

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

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**Name:** Sara Margaret Johnston

**SCR No:** 6023901

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at a hearing on **12 May 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 a conviction in the United Kingdom for a criminal offence;**

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

**Particulars of the Allegation:**

That on the 27 November 2020, whilst being registered as a social care worker, under the Health and Personal Social Services Act (Northern Ireland) 2001(as amended), you were convicted of the following offence at the District Judge's Court. The offence occurred whilst you were employed as a Care Assistant by Runwood Homes at Ashbrooke Care Home Enniskillen:

You were convicted as follows:

1. "Defendant on 30-May-2017, being an officer on the staff of or otherwise employed in a nursing home, namely Ashbrook Care Home, Enniskillen, wilfully neglected [Service User A], a patient for the time being, receiving treatment for a mental disorder as an in-patient in the said Ashbrook Care Home, Enniskillen, contrary to Article 121(1) of the Mental Health (Northern Ireland) Order 1986."

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

**Procedure**

The hearing was held under the fitness to practise procedure.

## **Preliminary Matters**

The Registrant was not in attendance and was not represented. The Council was represented by Mr Anthony Gilmore, Solicitor, Directorate of Legal Services.

## **Service**

Mr Gilmore told the Committee that the Notice of Hearing and hearing bundle were emailed to the Registrant's registered email address on 02 April 2021, and a delivery receipt was received on the same date. The Council telephoned the Registrant on 23 April 2021 and a voicemail was left, leaving the password for the Notice of Hearing and hearing bundle. In the voicemail, the Registrant was also asked to contact the Council prior to the hearing date. A further voicemail was left for the Registrant on 10 May 2021 by the Council, asking the Registrant to contact the Council to confirm her attendance at the fitness to practise hearing.

The Committee received legal advice from the Legal Adviser, and he referred the Committee to the requirements as set out in the Northern Ireland Social Care Council's ('the Council') Fitness to Practise (Amendment) Rules 2019 ('the Rules') and, in particular, Rule 3 which states that proof of service shall be treated as being effected on the day after it was properly sent.

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 submitted that the Committee should hear and determine the case in her absence. He invited the Committee to conclude that the Registrant's absence was a voluntary waiver of her right to attend. He submitted that the Registrant had failed to engage with the Council throughout the proceedings, and that in all of the circumstances it was fair to proceed with the hearing in her absence. He further submitted that proceeding in absence was in the public interest, and also was justified to ensure the timely disposal of the hearing.

The Committee was mindful that the discretion to proceed in the absence of the Registrant should only be exercised with the utmost care and caution. In considering the application, the Committee sought to satisfy itself that all reasonable efforts had been made to notify the Registrant of the hearing, and accepted the advice of the Legal Adviser. He referred the Committee to the cases of R v Jones 2003 1 AC, Adeogba and Visvardis v GMC 2016. He reminded the Committee that in exercising its discretion to proceed in the Registrant's absence, it must have regard to all of the circumstances, with fairness to the Registrant being of prime consideration, although fairness to the Council and the public interest must also be taken into account. He reminded the Committee to avoid reaching any improper conclusion about the Registrant's absence, and not to accept it as an admission in any way.

The Committee noted that the voicemails that had been left for the Registrant on two occasions in advance of the hearing had not been responded to. More generally, the Committee was of the view that the Registrant had

failed to engage in the regulatory process. The Committee considered that the Registrant has voluntarily absented herself from today's hearing. Therefore, after careful consideration of all of the issues, the Committee decided to exercise its discretion to proceed in the absence of the Registrant. The Committee also considered that proceeding in the absence of the Registrant was justified, taking into account the serious nature of the allegation and the wider public interest.

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

Mr Gilmore requested that the hearing bundle be admitted into evidence. The Committee accepted the bundle into evidence and marked it as Exhibit 1.

### **Background**

Mr Gilmore outlined the relevant background. The matter first came to the attention of the Council when an Employer Referral Form ('ERF') was received from Ashbrook Care Home ('the Home') on 19 July 2017. At the material time, the Registrant was employed at the Home as a care assistant. An allegation had been raised that the Registrant solely assisted a female service user to bed, despite the service user's care plan specifying that when being moved the service user required the assistance of a hoist and two staff members. It was alleged that after the Registrant had placed the service user in bed, she turned away to get wipes from the en suite facility in her service user's bedroom. When she was engaged in this activity, the service user fell out of bed and landed on the floor. The service user, as a result of the fall, sustained bruising to the right side of her head, and bruising to her face, right arm and shoulder. She also sustained a fractured collar bone. The nature of the injuries sustained by the service user meant that she had to attend the hospital for medical attention. It was further alleged that the Registrant did not notify the staff nurse on duty about the incident, nor complete the relevant incident form. Mr Gilmore submitted that the Council's case was that the Registrant, by her actions, had deprived the service user of immediate intervention by a nurse, and appropriate medical attention thereafter.

Following the uncovering of injuries sustained by the service user, a joint protocol investigation was commenced by social services and police. The Registrant attended an under caution interview with police on a voluntary basis on 02 June 2017. During the course of the interview, the Registrant confirmed that she had worked at the Home for the previous year and a half on a banking basis as a care assistant. She worked typically three shifts per week. The Registrant gave a full account of her actions with respect to the service user. She explained that she was getting the service user ready for bed. She 'cradled' the service user into bed, by which she meant that the Registrant lifted the service user on her own, without a hoist or the assistance of a work colleague. When the service user was in the bed, the Registrant realised that she had forgotten some wet wipes. She went to the en suite facility in the service user's bedroom to retrieve the wipes, when the service user rolled out of the bed and landed on the floor. The Registrant explained that she immediately picked the service user up from the floor. At the time, the service user appeared not to have suffered any injury and was not complaining of pain. In her account to police, the Registrant accepted that her care of the service user had been deficient. She had acted in a manner contrary to the service user's care plan by lifting the service user without the assistance of a hoist or

work colleague. Further, the Registrant accepted that she failed to use a crash mat to minimise the risk of injury in the event that the service user fell from the bed. The Registrant accepted that she should not have lifted the service user from the floor to the bed without a hoist or the assistance of a work colleague. There was also an admission by the Registrant that she had failed to make a report of the incident to the staff nurse on duty. When questioned, the Registrant accepted that she had been trained in appropriate courses, including manual handling, and that her training was up to date when the incident occurred.

Mr Gilmore confirmed to the Committee that the Registrant had been convicted at Enniskillen Magistrates' Court, on 23 October 2020, of the wilful neglect of Service User A, contrary to article 121 (1) of the Mental Health (NI) Order 1986. She had pleaded guilty on that date to the offence on that date. On 27 November 2020, the Registrant received a three-month custodial sentence, which was suspended for two years. The Committee was referred by Mr Gilmore to the certified copy of the Certificate of Conviction, which confirmed the Registrant's conviction and sentence for the wilful neglect of Service User A.

### **Evidence**

Mr Gilmore invited the Committee to consider the Certificate of Conviction. He reminded the Committee of the provisions contained in Paragraph 12 (5) of Schedule 2 of the Rules. He submitted that the Certificate of Conviction was conclusive proof of the conviction and the facts underlying it.

### **Findings of Fact**

The Committee took into account the submissions made on behalf of the Council, the Certificate of Conviction and the legal advice from the Legal Adviser. The Legal Adviser reminded the Committee that under Paragraph 12 (5) Schedule 2 of the Rules, a Certificate of Conviction issued in any UK Criminal Court '*shall be conclusive proof of the facts of convictions so found*'. He advised the Committee that a registrant could challenge a Certificate of Conviction if it did not refer to the Registrant, or where the conviction had been challenged successfully on appeal. He informed the Committee that the Certificate of Conviction in this case was issued before a competent Court of jurisdiction and, in the absence of any other evidence, the Committee was entitled to rely on the Certificate of Conviction to establish conclusively that the Registrant was convicted of the offence as set out. He also advised the Committee that the Certificate could also be relied upon to establish the facts underlying the conviction.

The Committee, having considered the submissions and having taken into account the legal advice, concluded that the Certificate of Conviction was conclusive proof of the conviction and the underlying facts. The Committee, therefore, found the facts proved.

### **Fitness to Practise**

The Committee proceeded to consider whether, in light of the conviction found proved, the Registrant's fitness to practise is currently impaired in consequence of the conviction.

Mr Gilmore submitted that the Registrant's actions, which had resulted in her conviction, had called into question her ability to work in social care services. With reference to specific standards, Mr Gilmore submitted that the Registrant's actions had fallen significantly below the standards to be expected of a registered social care worker. The Registrant had failed to discharge her responsibilities in respect of the care of Service User A, and had failed to report the incident to her employer. The Registrant had admitted her wrong doing during the police interview and had pleaded guilty at Court. However, during the course of the regulatory proceedings, the Registrant had failed to engage with the Council to demonstrate insight and remediation. Mr Gilmore submitted that there was a risk of repetition, and that a finding of current impairment was necessary to protect the public. Further, in the public interest, Mr Gilmore submitted that a finding of current impairment was warranted.

The Committee considered the submissions from Mr Gilmore, together with the documentary evidence contained in the hearing bundle. The Committee accepted the advice of the Legal Adviser. He referred the Committee to the Standards of Conduct and Practice for Social Care Workers. The Legal Adviser advised the Committee to adopt a sequential approach when considering the case. In particular, he asked it to take into account the nature and content of the criminal conviction against the Registrant, and reminded the Committee that it was being asked to determine whether the Registrant's fitness to practise is impaired because of the conviction. He referred the Committee to Paragraph 24 Schedule 2 of the Rules, and the requirements as set out in the case of the GMC v Cohen, looking at the current competence and behaviour of the Registrant along with the need to protect service users, members of the public, the upholding of proper standards of behaviour and maintaining of public confidence in the social care profession. The Legal Adviser further referred the Committee to the findings of Dame Janet Smith in the 5<sup>th</sup> Shipman Report as regards the potential causes of impairment. He also referred the Committee to the cases of GMC v Meadow and CHRE v NMC & Grant.

The Committee considered whether the Registrant's fitness to practise is impaired by reason of her conviction, as set out in the Particulars of the Allegation.

The Committee, in considering the issue of impairment of fitness to practise, also took account of Paragraph 24 (3) of Schedule 2 of the Rules, which states that it should 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 had regard to the Standards of Conduct and Practice for Social Care Workers, and the Council guidance titled 'Making a Determination of Impaired Fitness to Practise: Guidance for Committees on Remediation'.

As a result of its careful consideration of all of the evidence, the Committee was satisfied that the Registrant, by her conviction and actions, 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.

**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:**

2.1 Being honest and trustworthy; and

2.7 Honouring work commitments, agreements and arrangements and, when it is not possible to do so, explaining why to service users and carers.

**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:**

3.6 Complying with employers' health and safety policies, including those relating to substance misuse.

**Standard 4: As a social care worker, you must respect the rights of service users while seeking to ensure that their behaviour does not harm themselves or other people. This includes:**

4.3 Taking necessary steps to minimise the risks of service users' behaviour causing actual or potential harm to themselves or other people.

**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;

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

6.4 Maintaining clear and accurate records as required by procedures established for your work; and

- 6.11 Being open and honest with people if things go wrong, including providing a full and prompt explanation to your employer of what has happened.

**Standards of Practice:**

**Standard 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:**

- 1.7 Keeping records that are up to date, complete, accurate and legible; and
- 1.8 Reporting any adverse events, incidents, errors and near misses that are likely to affect the quality of care and wellbeing of service users or carers.

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

- 3.2 Delivering care in line with assessed needs and service user and carer preferences; and
- 3.8 Contributing to the implementation of care or support plans and risk management plans.

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

- 5.1 Applying your organisation's policies and procedures in relation to health and safety in your work setting and with regard to the service users and carers you support; and
- 5.3 Applying your organisation's policies and procedures in relation to moving and handling service users.

The Registrant failed in a number of basic and fundamental ways to discharge her responsibilities as a care assistant towards Service User A. She has been convicted of a serious criminal offence which arose from these failures, and resulted in significant injuries being caused to Service User A. The Registrant's actions have fallen significantly short of the standards to be expected of a registered social care worker, and they were serious.

The Committee noted that the Registrant accepted responsibility for her wrong doing when interviewed under caution by the police. When pressed, she explained the reasons for her actions, and that she had panicked when she realised that she should not have been getting Service User A ready for bed on her own. She accepted that her actions were totally wrong. The Registrant pleaded guilty to her wrongdoing before the Court. However, in the critical period following Service User A's fall, which had resulted in serious injuries to her, the Registrant failed to report the incident to her employer as she was required to do. Instead, the matter went unreported by the Registrant, and the seriousness of the injuries sustained to Service User A only became apparent the following day when bruising caused by the fall became visible. The Registrant, in the course of the regulatory proceedings, has failed to engage with the Council. She has not demonstrated evidence of insight into the seriousness of her wrong doing. The Registrant has failed to provide evidence to the Committee to reassure it that there would be no repetition of the conduct which resulted in her conviction. As a result, the Committee

was satisfied that there was a risk of repetition and that it was necessary, to protect the public, to make a finding of current impairment.

The Committee was satisfied that a finding of current impairment was also required in the public interest, to declare and uphold proper standards of professional conduct and to maintain public confidence in the social care workforce.

For these reasons, the Committee has determined that the Registrant's fitness to practise is impaired by reason of her conviction.

## **Sanction**

In reaching its decision on sanction, the Committee considered the submission from Mr Gilmore and had regard to all of the documentary evidence in the case. Mr Gilmore referred the Committee to the various mitigating and aggravating factors, which he identified. Mr Gilmore also referred the Committee to the 'NISCC Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees' document. As regards sanctions, he submitted that a Warning would be inappropriate and inadequate in all of the circumstances, and would not provide the necessary protection for the public given the nature of the matter for which the Registrant had been convicted. Mr Gilmore submitted that the serious criminal conviction was not conduct at the lower end of the spectrum and that, accordingly, a Warning would fail to uphold the public interest. A Conditions of Practice Order was also not relevant, proportionate or workable, given the serious nature of the Registrant's criminal conviction and her lack of engagement. Mr Gilmore submitted that a Suspension Order would not meet the risk of repetition identified, as well as the very limited insight on the Registrant's part identified by the Committee. Mr Gilmore submitted that the Registrant's criminal behaviour, taken together with her lack of insight and remediation, and risk of repetition, were such as to be fundamentally incompatible with her continuing registration as a social care worker. For these reasons, Mr Gilmore invited the Committee to make a Removal Order.

The Committee accepted the advice of the Legal Adviser. He referred the Committee to the Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance'), and reminded the Committee to consider the question of sanction in ascending order of severity, paying particular attention to the issue of proportionality.

He referred the Committee to Paragraph 26 of Schedule 2 of the Rules which provides that, upon a finding of impairment of fitness to practise, the Committee may:

- (a) impose no sanction; or
- (b) warn the Registrant and direct that a record of the warning should be placed on the Registrant's entry in the Register for a specified period of up to 5 years; or
- (c) make a Conditions of Practice Order for a specified period not exceeding 3 years; or
- (d) make an Order suspending the Registrant's registration for a specified period not exceeding 2 years (a 'Suspension Order'); or



(e) make an Order for removal of the Registrant's registration from the Register ('a Removal Order').

He further reminded the Committee that in deciding which sanction to impose, in accordance with Paragraph 26 (2) of Schedule 2 of the Rules, the Committee should 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 applied the principles of fairness, reasonableness and proportionality, weighing the public interest with the Registrant's interests, and taking into account any aggravating and mitigating factors in the case. The public interest includes the protection of members of the public, including service users, the maintenance of public confidence in the social care workforce and the declaring and upholding of proper standards of conduct and behaviour within the said workforce.

The Committee recognised that the purpose of a sanction is not to be punitive, although a sanction may have a punitive effect.

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

The Committee considered the mitigating factors to be:

- The Registrant had a previous good work history and was previously of good character; and
- Although having limited insight, the Registrant had pleaded guilty and had acknowledged wrongdoing in her police interview. During the same interview, the Registrant had expressed regret and remorse for her actions, although had failed to do so during the regulatory proceedings.

The Committee considered the aggravating factors to be:

- The Registrant failed to demonstrate any real insight into the seriousness of her actions which had resulted in significant injury to a vulnerable service user. Although she confirmed that she was appropriately trained and was aware of the applicable processes, she failed to implement appropriate practice requirements when Service User A sustained injury.
- The Registrant's actions represented serious and multiple breaches of applicable standards in respect of a single episode.
- There was evidence that the Registrant had attempted to conceal her wrongdoing, with the result that the service user was left untreated for serious injuries for a significant period.
- The Registrant had abused the trust reposed in her as an autonomous social care practitioner. Rather than seeking advice and reporting the matter, the Registrant had demonstrated disregard for Service User

A's best interests by keeping the matter to herself, and creating the risk that Service User A would suffer further harm as a result.

**No Further Action / Warning** – the Committee considered the issue of taking no further action or issuing the Registrant with a Warning. In light of its findings and the serious nature of the Registrant's criminal wrongdoing, the Committee was satisfied that such a disposal would be insufficient to protect the public and uphold the public interest.

**Conditions of Practice Order** – the Committee next considered a Conditions of Practice Order. The Committee noted the Guidance at Paragraph 4.13, which states that conditions may be appropriate in cases involving particular areas of a registrant's performance, and where a Committee is satisfied that it is appropriate for an individual to remain on the Register. The Committee concluded that a Conditions of Practice Order was insufficient to meet the public interest, given the seriousness of the Registrant's departure from the standards expected of a registered social care worker. The Committee could not formulate workable, enforceable or verifiable conditions which would address the Registrant's criminal behaviour and adequately protect the public.

**Suspension** – the Committee next considered a Suspension Order. The Committee noted that the criminal conviction of the Registrant was for a very serious offence directly connected to the Registrant's occupation. The Committee took account of the Guidance at Paragraph 4.19, which states: 'Suspension from the Register may be an appropriate sanction for impairment which while very serious, is not so serious as to justify removal from the Register; for example, where there has been an acknowledgment of failings and where a Committee is satisfied that the behaviour is unlikely to be repeated, and the Registrant has no psychological or other difficulties preventing them from understanding and seeking to remedy the failings and the failings are realistically capable of being remedied, then suspension may be appropriate.'

The Committee considered that the Registrant's conduct, which had resulted in her conviction for the wilful neglect of a service user, was of the utmost seriousness. The service user in question was noted at the time of the incident to have been in her early nineties. She had a history of osteoarthritis, dementia and a fractured neck of femur. She was also registered blind. The service user was considered to be extremely frail and vulnerable. The Registrant had engaged in a catalogue of wrongdoing on the date in question. She had disregarded the service user's care plan when she moved the service user into her bed without appropriate assistance. She compounded this error by failing to follow the correct procedure when she lifted the service user onto her bed. The Registrant had deprived the service user of appropriate medical intervention by making no report of the incident to her employer. Instead of safeguarding the service user's welfare, the Registrant prioritised her own interests over the service user's. The result was that the service user was left with significant injuries, which included a fractured collar bone, for a period of 24 hours before her injuries were observable and appropriate action was undertaken. While accepting that she had acted wrongly and had panicked, the Registrant failed to engage in the regulatory proceedings against her. She failed to take the opportunity to show evidence of insight and to offer regret and remorse for her actions. The Registrant seemed to the Committee not to appreciate the

seriousness of her actions, and the risk of harm to which she had exposed the service user. In the view of the Committee, in light of these factors, the imposition of a Suspension Order would be wholly inadequate to protect the public and maintain the public interest. .

**Removal** – the Committee next considered a Removal Order. In considering this, the Committee took into account the Guidance at Paragraphs 4.26 – 4.28. The Committee determined that in light of the factors identified above, the only appropriate and proportionate sanction to impose was a Removal Order. Such an Order was the only proportionate response to protect the public. Furthermore, the Committee considered that any lesser sanction than removal would undermine public trust and confidence in the social care workforce, and would fail to declare and uphold proper standards of conduct.

The Committee concluded that a Removal Order should be imposed on the Registrant's registration with immediate effect, and that the Interim Suspension Order currently in place should be revoked and replaced with the Removal Order.

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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.

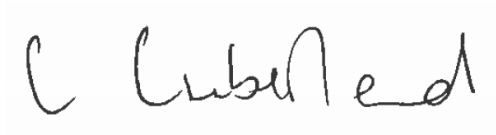
You are prohibited from working as a social care worker in any of the following positions:

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

13 May 2021

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Date