

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

SUSPENSION ORDER REVIEW HEARING

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**Name:** Marta Maria Aluko

**SCR No:** 1149800

**NOTICE IS HEREBY GIVEN THAT** the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **23 July 2018**, made the following decision about your registration with the Northern Ireland Social Care Council:

**The Committee found that your fitness to practise remains impaired;**

**The Committee decided to revoke the Suspension Order and impose a Removal Order on your registration.**

### **Preliminary Matters**

The Registrant was neither present nor represented. The Council was represented by Ms Rachel Kelso, Solicitor, Directorate of Legal Services, Business Services Organisation.

### **Service**

In a Notice of Review Hearing dated 22 June 2018, sent by Special Delivery and addressed to the Registrant at her address as it appears on the Register, the Council notified her of the date, time and venue for this hearing. The Notice was received and signed for on 23 June 2018.

The Committee is satisfied that the Notice of Review Hearing has been served in accordance with Rule 3 of the NISCC Fitness to Practise Rules 2016 ('the Rules') and the requirements of Paragraph 33 (5) of Schedule 2 of the Rules.

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

Ms Kelso made an application to proceed in the absence of the Registrant under Paragraph 15 of Schedule 2 of the Rules. Ms Kelso advised the Committee that in accordance with Paragraph 33 of Schedule 2 of the Rules, the Registrant was advised by way of letter dated 30 April 2018, that a review of her Suspension Order was being undertaken. There was no response from the Registrant to the requests in this correspondence. Ms Kelso reminded the Committee that the allegations found proved against the Registrant are serious and, in addition, the Registrant has not engaged with the Council in any of the hearings to date. She advised that there has been no request for an adjournment of this review and, in any event, an adjournment would serve no useful purpose as

there is nothing to suggest that the Registrant would attend at a later date. Ms Kelso submitted that it is in the public interest for the matter to proceed without delay.

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

The Committee noted that the Registrant did not attend the hearing in February 2018. The Committee also took into account that there is no suggestion from the Registrant that she seeks an adjournment or that she would be more likely to attend if the hearing was adjourned to another date. The Committee therefore determined that an adjournment would serve no useful purpose. The Committee has also taken into account public protection and the public interest in ensuring that the current Suspension Order is reviewed before it expires. The Committee, in all the circumstances, is satisfied that it is appropriate to proceed with this hearing in the absence of the Registrant.

### **Background**

Following a hearing at which the Registrant was neither present nor represented, on 07 and 08 February 2018, a Fitness to Practise Committee found the following allegations against her proved:

1. On or around 02 September 2016, you failed to comply with Service User A's care plan, which stated that personal hygiene and dressing needs should be provided by the assistance of two staff.
2. On or around 02 September 2016, you falsely recorded that Service User A had received personal care by the assistance of two carers.
3. On or around 02 September 2016, you failed to allow Service User A to use the toilet, despite him requesting you to do so.
4. On or around 02 September 2016, you failed to clean faeces from Service User A's body.
5. Between 11 pm on 02 September 2016 and 8 am on 03 September 2016, you failed to clean a dirty bed pan.
6. During 2016, you failed to keep up to date with mandatory training as a social care worker.

That Committee considered that the Registrant's actions amounted to misconduct and further, that she was currently impaired by reason of misconduct. In its decision on impairment, that Committee considered that the Registrant posed a risk to service users and, in particular, noted her behaviour towards Service User A and the painful effect of her actions in failing to provide him with appropriate personal care. That Committee also found that the Registrant in not abiding by the wishes of Service User A had failed to respect his dignity and brought her profession into disrepute. That Committee considered that the Registrant's misconduct was serious but did not find evidence that the Registrant's behaviour was fundamentally incompatible with continuing to be a registered social care worker in the long term. As a result, a Suspension Order for six months was imposed with the intention that the Registrant would have the opportunity at a future review of presenting evidence of insight and a willingness to undergo further training.

## **Fitness to Practise**

The Committee heard a submission from Ms Kelso on the issue of impairment. She submitted that the Registrant's fitness to practise remains impaired, and referred the Committee to the lack of engagement by the Registrant as to today's review hearing and her failure to provide the Committee with any evidence that her previous conduct would not be repeated and that she had undergone any further training. In light of this, Ms Kelso submitted that there is a lack of insight on the part of the Registrant and that there is no evidence to show her willingness to take steps to remedy her misconduct. She referred the Committee to the previous Committee's findings in February 2018 and, in particular, the Standards of Conduct for Social Care Workers which it found breached. She submitted that these still are applicable as of today's hearing. She further stated that the interests of the Registrant, in all the circumstances as applicable today, are outweighed by the interests of service users and, in particular, the risk of harm to them, and accordingly a Removal Order was an appropriate sanction.

The Committee accepted the advice of the Legal Adviser.

This is the first mandatory review of a six month Suspension Order. In considering whether the Registrant's fitness to practise remains impaired, the Committee reminded itself of the requirements set out at Paragraph 33 of Schedule 2 of the Rules. In considering this, the Committee is satisfied as to the reason for the alleged impairment of fitness to practise, as set out in the decision of the original Committee. The Committee noted the previous finding that the misconduct was serious and that the Registrant's failings involved not complying appropriately with a service user's care plan; falsely recording information on a service user's care plan; failing to allow a service user to use the toilet despite his requesting to do so; failing to clean Service User A's body and failing to remove a dirty bed pan; and failing to keep up to date with mandatory training as a social care worker. Taking into account the Standards of Conduct and Practice for Social Care Workers as set out in the previous decision, the Committee considered the Registrant remains in breach of the same Standards.

The Committee then considered whether the impairment is capable of remediation and concluded that it was. However, there is no evidence before the Committee that the Registrant has taken any steps to remediate the impairment since the original Order was made. The Registrant has not demonstrated any insight into her failings, nor has she presented any evidence of her willingness to take steps to remedy her misconduct. The Committee notes the correspondence sent to the Registrant on 12 February 2018 and 30 April 2018, and the lack of response from the Registrant to this correspondence.

Therefore, in view of the Registrant's lack of insight, lack of remediation, failure to provide any evidence of training or a willingness to train in the future and persistent lack of engagement, the Committee could not be satisfied that there is no risk of repetition of the Registrant's misconduct in the future. In considering this, the Committee took into account the recommendations of Dame Janet Smith in her fifth Shipman Report.

The Committee took into account the public interest when deciding whether the Registrant's fitness to practise remains impaired. The Committee accepted the need for NISCC to uphold proper professional standards and

public confidence in the social care profession. The Committee determined that public confidence would be undermined if a finding of impairment was not made in circumstances where a Registrant had been suspended but failed to engage with NISCC, demonstrate insight or take any steps to remediate during the course of her suspension.

For these reasons, the Committee finds the Registrant's fitness to practise remains currently impaired.

### **Sanction**

In reaching its decision on sanction, the Committee considered the submissions of Ms Kelso and heard and accepted the advice of the Legal Adviser. The Committee took into consideration the NISCC Indicative Sanctions Guidance (June 2017), bearing in mind that the decision on sanction is one for the Committee's own independent judgement.

The Committee was aware of its powers as set out at Paragraph 33 (8) of Schedule 2 of the Rules. The Committee, in addition to the powers set out in this Paragraph, may allow the Suspension Order to run its course and expire on 07 August 2018. The Committee took into account the need to act proportionately and that the purpose of sanctions is not punitive.

The Committee noted the mitigating and aggravating factors as set out previously in the original Committee's decision and accepted that these remain relevant and appropriate. The Registrant has not responded to correspondence from NISCC, nor has she provided any written submissions or documentation as regards training.

**Conditions of Practice Order** – the Committee first considered whether to impose a Conditions of Practice Order to commence on the expiry of the current Suspension Order on 07 August 2018. The Committee determined that it would not be appropriate to impose a Conditions of Practice Order in all the circumstances. The Committee had no evidence as to the current employment of the Registrant, nor that she would cooperate with conditions of practice or respond positively to training. The Registrant did not attend her initial hearing and was not present today. The Committee determined that in the current circumstances, no practicable or workable conditions could be formulated to adequately address the Registrant's failings. In addition, the Committee did not consider a Conditions of Practice Order sufficient to protect the public from the risk of repetition, nor would it meet the public interest in upholding proper professional standards and in maintaining public confidence in NISCC.

**Suspension** – the Committee then went on to consider whether it would be appropriate to impose a further period of suspension. The Committee considered that the Registrant's misconduct and impairment was serious. The Committee considered the Registrant's misconduct had the potential to cause harm to vulnerable service users and that she had failed to provide evidence that her misconduct has been remedied and lessons had been learned. The Committee had no evidence as to the Registrant's current employment. The Committee noted the finding at the original hearing in February 2018 that the Registrant's behaviour was not fundamentally

incompatible with continuing to be a registered social care worker in the long term. However, the Committee noted that the Registrant has persistently failed to engage with NISCC despite correspondence sent to her and, in particular, has provided no evidence of training or a maintenance of her skills during the period of suspension, nor any evidence of willingness to undergo training in the future. Accordingly, the Committee considered that the Registrant's behaviour during the period of suspension and to date is evidence of fundamental incompatibility with continuing to be a registered social care worker in the long term.

In all these circumstances, the Committee concluded that a further period of suspension would not resolve or remedy the Registrant's misconduct, and would not uphold public confidence in NISCC as the protector of vulnerable service users.

**Removal** – after careful deliberation, the Committee determined to revoke the Suspension Order and impose a Removal Order in accordance with Paragraph 33 (8) (g) of Schedule 2 of the Rules. The Committee concluded that removal from the Register is the only appropriate and proportionate sanction. The Committee concluded that the Registrant's misconduct, compounded by her continued lack of insight, failure to engage with NISCC, and failure to undergo training is fundamentally incompatible with being a registered social care worker in the long term. There is no evidence of remorse and no evidence that the Registrant is likely to remediate her misconduct in the future. Taking into account all of the evidence, the Committee is of the view that confidence in the social care profession would be undermined by allowing the Registrant to remain on the Register.

The Committee considered the potential devastating impact of a Removal Order on the Registrant but concluded that public safety and the public interest outweighed the impact on the Registrant.

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

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## **Legal Advice Given**

### **Service**

Just to confirm that Ms Stewart has in fact provided me with details of service on the Registrant, as outlined by Ms Kelso. You will be aware that Paragraph 33 (5) of Schedule 2 of the Rules governs the requirements that a hearing should not be fixed earlier than 28 days after the posting of the Notice, except with the agreement of the Registrant, and in this case the Notice was sent on 22 June and you have a signed for Special Delivery package signed on 23 June indicating that the Registrant has received that, although there is no specific requirement in the Rules to prove that. Rule 3 provides that the Notice should be sent by registered post, and that has taken place, and it has been served on the address as shown on the Register. In those circumstances, I would suggest to you that it would be safe for you to consider service has been in accordance with the Rules.

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

The Committee, in view of the Registrant's absence, must now consider proceeding in her absence and an application has been made by Ms Kelso under Paragraph 15 of Schedule 2 of the Rules for the matter to proceed in her absence. And it is a matter now for you to consider whether you are satisfied that the matter should proceed and this is a matter where you will be exercising your discretion. Ms Kelso has referred you to certain case law and you will be familiar with the well-known case of *R v Jones [2003]* and that was a starting point when considering proceeding in absence. This was a criminal case but in that matter Lord Bingham stated that 'the discretion to commence a trial in the absence of a Registrant should be exercised with the utmost care and caution'. In the recent cases of *Adeogba* and *Visvardis v The General Medical Council* in 2016, Sir Brian Leveson warned that *R v Jones* was a criminal matter and it is important therefore to acknowledge the difference between criminal prosecution and regulatory matters in which you are involved today. In criminal matters steps can be taken to enforce the attendance of a defendant and that is not open to you. In addition, there is an obligation in regulatory matters for registrants to engage with their regulators. Therefore, you have a number of options. In considering whether an adjournment may result in the Registrant attending the proceedings at a later date, I would ask you to look at the time involved in such an adjournment, the extent of the disadvantage to the Registrant in not being able to present herself and her response in relation to the review today. You must also look at the seriousness of the issues before you, the general public interest in these matters being dealt with, along with the interests of any service users. A Registrant is entitled to a fair hearing, to attend, be represented, to test the Council's case and present evidence on her own behalf. However, if the Registrant has the knowledge or the means of knowledge of today's proceedings in this review you may conclude that she has voluntarily absented herself and proceed in her absence. In considering this, you should also take into account what information you have before you today to indicate that this Registrant had sufficient information to appreciate the importance of attending today.

The principle of fairness in relation to the proceeding in absence also applies to the presentation of the Council's case, therefore in exercising your discretion I would ask you to balance the rights of the Registrant on the one hand against the wider public interest in the expeditious disposal of the matter. If you consider this matter should proceed in her absence you must avoid reaching any improper conclusion about that absence and not treat it as an admission in any way.

## **Fitness to Practise and Impairment**

Ms Kelso has set out the Council's position in relation to the review today and she has referred you to the relevant legislative paragraphs and rules. Under Paragraph 33 of Schedule 2, the Council must invite the Registrant to provide documents or information towards the end of the suspension period, six months in this particular instance, as to whether her fitness to practise remains impaired. And you have in your bundle of documents the correspondence that was sent to the Registrant and you have two specific letters sent to her on 12 February 2018 and 30 April 2018. You have no response from the Registrant to that correspondence.

Paragraph 33 (3) (b) indicates that if there is a failure to comply with that reasonable request the matter is then referred to the Fitness to Practise Committee and this is the hearing that you are involved with today. Paragraph 33 (4) indicates that a newly constituted Committee shall deliberate and determine, and that has happened in this matter.

Therefore, in relation to the application I would ask you to firstly consider the Standards of Conduct and Practice, and Ms Kelso has very fairly referred you to the various Standards which she thinks are relevant, and I would advise you that you have the option of considering any other Standards that you may think are applicable in this matter. You are an experienced Committee, you will be aware that in this particular instance the particular concerns of the original Committee are set out in its decision, and that is in your bundle of papers, and I would ask you to consider the steps that that Committee considered would be appropriate to allay their concerns at that stage and in this particular instance there were specific references to both evidence of insight and willingness to undergo further training, and these are important considerations for you today.

The original Committee found the Registrant's fitness to practise was impaired; you must now ask yourselves does the Registrant's fitness to practise remain impaired.

### **Sanction**

I would remind you that in considering sanction you have also received a very detailed submission from Ms Kelso which must be taken into account. Your decision in relation to sanction is for yourselves and it is a matter for you to consider exercising your common sense and judgement and considering all the factors in the case. Paragraph 33 (8) of the Rules lay out the options that are available to you at the sanction stage. You will be aware that the Suspension Order is due to expire and you have a number of options and I would emphasise these options that you may take into consideration. You may consider imposing a further Suspension Order to commence on the expiry of the existing Suspension Order for a period of no longer than two years; you may also consider imposing a Conditions of Practice Order, again to commence at the expiry of the Suspension Order for a period of no longer than three years in relation to any Conditions of Practice Order; or, in relation to the Suspension Order that is currently in force against the Registrant, you may consider revoking that and imposing a Removal Order, and these are all matters for your consideration.

In these considerations I would ask you to look at the Northern Ireland Social Care Council Indicative Sanctions Guidance. You will be aware and very conscious that the purpose of sanctions is not punitive but you must have at the forefront of your mind the protection of the public, looking at the protection of service users, maintaining confidence in the profession and upholding proper standards of conduct and behaviour. As always, you must act proportionately, balancing the interests of the Registrant against your overarching duty to protect the public. Again, I would ask you to look at the sanctions in ascending order of severity, although you are confined in your considerations to the options as I have just previously mentioned.

I would also remind you that any limitation of the right to practise one's profession should be no more than is necessary in all the circumstances and therefore you have a duty to act fairly. Unfortunately, you have no

information from the Registrant before you to allow you to consider the impact of any continuing Order you may wish to look at. Therefore, in conclusion, you must act proportionately and as always adopt a sequential approach looking firstly at any relevant facts before you today, then the question of impairment and finally move to the consideration of sanction.

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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.

P.P. M. Stent  
Committee Manager

27 July 2018  
Date