

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

---

**Name:** Judith Newell

**SCR No:** 6015651

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **14 and 15 January 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 misconduct;**

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

**Particulars of the Allegation:**

That, being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), and whilst working as a support worker for Positive Futures:

1. On or about 29 January 2016, you left Service User A on the toilet for 20 - 25 minutes;
2. On or about 29 January 2016 you, as lead support worker, failed in your duty to lead on the administration of medications;
3. On or about 29 January 2016, you were responsible for a medication error;
4. On or about 22 and 23 November 2016, you failed to follow NISCC Standards of Conduct and Practice by sending inappropriate emails to current Positive Futures' employees, former employees of Positive Futures and families of service users at Positive Futures.

And that by reason of the matters set out above, your fitness to practise is impaired by reason of your misconduct.

**Procedure:**

The hearing was held under the fitness to practise procedure.

**Preliminary Matters**

The Registrant was not in attendance. The Council was represented by Ms Kelso, solicitor.

## **Service**

In a Notice of Hearing dated 23 November 2018, 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 Notice was signed for and collected on 24 November 2018.

The Committee determined that the Notice of Hearing has been served in accordance with Rule 3 of the NISCC Fitness to Practice 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 pursuant to Paragraph 15 of Schedule 2 of the Rules. Ms Kelso submitted that the Registrant is aware of the hearing. The Committee heard that the Registrant did not request an adjournment or postponement. Ms Kelso submitted that the Council had three witnesses in attendance today and that in all of the circumstances it was appropriate to proceed in the absence of the Registrant, and there is a public interest in the case proceeding today.

The Committee heard and accepted the advice of the Legal Adviser. The Legal Adviser reminded the Committee of the principles from R v Jones, and that the discretion to proceed in the absence of the Registrant should only be exercised with the utmost care and caution.

The Committee took into consideration the detailed information contained within the Notice of Hearing, which provides 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 noted that the Registrant had not applied for a postponement or adjournment of the hearing. The Committee accepted that the Registrant is aware of the hearing and had voluntarily waived her right to attend or to be represented. The Committee considered the extent of the disadvantage to the Registrant in not being here to give evidence and to present her account of events relating to the allegations. The Committee heard that three witnesses were in attendance today to give live evidence, and that further delay would inconvenience the witnesses and may have an adverse effect on their ability to accurately recall events. The Committee carefully balanced the rights of the Registrant against the wider public interest in the expeditious disposal of the case.

Taking all these factors into account, and after careful consideration, the Committee decided that it was fair and appropriate to exercise its discretion to proceed in the absence of the Registrant.

## **Background**

The Council received an Employer Referral Form in relation to the Registrant on 09 February 2016. The Registrant is registered on Part 2 of the Register and, at the relevant time, was employed as a support worker for Positive Futures. The Registrant had been a relief support worker for Positive Futures before becoming a

contracted member of staff in December 2015. The Registrant was first registered with the Council on 16 June 2015.

Positive Futures provides supported living to service users of a range of ages on a 24/7 basis to assist with activities of daily living. The allegations in this case relate to three service users: Service User A, Service User B and Service User C. The Committee heard that there are two support workers on each shift for these service users, with the lead support worker allocated by rota. On a Friday, an additional support worker is employed to assist with the weekly shop.

On 29 January 2016, the Registrant was working from 2 pm until sleepover, which is the following morning. An allegation was raised by one of her co-workers that the Registrant left Service User A on the toilet for 20 - 25 minutes. There was a separate allegation that the Registrant was responsible for a failure to administer night time medication to one of the service users.

On 08 November 2016, the Registrant resigned prior to the conclusion of the disciplinary investigation. A decision was made in her absence and the Registrant subsequently sent emails to current Positive Futures employees, former employees of Positive Futures and families of service users at Positive Futures.

### **Evidence**

The Committee received into evidence a bundle of evidence, referred to as Exhibit 1.

The Committee received oral evidence from three witnesses and submissions from Ms Kelso on behalf of the Council.

The Committee paid careful regard to the responses of the Registrant at the investigation meeting held on 18 May 2016 by her employer, and the corrections to the minutes of this meeting provided by her support person.

### **Finding of Facts**

The Committee received advice from the Legal Adviser, which focused on the principles associated with the burden and standard of proof. The Committee recognised and accepted that the onus was on the Council to prove its case on the balance of probabilities. This means that the facts will be proved if the Committee is satisfied that it was more likely than not that the incidents occurred as alleged.

The Committee has drawn no adverse inference from the non-attendance of the Registrant.

The Committee first considered the overall credibility and reliability of the witnesses it had heard from.

The Committee found Witness 1 to be very clear about her recollection of events on 29 January 2016. The Committee heard that the relationship between Witness 1 and the Registrant had been frosty during the shift on 29 January 2016, and concluded that this frosty working relationship impacted on the reliability of her evidence. The Committee did not find that Witness 1 tried to mislead the Committee or to embellish her evidence, but at times she did not give direct answers to the questions from the Committee.

The Committee found Witness 2 to be a reliable and credible witness who tried to assist the Committee to the best of her knowledge. The Committee considered Witness 2 to be largely consistent with her NISCC witness statement. Even though Witness 2 is no longer in post, her evidence to the Committee was clear and concise.

The Committee found Witness 3 to be credible, straightforward and reliable. The Committee found Witness 3 to be professional, assured and knowledgeable. The Committee found that Witness 3 reflected on questions raised, the evidence available and made concessions where appropriate to do so.

The Committee then considered each of the allegations as follows:

**Particular 1: On or about 29 January 2016, you left Service User A on the toilet for 20 - 25 minutes**

This allegation is found proved.

In reaching this decision, the Committee took account of all of the evidence adduced in this case.

The Committee heard direct evidence from Witness 1 that she saw the Registrant place Service User A on the toilet when she was bringing Service User B down to her bedroom from the living room. The Committee heard that Witness 1 removed Service User B's nail polish, gave her a hand massage and painted her nails, and could hear Service User A shouting from the bathroom. The Committee heard that when she asked the Registrant where Service User A was, the Registrant jumped up from her seat and went and removed Service User A from the toilet. Witness 1 said this was approximately 20 - 25 minutes after the Registrant had placed her there.

The Committee noted that the minutes of the Investigation Meeting on 18 May 2016 record that the Registrant admitted leaving Service User A on the toilet for 22 minutes while she attended to paperwork.

The Committee further noted that in an email which the Registrant sent, dated 23 November 2016, the Registrant confirms that she and another member of staff (Witness 1) left Service User A on the toilet for 22 minutes and that every member of staff has also done this.

The Committee therefore concluded that, in the circumstances, it has been found proved that the Registrant left Service User A on the toilet for 20 – 25 minutes.

**Particular 2: On or about 29 January 2016 you, as lead support worker, failed in your duty to lead on the administration of medications.**

This allegation is found proved.

The Committee heard from the Council that on each shift, on a rota basis, a support worker was allocated as lead support worker. The Committee considered the Shift Planner provided, which documents the tasks to be completed on shift depending on whether the support worker was either lead or support. The Committee noted that the lead was to prepare and administer the night time meds. The shift rota confirmed that on 29 January 2016, the Registrant was working as lead support worker and the Committee was satisfied that it was her responsibility to lead on the administration of medications.

The Committee heard evidence that the Registrant stated that she had delegated the administration of medications to Witness 1. Witness 1 gave evidence that this task was not delegated to her but that she had administered medication as the Registrant was doing other things.

The Committee received evidence from Witness 2 and Witness 3 that the lead support worker should administer the medications. Witness 2 and Witness 3 gave evidence that as Witness 1 was a relief worker, she should not have been administering medication. However, the Committee was not satisfied that this was the practice. The Committee noted evidence that it was not unusual for a relief support worker to administer medication, in particular:

- Witness 1 gave evidence that she had the medication folders of the three service users out at one time, and the Registrant did not challenge her decision to administer medication. The Registrant's concern was that Witness 1 had got all three folders out at the same time;
- Witness 1, in her statement to the Council, stated that she *'always removed the three folders at the same time and no issue had been raised with me by other members of staff'*;
- Witness 1 recorded in her contemporaneous record on 29 January 2016 that she had 'probably by habit' lifted Service User C's medication folder and placed medication in the cup;
- When the Registrant phoned Witness 3 on 29 January 2016 at 11 pm, it was to report that Witness 1 had gone off shift without administering medication to Service User A.

The Committee concluded that it was not uncommon for Witness 1 to administer medication.

The Committee noted the minutes of the team meeting of 12 January 2018, which record that the lead person could delegate tasks as appropriate. The Committee heard from Witness 3 that she did not intend this to cover medication. In any event, the minutes of the same meeting record that the role of the lead meant that one person took responsibility for the tasks being completed. The Committee concluded that even if the administration of medication could be delegated by the lead, the responsibility for the task could not. The Committee had no evidence that the Registrant took the lead on the administration of medications or checked with Witness 1 to confirm what had been administered. Therefore, in all of the circumstances, the Committee concluded that the Registrant had failed in her duty to lead on the administration of medications.

**Particular 3: On or about 29 January 2016, you were responsible for a medication error.**

This allegation is found proved.

The Committee heard from Witness 3 that at approximately 11.00 pm on 29 January 2016, she was on call and received a telephone call from the Registrant. The Registrant reported that another support worker (Witness 1) had gone off shift without administering medication to Service User A. The Registrant asked if the medication could be given at 11.00 pm and was advised that it could, and that a medication error report form should be completed. During this call, the Registrant confirmed that she was the lead support worker on shift.

Witness 2 gave evidence to the Committee about her understanding of the administration of medication to Service User A. Witness 2 told the Committee that Service User A does not get her evening medication until 10

pm and, as Witness 1 went off shift at 10 pm, it would have been the Registrant's responsibility to administer the medication, even if Witness 1 had given medication earlier in the evening.

The Committee noted that the Registrant denies this allegation, and has maintained that it was the responsibility of Witness 1 to administer the medication. The Committee had the opportunity to ask Witness 1 direct questions about this, and heard that Witness 1 gave supper and medication to the other two service users but that, as Service User A had a later bedtime routine, she would have her supper and medication later in the evening. Witness 3 was clear that the Registrant brought Service User A to the kitchen and began to prepare her supper. Witness 1 did not accept that she was responsible for administering medication to Service User A.

The Committee noted that it was not in dispute that a medication error had occurred, and that Service User A did not receive her medication at the appropriate time. However, the error was detected and the medication was administered approximately one hour later. The dispute is whether the Registrant or Witness 1 was responsible for this error. The Committee concluded that as the Registrant was the lead support worker, even if she assumed incorrectly that Witness 1 had given the medication, she was responsible. Accordingly, this allegation is found proved.

**Particular 4: On or about 22 and 23 November 2016, you failed to follow NISCC Standards of Conduct and Practice by sending inappropriate emails to current Positive Futures' employees, former employees of Positive Futures and families of service users at Positive Futures.**

This allegation is found proved.

The Committee had careful regard to the emails contained within the bundle. The Committee was satisfied that it is more likely than not that these emails were sent by the Registrant. Her name is on the emails, and the personal details contained within the content of the emails satisfied the Committee that the emails were from the Registrant.

The Committee heard evidence from Witness 1, Witness 2 and Witness 3 that the emails were sent to Positive Futures' employees, former employees and to families of service users. The Committee heard evidence of the impact which these emails had on the witnesses and the distress which had been caused by them.

The Committee was satisfied that the content of the emails was inappropriate. The emails referred to service users by name, without regard to their privacy or the confidential nature of the information being sent to a wide group of people. The Committee found the tone and content of the allegations which were raised against staff members or management to also be unprofessional and inappropriate. The Registrant had no regard for the concern which the emails would cause the families of the service users. The Committee was very concerned by the lack of judgement on the part of the Registrant in sending these emails.

Having carefully considered all of the evidence, the Committee was satisfied that the Registrant failed to follow the NISCC Standards of Conduct and Practice for Social Care Workers when sending these emails.

## 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, and referred to the requirements of Paragraph 24 of Schedule 2 of the Rules. Ms Kelso submitted that, in the opinion of the Council, the following Standards have been breached: Standard 1 – 1.1 and 1.2; Standard 2 – 2.2, 2.4 and 2.5; Standard 5 – 5.1, 5.3 and 5.8; Standard 6 – 6.1, 6.3, 6.13, 6.14 and 6.15.

The Committee heard and accepted the advice of the Legal Adviser. She referred the Committee to Paragraph 24 of Schedule 2 of the Rules and the requirements as set out in the case of GMC v Cohen. She directed the Committee to the findings of Dame Janet Smith in her 5<sup>th</sup> report to the Shipman Inquiry and her guidance on the causes of impairment. She also referred the Committee to the cases of GMC v Roylance and CHRE v Grant.

The Committee, in considering the issue of impairment of fitness to practise, took account of Paragraph 24 (3) of Schedule 3 of the Rules, which states that the Committee shall have regard to:

- a) whether it is satisfied as to the reason for the alleged impairment of fitness to practise;
- b) the Standards of Conduct and Practice issued by the Council under Section 9 of the Act;
- c) whether the impairment is capable of remediation;
- d) whether the impairment has been remediated;
- e) the risk of repetition; and
- f) the public interest.

The Committee first considered whether the facts found proved amount to misconduct. With regard to Particular 1, the Committee determined that this was a deviation from accepted practice, but did not consider that it crossed the threshold of serious misconduct. The Committee determined that it was poor practice to leave Service User A on the toilet for 20 - 25 minutes. The Committee considered that the evidence before it was that this was not a deliberate act. The Committee heard from Witness 1 that when she spoke to the Registrant about the service user, the Registrant jumped and went to get her straight away. The Committee noted that the Registrant was doing other work at the time in the staff room. Fortunately, there were no adverse consequences for Service User A.

The Committee next considered Particular 2. The Committee determined that the Registrant failed to comply with the requirements of her role, but was not satisfied that her actions crossed the threshold of serious misconduct. The Committee was satisfied that the Registrant did not fulfil her role as lead support worker. However, the evidence before the Committee was that it was not unusual for the relief support worker to administer the medication. The Committee heard that communication between Witness 1 and the Registrant on 29 January 2016 was not good. If they had been communicating professionally, the Committee considered that it

would not have been an issue for the relief support worker to administer medication, and the Registrant would have been able to check that the task had been completed properly.

The Committee considered whether the failure to administer medication to Service User A constituted misconduct. The Committee noted that the error had occurred but that the Registrant followed the appropriate procedure when she identified the problem. The Committee accepted that this medication error could have had serious consequences for the service user but noted that fortunately it did not. The Committee heard that the medication was administered to Service User A around an hour later. The Committee determined that a medication error which occurred on one occasion, which did not cause harm to the service user, and which was rectified within one hour did not constitute misconduct.

With regard to the fourth Particular, the Committee considered that the Registrant's actions in sending emails in the way that she did was very serious. The Committee had no hesitation in deciding that her actions fell far below the standard of conduct which would be expected of a registered social care worker. It was serious to send emails with confidential information to a broad group of people, the emails are lengthy and three separate emails were sent. The emails breach confidentiality and refer to service users by name, and were derogatory of management and colleagues. The Committee felt that the emails could, in part, be seen as threatening. The Committee was concerned by the way in which the addresses of the email recipients were openly listed, and found this alone to be an inappropriate use of personal information. Accordingly, the Committee found that the Registrant's actions in sending emails on 22 November and 23 November 2016 to current Positive Futures' employees, former employees and families of service users at Positive Futures did amount to misconduct.

In reaching this decision, 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 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;
- 5.3 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;
- 5.8 Behave in a way, in work or outside work, which would call into question your suitability to work in social care services; and
- 5.9 Use social media or social networking sites or other forms of electronic communication in a way that contravenes professional boundaries, organisational guidelines or NISCC standards.

The Committee next considered whether as a result of the misconduct found proved, the Registrant's fitness to practise is impaired. The Committee kept at the forefront of its mind when reaching this decision the duty to



protect the public, uphold proper standards of conduct and behaviour and maintain public confidence in the social care profession.

The Committee considered that the Registrant's misconduct is capable of remediation. However, the Committee determined that it has not yet been remedied. The Registrant demonstrated a concerning lack of insight in the emails and this has not been addressed. Without any evidence of insight or demonstration of remorse, the Committee was concerned that she could send similar emails again in the future.

The Committee considered the public interest, and concluded that public confidence in the profession and NISCC as a regulator would be undermined if a finding of impairment were not made. In particular, the Committee noted the evidence of Witness 1 and Witness 2 describing the impacts which the emails had on them. Witness 1 had contacted the PSNI and Witness 2 had consulted a solicitor. However, the Committee was most concerned about how the public would perceive the breach of confidentiality on the part of the Registrant. On this basis, the Committee concluded that public confidence in the social care profession, and in NISCC as the regulator, 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**

In reaching its decision on sanction, the Committee considered the submissions of Ms Kelso on behalf of the Council and had careful regard to all the evidence in this case.

The Committee accepted the advice of the Legal Adviser. She referred the Committee to the Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('Indicative Sanctions Guidance') and reminded the Committee that in deciding which sanction to impose, the Committee shall take into account:

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

The Committee took these factors into account and had careful regard to the Council's Indicative Sanctions Guidance. The Committee recognises that the purpose of sanction is not to be punitive, although sanction may have a punitive effect. The Committee first considered the aggravating and mitigating factors in this case and found the aggravating factors to be:

- the emails sent by the Registrant constitute an abuse of trust;
- the Registrant has demonstrated a lack of insight;
- the Registrant demonstrated no regret for her actions;

- the emails sent by the Registrant had an impact on the service users who were named, and also on their families;
- the Registrant has not engaged in the NISCC investigation;
- she has demonstrated a serious disregard for NISCC's Standards of Conduct and Practice.

The Committee considered the mitigating factors to be:

- the Registrant has a good work history;
- there have been no previous concerns raised with the Council.

The Committee proceeded to consider the appropriate sanction to apply in this case;

**Warning** - the Committee considered a Warning but was not satisfied that a Warning was the appropriate sanction in this case. The Committee concluded that the Registrant's misconduct was of a serious nature and has not been remediated. The Committee determined that a risk of repetition remained and, when considered in conjunction with the Registrant's lack of insight, concluded that a Warning was not appropriate.

**Conditions of Practice Order** - the Committee next considered a Conditions of Practice Order. The Committee had already determined that the Registrant's misconduct could be remediated. However, the Registrant has not engaged in the process and is not present today. The Committee has no evidence as to the Registrant's current employment circumstances, or whether she would agree to any conditions imposed. 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.

**Suspension** - the Committee next considered a Suspension Order. The Committee has made findings at the fact and impairment stages that the emails sent by the Registrant were inappropriate, and that her actions were of a serious nature. The Committee has no evidence of remediation by the Registrant, nor has it any information to indicate that the Registrant is unlikely to repeat the same behaviour if she finds herself in similar circumstances in the future. Where the evidence demonstrates that the Registrant will be able to resolve or remedy the cause of the misconduct during the period of suspension. In all of the circumstances, the Committee concluded that a Suspension Order would not be sufficient to mark the seriousness of the emails sent by the Registrant, and the degree to which her actions were entirely unacceptable.

**Removal** - the Committee then considered a Removal Order. The Committee has already found that the emails sent by the Registrant were of a serious nature and had an impact on service users, their families and her work colleagues. The Committee considered that the emails demonstrated a lack of judgement, a failure to respect the confidential nature of the information she was privy to and a complete inability to consider the consequences of her actions. These factors, when considered with the Registrant's failure to demonstrate insight or remorse, caused the Committee to conclude that her behaviour is fundamentally incompatible with being a social care worker.

The Committee considered the factors set out at Paragraph 4.27 of the NISCC Indicative Sanctions Guidance and concluded that:

- the Registrant's actions deliberately placed service users at risk because of the breach of confidentiality;
- the Registrant breached confidentiality and abused her position of trust;
- the Registrant has demonstrated no insight into the seriousness of her actions or the consequences of her actions;
- the Registrant's actions constitute a serious departure from the relevant professional standards set out in the Standards of Conduct and Practice for Social Care Workers.

In all of the circumstances, the Committee concluded that a Removal Order is the only sanction available to it that would protect the public and meet the public interest in upholding confidence in the social care profession and its regulator, by marking the seriousness and unacceptable nature of the Registrant's actions. The Committee determined that a Removal Order is the suitable, appropriate and proportionate sanction which will be imposed on the Registrant's registration with immediate effect.

---

**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.

C Kennedy

Committee Clerk

22.01.19.

Date