



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

**Name:** Edel Patricia McElhill

**SCR No:** 6026200

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **31 January 2020, 14 January 2021 and 05 February 2021**, made the following decision about your registration with the Northern Ireland Social Care Council:

**The Committee found the facts proved;**

**The Committee found that your fitness to practise is impaired by reason of misconduct;**

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

**Particulars of the Allegation:**

That, being registered as a social care worker under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), and whilst working as a Community Care Worker for Care Plus (NI) Ltd at the home of Service User A:

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|----|--|
| 1. | On or about 05 October 2017, you, while providing care to Service User A, roughly handled Service User A.  |
| 2. | On or about 05 October 2017, you, while providing care to Service User A, failed to properly carry out a manual handling movement of Service User A, in that you failed to use a slide sheet as required in the care plan of Service User A.         |
| 3. | On or about 05 October 2017, you, while providing care to Service User A, failed to provide adequate assistance to allow Service User A to have breakfast and / or ignored the request of Service User A for assistance with her breakfast porridge. |
| 4. | On or about 05 October 2017, you, while providing care to Service User A, failed to treat Service User A with consideration, respect and compassion in that you used inappropriate communication with Service User A.                                |

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.

**31 January 2020****Preliminary Matters**

The Registrant was neither present nor represented. The Council was represented by Mr Anthony Gilmore, Solicitor, Directorate of Legal Services.

**Service**

The Notice of Hearing and hearing bundle were posted by Special Delivery post to the Registrant's registered address on 18 December 2019, and were delivered and signed for by the Registrant on 19 December 2019. Further correspondence was issued to the Registrant regarding a witness statement on 23 January 2020. This correspondence was also delivered and signed for by the Registrant on 25 January 2020. The Committee heard and accepted the advice from the Legal Adviser. He referred the Committee to Rule 3 of Part 1 and Paragraph 5 (2) of Schedule 2 of the Northern Ireland Social Care Council Fitness to Practise (Amendment) Rules 2019 ('the Rules').

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

**Proceeding in the Absence of the Registrant**

Mr Gilmore 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 the Registrant's absence. He advised that there was no evidence to suggest that the Registrant was seeking to postpone the hearing, nor did she provide any reason for her non-attendance at the hearing. He submitted that the Registrant's absence was deliberate and that, while there may be some disadvantage to the Registrant, any disadvantage was outweighed by the public interest and it was fair to allow the case to proceed in the Registrant's absence.

The Committee heard and accepted the advice from the Legal Adviser, who referred it to the need to exercise its discretion with the utmost care and caution. He referred the Committee to the principles identified in the cases of R v Jones and GMC v Adeogba. He reminded the Committee that the Registrant was entitled to a fair hearing, to attend, be represented, to test the Council's case and present evidence on her own behalf. He reminded the Committee that in exercising its discretion, it must consider not only fairness to the Registrant but fairness to the regulator. He said that the Committee should consider whether the Registrant had voluntarily absented herself from the proceedings and whether, on the available evidence, an adjournment would secure the Registrant's attendance at a later date. The Legal Adviser advised the Committee that it should not draw any adverse inference from the Registrant's absence, and to consider any disadvantage which might arise to the Registrant if the Committee decided to proceed in her absence. The Committee was also told that it should consider the

general public interest in progressing the case in an expeditious manner. The Legal Adviser advised the Committee that it should strike a careful balance between the public interest, the Registrant's interests and the interests of the Council in reaching its decision.

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

The Committee reminded itself that it should avoid reaching any improper conclusion about the Registrant's absence. However, having satisfied itself that all reasonable efforts had been made to serve the Registrant with notice of the proceedings, the Committee concluded that she had voluntarily absented herself from the hearing. There was no information before the Committee to suggest that an adjournment would secure the Registrant's attendance at a later date. The Committee also noted that the Council intended to call a live witness at the hearing. The Committee considered that it would be inappropriate to adjourn the proceedings, given the efforts made to secure the attendance of the witness and the need to determine the case when the memory of the witness was still relatively fresh. In addition, at the forefront of the Committee's mind, was the public interest. The Allegation was serious, and was directly related to the Registrant's occupation as a social care worker.

After careful consideration of all of the issues, the Committee decided, in the public interest, to exercise its discretion to proceed in the absence of the Registrant. In doing so, it took into account the nature of the Allegation and the need to strike a careful balance between fairness to the Registrant, the regulator and the wider public interest.

### **Application to Admit Evidence**

Mr Gilmore requested that the hearing bundle be admitted into evidence. The Committee heard and accepted the advice of the Legal Adviser. The Committee noted that the Registrant had been served with a copy of the bundle, and that the accompanying letter informed the Registrant of her right to raise an objection to the contents of the bundle. The Registrant was also informed of the timeline in providing any documents on her behalf. The Committee heard and accepted the legal advice in relation to the admission of the hearing bundle. It noted that there was no objection to the bundle being admitted into evidence and, having considered the relevance of the documents and fairness to the Registrant and to the regulator, accepted the bundle into evidence and marked it as Exhibit 1.

Mr Gilmore applied to admit CCTV footage as evidence. The footage, of approximately five minutes' duration, was said to have recorded the Registrant's interactions with Service User A on 05 October 2017. The footage was passed to the Council from the Registrant's former employer, who had used it in disciplinary proceedings against the Registrant. When pressed by the Committee, Mr Gilmore confirmed that the Registrant was aware of the existence of the CCTV footage, not only from the disciplinary process but also from proceedings taken

against her by the Council. Mr Gilmore submitted that the Registrant was aware that the CCTV footage would form a core piece of evidence in these proceedings, and that the Registrant had raised no objections to its admission. The Committee decided that the CCTV footage was an important aspect of the case in its consideration of the Allegation, and was satisfied that it was fair to admit the footage into evidence. The CCTV footage was marked as Exhibit 2.

## **Background**

Mr Gilmore told the Committee that the Registrant is registered on Part 2 of the Register. The Registrant was employed as a domiciliary care worker with Care Plus from July 2017, and had worked in the same capacity with Glen Care from 2012 until that provider was taken over by Care Plus on 01 July 2017.

On 06 October 2017, Care Plus was contacted by the next of kin of Service User A to raise issues in relation to the Registrant's care of Service User A. The issues included a concern that Service User A was not drinking or eating as much as she used to, that she had been roughly handled by the Registrant, and that appropriate attention had not been paid to Service User A's nutrition and comfort. The family of Service User A had CCTV installed in Service User A's bedroom at her home, where the Registrant and other carers attended to look after Service User A's needs. The family of Service User A placed signage prominently in Service User A's home to bring to the attention of attending carers that CCTV recording was taking place. The CCTV footage, which was shared with the employer and which was taken on 05 October 2017, was alleged to show the Registrant's failure to deliver an adequate level of care to Service User A.

The Registrant attended at a meeting with her employer on 06 October 2017 and a subsequent disciplinary hearing on 09 October 2017. The notes of the meeting and hearing were included in the hearing bundle.

The Council received an Employer Referral Form from Care Plus, dated 10 October 2017, which enclosed a copy of the CCTV footage, which had previously been given to the employer by Service User A's family.

## **Evidence**

The Committee heard evidence from Witness 1, the registered manager of Care Plus. She confirmed the identity of the Registrant on the CCTV footage contained in Exhibit 2. Witness 1 told the Committee that Service User A was a 94 year old lady and was totally bedbound. She had fragile skin and curvature of the spine. As a result of suffering from osteoporosis and osteoarthritis, Service User A was also at risk of skin and bone damage. Witness 1 outlined to the Committee the contents of Service User A's care plan and related care documents. Witness 1 stated that the Registrant, as a carer for Service User A, would have been expected to read these documents to ensure that she was aware of Service User A's vulnerabilities and care needs. Witness 1 confirmed to the Committee that the Registrant had undertaken appropriate training for her position as a domiciliary care worker.

The Committee viewed the CCTV evidence contained in Exhibit 2. The Committee viewed it both during the hearing and after it had retired to consider the facts contained in the Allegation.

In summary, and after careful examination, the footage demonstrated as follows (the timings below relate to the actual time of day on 05 October 2017):

- 06.50.00 – shows the Registrant and another carer entering Service User A's room. Service User A, whose face, together with other identifying characteristics, was pixelated and could be heard stating 'I am sore'. The Registrant lowered Service User A's bed and could be seen preparing Service User A before feeding.
- 06.50.45 – the Registrant and another carer leave Service User A's room to prepare breakfast.
- 06.52.20 – the Registrant and the other carer re-enter the room. The Registrant places a cup and bowl of porridge on a side table. The Registrant pulls a chair towards Service User A's bed and takes hold of Service User A to move her closer to the Registrant. The Registrant sits down to commence feeding Service User A, who could be heard stating 'I'm sore'.
- 06.52.40 – the Registrant hands Service User A the cup from the side table and states, 'There's your tea'.
- 06.53.12 – the Registrant removes the cup from Service User A and holds a spoon up to Service User A's mouth. The Registrant states: 'open up' and 'swallow it down'.
- 06.53.32 – after Service User A's failure to swallow the porridge offered, the Registrant states 'right no. That's it you're getting nothing'. In response, Service User A states: 'that's not fair', 'go easy', and subsequently states on a number of occasions 'I'm sore' and was heard whimpering.
- From the above time until 06.54.54, the Registrant, together with the other carer, uses a tissue to clean Service User A's face. Service User A is moved on the bed by the other carer. The Registrant and the other carer leave Service User A's room. The light is switched off, leaving the room in darkness, after which Service User A states: 'I'm sore'.

### **Application to Adjourn**

After the Committee had taken advice from the Legal Adviser, but before it had made a decision on the facts, the attention of the Committee was drawn by the Council to an email which it had received on the morning of the hearing but which had not been considered by the Council until after the Committee retired to consider its decision on the facts. The Committee was asked to reconvene by Mr Gilmore to consider the documentation provided by the Registrant, and the contents of a subsequent telephone conversation which had taken place between the Council and the Registrant.

The Committee was told that the Registrant had emailed the Council on 31 January 2020 at 10.16 am to advise that she was unable to attend the hearing owing to the fact that her father had been taken into hospital on the morning of the hearing. A memo of a telephone conversation between the Registrant and the Council confirmed that the Registrant would have intended to attend the hearing but that she was not able to do so, owing to her father's ill health and her unexpected need to accompany him to hospital. The Registrant's email, together with

the memo of the subsequent conversation, was admitted by the Committee as Exhibit 3. The Committee accepted the advice of the Legal Adviser and decided, in the interests of justice, to adjourn the hearing without any further consideration of the facts. In so deciding, the Committee directed that it would resume the hearing on a future date, and further directed the Registrant to provide medical evidence to support what she had stated as the reason for her non-attendance at the hearing.

In light of the restrictions brought about by the coronavirus pandemic, a resumed hearing scheduled for 25 March 2020 did not proceed, and a decision was made by the Chair of the Committee on 23 March 2020 that the matter should be postponed to a later date when circumstances for a relisting were more favourable. Following a pre-hearing review which took place on 22 September 2020, the hearing was scheduled to resume on 14 January 2021.

### **14 January 2021**

At the resumed hearing, the Committee admitted into evidence Exhibit 4. This comprised the original hearing bundle together with a number of other documents, namely, the transcript of the hearing on 31 January 2020 and a number of references.

The hearing was conducted using Zoom videoconferencing facilities in light of ongoing restrictions brought about by the pandemic.

The Registrant attended the hearing via a telephone link and represented herself. Mr Gilmore attended remotely on behalf of the Council.

At the outset, the Allegation was read to the Registrant, who, in reply responded as follows:

- Particular 1 was denied;
- Particular 2 was admitted;
- Particular 3 was admitted in part – the Registrant admitted that she had failed to provide adequate assistance to allow Service User A to have breakfast, but denied that she had ignored Service User A's request for assistance with her breakfast porridge; and
- Particular 4 was admitted.

The Committee announced that Particulars 2 and 4 were proved by reason of the Registrant's admissions. Particular 3 was found proved in part. The Committee indicated that it would proceed to consider Particular 1 and that part of Particular 3 which had been denied by the Registrant.

The Registrant made a submission to the Committee in respect of those Particulars not being admitted. Before doing so, she confirmed to the Committee that she had previously written to the Council to indicate that she did not require Witness 1 to be recalled for the purposes of cross-examination. The Registrant also confirmed that, in connection with these proceedings, she had previously watched the CCTV footage and did not require to see it again before the hearing proceeded.

In relation to Particular 1, the Registrant stated that she had not acted out of malice or ignorance. She had moved Service User A by the shoulder 'just to position her'. Moving Service User A in this manner was described by the Registrant as 'general practice'. The Registrant denied rough handling. She stated that she knew how it looked but she did not act aggressively, and no injury was caused to Service User A by her actions.

In relation to Particular 3, the Registrant denied ignoring the request of Service User A for assistance with her breakfast porridge. The Registrant stated that she knew Service User A well, and was familiar with when Service User A would eat and when she would not. At the end of the call which was the subject of the Allegation, the Registrant stated that she and her colleague, who also attended Service User A's home, both agreed that Service User A would not take any more food. They did not force Service User A to eat anything more other than that which was offered to her.

Before the Committee retired, Mr Gilmore confirmed that he did not wish to make any further submissions on the facts, and invited the Committee to read the transcript of his earlier submissions which he made on 31 January 2020. In her closing remarks, the Registrant apologised for her actions on the date in question, and accepted that the family of Service User A would have been distressed to view what had happened in the course of the visit to their mother.

The Committee accepted the advice of the Legal Adviser. He outlined that the burden of proving any disputed facts lay with the Council. The Registrant did not have to prove her innocence. The standard to be applied was the balance of probabilities.

The Committee considered all of the available oral and documentary evidence, including the CCTV evidence admitted during the hearing. The Committee also considered carefully the submissions made by Mr Gilmore and the Registrant.

## **Decision on the Facts**

### **Particular 1 - On or about 05 October 2017, you, while providing care to Service User A, roughly handled Service User A.**

From its consideration of the CCTV footage, the Committee was satisfied that the Registrant's actions in moving Service User A were inappropriate and amounted to rough handling of her. This was demonstrated most clearly by the Registrant's actions at 06.52 on the CCTV footage. The care plan and related documents made clear that Service User A was very vulnerable, and was at risk of sustaining breakage to her skin as a result of underlying and documented health conditions.

The Committee could attach no weight to the explanation given by the Registrant that her actions represented a general practice in the discharge of care to Service User A. Further, the Committee was troubled by the Registrant's evidence in that regard. The CCTV footage demonstrated to the complete satisfaction of the Committee that the Registrant's actions on the date in question were contrary to the care plan in place, and that she had roughly handled Service User A.

The Committee found Particular 1 proved.

**Particular 2 - On or about 05 October 2017, you, while providing care to Service User A, failed to properly carry out a manual handling movement of Service User A, in that you failed to use a slide sheet as required in the care plan of Service User A.**

Proved by admission.

**Particular 3 - On or about 05 October 2017, you, while providing care to Service User A, [proved by admission] and / or ignored the request of Service User A for assistance with her breakfast porridge.**

The Committee paid careful regard to the CCTV footage, which showed that the Registrant attempted for no more than 20 seconds to feed Service User A porridge from the bowl which had been prepared for breakfast. After one attempt in that short period, food was withdrawn from Service User A, who in response said, 'that's not fair' (at 06.53.12 – 06.53.32 as set out in the CCTV footage). The Registrant did not communicate with Service User A or attempt to reassure her. Service User A's requests for assistance were ignored.

The Registrant's account contained in her submission to the Committee gave rise to significant cause for concern. Her case that she knew when Service User A would eat and when she would not was contrary to the safeguarding requirements contained in Service User A's care plan and related documents.

The Committee found this element of the Particular proved.

**Particular 4 - On or about 05 October 2017, you, while providing care to Service User A, failed to treat Service User A with consideration, respect and compassion in that you used inappropriate communication with Service User A.**

Proved by admission.

### **Fitness to Practise**

The Committee heard a submission from Mr Gilmore in light of its findings of fact on the question of whether, in consequence, the Registrant's fitness to practise was currently impaired.

Mr Gilmore submitted that the Registrant had been found by the Committee to have acted in an inappropriate manner in respect of the care provided to Service User A. He suggested relevant Standards to which the Registrant was expected to adhere, but that she had breached as a result of the facts found proved against her. Mr Gilmore submitted that the Registrant's actions were serious, and that they had fallen well short of the Standards expected. Mr Gilmore invited the Committee to make a finding of misconduct.

The Committee also heard from Mr Gilmore on the question of the Registrant's current impairment by reason of her misconduct. He submitted that multiple incidents had taken place in the visit by the Registrant to Service User A's home. Cumulatively, Mr Gilmore submitted that the Registrant had failed to provide safe and effective care towards Service User A, and had failed to maintain the safety of a vulnerable service user. The Registrant, in Mr Gilmore's submission, had failed to demonstrate evidence of remediation. She had also failed to provide



adequate evidence of insight, and had not offered an apology to Service User A for her actions. Mr Gilmore submitted that there was a risk of repetition. Furthermore, he submitted that the public interest was also strongly engaged in this case. In his submission, Mr Gilmore stated that public trust and confidence in the social care workforce would be undermined if a finding of current impairment was not made in the circumstances of this case.

The Committee heard a submission from the Registrant. On reflection, the Registrant stated to the Committee that her actions, which she had denied at the fact finding stage, did amount to rough handling of Service User A. The Registrant stated that she was truly sorry that Service User A's family had been caused distress by having to watch the CCTV footage of the visit on 05 October 2017. The attention of the Committee was drawn by the Registrant to the fact that the incident in question was over three years ago. In that time, the Registrant told the Committee, she had learned a valuable lesson and the mistakes she had made in the provision of care to Service User A would not be repeated. The regulatory proceedings had also brought home to the Registrant the need to act to the required standard as a social care worker at all times. The Registrant stressed that the Committee was dealing with a one-off incident, and that she had never had her practice brought into question before. The Registrant stated that she was well regarded in her local community. She told the Committee about two instances when she was asked by families in her local community to look after their vulnerable relatives. She did not seek this work, but undertook it in a private capacity. These approaches were made to the Registrant after the incident involving Service User A. The Registrant stated that, if given a chance, she would hope to continue in social care and that, following these proceedings, the Committee could be confident that there would be no repetition of the conduct which had resulted in her referral.

The Committee took into account the submissions of Mr Gilmore and the Registrant in reaching its decision. The Committee also heard and accepted the legal advice provided by the Legal Adviser. The Committee was reminded that the purpose of fitness to practise proceedings is primarily to uphold the public interest and protect the public. The public interest comprised public protection but also broader considerations, namely, upholding proper standards of conduct and maintaining the reputation of the social care workforce.

On the question of misconduct, the Committee was advised to consider the Northern Ireland Social Care Council Making a Determination of Impaired Fitness to Practise: Guidance for Committees on Remediation (May 2016), and to exercise its own independence, skill and judgement in considering the breaches of the Standards of Conduct and Practice. In addition, the Committee's attention was drawn to the definition of misconduct provided in Roylance v GMC (No. 2) [2000] AC 311. The attention of the Committee was also brought to the case of Calhaem v GMC [2007] EWHC 2606. The Legal Adviser reminded the Committee that a single, negligent act or omission was less likely to cross the threshold of misconduct than multiple acts or omissions. Nevertheless, and depending on the circumstances, the Committee was told that a single act or omission, if particularly grave, could be characterised as misconduct.

The Committee was advised that it must assess the Registrant's fitness to practise in the present tense, and take account of the principles identified in CHRE v NMC and Grant [2011] EWHC 927. The Legal Adviser informed the Committee that the assessment of fitness to practise was a matter for the Committee, exercising its independent judgement, and that there was no burden or standard of proof. The Committee was reminded of the need to consider both the personal and public components in reaching its decision on impairment and, in particular, whether the Registrant had provided evidence of insight or remediation, and if there is a risk of repetition. The Committee was advised that remediation and risk of repetition are important factors when considering impairment, but they must be weighed in the balance, taking into account the public interest.

The Committee first considered whether the Registrant's actions amounted to misconduct. In so doing, the Committee considered that the Registrant had breached the following Standards of Conduct and Practice:

### **Standards of Conduct**

**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;
- 1.3 Empowering service users and carers to communicate their views, needs and preferences, taking account of their preferred language and form of communication;
- 1.4 Respecting and, where appropriate, representing the individual views and wishes of both service users and carers;
- 1.5 Supporting service users' right to control their lives and make informed choices about the services they receive;
- 1.6 Gaining consent as appropriate from service users before you provide care or services, in line with your employer's procedures and any statutory requirements;
- 1.7 Explaining your role, the purpose of your involvement and the reasons for any decision you make; and
- 1.8 Respecting and maintaining the dignity and privacy of service users.

**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:**

- 2.2 Communicating in an appropriate, open, accurate and straightforward way.

**Standard 3: As a social care worker, you must promote the autonomy of service users while safeguarding them as far as possible from danger or harm. This includes:**

- 3.1 Promoting service users' independence and empowering them to understand and exercise their rights; and

3.3 Following practice and procedures designed to keep you and other people safe from violent and abusive behaviour at work.

**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;

5.7 Put yourself or other people at unnecessary risk; or

5.8 Behave in a way, in work or outside work, which would call into question your suitability to work in social care services.

**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;

6.2 Taking personal and, where appropriate, collective responsibility for quality improvement and safety in line with your job role; and

6.3 Being personally accountable for your actions and able to explain and account for your actions and decisions.

## **Standards of Practice**

**1. As a social care worker, you must understand the main duties and responsibilities of your own role within the context of the organisation in which you work. This includes:**

1.3 Knowing your main responsibilities to those service users and carers you support including duty of care.

**2 As a social care worker, you must be able to communicate effectively. This includes:**

2.1 Developing effective relationships with service users and carers; and

2.3 Using a range of communication methods and styles to meet a service user's communication needs, wishes and preferences.

**3. As a social care worker, you must deliver person-centred care and support which is safe and effective. This includes:**

3.1 Promoting and applying person-centred values in your day to day work with service users and carers;

3.2 Delivering care in line with assessed needs and service user and carer preferences;

3.6 Working in partnership with service users to enable them to achieve their goals and be as independent as possible;

3.10 Supporting service users in their daily living;

- 3.12 Contributing to the physical and emotional well-being of service users and carers; and
- 3.13 Enabling service users and carers to make informed choices about their lives and to actively participate in decision-making processes.

**5. As a social care worker, you must maintain health and safety at work. This includes:**

- 5.3 Applying your organisation's policies and procedures in relation to moving and handling service users.

The Registrant had acted in a manner which failed to show respect and compassion to Service User A. She had failed to deliver basic care to a vulnerable service user with significant underlying health conditions. The Registrant had fallen far below the standards expected of her as a social care worker. Although the Allegation related to a single date, the Committee considered that the Registrant's actions were particularly serious, and related to a fundamental failure by her to act in the best interests of a vulnerable service user. The Registrant's actions fell far below the standard to be expected of a registered social care worker, and were serious. The Committee was satisfied that the Registrant's actions on the date in question amounted to misconduct.

The Committee, by reason of its finding of misconduct, turned to consider whether, in consequence, the Registrant's fitness to practise is currently impaired.

The Committee first considered the question of whether the Registrant's actions were remediable. The Committee concluded that such actions were capable of remedy in principle. Next, the Committee considered whether the Registrant had, in fact, remedied her misconduct. The Committee noted that the Registrant, in her submission, had expressed remorse for her actions. She had stated that she was truly sorry for Service User A's family having to view the CCTV footage of the visit in question. The Committee noted, however, that at no stage did the Registrant, at the time of the incident or afterwards, express regret and remorse to Service User A. The Committee noted that the Registrant had expressed regret and remorse during the hearing. However, the Committee observed that the Registrant's apologies were directed towards the family of Service User A, who had to view the CCTV footage, rather than expressing regret and remorse for her failings in respect of the standard of care delivered to Service User A on the date in question.

The Committee concluded that the Registrant had demonstrated only very limited insight into her failings.

The Committee also considered the issue of remediation. It noted that, in her submissions, the Registrant had stated that she would not repeat the actions which had resulted in her referral to the Committee. The Committee noted this submission and attached some weight to it. However, the Committee observed that the Registrant had not placed any evidence before it to show that she had undertaken appropriate training and / or reflection to avoid the risk of repetition. As such, the Committee concluded that there was limited evidence of remediation of the Registrant's misconduct, and that a risk remained that she would repeat the actions complained of.

The Committee also had regard to the formulation provided by Dame Janet Smith in her Fifth Report to the Shipman Inquiry. The Committee considered that the Registrant's actions engaged the following limbs:

Do our findings of fact in respect of the [Registrant's] misconduct... show that her fitness to practise is impaired in the sense that she:

- a) Has in the past acted and is liable in the future to act so as to put service users at unwarranted risk of harm;
- b) Has in the past brought and is liable in the future to bring the social care workforce into disrepute; and
- c) Has in the past breached and is liable in the future to breach one of the fundamental tenets of the social care profession.

The Committee therefore finds, on public protection grounds, that the Registrant's fitness to practise is currently impaired.

In addition, the Committee concluded that a failure to make a finding of current impairment on public interest grounds would undermine the public's trust and confidence in the social care workforce.

For these reasons, the Committee decided that that Registrant's fitness to practise is currently impaired by reason of her misconduct.

### **Sanction**

In reaching its decision on sanction, the Committee had careful regard to all of the evidence in the case, as well as the submissions from Mr Gilmore and the Registrant.

Mr Gilmore submitted that the only appropriate and proportionate sanction to impose was a Removal Order. Mr Gilmore outlined to the Committee that the Registrant had a previously clear disciplinary record. Further, she had a clear work history and had been working in the social care field since 2012. However, in his submission, Mr Gilmore outlined what he stated were significant aggravating factors. The service user in this case was frail and elderly. She was confined to her bed. She was totally reliant on the Registrant and her colleagues for care and nutrition. The service user had many assessed needs which ought to have been known to the Registrant as they were contained in the relevant care plan. The Registrant, in Mr Gilmore's submission, had failed to provide basic care to the service user, and had failed to treat her with compassion and respect. There was a need to impose a Removal Order to protect the public from those actions demonstrated by the Registrant, and found proved by the Committee. Mr Gilmore also submitted that there was a need to impose a Removal Order on public interest grounds.

In her submission, the Registrant stated that she was truly sorry for the events which had resulted in her referral to the Committee. She stated that she would never forgive herself for her actions on the date in question. The Registrant indicated that she had loved social care, and would like to retain the option of going back to a caring role. The Registrant stated that she would like to have the matter resolved by the Committee.

The Committee heard and accepted the advice of the Legal Adviser. He advised that the purpose of sanction was not to be punitive, but that it may have a punitive effect. The Committee was reminded that it should

exercise its professional judgement in reaching a decision on sanction, and should keep at the forefront of its decision making the need to protect the public, the wider public interest and the principles of fairness and proportionality. The Committee was reminded that it should take into account the Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees 2017 ('the Guidance'), and consider the range of sanctions as set out in Paragraph 26 Schedule 2 of the Rules.

The Committee was advised that it should consider sanctions beginning with the least restrictive, and stopping when it reached a sanction which it considered appropriate and would provide the necessary level of protection. The Committee was advised that it should consider aggravating and mitigating factors, and properly evaluate them in reaching its decision.

At the outset, the Committee considered the mitigating and aggravating factors.

The Committee considered the following to be mitigating factors:

1. The Registrant had a previously clear disciplinary record and a clear work history;
2. The Registrant had demonstrated insight, albeit very limited;
3. The Registrant had engaged in the regulatory proceedings taken against her; and
4. The Registrant had provided references, which attested to her abilities as a social care worker and that she was well regarded in her role. The Committee, however, attached limited weight to the references provided. They were received by the Council in November 2017. The references also covered a period up to 2013 / 2014, some years before the date of the Registrant's misconduct in October 2017.

The Committee considered the following to be aggravating factors:

1. The Registrant had demonstrated very limited insight and a limited degree of remediation. The Registrant's expressions of regret and remorse were directed not to her failings in respect of the care provided, but rather to the family who had to view the CCTV footage;
2. The Registrant's actions posed a risk of harm to the service user; and
3. The Registrant had acted in a manner which amounted to showing a serious disregard to the Council's Standards of Conduct and Practice.

The Committee then considered the appropriate and proportionate sanction to impose.

**Warning** – having regard to its findings, the Committee considered that the public would not be adequately protected, nor would the public interest be upheld, if the proceedings were concluded by taking no further action or issuing a warning the Registrant.

**Conditions of Practice Order** – the Committee noted that the Registrant was not working in social care and had not done so in a significant period of time. The Committee, after careful consideration, was unable to formulate conditions which were workable and measurable, and which would adequately protect the public. The fact that the Registrant did not have an employer who could facilitate a Conditions of Practice Order was of little relevance

of the view of the Committee. This factor was outweighed by the serious nature of the findings made against the Registrant. The imposition of a Conditions of Practice Order would be inadequate to protect the public and insufficient to uphold the public interests.

**Suspension** – the Committee then considered whether it would be proportionate to apply a Suspension Order. The factors as set out in the Guidance were examined closely by the Committee. In the judgement of the Committee, the Registrant had not demonstrated evidence of insight and remediation to a sufficient degree that would give it confidence that a Suspension Order would protect the public and be in the public interest. There was also a risk of the behaviour which the Registrant engaged in being repeated. In this case, the Registrant’s misconduct was of the utmost seriousness. It was directly related to the Registrant’s position as a social care worker. With knowledge that the service user was being recorded, the Registrant provided a level of care to her which fell significantly below the standards to be expected of a social care worker. The Registrant had failed to treat the service user in her care with dignity and compassion. In the Committee’s judgement, the Registrant’s actions were fundamentally incompatible with remaining on the Social Care Register.

**Removal** – The Committee decided to make a Removal Order. The Committee had particular regard to Paragraph 5.14 of the Guidance. Such an Order was necessary to protect the public, given the Registrant’s very limited insight and lack of remediation. The Registrant’s actions were of the utmost seriousness. She had failed in her basic duty as a social care worker to treat one of the most vulnerable persons in society with dignity and compassion. The Registrant’s actions were fundamentally incompatible with remaining on the Social Care Register. Further, the Committee considered that a Removal Order was appropriate to uphold the public interest. In light of its findings, the Committee considered that only a Removal Order would send out a clear message to the public that the Registrant’s actions were of the utmost seriousness, and would be strongly disapproved of by the public in general and the social care workforce in particular.

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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 removed.

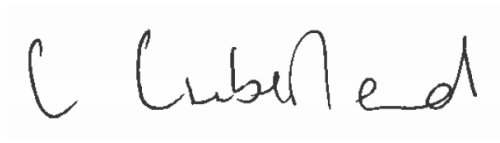
You are prohibited from working as a social care worker in any of the following positions:

1. A member of care staff at a:
  - a.) Children’s home;
  - b.) Residential care home;
  - c.) Nursing home;
  - d.) Day care setting;
  - e.) Residential family centre.

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

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

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



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Regulatory Committee Manager

10 February 2021

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Date