

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

SUSPENSION ORDER REVIEW HEARING

Name: Maggie Magdalene Frost

SCR No: 6012504

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **09 November 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.

Procedure

The hearing was held under the fitness to practise procedure.

Legal Advice Given

Advice given to the Committee by the Legal Adviser is contained within the body of this Decision.

Preliminary Matters

The Registrant was not in attendance. The Council was represented by Ms Kelso, Solicitor. The application was referred to the Fitness to Practise Committee in accordance with Schedule 2 Paragraph 33 (3) (b) (c) of the NISCC Fitness to Practise Rules (2016) ('the Rules').

Service

In a Notice of Review Hearing dated 04 October 2018, sent by Special Delivery post and addressed to the Registrant at her last known address, the Council notified her of the date, time and venue for this hearing. The Notice was signed for on 05 October 2018.

The Committee determined that the Notice of Review Hearing has been served in accordance with Rule 3 of the Rules and the requirements of Paragraph 33 (5) of Schedule 2 of the Rules.

Proceeding in Absence

Ms Kelso on behalf of the Council submitted that the Registrant is aware of the hearing and has advised the Council that she does not wish to attend. The Committee heard that she has not requested an adjournment and has submitted a testimonial. Ms Kelso submitted that given the seriousness of the allegations, it was appropriate to proceed in her absence.

The Committee heard and accepted the advice of the Legal Adviser. The Legal Adviser reminded the Committee of the principles from *R v Jones* [2003] 1 AC 1, and that the discretion to proceed in the absence of the Registrant should only be exercised with the utmost care and caution.

The Committee was satisfied that all reasonable efforts had been made to notify the Registrant of the hearing. The Committee accepted that the Registrant is aware of the hearing, and noted that she had advised the Council that she would not be attending and had not sought a postponement. The Committee concluded that the Registrant had voluntarily waived her right to attend. The Committee determined that it is fair and proper to proceed in her absence.

Background

This is the first review of a Suspension Order imposed by a Fitness to Practise Committee on 17 May 2018 for six months. The current Order is due to expire on 18 November 2018.

The Particulars of the Allegation found proved which resulted in the imposition of the Suspension Order were as follows:

That, being registered under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), and whilst working as a Care Assistant at Madelayne Court Nursing Home, 2 Nursery Avenue, Portstewart:

- | | |
|----|--|
| 1. | On or around 03 April 2017, you roughly led Resident A by both arms to the lounge area. |
| 2. | On or around 03 April 2017, you inappropriately restrained Resident A by placing her in a recliner chair and tipping it back so far that she could not get up. |

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

The original Committee determined the following with regard to impairment:

Fitness to Practise

The Committee moved on to consider if the Registrant's fitness to practise is impaired.

The Committee heard submissions from Ms Kelso. She submitted that the Registrant's fitness to practise is impaired by reason of misconduct. Ms Kelso stated that impairment was defined in the Rules as circumstances which call into question the suitability of a registrant to remain on the Register without restriction or at all. She referred the Committee to the case of Cohen and to the requirements of Paragraph 24 (3) of Schedule 2 of the

Rules. Ms Kelso submitted that in the opinion of the Council, the following Standards of Conduct have been breached: Standard 1: 1.2, Standard 5: 5.1, 5.8 and Standard 6: 6.1.

Ms Kelso referred the Committee to the case of CHRE v Grant 2011, and submitted that when considering whether the Registrant's fitness to practise is impaired her level of insight is central. Ms Kelso submitted that there had not been a full explanation of what occurred and there was no evidence of insight.

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

The Committee first considered whether the facts found proved amount to misconduct. The Committee had regard to the Standards of Conduct for Social Care Workers and found the Registrant's actions to be in breach of the following provisions:

Standard 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 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;*

5.8 *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.*

The Committee heard evidence from Witness 1 that the Registrant pulled Resident A roughly along the corridor towards the lounge area. The Committee heard that the Resident was shouting at the Registrant to stop or let her go. The Registrant accepted that she placed Resident A in a recliner chair and the Committee heard that the chair was reclined to the extent that Resident A was unable to get up by herself. The Committee noted that the Registrant admitted that this was a mistake but stated that she was told to do it. The Committee noted that this went against her training and that she had received training never to use restraint in this way. As a result of all the evidence considered, both oral and in the hearing bundle, the Committee concluded that the Registrant's actions fell below the standard expected of a social care worker and were serious enough to amount to misconduct.

The Committee next considered whether, as a result of the misconduct, the Registrant's fitness to practise is impaired. The Committee kept at the forefront of its mind the duty to protect the public, uphold proper standards of conduct and behaviour and maintain public confidence in the social care profession.

Social care workers in a dementia unit are working with some of the most vulnerable residents. These residents and their families must be able to trust those that provide care to do so with dignity and respect. The Committee

concluded that the Registrant's actions on 03 April 2017 did pose a risk of harm to Resident A. In the view of the Committee, the Registrant's actions brought the profession into disrepute and did breach a fundamental tenet of the social care profession. Resident A was vulnerable and the Committee heard how Witness 1 described her disgust when she saw how she was treated.

However, the Committee concluded that her misconduct is capable of remediation but has not yet been remedied. The Registrant's misconduct could be remedied through further training and supervision. The Registrant has accepted that she put Resident A in the recliner chair and that this was a mistake, but that she was told to do so. The Committee concluded that the Registrant has demonstrated limited insight. Without full insight and further training, the Committee remains concerned that there is a risk of repetition. For that reason, the Committee concluded that the Registrant's fitness to practise is impaired on grounds of public protection.

The Committee also addressed the public interest, and concluded that public confidence in the profession would be undermined if a finding of impairment were not made. In particular, the Committee noted the evidence of Witness 1 that she was distressed by the Registrant's actions on 03 April 2017. Witness 1 was in the nursing home visiting another resident, and the Committee considered her views to be reflective of any member of the public. On this basis, the Committee concluded that public confidence in the profession would be undermined if a finding of impairment were not made.

Therefore, the Committee determined that the Registrant's fitness to practise is currently impaired.

The original Committee determined the following with regard to sanction:

Sanction

The Committee heard a submission from Ms Kelso on the question of sanction. Ms Kelso confirmed that the Registrant had no previous findings of misconduct and was entitled to a good work history. Ms Kelso submitted that this was an isolated incident and that there was no evidence that the Registrant's actions were premeditated. The Committee heard that the Council's position was that the Registrant had demonstrated a lack of insight and her actions fell far short of what would be expected of a registered social care worker.

The Committee had regard to the Indicative Sanctions Guidance (June 2017) issued by NISCC and accepted the advice of the Legal Adviser.

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

Warning - *the Committee took into account that there was no evidence of physical harm to Resident A, that this was an isolated incident and that the Registrant has a good work history. However, the Committee concluded that the misconduct was serious because of the vulnerable nature of the residents under the Registrant's care. Without insight and appropriate evidence of corrective steps, the Committee concluded that there remains a risk of repetition. A Warning would allow the Registrant to work without restriction and would not be sufficient to protect the public in these circumstances. The Committee was not satisfied that a Warning would meet the public interest in this case.*

Conditions of Practice Order - the Registrant failed to attend the hearing and failed to engage with NISCC. The Registrant did not make any representations to the Committee which demonstrate full insight or remorse for what she did. The Committee did consider that there was the potential for the Registrant to respond positively to retraining and to supervision of her work. She had completed training previously but had not provided any evidence to the Committee that she was willing to undergo further training at this point. The Registrant was not present and was unable to confirm whether conditions of practice were achievable and accepted. The Committee had no information about the Registrant's employment status or evidence that it would be possible for her to avail of further training. In these circumstances, the Committee was unable to formulate conditions of practice that would be workable and measurable and would adequately protect the public. This sanction would not afford service users the appropriate level of protection.

Suspension - the Committee determined that the Registrant's misconduct was serious but concluded that this was not a case when removal was warranted. The Committee did not find evidence that the Registrant's behaviour is fundamentally incompatible with continuing to be a registered social care worker. The Committee is clear that the Registrant's misconduct is capable of remediation and there is no evidence of any other similar incident. There is no evidence of repetition since the date of the incident. The Committee was satisfied that the public would be sufficiently protected by a period of suspension. The Registrant should be aware that a review of her fitness to resume practice will be undertaken towards the end of her Suspension Order. At any review, she will have the opportunity to present evidence of insight and a willingness to undergo further training.

The Committee determined that a Suspension Order for the maximum period of two years would be disproportionate. Suspension for a period of six months would be appropriate to protect the public and service users from the risks identified during the period of suspension, and would allow the Registrant time to reflect and demonstrate further insight. In reaching this decision, the Committee took into account the Registrant's previous good character and work history, the fact that this was an isolated incident and that her actions did not cause harm to a service user. Suspension for a period of six months would send a clear message that the misconduct is serious and that the Registrant's actions fell short of what is accepted of a social care worker.

The Committee considered the public interest. The public must be able to have confidence in those who provide care to the most vulnerable. In all the circumstances of the case, the Committee determined that the reputation of the profession and the role of NISCC to uphold proper standards of behaviour will be met by a Suspension Order. The Committee was satisfied that a Suspension Order is proportionate, having weighed the public interest with the interests of the Registrant.

The Committee concluded that a Suspension Order for a period of six months is the most suitable, appropriate and proportionate sanction to be imposed on the Registrant's registration with immediate effect.

Decision on Current Fitness to Practise

The Committee has considered carefully whether the Registrant's fitness to practise remains impaired.

Ms Kelso provided a background in terms of the allegations and referred the Committee to the decision of the previous Committee. She told the Committee that the Registrant had not attended the hearing or provided any written submissions. She reminded the Committee that the allegations found proved at the hearing concerned serious misconduct in relation to vulnerable elderly patients. The previous Committee noted that the Registrant's insight was limited and that, without full insight, a risk of repetition remained. She had also not demonstrated any remediation. The Committee had therefore determined that the Registrant's fitness to practise was impaired and that an Order was necessary to protect the public.

Ms Kelso submitted that there is no evidence that during the period of suspension, the position has changed. The Registrant has not demonstrated any further insight and there is also no evidence of her intending to remediate. She provided one testimonial from a co-worker, but this is not sufficient to satisfy the concerns of the Council. Ms Kelso therefore submitted that the Registrant's fitness to practise remains impaired, and that there is a need for some form of restriction to remain on her practice.

The Committee heard and accepted the advice of the Legal Adviser. She advised the Committee that in considering this case, the Registrant should only be allowed to return to unrestricted practice if the Committee finds that her fitness to practise is no longer impaired. The Legal Adviser reminded the Committee that it must exercise its own independent judgment as to current impairment.

In reaching its decision, the Committee was mindful of the need to protect the public, maintain public confidence in the social care profession and to declare and uphold proper standards of conduct and performance. The Committee had regard to all of the documentation before it and has taken account of the submissions made by Ms Kelso. The Committee considered whether the Registrant's fitness to practise remains impaired.

The Committee noted that the previous decision set out for the Registrant what was required in terms of insight and remediation. The Committee noted that she was advised by the Council on 23 May 2018, and on 09 August 2018, of the documents or information which she could provide as evidence that her fitness to practise is no longer impaired. The Committee had no evidence of any further insight from the Registrant. The Committee also had no evidence of any remediation. The Committee took into consideration the testimonial provided. This testimonial was welcomed by the Committee. However, it provided no context and did not provide evidence of insight or remediation. The Committee concluded that the lack of engagement from the Registrant demonstrated a further lack of insight. There is nothing before the Committee to give it confidence that the Registrant has resolved or remediated the cause of her misconduct during the period of her suspension. The Committee was therefore of the view that there remains a risk of repetition.

The Committee had regard to the Standards of Conduct of Practice for Social Care Workers.

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 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; 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.

The Committee determined that the Registrant continued to be in breach of these Standards.

The Committee bore in mind that its primary function was to protect service users and the wider public interest, which includes maintaining confidence in the social care profession and upholding proper standards of conduct and performance. The Committee determined that, in this case, a finding of continued impairment on public interest grounds is also required.

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

Sanction

Having found that the Registrant's fitness to practise is currently impaired, the Committee then considered what, if any, sanction it should impose in this case. The Committee noted that its powers are set out in Paragraph 33 of Schedule 2 of the Rules. The Committee bore in mind the NISCC Indicative Sanctions Guidance.

The Committee heard and accepted the advice of the Legal Adviser. The Legal Adviser reminded the Committee that the purpose of a sanction is not to be punitive, although any sanction imposed may have a punitive effect.

The Committee first considered whether to take no action and allow the current Order to lapse, but concluded that this would be inappropriate in view of the risk of repetition identified and the seriousness of the case. The Committee decided that it would be neither sufficient nor in the public interest to take no further action.

The Committee considered whether to impose a Conditions of Practice Order but concluded that this would be inappropriate. The Committee considered that the Registrant had failed to engage in a meaningful way with her regulator and has shown very little insight into her failings. The Committee also had no evidence of any willingness on the part of the Registrant to comply with Conditions of Practice. As the Committee has no evidence about the Registrant's current employment, the Committee was not able to consider whether Conditions would be workable. Given the Registrant's lack of insight, the Committee is of the view that there are no proportionate, workable and measurable conditions that could be formulated that would sufficiently protect the public and meet the public interest considerations of this case.

The Committee next considered suspension. The Committee concluded that it would not be appropriate or proportionate to impose a further period of suspension. The Committee was of the view that the misconduct

could be remediated or resolved but, since the initial Order was imposed, the Registrant has not demonstrated any increased insight or evidence that she has resolved the cause of her misconduct. The suspension provided the Registrant with an opportunity to reflect on the cause of her misconduct. However, the Registrant has provided no evidence to the Committee to show any insight or that she accepts that what she did was wrong or that she is sorry. After a full and careful consideration of all of the evidence before the Committee today, the Committee concluded that there is nothing to suggest that the Registrant would take any action to resolve or remedy the cause of her misconduct during a further period of suspension.

The Committee determined to revoke the Suspension Order and impose a Removal Order. The Committee concluded that the Registrant's misconduct, compounded by her persistent lack of insight, is fundamentally incompatible with being a registered social care worker. The Committee considered that the Registrant's failure to resolve the cause of her misconduct during the period of her suspension, and the ongoing risk which she creates to vulnerable service users, could only be met by removal. The Committee considered that public confidence in the social care profession, and NISCC as a regulator, could be undermined if a social care worker who was found to have been involved in serious allegations and failed to say sorry, accept their wrong doing or take action during a period of suspension was allowed to remain on the Register.

The Committee considered the potential devastating impact of a Removal Order on the Registrant, but concluded that the protection of the public 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.

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

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

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

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

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

- a.) Residential care home;
- b.) Day care setting;
- c.) Residential family care centre; or
- d.) Domiciliary care agency.

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

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

C. Cumberledge

Committee Manager

13 November 2018

Date