

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

Name: Barbara-Anne Moore

SCR No: 2002162

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **12, 13 and 14 October 2016**, made the following decision about your registration with the Northern Ireland Social Care Council:

The Committee found the facts proved in Particulars 1 - 8;

The Committee did not find the facts proved in Particular 9;

The Committee found that your fitness to practise is impaired by reason of your 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 employed as a Dementia Support Worker with the Northern Health and Social Care Trust working at The Brook, Coleraine:

1. In or around Christmas 2013, in the course of your employment, you unzipped your tunic and deliberately exposed your bra to Tenant A and Tenant D;
2. In or around April / May 2014, in the course of your employment, you 'cupped your breasts' in the presence of Tenant B;
3. On 15 May 2014, in the course of your employment, you deliberately exposed your bare buttocks to colleagues;
4. On an unknown date, in the course of your employment, you lifted up your tunic, exposed your midriff and did pelvic thrusts in front of Tenant B;
5. In or around January / February 2014, in the course of your employment, you placed a hairbrush in Tenant E's mouth and made a comment of a sexual nature;
6. On a date in or around April 2014, in the course of your employment, you commented on the size of Tenant A's genitals in the presence of Tenant A and staff;
7. On a date in or around May 2014, in the course of your employment, you used foul language in the presence of Tenant F;

8.	On dates unknown, in the course of your employment, you used sexually explicit language in the presence of tenants and staff;
9.	On a date unknown, in the course of your employment, you touched Tenant A's crotch in an inappropriate manner and made a comment of a sexual nature whilst so doing.
And that in relation to the facts alleged, your fitness to practise is impaired by reason of your misconduct.	

Preliminary Matters

Service

The Registrant was neither present nor represented. The Council was represented by Mr John Johnston, Solicitor, Directorate of Legal Services, Business Services Organisation. In a Notice of Hearing dated 13 September 2016, sent by Special Delivery and addressed to the Registrant at her address as it appears on the Register, the Council notified her of the date, time and venue for this hearing. The Notice was signed for on 14 September 2016. The Committee, in all the circumstances of the case, is satisfied that the Notice of Hearing has been served in accordance with Rule 3 of the NISCC Fitness to Practise Rules 2016 ('the Rules'), and the requirements of Paragraph 5 of Schedule 2 of the Rules.

Proceeding in the Absence of the Registrant

Mr Johnston 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 absence of the Registrant. Mr Johnston told the Committee that in a telephone conversation on 16 September 2016, the Registrant told the NISCC that she did not intend attending the forthcoming hearing, nor did she wish to apply for an adjournment. Subsequent to this the NISCC, by way of letter dated 20 September 2016, wrote to the Registrant confirming her intention not to attend the Hearing. On 05 October 2016, the NISCC received a completed attendance form from the Registrant indicating that she would not attend the hearing. She also provided a handwritten letter dated 04 October 2016, which Mr Johnston provided for the Committee's consideration. Mr Johnston submitted that this correspondence clearly stated that the Registrant had no intention of attending the hearing nor was she requesting an adjournment or postponement. Mr Johnston invited the Committee to conclude that the Registrant's absence was voluntary.

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.

The Committee bore in mind the public interest in the expeditious disposal of the hearing and considered that there was no evidence to indicate that the Registrant would be more likely to attend a future hearing if the matter was adjourned.

The Committee noted the Registrant's repeated assertions to the NISCC as to her not attending the hearing. The Committee took into account the Registrant's letter of 04 October 2016 and noted the Registrant's comments that she wanted this hearing to be 'over and done with'. This letter also states that the Registrant does not want the hearing to be postponed.

Therefore, after careful consideration of all the issues, the Committee decided to exercise its discretion to proceed in the absence of the Registrant, taking into account the serious nature of the allegations and striking a careful balance between fairness to the Registrant and the wider public interest. The Committee, in all of the circumstances, considers that the Registrant has voluntarily absented herself from the hearing. However, the Committee reminded itself that it must avoid reaching any improper conclusion about the Registrant's absence, nor treat the absence as an admission of guilt.

Application to Admit Hearing Bundle

The Committee heard an application from Mr Johnston under Paragraph 12 of Schedule 2 of the Rules to admit a bundle of papers into evidence. He advised the Committee that this bundle of papers had been served on the Registrant by way of Special Delivery on 27 September 2016, with service signed for on 28 September 2016.

On receiving advice from the Legal Adviser, and there being no objection from the Registrant, the Committee was satisfied that the bundle met with the requirements of fairness and relevance and should be admitted.

Background

The Registrant is registered at Part 2 of the Register. The nine Particulars of the Allegation arise out of incidents which allegedly occurred in the course of the Registrant's employment as a dementia support worker at The Brook, Coleraine. The Brook is a supported living scheme operated by the Northern Health and Social Care Trust ('the Trust') and provides supported living for tenants with impaired cognitive abilities. The Registrant worked here from June 2008 to December 2014. The Brook comprises of a number of bungalows and apartments and the tenants, all of whom require support, have varying degrees of specific living needs which can range from mild to severe.

Evidence

In considering the Particulars of the Allegation, the Committee took into account sworn oral evidence from five witnesses on behalf of the NISCC and documentary evidence comprising the Trust's investigation of the Registrant, along with minutes of a disciplinary meeting on 26 November 2014 and minutes of an appeal hearing on 03 February 2015. With regard to the handwritten minutes from the disciplinary meeting and appeal hearing, the Committee notes that these minutes were not signed by the Registrant and are, in parts, incomplete.

The Committee was mindful at all times that the burden of proof rests with the NISCC, which is required to prove the facts on the balance of probabilities. The Committee accepted the advice of the Legal Adviser.

Finding of Facts

Particular 1: In or around Christmas 2013, in the course of your employment, you unzipped your tunic and deliberately exposed your bra to Tenant A and Tenant D.

In considering this Particular, the Committee notes the evidence of Witness 3, who is a dementia support worker at The Brook. The Committee considers her to be a credible and coherent witness, and notes from her evidence that she has been acquainted with the Registrant since her school days. Witness 3 told the Committee that she had walked into the main dining room where Tenant A and Tenant D were sitting at the dining table. She described seeing the Registrant unzip her tunic and then push her breasts together, saying to Tenant A, 'Do you like that?'. She said that this took place over a period of a few seconds and that she was shocked at this behaviour. The Committee further notes the statement made by Witness 3 during the course of the Trust investigation, which refers to this incident and provides a similar description of events. The Committee further notes that Witness 3 makes reference to this incident during the investigation hearing and at the appeal hearing. The Committee considers Witness 3's evidence to be consistent throughout. In considering this allegation, the Committee notes the Registrant's denial as to this event during the Trust's investigation.

Taking all of the evidence into account, the Committee finds, on the balance of probabilities, that this Particular is proved.

Particular 2: In or around April / May 2014, in the course of your employment, you 'cupped your breasts' in the presence of Tenant B.

In considering this Particular, the Committee heard evidence from Witness 4 who is a dementia support worker at The Brook. The Committee considers her evidence to be credible and clear.

Witness 4 told the Committee that sometime in April / May 2014, she was present in the high dependency room with another senior support worker and Tenant B. She gave evidence that Tenant B, because of his dementia, tended to make sexualised comments. She told the Committee that on this occasion, in response to Tenant B making a sexual remark, the Registrant said 'he is horny today' and then unzipped her tunic, cupped her breasts, turned around and completed the action in front of Tenant B. She gave evidence that the senior support worker told the Registrant to watch out as there were people outside who could see in through the windows. Witness 4 told the Committee that she was shocked at what had happened and that it was hard to know what Tenant B was thinking as a result of what had happened. The Committee also took into account Witness 4's statement, concerning this event, made during the Trust's investigation and also her comments at the disciplinary meeting.

The Committee considers Witness 4's evidence in relation to this event to be consistent and accepts her evidence. The Committee therefore finds this Particular proved on the balance of probabilities.

Particular 3: On 15 May 2014, in the course of your employment, you deliberately exposed your bare buttocks to colleagues.

In considering this Particular, the Committee heard evidence from Witness 1, a dementia support worker at The Brook. The Committee considers Witness 1's evidence to be genuine and credible. She gave evidence to the Committee that the Brook provides supported care to a broad spectrum of tenants with needs ranging up to high dependency. She told the Committee that on the afternoon of 15 May 2014, she was working in the garden at The Brook with another support worker. She said that she had heard a noise and turned to see the Registrant standing with her back to a nearby window and then pulling her work trousers down. She told the Committee that she had also pulled down her pants, exposing her bottom. Witness 1 told the Committee that the Registrant stood like this for a few seconds, pulled up her trousers and pants and walked away. She said the Registrant had 'mooned at her' and she was very shocked. She told the Committee that she did not report the incident at the time but did so later to the acting manager.

In considering this matter, the Committee notes the Registrant's response to these allegations during the Trust's investigation. The Registrant stated that her trousers had partially fallen down due to a loose button and that Witness 1 may have seen this when she had stopped to pull up her trousers.

The Committee notes that in her statement made during the Trust's investigation, Witness 1 did not mention seeing the Registrant's underwear or any flesh. However, during the disciplinary meeting and appeal hearing, Witness 1 referred to seeing 'flesh' after the Registrant pulled down her clothing.

The Committee accepts Witness 1's evidence in this matter, and finds on the balance of probabilities that this Particular is proved.

Particular 4: On an unknown date, in the course of your employment, you lifted up your tunic, exposed your midriff and did pelvic thrusts in front of Tenant B.

In considering this Particular, the Committee heard evidence from Witness 1. She gave evidence that on an unknown date, she entered the 'top sitting room' where Tenant B was sitting in the chair with a Zimmer frame in front of him. She told the Committee that she saw the Registrant leaning on the Zimmer frame and then lifting up her tunic. Witness 1 gave evidence that she was standing beside the Registrant and then observed her exposed tummy, followed by the Registrant making a number of pelvic thrust actions. She told the Committee that Tenant B was a male in his mid-80s who had no difficulties with everyday life although he had short term memory problems. She gave evidence that, in her opinion, Tenant B would have clearly seen what the Registrant was doing although she did not observe any specific reaction from him. She told the Committee that she was disgusted by what had happened. Witness 1 told the Committee that she got on with the Registrant as a work colleague and that she had no issues with her. She told the Committee that she did not report this incident at the time to management as she considered them to be unsupportive.

In considering this Particular, the Committee accepts Witness 1's recollection of this incident to be clear and consistent and finds, on the balance of probabilities, this Particular to be proved.

Particular 5: In or around January / February 2014, in the course of your employment, you placed a hairbrush in Tenant E's mouth and made a comment of a sexual nature.

In considering this Particular, the Committee heard evidence from Witness 4. She gave evidence that in and around January / February 2014, she observed the Registrant with Tenant E when the hairdresser was attending at The Brook. She told the Committee that she saw the Registrant lift a hairbrush, saying 'Wait until you see this', and then putting the brush into Tenant E's mouth. She told the Committee that Tenant E is a lovely lady with advanced dementia who would be unable to hold anything in her hands. She told the Committee that the Registrant took the hairbrush from Tenant E's mouth, saying 'you have done this before'. She said that the Registrant was laughing and giggling, and that she considered this to be inappropriate and not fair to Tenant E. She gave evidence that she shouted at the Registrant as she considered the comments to have been of a sexual nature. She told the Committee that the Registrant did not respond to her and that she was shocked by the incident. Witness 4 gave evidence that she felt unable to report this matter herself to management and reported the incident to a colleague, Witness 1, who subsequently reported the matter to management.

In considering this Particular, the Committee notes the Registrant's description of this event during the Trust's investigation. She said that Tenant E was singing and using a hairbrush as a microphone, biting on the handle like a child. She further stated that she had removed the hairbrush from Tenant E's mouth, telling her the microphone was for singing and not eating.

The Committee heard further as regard this Particular from Witness 3. She gave evidence that she had walked into the room on this occasion and had seen the Registrant with a hairbrush in her hand with the handle in Tenant E's mouth. She told the Committee that she did not know how the hairbrush came to be in Tenant E's mouth, but that she was shocked to see this. She said that she saw the Registrant take the brush from Tenant E's mouth, saying 'you've done that before', which seemed to her to be a comment of a sexual nature.

In considering this Particular, the Committee notes Witness 4's evidence that she observed the Registrant placing the hairbrush in Tenant E's mouth and making a comment while she removed the hairbrush. The Committee notes that when Witness 3 entered the room, the hairbrush was already observed to be in Tenant E's mouth. Accordingly, the Committee considers Witness 4's evidence to be more complete when dealing with this Particular. The Committee considers Witness 4's evidence to be clear and concise and does not accept the Registrant's description of events. Accordingly, the Committee finds on the balance of probabilities that the Particular is proved.

Particular 6: On a date in or around April 2014, in the course of your employment, you commented on the size of Tenant A's genitals in the presence of Tenant A and staff.

In considering this Particular, the Committee heard evidence from Witness 2, a domestic assistant at The Brook. She told the Committee that she would have had dealings with the tenants when serving meals throughout the day. She said that she was not involved with the tenant's personal care. The Committee considers her to be a credible witness though her evidence was lacking in detail in parts. Witness 2 told the Committee that in April

2014, she was in the dining room and heard the Registrant comment on the size of Tenant A's genitals. She gave evidence that the Registrant said 'it was wasted on him because he was in here'. She gave evidence that she did not notice any reaction from Tenant A as he is quite confused.

The Committee heard further in relation to this matter from Witness 5, who is a dementia support worker at The Brook. She told the Committee that Tenant A is a man in his 80s suffering from dementia. She described him as a quiet and private man who was able to communicate verbally. She told the Committee that in and around the Spring of 2014, she observed the Registrant with Tenant A in the dining room. She recalled the Registrant making a comment about Tenant A's genitals, saying that it was 'a waste of a man'. She gave evidence that the Registrant asked her if she had ever seen the size of them [referring to Tenant A]. She gave evidence that she did not respond to the Registrant and that she saw Tenant A blushing after the comment was made. She gave evidence that the Registrant had made previous innuendos about this tenant, and she recognised that the Registrant's comments were not appropriate. She told the Committee that she did not report this incident as her manager was unapproachable and was friendly with the Registrant.

In considering this Particular, the Committee considered the evidence of Witness 2 and Witness 5 to be most relevant. It noted that both witnesses referred to this incident during the disciplinary meeting and the appeal hearing, and that their evidence was clear and consistent. The Committee notes that the Registrant denied this incident during the Trust's investigation.

Taking all of the evidence into account, the Committee considers this Particular to be proved on the balance of probabilities.

Particular 7: On a date in or around May 2014, in the course of your employment, you used foul language in the presence of Tenant F.

In considering this Particular, the Committee heard evidence from Witness 1. She told the Committee that Tenant F was a 96 year old female suffering from memory loss. She said that her speech tended to be muddled and that she would have repeated things. She gave evidence that in and around May 2014, Tenant F was taking her breakfast and she heard the Registrant say about Tenant F 'for fuck sake here she comes again'. She told the Committee that this happened in the dining room, and that Tenant F was close to the Registrant when this was said and would have heard her comments.

The Committee notes that during the Trust's investigation, the Registrant indicated that she never intentionally used bad language to clients, but may on occasions have used the words 'shit' and 'damn it'.

The Committee consider Witness 1's evidence to be clear and consistent in relation to this matter. In addition, it notes that during the Trust's investigation and the subsequent disciplinary and appeal hearing, Witness 1's description of this matter supported her sworn oral evidence at today's hearing.

Accordingly, the Committee accepts her evidence and finds this Particular proved on the balance of probabilities.

Particular 8: On dates unknown, in the course of your employment, you used sexually explicit language in the presence of tenants and staff.

In considering this Particular, the Committee heard evidence from Witnesses 2 and 3. They gave evidence to the Committee as regards overhearing the Registrant talking about conversations with tenants of a sexual nature. However, they were unable to remember exactly what the Registrant had said, nor provide the Committee with specific examples.

The Committee also heard evidence from Witness 4, when she referred to two incidents when she heard the Registrant using sexually explicit language in the presence of tenants. She told the Committee that on one occasion she heard the Registrant, in the presence of Tenant A, saying 'he is hung like a donkey'. She told the Committee that this comment was made a number of times. She gave evidence that, on a further occasion when Tenant A was using the toilet, she heard the Registrant say 'what a waste'. She told the Committee that she believed that Tenant A knew what the Registrant was saying, and noticed that he was embarrassed.

The Committee considers Witness 4's evidence to be clear and concise, and her memory to be specific as regards the Registrant's use of sexually explicit language in the presence of tenants and when she was also present. Accordingly, the Committee finds, on the balance of probabilities, that this Particular is proved.

Particular 9: On a date unknown, in the course of your employment, you touched Tenant A's crotch in an inappropriate manner and made a comment of a sexual nature whilst so doing.

In considering this Particular, the Committee heard evidence from Witness 1. She gave evidence that Tenant A, who is now deceased, was single and a quiet private man. She told the Committee that on an unknown date, she walked into the sitting room and observed the Registrant sitting beside Tenant A, who was sitting in a chair. She gave evidence that the Registrant turned to Tenant A and made an action with her hands towards his private area, and said 'I suppose you like that'. She gave further evidence, describing this action as a light touch of his crotch. During the Trust investigation, she did not make any reference to this incident. During the disciplinary hearing, she refers to the Registrant as putting her hand near Tenant A's genitals but no contact was made. At the appeal hearing, she said the Registrant 'touched the client's crotch'.

The Committee considered all of the evidence in relation to this matter. It noted Witness 1's differing descriptions of events as regards the Registrant's behaviour towards Tenant A, and does not consider that it has sufficient consistent evidence to show that the Registrant touched Tenant A's crotch in an inappropriate manner, making a comment of a sexual nature at the same time. Accordingly, the Committee does not find this Particular proved on the balance of probabilities.

Fitness to Practise

The Committee heard a submission from Mr Johnston on the question of the Registrant's fitness to practise being currently impaired by reason of her misconduct. Mr Johnston referred the Committee to its findings on the Particulars of the Allegation at 1 – 8, and submitted that the Registrant's actions constituted a gross departure

from proper standards of social care workers. He submitted that in inappropriately exposing herself to both vulnerable tenants and colleagues, she had evidenced a complete disregard for their dignity and wellbeing. He further referred the Committee to the Registrant's use of sexual language to tenants at Particular 7, concerning Tenant F, and at Particular 6 in relation to Tenant A. He submitted that the Registrant's behaviour was totally incompatible with the tenants' rights to be treated with respect. He referred the Committee to the Code of Practice for Social Care Workers at Codes 1 – 1.4; 2 – 2.2; 5 – 5.1, 5.8.

He reminded the Committee that it had no evidence from the Registrant as regards remediation or insight into the effects of her actions. He therefore submitted that there remained a risk to the public of repetition by the Registrant, and that not finding the Registrant's fitness to practise to be impaired would undermine public confidence in the profession. He submitted that the best predictor of further behaviour was by considering past behaviour and this was relevant to this Registrant.

The Committee considered the submission of Mr Johnston and accepted the advice of the Legal Adviser.

The Committee then considered whether the Registrant's fitness to practise was impaired by reason of her misconduct as set out in the proved Particulars of the Allegation. The Committee was satisfied that the Registrant's actions amounted to misconduct. In finding this, the Committee considered that the Registrant's behaviour in each of the Particulars fell well below the standards to be expected of social care workers. The Registrant used sexually explicit language in front of staff and vulnerable tenants without any consideration as to the effect of this behaviour on them. The Registrant's behaviour as set out at Particular 3 evidenced a complete lack of respect for her colleagues. In exposing herself to a number of vulnerable tenants, the Registrant's behaviour fell well short of what would be expected of a social care worker. The Committee notes the evidence from the Registrant's colleagues as to the embarrassment caused to tenants by the Registrant's use of sexual innuendo. In addition, the Committee notes the effect of the Registrant's actions, in both using foul language and sexually explicit language, on her colleagues and their evidence to the Committee of their shock and dismay in this regard.

The Committee finds, in light of the above, that the Registrant has breached the NISCC Code of Practice for Social Care Workers 2002 (applicable at the time) as follows:

Code 1: As a social care worker, you must protect the rights and promote the interests of service users and carers. This includes:

1.4 Respecting and maintaining the dignity and privacy of service users.

Code 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;

2.3 Respecting confidential information and clearly explaining agency policies about confidentiality to service users and carers.

Code 3: As a social care worker, you must promote the independence of service users while protecting them as far as possible from danger or harm. This includes:

3.8 Recognising and using responsibly the power that comes from your work with service users and carers.

Code 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;

5.2 Exploit service users, carers or colleagues in any way;

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.

Code 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;

6.5 Working openly and co-operatively with colleagues and treating them with respect.

The Committee considered the issue of impairment and notes that a finding of misconduct does not necessarily lead to a finding of current impairment. When considering current impairment, the Committee had regard to the Standards of Conduct and Practice for Social Care Workers 2015, and found that the Registrant's actions fell short of the underpinning values which require that social care workers must:

- Ensure the care they provide is safe and effective and of high quality.

The Committee finds that the Registrant is in breach of the Standards of Conduct 1 – 1.2, 1.8; 5 – 5.1, 5.2, 5.3, 5.8; 6 – 6.1, 6.13.

The Committee finds that the Registrant's actions did pose a risk to service users. The Committee notes that in Particular 5 the Registrant, in placing a hairbrush in Tenant E's mouth, placed her at risk of harm, with a possibility of choking. In addition, the Committee notes the effect of the Registrant's comments of a sexual nature on the emotional wellbeing of Tenant A, who was described as a private quiet man whose behaviour appeared to change after the Registrant's comments.

The Committee considers that the Registrant's actions breach fundamental principles of the social care profession. She did not make the care of tenants her first concern, she did not respect their dignity, she did not provide a high standard of practice and, in fact, delivered poor care.

The Committee considers that the Registrant's inappropriate behaviour and use of foul and sexually explicit language brought the social care profession into disrepute. The Committee notes that on occasions this took place where members of the public may have observed her.

The Committee considered whether the Registrant's conduct was easily remediable, had been remedied and the likelihood of repetition. The Committee has no evidence the Registrant has made efforts to remedy her behaviour and considers that in light of the Registrant's repeated inappropriate behaviour, it would be very difficult to 'put right' the outcome of her failings. Therefore, in absence of any evidence of remedial action, the Committee considers there is a risk the Registrant's conduct could be repeated in the future.

The Committee considered the public interest and finds that public confidence in the profession would be undermined if a finding of impairment of fitness to practise were not made. The Committee finds that the Registrant's actions brought the reputation of the profession into disrepute.

Accordingly, and for the above reasons, the Committee finds that the Registrant's fitness to practise is impaired by reason of her misconduct.

Sanction

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

It accepted the advice of the Legal Adviser.

The Committee has 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 profession and the declaring and upholding of proper standards of conduct and behaviour within the profession. The Committee has taken account of the Council's Indicative Sanctions and Use of Interim Orders: Guidance for Fitness to Practise Committees ('the Guidance'), bearing in mind that the decision on sanction is one for its own independent judgement.

The Committee recognises that the purpose of 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 considers the aggravating factors to be:

- The Registrant abused the trust placed in her as a social care worker by her use of sexually explicit language and innuendo when dealing with vulnerable service users;
- The Registrant's actions took place during her employment and when she was providing care to service users;
- The Registrant's actions constituted a serious pattern of behaviour which took place over a prolonged period of time;
- The Committee had no evidence that the Registrant had demonstrated insight into her conduct or had undertaken remedial action to prevent the risk of the behaviour complained of being repeated in the future;
- The Registrant failed to engage in the NISCC investigation into her conduct;

- The Registrant has not expressed to this Committee regret or demonstrated remorse for her actions;
- The Registrant's actions constituted an abuse of her position as a social care worker, evidencing a lack of respect for both service users' dignity and personal wellbeing and her colleagues.

The Committee took into account as a mitigating factor that the Registrant had no previous disciplinary history with the NISCC.

The Committee notes the evidence of various witnesses that, at the time of the Particulars, there appeared to be a lack of appropriate management intervention, particularly in addressing staff concerns about poor practice.

Having balanced the aggravating and mitigating factors, the Committee went on to consider what sanction, if any, to apply in this case.

Warning – the Committee considered the issue of a Warning in this case. It bore in mind that the imposition of a Warning for a period of time would not protect the public from the risk of repetition and consequent risk of serious harm to service users. The Registrant's impairment of fitness to practise is not at the lower end of the spectrum, nor are the circumstances such that the Committee would be confident that this sanction would provide adequate public protection as far as the Registrant's suitability is concerned, bearing in mind that a Warning would entitle the Registrant to work as a social care worker. The Committee was satisfied that a substantial risk remained of the conduct complained of being repeated and the conduct itself involved serious wrongdoing by the Registrant.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order. The Registrant has demonstrated no insight into her actions, nor expressed her desire to remediate her misconduct. The Committee concludes that the Registrant's actions arose from an attitudinal issue which could not, therefore, be addressed by a Conditions of Practice Order, and that such an Order would not be sufficient to protect the public. The Committee also concludes 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. In these circumstances, the Committee could not formulate workable, enforceable or verifiable conditions which would address the Registrant's misconduct and adequately protect the public.

Suspension – the Committee next considered a Suspension Order. The Committee notes that it had made findings at the Fact and Impairment stage of the proceedings which were of a very serious nature, and related to the Registrant's breaching of the fundamental tenets of the profession. The Registrant has shown no remorse for her actions, nor demonstrated any action to remediate. The risk of her repeating her misconduct could reasonably be regarded as substantial. The Registrant's misconduct, by way of her inappropriate language and behaviour towards vulnerable service users and her colleagues, represented serious departures from fundamental tenets of the social care profession. Therefore, in all of the circumstances, the Committee determined that a Suspension Order would not be a sufficient and appropriate or proportionate sanction. Further, the Committee did not find that a Suspension Order would satisfy the public interest in this matter, nor provide an adequate level of protection to vulnerable service users.

Removal – the Committee then considered a Removal Order. In considering this, the Committee took into account the Guidance at 4.26 – 4.28. It concludes that, given the seriousness of the Registrant's misconduct and her lack of insight into and remediation of her failings, a Removal Order is the only sanction sufficient to protect the public and maintain public confidence in the social care profession and the Council as its regulator. The Committee considers the Registrant's actions to constitute a serious departure from the professional standards as set out in the Codes of Practice and Standards of Conduct and Practice for Social Care Workers. The Committee considers the Registrant behaved in a wholly inappropriate and reprehensible manner towards very vulnerable service users. The Committee has evidence that on occasions the Registrant's use of sexual innuendo and explicit sexual language caused embarrassment and emotional distress to service users. In addition, the Registrant's behaviour caused distress to her colleagues both during the provision of care to service users and in her day-to-day interactions with them. The Registrant has provided no explanation to the Committee for her behaviour, nor has she expressed regret or remorse. Balancing all these factors and taking into account all of the evidence before it, the Committee determined that the appropriate and proportionate sanction was that of a Removal Order. The Committee has no evidence as to the financial impact that an Order may have on the Registrant. The Committee considers that such an Order would ensure the protection of the public and service users, and would meet the public interest in upholding confidence in the social care profession and its regulator by marking the seriousness and unacceptability of the Registrant's actions.

The Committee considers that public confidence in the social care profession would be undermined if a social care worker who behaved in such a totally unacceptable manner towards service users and colleagues, having failed to show insight or remediation, was allowed to remain on the Register.

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

Legal Advice Given

Proof of service

Paragraph 5 of Schedule 2 of the Fitness to Practise Rules 2016 governs the requirement that the Hearing should not be fixed for hearing earlier than 28 days from the posting of the Notice, except of course with the agreement of the Registrant. In this case you have evidence before you, and I have had an opportunity to examine the documentation, that the Notice was sent to the Registrant on 13th of September 2016 and signed for on 14th of September '16 and this documentation is available to the Committee if they wish to peruse it. Rule 3 of Part 1 of the Rules provides that the Notice should be sent by registered post, which has taken place in this matter, and sent to the Registrant's last known address with the Notice being treated as having been served on the day after it was posted and in fact in this case you have evidence in relation to that. Therefore, my advice to you would be that it would be safe for you to consider service has been effected in accordance with the Rules.

Proceeding in Absence

In view of the Registrant's absence today, you must now consider the issue of proceeding in her absence. An application has been made this morning under Paragraph 15 of Schedule 2 of the Rules for the matter to proceed in her absence. Mr Johnston has highlighted and given you a chronology of events in relation to contact with this Registrant by way of a telephone call and subsequent correspondence, and indeed you have both the attendance form and a letter from her which has been provided to you which I would ask you to consider when you are considering this application.

You will be aware that where a Committee is satisfied that the Notice of Hearing has been served you have a number of options: You may either hear and determine the case in the absence of the Registrant or adjourn and give directions, and this is a matter of discretion for you. I would refer you to the case of *R v Jones* [2003], with which you are very familiar, this is a criminal case which has been approved as applicable in regulatory matters and in this case Lord Bingham stated that 'the discretion to commence a trial in the absence of a defendant should be exercised with the utmost care and caution'. Therefore, today you should consider whether an adjournment may result in the Registrant attending the proceedings at a later date, you should consider the time involved in an adjournment and the extent of the disadvantage to the Registrant in not being able to present her account of events. You should also consider the seriousness of the allegations, the general public interest in this matter being dealt with and the interests of any victims. I would remind you that this Registrant is entitled to a fair Hearing, to attend, or be represented, to test the Council's case and present evidence on her own behalf. However, if the Registrant had knowledge or the means of knowledge of today's proceedings you may conclude that she has voluntarily absented herself and proceed in her absence. In considering this, you should consider whether the information provided to this Registrant was sufficient to advise her of the importance of attending here today. You should consider any evidence or information before you to assist you as to why she is not present and whether her decision not to attend has been made on an informed basis. You should also consider the allegations against her have been particularised so that she understands the case against her and the importance of attending an oral Hearing. You have the Notice of Hearing that was sent to the Registrant and this has specific and clear information as regards the particulars of allegations, the Hearing dates and the powers of the Committee to proceed in her absence. This principle of fairness applies equally to the presentation of the Council's case, therefore in exercising your discretion you must balance on the one hand the rights of the Registrant against on the other the wider public interest in the expeditious disposal of the matter. If you consider this Hearing should continue in her absence, I would ask you to avoid reaching any improper conclusions about this absence and not to treat this absence as an admission of guilt in regards to the allegations in any way.

Admission of Hearing Bundle

As you have heard the application from Mr Johnston, and this is in relation to an application under Paragraph 12 of Schedule 2 of the 2016 Rules which allows a Committee to admit evidence, either oral or documentary, or other, whether or not it would be admissible in a Court of Law subject to the requirements of relevance and

fairness. To assist you, relevance means having some reasonable connection with the evidence in the case, having a value or a tendency to prove a matter of fact significant to that case, and when you are considering fairness I would direct you look at issues of equality, reasonableness, public interest and the interests of justice.

You have heard from Mr Johnston in relation to service of the bundle on the Registrant and proof of service, and there is nothing from the Registrant to indicate that she has any objections to the contents of the bundle and it would therefore be apparent that the documents are relevant to the Charges before you, and that there does not appear to be any unfairness to the Registrant in admitting this bundle. With the caveat that within the bundle there may be hearsay evidence and that you must always, and you are an experienced Panel, take account of the fact that the person who is the source of some of the evidence within the bundle is not appearing, may not appear before you and therefore the evidence must be assessed accordingly and the appropriate weight given in those circumstances.

Finding of Facts

At this stage, you as a Committee are deciding whether or not the facts of the allegations as set out in the nine Particulars are proved. You have no admissions in this case. Therefore, you must apply the standard of proof applicable to civil proceedings which is on the balance of probabilities, and case law has made this a single and unvarying standard. It means that a fact will be found proved if you consider it more likely than not to have happened, and I would also in this regard refer you to Schedule 2 of the Northern Ireland Social Care Council Fitness to Practise Rules 2016 at Paragraphs 13 and 23. The Northern Ireland Social Care Council has brought these proceedings and it is up to them to prove its case. Therefore, you must look with the greatest of care at the accusations which potentially give rise to serious consequences, but in determining whether or not these have occurred the standard is always the balance of probabilities.

I would again remind you that you should draw no adverse inference as a consequence of the Registrant not attending to give evidence to you in relation to these allegations.

I would ask you to consider very carefully each disputed charge, weighing and balancing the evidence presented. You have heard oral sworn evidence from five witnesses on behalf of the Council and you have had the opportunity to question these witnesses. Therefore, you must use your own judgment as to: firstly, the credibility of those witnesses and, secondly, determine which evidence is truthful and reliable.

In addition, you have a large number of documents before you in exhibit A and these require your careful consideration. Serious allegations require careful analysis of the evidence, taking into account any inherent probabilities and other matters requiring the application of good sense. The cases of *Re B* [2008] and *Re D* [2008], as decided by the House of Lords, make it clear that whilst the seriousness of an allegation or its consequences may necessitate more careful consideration of the evidence, this does not require a different standard of proof or an especially cogent type of evidence.

The oral and documentary evidence that you have heard contains hearsay evidence and, in places, second hand

hearsay. You are an experienced Committee and you will be aware of the weight to be given to such evidence. In particular, you have in the bundle of papers employer investigation minutes and documents, and also minutes of Hearings. In assessing this documentary evidence, you will note that these minutes do not appear to have been signed or accepted by the Registrant and, in parts, are incomplete.

In accordance with the case of *NMC v Enemuwe* [2015], you will note that within the papers there is reference to disciplinary Hearings, and I would advise you to put from your minds any references to findings in previous forums.

Generally, and this is advice that I am required to give you in accordance with the case of *Re H (Minors)* [1996] and as observed by Lord Nicholls, 'in assessing the probabilities', the Court, as it was in that case, 'will have in mind as a factor that the more serious the allegation, the less likely it is that the event occurred and hence the stronger should be the evidence before the court concludes that the allegation is established on the balance of probabilities'.

Finally, you have heard the detailed submissions from Mr Johnston and you will spend time considering this as well. Although the Registrant is not present today, there is within the papers at exhibit A responses made by her as regards some of the events set out in the allegations, and you should consider those during your deliberations.

Impairment

In addition to the detailed submissions by Mr Johnston as well as his references to the standards of conduct and practice for social care workers, you as a Committee will know that in determining whether fitness to practise is impaired you should adopt a sequential approach and I would refer you to the case of *GMC v Cohen* [2008] in support of that. In this case, the Court noted that this sequential approach means that not every finding of misconduct will automatically result in a Panel concluding that fitness to practise is impaired. In this matter, you have found that the particulars of allegations at 1 to 8 have been found proved. In accordance with Schedule 2, paragraph 24 of the 2016 Rules, and in deciding on the issue of impairment of fitness to practise, you should have regard to a number of issues. Firstly, your being satisfied as to the reasons for the alleged impairment of fitness to practise. Secondly, the standards of conduct and practice. Thirdly, whether the impairment is capable of remediation. Fourthly, whether the impairment has been remediated. Fifthly, you should consider any risk of repetition and, lastly, the public interest. Therefore, you must consider the current competence and behaviour of the Registrant and the need to protect service users, uphold proper standards of behaviour and maintain public confidence in the Social Care profession. You should also consider any degree of harm caused by the Registrant and the Registrant's culpability in that harm.

You have heard evidence from five witnesses from the Northern Ireland Social Care Council, and you have a number of documentary evidence before you and I would ask you again to consider that evidence at this stage of the proceedings. I would emphasise that as regards impairment, and as set out by the Court of Appeal in the case of *GMC v Meadow* [2006], you are exercising your professional judgment. There is no applicable burden or

standard of proof here. I would refer you to the case of CHRE & NMC & Grant [2011] and, in particular, the findings of Mrs Justice Cox at paragraphs 74 and 75 where she indicates:

"In determining whether a [Registrant's] fitness to practise is impaired by reason of misconduct the relevant Panel should generally consider, not only whether the [Registrant] continues to present a risk to members of the public in his or her current role, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances."

I would again refer you to the findings of Dame Janet Smith as set out in the Fifth Shipman Report, paragraph 25.67 where she refers to the potential causes of impairment as arising when:

- (a) the Registrant presents a risk to patients;
- (b) has brought the profession into disrepute;
- (c) has breached one of the fundamental tenets of the profession and the last subsection refers to a dishonesty charge which isn't before you today.

She also noted that 'present impairment of fitness to practise can be founded on past matters and by reference to how a Registrant is likely to behave in the future'. I would refer you to the case of GMC v Cheadle [2009] which deals with the issue of impairment where Mr Justice Cranston indicated:

"The issue becomes whether that misconduct, in the context of the doctor's behaviour ...", as it was in that case, "... both before the misconduct and to the present time, is such as to mean that his or her fitness to practise is impaired."

Misconduct is defined as circumstances which call into question the suitability of a Registrant to remain on the Register without restriction or to be registered at all. Guidance can be found in the case of GMC v Roynance. Therefore the Panel should consider the level of conduct and competence expected of the average Registrant and the terms and content of the Northern Ireland Social Care Council standards of conduct and practice and, in addition, whether there has been a serious breach of the Registrant's duty of care to patients.

Case law indicates that misconduct is of two principle kinds; firstly, serious misconduct in the exercise of professional practice. Or, secondly, conduct of a morally culpable or disgraceful kind which may occur outside the course of professional practice itself, but which may bring disgrace on a practitioner and thereby damaging the reputation of the profession.

In this particular case before you, you have a number of Charges, one of which relates to an incident which occurred outside the Registrant's practice of care and the allegation relating to the exposure to a member of staff, that that member of staff was in the garden of the home at the time of that incident. Therefore, you should consider any evidence which shows the degree of insight the Registrant has now in relation to her failings and consider any evidence you have of steps she has taken to remedy the deficiencies in her practice.

In the 2007 case of GMC v Mallon, misconduct was described as 'wrongful or inadequate mode of performance

of professional duty'. In the case of GMC v Meadow [2007], the Court of Appeal indicated that 'conduct should not be viewed as anything less than serious professional misconduct and the conduct in any given case must be serious before being branded as misconduct in a professional context'.

The 2010 case of GMC v Remedy UK Ltd reviewed several relevant cases in relation to the meaning of misconduct and is of assistance to you. It indicates 'misconduct may involve sufficiently serious misconduct in the exercise of professional practice', or as I quoted, 'conduct of a morally culpable or otherwise disgraceful kind'. This includes dishonourable conduct which brings the profession into disrepute and it does not matter that the conduct is not directly related to the exercise of professional skills.

The case of The Law Society v Bolton [1994] suggests that the reputation of the profession is more important than the fortunes of any individual member.

Sanction

Paragraph 26 of Schedule 2 of the Northern Ireland Social Care Council (Fitness to Practise) Rules 2016 sets out the available sanctions open to you as a Committee at this stage and, Mr Chairman, you have already referred to these at the outset of the proceedings and I wouldn't remind you again. You are an experienced Panel and you will be very familiar with them.

However, in considering and determining the appropriate sanction you are obliged to take into account the following factors:

Firstly, the seriousness of the Registrant's impaired fitness to practise;

Secondly, the degree to which the Registrant has fallen short of any expected standard; and

Thirdly, the protection of the public;

Fourthly, the public interest in maintaining confidence in social care services and lastly, and very importantly, the issue of proportionality, which means weighing on the one part the Registrant's interests against on the other part the interests of the public.

I would also, in addition to Mr Johnston, refer you to the Northern Ireland Social Care Council Indicative Sanctions Guidance 2016 and remind you that the purpose of sanctions is not punitive. Paragraphs 2.5, 2.6 and 2.7 of the Guidance deal with the considerations of fairness and proportionality. You should consider the question of sanction in ascending order of severity, beginning your deliberations by considering warning first. The primary purpose of sanctions is protection of the public and also maintaining the reputation of the profession. I would refer you in particular to paragraphs 2.3 and 2.4 of the Guidance. This directs that the public should have confidence that the Northern Ireland Social Care Council will uphold proper standards of behaviour and conduct in regulating social care workers. Public interest requires that both the public and social care users are protected from unsafe practice and confidence in the social care workforce is maintained. In serving that public interest, the purpose of sanctions is to ensure that the social care worker does not have an opportunity to repeat their actions and also to maintain the reputation of the profession. I would refer you to paragraphs 2.2 and 2.5 of the Guidance

which remind you that any limitation of the right to practise one's profession should be no more than is necessary in the circumstances and that you have a duty to act fairly.

Mr Johnston has very fairly referred you to the consideration of mitigating factors in this matter as arising out of the documentation before you, and unfortunately you have nothing from the Registrant today that would assist you in relation to this.

One of the issues I would refer you to relates to issues raised by the various witnesses concerning failings by management at this particular complex, and Mr Johnston has also referred you to what he considers to be the aggravating factors in the matter.

Unfortunately you have no references or testimonials to consider, nor have you any information as to the financial impact of any Order you may consider today.

In relation to the matter Mr Johnston referred to you as regards paragraph 4.7 of the Guidance and the profession and the fortunes of an individual. You will be aware of the findings in the case of Bolton v The Law Society [1994] and it confirmed, and this may be of assistance to you, that the reputation of the profession is more important than the fortunes of any individual member.

You have the right to appeal this decision to the Care Tribunal. Any appeal must be lodged in writing within 28 days from the date of this Notice of Decision.

You should note that the Fitness to Practise Committee's decision takes effect from the date upon which it was made.

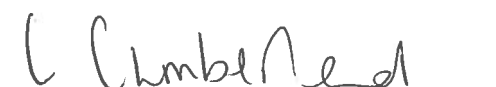
The effect of this decision is that your entry in the Register has been removed.

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

- Care staff in a children's home, residential care home or nursing home.
- Manager of a residential care home, day care setting or domiciliary care agency.

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

In accordance with Schedule 3, Paragraph 9 of the NISCC Fitness to Practise Rules, you may not apply to be restored to the Register within five years from the date of removal. This does not affect your right to appeal the Committee's decision to the Care Tribunal.



Committee Manager



Date