden on all practitioners, as there is with all professionals subject to a regulatory regime, to engage with the Regulator both in relation to the investigation and ultimately the resolution of any allegation against them. This is part of the responsibility to which they signed up on being admitted to the profession.

I would remind you that the Registrant is entitled to a fair hearing, to attend the hearing, to be represented, and to test the case against her and to present evidence on her own behalf. You should therefore consider whether her decision not to attend today has been deliberate or voluntary, whether an adjournment would make it more likely

that she would attend on another date and the sort of length of time that would be involved in such an adjournment. If you are satisfied that the Registrant had knowledge or the means of knowledge of today's hearing you should consider whether she has voluntarily absented herself. In considering this point I encourage you to take into account the information set out in the Notice of Hearing and to consider whether in your view it was sufficient to advise her of the importance of attending today. You should balance the rights of the Registrant against the wider public interest and take all these factors into account, and I would suggest that you should retire to consider your decision.

### **Application to Admit Hearing Bundle**

The position is simply as set out that you have received the application made pursuant to Paragraph 12 (1) (a) and (1) (b) of Schedule 2 and Paragraph 12 (2) of the Rules that you can admit the bundle into evidence whether or not it would be admissible in a Court of Law provided it satisfies the test that it is fair and that it is relevant. Now, the problem which you face at this stage is that you have not yet had the opportunity to consider the bundle but it has been shown to me and I would not disagree with the submissions made on behalf of the Council that the documentation is relevant and there would be no undue fairness to the Registrant in admitting the bundle insofar as it is relevant to today's hearing.

### **Application to Admit Hearsay Evidence**

So as you appreciate you have now received an application from the Council to admit a witness statement from a witness who is not present today. Now, you have heard that the reason is that she is dealing with ongoing health issues and you should consider whether you feel that is a genuine and cogent reason for the witness not to be in attendance today. You have been directed to, correctly, the test set out in Paragraph 12 of Schedule 2 of the Rules with regards to fairness and I would remind you that fairness applies to both Parties, both to the Council and to the Registrant, so you have to consider fairness in the round. The other issue for you to consider is whether the statement is relevant and you have heard the Council's views that it touches on issues that arose both at the time of the Registrant's disciplinary hearing and then subsequently as part of the Council's investigations. In the case of NMC v Ogbonna, which Ms Kelso did mention in her submissions, and that is a 2010 case, the nurse in that case faced three serious charges which were found proved and she was struck off. On count 1 the NMC placed sole reliance on the statement of her line manager with whom she was not on good terms, the line manager did not give evidence, her statement was admitted as hearsay despite the fact that the Registrant nurse wanted to cross-examine her. The NMC said she was not in fact available but it turned out that no enquiry had been made as to whether she was available or not. The matter went to the Court of Appeal who held that when considering fairness it was important that the Committee, or the Panel in that case, consider fairness to both sides and if the NMC in that case could not arrange for that witness to be present then the case for admitting her statement as hearsay evidence would be strong. In this case you have been told that efforts have been made to secure the attendance of the witness but that health reasons prevent her from attending today.

You have also been directed by Council's solicitor to the case of *Thorneycroft v NMC* and in that case allegations were raised that the nurse had used derogatory language towards patients. Witness statements were produced by two co-workers who did not attend the hearing and they were admitted, their statements were admitted as hearsay evidence and I will just remind you of the guidance that the Court gave with regards to admitting that hearsay evidence. They said that: you should take into account whether the statement is the sole and decisive evidence in support of the allegation, and you have heard the Council's submissions on that point; the nature and extent of the Registrant's challenge to the content of the witness statements in that case as it was, or statement in this case; whether there was any suggestion that the witness had any reason to fabricate her evidence; the seriousness of the charge taking into account the impact which an adverse finding might have on the Registrant's career; whether there is a good reason for the non-attendance of the witness; whether in this case the Council has taken reasonable steps to attempt to secure the attendance of the witness; and whether the Registrant has had prior notice that the witness is not attending and of the content of the statement.

In summary then, the position for the Committee is that you do have a discretion to admit this statement without the witness being in attendance to give evidence before you but again this is a decision which you should only make with the utmost care and caution after full consideration of all the competing interests in this case with an emphasis on fairness to the Registrant who is not here to make submissions before you. If you do admit the statement it won't be tested through cross-examination and then it would be a matter for you as a Committee to decide what weight you would put on that statement.

### **Findings of Fact**

It now falls to me to provide you, as the Committee, with some advice in relation to this fact finding stage in these proceedings dealing with the Registrant, Maggie Frost. The position, as an experienced Committee that you are familiar with, is that the burden of proof rests upon the Council at this stage of the proceedings and that is dealt with under Paragraph 13 of Schedule 2 of the Rules. The burden of proof is the balance of probabilities, the Council has brought these proceedings and the Council must therefore prove its case. I would remind you that the Registrant does not have to prove that she is innocent of these allegations, as defined in the case of *Re H*, and that is a 1990 case, the balance of probabilities standard means that a Court is satisfied that an event occurred if the Court considers on the evidence that the event was more likely than not. You should therefore consider all the evidence before you, both documentary and oral evidence, and applying both logic and common sense weigh the strength of this evidence. This is a case in which you have received both oral and documentary evidence. It is often said that oral live evidence is the best type of evidence that you can receive because you have the opportunity to observe the bearing and demeanour of the witness and you are able to hear the way in which they give their evidence and you have been able to put questions yourselves to the witness today. You must weigh the evidence given and give reasons for your decision if you find one of the particulars proved or not proved, as might be the case.

I would remind you that you should consider the evidence in respect of each particular allegation and assess the

weight of the evidence. You have admitted into evidence before you today hearsay evidence in respect of one of the witnesses. Again, I remind you that hearsay evidence is by its very nature not the best evidence because it is second-hand or reported. There may be reasons for the witness not to attend today and you have admitted her statement but it is a matter for you to consider and to decide what weight you want to apply to that statement. These are the factors which you should take into account when reaching your decision in respect of the finding of facts today.

### **Fitness to Practise**

My advice to you as a Committee at this stage of the proceedings, the impairment stage of the proceedings, is as follows: So you are now tasked with deciding whether this Registrant's fitness to practise is impaired. Rule 4, that you have been directed to, sets out that a Registrant's fitness to practise may be impaired by one or more of a number of reasons and in this case you are asked to consider misconduct as the gateway to impairment. In the case of *Cheatle v GMC*, Mr Justice Cranston made it clear that a Panel, such as this, considering the question of impairment should engage in a two-step process:

Firstly, they should consider whether on the facts found proved one or more of the routes, these gateways for impairment has been established. So step 1 is therefore to ask yourselves whether there has been conduct here which is sufficiently serious that it can properly be described as misconduct going to fitness to practise.

You have been reminded that in accordance with *GMC v Roylance* 'misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances'. Lord Clyde, giving judgment in that case, said that 'the standard of propriety may often be found by reference to the rules and standards required to be followed by a medical practitioner', or in this case a social care worker. The Codes and Standards in force at the time will help you in understanding whether there has been some sense of falling short, so you should properly consider whether you think there has been a breach of the Standards. The Council has submitted to you its views, but it is a matter for you to exercise your own independent judgement without any reference to a burden or standard of proof on that point.

If you are satisfied that the actions of the Registrant did constitute misconduct, then and only then should you move on to the next step, which is to consider whether in light of that misconduct her fitness to practise is impaired. It is well established that Panels considering impairment should do so in the present tense, that is to determine whether her fitness to practise is impaired at the time you are considering the case, that is today. You have had referred to you, and again I recommend the decision of *CHRE v Grant*, and that is a 2011 case, and in particular the comments of Mrs Justice Cox at paragraph 74 when she stated that 'in determining whether a practitioner's fitness to practise is impaired by reason of misconduct the relevant panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role, but also the need to uphold proper professional standards and whether public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances'. It is therefore proper for you to take into account the public interest as part of your deliberations. Mrs Justice Cox went on to refer to the

formulation adopted by Dame Janet Smith in her Fifth Report to the Shipman Inquiry, the test you are familiar with but I will remind you of it again as it may be helpful as you approach your deliberations. Firstly: has this Registrant acted in the past and/or is she liable to act in the future so as to put a service user at unwarranted risk of harm; secondly, has the Registrant acted in the past or is she likely in the future to behave in a way which would bring the profession into disrepute; thirdly, has the Registrant in the past or is she liable in the future to behave in a way so as to breach one of the fundamental tenets of the social care profession; and the fourth limb of the test relates to dishonesty, which is not relevant to any of the factors before you today.

I know you are also familiar with Mr Justice Silber's guidance in the case of Cohen on whether fitness to practise is established and taking into account these three questions: firstly, whether the conduct which led to the charge is easily remediable; secondly, whether it has been remedied; and thirdly, whether it is likely to be repeated.

So the issue of remediation and future risk is undoubtedly an important one for you to take into account, and in some cases it has more significance than others.

It is a matter for you, exercising your own independent judgement, looking at all the evidence before you today, to decide whether this is a case which falls into a category of isolated misconduct in an otherwise unblemished career, as envisaged by Mr Justice Silber, or whether there is likely to be a risk of future repetition.

I would also commend to you the Council's guidance on Making a Determination of Impaired Fitness to Practise Guidance for Committees on Remediation and that is something that you can properly refer to as you reach your decision.

## **Sanction**

At this point it now falls to me at this final stage of these proceedings to give you as a Committee some advice on sanctions and the approach which you should properly take as you consider your decision on sanction.

Let me start by reminding you that it is not for the Council to seek to persuade you to take a particular course, nor would it be for the Registrant to persuade you to take another, rather it is for you as a Committee exercising your own independent judgement to decide what is the appropriate response to the findings that you have made so far.

The purpose of sanction is not to be punitive, though it may have a punitive effect, rather the purpose of sanction is to protect the members of the public and the wider public interest. The public interest includes the maintenance of confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour. As Lord Justice Laws said in the case of *Raschid & Fatnani v GMC*, and that is a 2007 case, the Panel is centrally concerned with the reputational standing of the profession rather than the punishment of the individual doctor, again this will equally apply to a social care worker.

The options before you at this point are laid out in Paragraph 26 of Schedule 2 and you have already outlined those, I don't think you need me to go through those again for you, but in reaching your decision I would remind you that you should take into consideration all the evidence that has been placed before you, both the oral

evidence and the documentary evidence, as well as the submissions you have received from the Council.

I would refer you to the Council's Indicative Sanctions Guidance and you should take this into account as you reach your decision. You should look at both the aggravating and mitigating features of this case and have these at the front of your mind as you reach your decision. In reaching your decision you must apply the principle of proportionality, that is weighing the public interest in the case with the interests of the Registrant. Public interest does include protection of members of the public and maintaining confidence in the profession, in the Council and declaring and upholding of proper standards of conduct and behaviour. You should consider each of the options that are available to you, starting with the least restrictive one and only working up the scale if the sanction which you are considering has been rejected.

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**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 suspended for a specified period of SIX MONTHS and you may not practise as a social care worker during the period 17 MAY 2018 to 16 NOVEMBER 2018 inclusive.**

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.

### **Early Review**

The Fitness to Practise Committee may, at your request, review the Order before the end of the period for which the suspension has been imposed if there has been a material change of circumstances since the Order was

imposed. The Committee may, after reviewing a Suspension Order, revoke that Order or replace that Order with a Conditions of Practice Order.

**Review at Conclusion of Sanction**

A review of your fitness to practise will be undertaken towards the end of the period for which the Suspension Order has been imposed. The Council will write to you no later than 12 weeks before the expiry of the Order to invite you to submit any information or documentation which you would like to have considered as part of the review process. The review will consider the particular concerns which have been outlined above by the Fitness to Practise Committee, and will seek to ascertain what remedial steps you have taken during the period of your suspension.

Following the Council's review, the matter may be referred for review by the Fitness to Practise Committee. If the Committee reviews the Order and it is satisfied that your fitness to practise remains impaired, it may impose a further Order to commence upon expiry of the existing Order, or it may impose a Conditions of Practice Order to commence upon expiry of the existing Order, or it may vary the terms of the existing Order, or it may revoke the existing Order and impose a Removal Order.

P.P M. Stewart  
Committee Manager

22 May 2018  
Date