IN THE CARE TRIBUNAL

GC

v

DEPARTMENT OF HEALTH, SOCIAL SERVICES AND PUBLIC SAFETY

BEFORE:

HARRY BLACK (CHAIRMAN), MONICA CULBERT, MAUREEN FERRIS

Hearing date: 5th February 2007

1. The Appellant appeals against two decisions of the Respondent dated 26 May 2006, namely to include him on the Disqualification from Working with Vulnerable Adults (DWVA) List and the Disqualification from Working with Children (DWC) List.

2. The Appellant was represented by Mr Lavery of Counsel, instructed by Paul McMullan, Solicitor and the Respondent was represented by Mr Robinson of Counsel, instructed by the Departmental Solicitor.

3. The Tribunal made a Restricted Reporting Order under Regulation 19(1), prohibiting the publication (including by electronic means) in a written publication available to the public, or the inclusion in a relevant programme for reception in Northern Ireland, of any matter likely to lead members of the public to identify the appellant of any vulnerable adult. For this reason the names of those referred to in the decision will be replaced by their initials.

4. THE LAW: Appeals against inclusion in the DWVA list are governed by Art 42 of the Protection of Children and Vulnerable Adults (N.I.) Order 2003.

   Art 42(3)(a) provides that: If on an appeal … under this Article the Tribunal is not satisfied of either of the following, namely:-

   a. that the individual was guilty of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult; and

   b. that the individual is unsuitable to work with vulnerable adults, the Tribunal shall allow the appeal.

   Art 11(3) of the Order is in similar terms and governs appeals against inclusion in the DWC List.

Thus, in order to dismiss the appeal, the Tribunal must be satisfied that:

(i) there was misconduct;

(ii) the misconduct harmed a vulnerable adult, or placed a vulnerable adult at risk of harm; and

(iii) the individual is unsuitable to work with 'vulnerable adults.

5. The burden of proof is on the Department and the standard of proof is the civil standard, that is, the balance of probability.

6. <u>The alleged misconduct which harmed or placed at risk of harm a vulnerable adult.</u> The Appellant GC, at the material time was employed as a Care Assistant in RL Care Home. In the early part of 2005 the mother of Mrs LM was resident in the Home. Mrs LM gave evidence to the Tribunal that on two occasions when she was visiting her mother she witnessed incidents which caused her great concern. On the first occasion she said that she observed GC in a corridor, standing in front of one of the elderly female residents effectively blocking her path. The resident was trying to get past but GC wasn't moving, he seemed to be enjoying the occurrence which lasted a minute or two. She described his action as 'shadowing' the resident who was getting agitated. LM made her self noticeable to GC and he stopped. In a second incident, less than two weeks later she observed another elderly female resident having followed GC into a room. GC came out quickly and closed the door behind him and held the handle. The resident was banging on the door and GC was finding the matter very funny. When the resident was released she was crying and was very agitated. Mrs LM subsequently reported the matter and made a written complaint. A third incident was described to the Tribunal by a witness KJH. She was a Care Assistant at the Home for a period having been placed there by an Agency. She had been working with GC and gave evidence to the Tribunal about an incident when an elderly male resident JS made a request to be taken to the toilet. She stated that GC initially refused to take him indicating that he did not need to go and that JS began to get anxious and started to shuffle in his wheelchair. KJH and the appellant then took him to the toilet but when JS didn't actually use the toilet it was alleged that GC said to JS, 'I have no fucking time for this'. KJH subsequently reported this incident to a senior member of staff and made a statement when requested to do so.

7. The appellant denied the allegations. He stated in evidence that the first two incidents as described by Mrs LM did not happen. He said that he did recall taking JS to the toilet and that JS did not use the toilet but KJH was not present as she was further up the corridor using her mobile phone and that she could not have heard anything. He believed

that KJH did not like him very well and that she resented the fact that he was accustomed to telling her what to do and he had been obliged to tell her on a few occasions to stop using her mobile phone at work. He agreed that he did not know Mrs LM and had no previous dealings with her or her family although he claimed that Mrs LM had some concerns about male care workers attending to her mother, a claim denied by Mrs LM. He said that he did not know why the allegations were made.

8. The Tribunal was faced with a conflict in the evidence. However, having observed and heard the witnesses give their evidence we reached a conclusion that Mrs LM and KJH were credible witnesses and that the appellant was not. We were satisfied that Mrs LM did witness the incidents which she described. We accept her evidence that she had a good view from where she was positioned. The appellant was unknown to her, they had no previous dealings and the appellant could advance no plausible reason as to why she should make the allegations. Her character was not in issue and she told the Tribunal that she herself had experience of working with vulnerable adults and children for 30 years and was sufficiently concerned about the incidents to report them and commit her complaint to writing. There was no evidence to suggest that she was biased against the appellant nor had any malice towards him. The incidents which she described did not directly affect her own mother although she did agree that she did worry about her mother subsequently. Also, in answer to questions by the Panel the appellant confirmed that no incidents similar to that described by Mrs LM occurred which may have had an innocent explanation and which may have resulted in a mistaken interpretation by the witness. The witness KJH also impressed us with her evidence. She was closely cross examined by counsel and was prepared to accept that she could not remember everything due to the passage of time but she was adamant that the incident at the toilet occurred as she described and that the foul language was used by GC. The suggestion that she was motivated to make a complaint against GC because of being told what to do and for being admonished for using her mobile phone does not commend itself to the panel.

9. The Order does not define misconduct. However, in Angella Mairs v Secretary of State (2004) 269.PC the Care Standards Tribunal in Great Britain observed that 'in principle, a single act of negligence could constitute misconduct but in most cases the misconduct will be an incident forming part of a course of erroneous or incorrect behaviour undertaken by a person who knew or ought to have known that what he or she was doing was contrary either to the general law or to a written or unwritten code having particular application to his or her profession, trade or calling. In the context of a profession, for there to be a finding of misconduct there must be a falling short, whether by omission or commission, of the standards of conduct expected from members of that profession'. Having found as facts that the appellant did act in the manner described by the witnesses we have no hesitation

in finding that his actions in each of the three incidents amount to misconduct.

10. Harm is defined in Article 20 of the 2003 Order as having the same meaning as in Article 2(2) of the Children (NI) Order 1995, that is 'ill treatment or the impairment of health or development'. We heard evidence that the RL Care Home is a Home for the Elderly Mentally Infirm where the residents have cognitive impairment and where a calm environment would be essential to their needs. We have no doubt that the appellant's behaviour would have been very confusing and upsetting for them and was likely to cause them distress or have a significant impact on their well being. We are satisfied that the misconduct, in each incident, at the very least placed a vulnerable adult at risk of harm.

11. We take the view that the appellant simply does not comprehend the nature of the risk to vulnerable adults his actions have caused or would be likely to cause. The public at large and those who find themselves in situations where care is required have a right to expect, indeed to demand, that such people who are placed in such important positions of trust working with vulnerable adults are beyond reproach. An issue was raised in the course of the hearing questioning the nature and extent of the training received by the appellant. We heard evidence that he received some training and he did accept that he had observed a training video and he also accepted that he had worked previously for about one year in another Care Home. If there were any shortcomings in his training, and on this issue we did not reach any firm view, he nevertheless should have realised that his conduct was totally unacceptable, unprofessional and fell entirely outside the bounds of normal practice. We have no hesitation in reaching the conclusion that he is unsuitable to work with vulnerable adults. Given the serious nature of his actions we believe that public confidence in the provision of services to children would be undermined if the appellant was permitted to work with children, given the fact that he was deemed unsuitable to work with vulnerable adults. We cannot be confident that he would act differently if he was given a position of trust in relation to children. We conclude that he is also unsuitable to work with children.

12. Accordingly, it is our unanimous decision that both appeals be dismissed.

HARRY BLACK (CHAIRMAN)
MONICA CULBERT
MAUREEN FERRIS

12 FEBRUARY 2007