

IN THE CARE TRIBUNAL

**APPEAL NO. 2006/2PC & 2006/2PVA
APPEAL NO. 2006/3PC & 2006/3PVA**

LM

-v-

DEPARTMENT OF HEALTH, SOCIAL SERVICES AND PUBLIC SAFETY

SC

-v-

DEPARTMENT OF HEALTH, SOCIAL SERVICES AND PUBLIC SAFETY

Before:

**J.A. Kenneth Irvine (Chairman)
Isobel Elliott-Knox
Mary McGoldrick**

Hearing dates: 15th, 16th & 19th February and 8th March 2007

Application

1. (a) The Appellants appeal under Art.11(1)(a) of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003, against the decision of the Department of Health, Social Services and Public Safety to include them on the Disqualification from Working with Children (DWC) List, and under Art.42(1)(a) of the said Order, against the decision of the Department of Health Social Services and Public Safety to include them on the Disqualification from Working with Vulnerable Adults (DWVA) List. Both these decisions are dated 13th March 2006.

(b) LM had been playgroup leader and SC playgroup assistant at a playgroup (referred to as CNPG). The incidents alleged arose in the course of their conduct of the group. It was agreed by the parties at the Directions Hearing below referred to that as the listing of each party turned upon the same facts the appeals of each of the Appellants should be heard together.

Representation

2. (a) The Appellants were unrepresented but were accompanied by a friend, Mr. John Barr, who spoke and questioned witnesses on their behalf and the Respondent was represented by Denise McBride of Counsel (instructed by the Departmental Solicitor).

(b) The Appellants, being unrepresented, the Tribunal took considerable care throughout the hearing to ensure that they had ample opportunity to present their case, and to ensure that they were not in any way at a disadvantage. Tribunal in fact allowed the Appellants and Mr. Barr considerable latitude in their questioning of witnesses to ensure that they had full opportunity to make their case. Tribunal is

satisfied that the Appellants were not in any way prejudiced by the fact that a lawyer did not represent them at the hearing.

Preliminary matters

3.(a) At the Directions Hearing held on 8th December 2006 the Tribunal made the following direction:

that there be 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 Appellants, any child or any vulnerable adult. For this reason the decision is published in an anonymised form so as to protect the private lives of the children who attended the playgroup.

(b) At the outset of the hearing Mr. Barr raised a point under Article 6 of Schedule 1 of the Human Rights Act 1998. He argued that the Appellants had been denied a fair hearing at an earlier stage of the process because they were not present at the Panel hearings which had determined that they were not 'Fit Persons'. This finding had led to them being notified to the Respondent for consideration of listing as above. Mr. Barr wished the Tribunal to pass the matter back for a rehearing of the earlier matter.

The Tribunal recessed to consider this point and determined that it could not grant the application as it related to matters which were outside the jurisdiction of the Tribunal and further that the rights of the Appellants under the Human Rights Act were protected by the present hearing at which they would have the opportunity to give evidence and to cross-examine the witnesses for the respondent.

The evidence

4. For the Respondent we heard oral evidence from Mrs. Mary Bond, Miss. Kerry Gregory, Mrs. DMcL, Mrs. YM, Mrs. JD and Mrs. CO'H. We heard oral evidence from the Appellants.

5. Tribunal read written statements from these witnesses for the Respondent and also from Mrs. Helyn Kirkpatrick, Mrs. Margaret Gordon, Mrs. Kathleen O'Kane and a parent Mr. AC.

6. Tribunal was provided with a considerable number of associated documents including papers relating to actions taken by Causeway Health and Social Services Trust ('the Trust') in respect of the matters leading to the placing of LM and SC on the respective lists.

7. Upon completion of the oral evidence Miss. McBride handed in a written closing submission and indicated that she would have no objection to Mr. Barr being given the facility to make his closing submission in like manner. Tribunal agreed that he should have until 23rd February to do so and Tribunal would reconvene as soon as possible thereafter to consider the submissions and reach its Decision.

The law

DWVA list

8. Appeals against inclusion in the DWVA list are governed by Art.42 of the Protection of Children and Vulnerable Adults Order (Northern Ireland) 2003.

9. 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....

Three stage test

10. Thus, in order to dismiss the appeal, the Tribunal must find:

- (i) that there was misconduct,
- (ii) that the misconduct harmed a vulnerable adult, or placed a vulnerable adult at risk of harm and
- (iii) that the individual is unsuitable to work with vulnerable adult.

DWC list

11. Article 11 of the Protection of Children and Vulnerable Adults Order (Northern Ireland) 2003 provides for an individual to appeal against inclusion of his name on the list to this Tribunal and Art.11(3) provides that:

If on an appeal...under this Article a Care 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 a child or placed a child at risk of harm;
 - and
 - (b) that the individual is unsuitable to work with children,
- the Tribunal shall allow the appeal....

Three stage test

12. Thus, in order to dismiss the appeal, the Tribunal must find:

- (i) that there was misconduct,
- (ii) that the misconduct harmed a child, or placed a child at risk of harm and
- (iii) that the individual is unsuitable to work with children.

Definition of Misconduct and harm or risk of harm

13. 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 "misconduct could range from serious sexual abuse through to physical abuse (including inappropriate physical restraint) and/or poor child care practices in contravention of organisational codes of conduct". They referred to the case of *Doughty v. General Dental Council* [1987] where misconduct was said to be "a falling short, whether by omission or commission of the standards of conduct expected from members of [a] profession".

14. "Harm" is defined in Art.20 of the 2003 Order as having the same meaning as in Art.2(2) of the Children (Northern Ireland) Order 1995, that is "ill treatment or the impairment of health or development".

Burden of proof

15. The burden of proof is upon the Department.

Standard of proof

16. The standard of proof is the civil standard, that is, the balance of probability, as defined in *Re H* [1996] AC 563:

"The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, 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 probability..."

17. In *W v Secretary of State* [2002] 115 PC the Care Standards Tribunal in Great Britain considered further the guidance on the balance of probability standard of proof set out above and said that:

"The Tribunal is composed of people who, because of their training and professional experience, are very familiar with the likelihood or otherwise of incidents occurring that form the basis of the claim of misconduct and of the reliability of the accounts given of that misconduct. We are therefore entitled to

- draw inferences from the facts presented to us, but we must not speculate
- analyse the facts presented to us in the light of our particular expertise
- form a view about whether the Secretary of State's version of events is more likely than not. In some cases, the seriousness of the allegation will make the version of events as described more improbable and therefore more evidence will be required to discharge the burden. In other cases, although a serious incident is alleged, the Tribunal's expertise may lead it to conclude that the event described is not so unlikely and therefore the balance of probability will be satisfied without much in the way of supporting evidence."

The evidence

18. A. The Parents' Evidence

i. Mrs. DMcL

Mrs. McL adopted the statement which she had previously made. In it she referred to an incident on 19th January 2004 when her husband had collected their son J from CNPG. She said that J had been 'talking gibberish' and that he said that he had been told off for being late. Later that day J had been to a friend's birthday party and had been fighting, which was said to be out of character. In the evening he started to cry when going to bed and told his parents that SC had hit him because he was unable to write his name. Mrs. McL confirmed that a faint mark was visible below his left eye. Under questioning by LM DMcL accepted that it was possible that the mark could have resulted from the fight at the party. The following day they again asked J and he repeated the same story. J did not return to CNPG. After contact with the Trust they were informed that CNPG had made an allegation that J had told them that he had

been hit by his father. This was absolutely denied by the parents.

Mrs. McL told Tribunal that up until the incident she had been very happy with the care provided by CNPG and confirmed that during the previous year, when she had been having problems because of the birth of another child, both LM and SC had been very helpful. She also said that they had not wished to involve Police Service for Northern Ireland although the Social Services had been anxious that they should do so.

ii. Mrs. JD

Mrs. D's son M had attended the play group in 2002. M had some developmental delays, mainly in toileting. She had been pleased with the manner in which M settled into CNPG and initially was very happy with the approach of both LM and SC. She subsequently became concerned at the toileting 'accidents' which were occurring and also at the attitude of the leaders to them. She reported remarks made by LM in the presence of M and of other parents in which his toileting was described as 'absolutely disgusting'. She also recorded an occasion when he came home with soiled pants in his schoolbag.

iii. Mrs. YM

Mrs. M's daughter E had attended CNPG in 1999-2000. Her daughter had come home from school '2 or 3 times' in June 2000 and alleged that SC had pulled her hair. She did not complain of the matter at the time and only reported it in 2002 when the Headmistress of C Primary School (where she was then working) mentioned to her that there had been other allegations against the play group. She told Tribunal that she would probably not have raised the matter with Social Services had the Headmistress not mentioned it to her. In her written statement she referred to speech problems which her daughter was experiencing. She referred again to these in her oral evidence. It appears that these problems cleared up within two weeks after leaving the play group.

Mrs. M told Tribunal that she had thought that CNPG was 'very nice' and that E was happy there. On the other hand, she did criticise SC's attitude to parents, finding her rather abrupt.

iv. Mrs. CO'H

Mrs. O'H's daughter K attended CNPG in 1999-2000. She told Tribunal that after attending CNPG for a few months K started to squeal when being taken there in the mornings. When asked by her Grandmother (Mrs. O'H's Mother), she told her that she had been closed in an office by SC, given a baby's bottle with water and told that she could come out when she stopped crying. She said that K was still to this day consistent in her version of the story. At this time she also started bed-wetting. This apparently stopped when she left the CNPG. Mrs. O'H also recounted a couple of incidents where K had chanced upon SC out of school and refused to go near the area until SC left.

There had been a meeting with the Trust to discuss the problem but no-one from the CNPG attended. She told Tribunal that she had not been surprised when, four years after the report, there had not been any further action by the Trust. She had been told that these things take time.

v. Mr. AC

Mr. C did not give oral evidence. Tribunal read a statement from him. His son J had attended CNPG in 2000. The allegation was that on his first day at the group he was called to collect J because he had soiled himself. When he got J home he was told by him that 'the lady' had made him sit on the toilet and she had slapped him on the top of his leg. He took J back to the group a couple of days later but J did not settle. It was said that even to travel along the road by the CNPG caused him distress.

B. The Social Work evidence

i. Miss. Kerry Gregory

Miss. Gregory was the Social Worker allocated to investigate the complaint by the McL family. She said that she had visited the family on 20th January 2004. She was told by Mr. McL that when he had collected J from CNPG he 'could tell from the look on his face that something was wrong'. He told her that he had not noticed the mark on J's face until that evening when J stated that he had been hit by SC. In her presence Mr. McL asked J what had happened and he replied that S had hit him because he could not write his name.

She was later asked to investigate the counter-allegation that Mr. McL had hit J. She again called with the family on 29th January 2004. She put the allegation to them and they denied it. She did not again question J because, in her opinion, he was traumatized by the event. She did not know that J had been at a party on the day of the alleged incident.

ii. Mrs. Mary Bond

Mrs. Bond is a very experienced social worker. Since 1999 she had been the link social worker for inspection and monitoring of the CNPG. A number of annual reports prepared by her were included in the documents furnished to the Tribunal. Tribunal had a very lengthy statement from her and also heard substantial oral evidence.

In her statement she detailed eight complaints about the group covering a period from June 1998 to January 2004 (the latter being the McL complaint). In her oral evidence she elaborated upon the various cases. She emphasised that the children involved were very very young. She indicated that there was a concern about the level of complaints regarding the group which would not have been the case with other such groups. She described the level of complaint as 'exceptionally high'. She also said that there was 'a commonality' in the complaints. She said that some of the complainants did not want their details released to the staff because they all lived in a small community. In the course of her investigations she discovered that there had been some complaints made to the staff which had not been reported to the Trust. She was concerned that the group did not maintain a Complaints Register, even after the discussions regarding the McL case. She said that complaints should have been recorded and reported to the Trust even if the Appellants thought that they were ill-founded. Likewise, there was a clear duty to report child protection concerns where a matter arises as in the absence of a report there is a risk of a child suffering harm. They had a duty of care to report the allegations about Mr. McL. It was their duty to report the allegation, not to make any judgment upon it.

Mrs. Bond said that she had been welcomed when she called at the group and that she had witnessed some very good practice there. She was, however, concerned at how harmful was the worst practice in the group. She had indicated satisfaction in

her Annual Reports. She accepted that there were many many parents who were happy with the group. She said that her own experience was that parents will not complain unless they feel that other children are at risk.

Mrs. Bond was concerned at the standard of paperwork in respect of the group. She felt that the paperwork was important for the children and that their needs were met by it as well as by contact time. She felt that the standard of record-keeping was significantly behind that of other playgroups which she inspects.

There was also in Mrs. Bond's evidence discussion of a 'Standard Transition Form' which had been completed in respect of J McL. This form had included some personal and judgmental remarks which were not appropriate to such a form.

iii. Mrs. Helyn Kirkpatrick

Mrs. Kirkpatrick is Chairwoman of the Early Years Panel which carries out a regulatory function on behalf of the Trust and in particular deals with child day care provision. She exhibited to her statement a chronology of the meetings of the Early Years Panel which led to a decision on 11th August 2004 that LM and SC were not 'fit persons' and that notice should be issued to CNPG that they no longer be employed by it.

iv. Mrs. Margaret Gordon

Mrs. Gordon is Director of Primary Care, Elder Care, Nursing and Quality employed by the Trust. She was Chairwoman of the Panel appointed to consider the objection raised by the Board of Directors of CNPG against the Notice of Intention to take a Step, namely, to make it a requirement of registration that they no longer employ either LM or SC. She annexed to her Statement a detailed Minute of the Appeal Panel hearing and also a copy of its Decision Notice.

v. Mrs. Kathleen O'Kane

Mrs. O'Kane is employed by Northern Ireland Pre-school Playgroup Association (NIPPA). As the group was in receipt of funded places through Department of Education it was a requirement that an Early Years Specialist such as herself should be in place to support it.

She said in her Statement that she first visited the group in October 2002 and recorded that she found that, 'The premises required a significant revamp in relation to the layout. Planning and recording of child observations were non-existent, there was lack of physical play, Healthy Eating needs to be addressed, as did their approach to Special Needs.' In December she found junk-art to be 'non-existent'. Her June 2003 visit found that previous issues which had been identified 'continued to be a problem'. She said that when she tried to address issues with LM and SC they 'tried to deflect by getting into other matters.'

C. The Appellants' Evidence

Neither of the Appellants had submitted written statements. Each gave evidence under questioning from Mr. Barr. They also made various statements in the course of their questioning of the other witnesses which supplement what they said in direct evidence.

i. LM

Mrs. M outlined the history of the CNPG with which she had been involved since 1994. In the initial stages there had been much paper-work to be handled. The Annual Reports had showed 'all criteria met'.

She dealt with the McL incident. She said that they had decided not to report the allegation re Mr. McL because she was friendly with the family and knew the difficult year which they had just experienced. On the D case, she was adamant that an extra helper, as suggested by Mrs. Bond, would not have been any help as there was just not enough physical space on the premises to install the necessary additional changing facility for M. She had no problem about a third party being on the premises. Indeed, they frequently had appropriate student help engaged. She had never seen any child having its hair pulled on the premises. She had no idea where the story about the O'H child being locked in the office originated; there are no locks on the door. She could recall two minor complaints which had been made to her but which had not been recorded. She accepted that she should have recorded them. She had made four reports to Social Services but was unhappy at the result.

It was pointed out by Counsel that she had had the opportunity to confront some of the allegations at the meeting arranged by the Trust. LM said that she had been advised by her Solicitor not to attend the meeting.

She said that she had been concerned at the level of complaints made but was not concerned about the children because she knew that they had not been harmed. She accepted that she had made mistakes but denied that she had ever witnessed any child coming to harm.

There was also an issue about alteration of diary entries. LM accepted that she had made alterations and that it was the wrong thing to do.

She disagreed with Mrs. O'Kane's remarks about equipment. She could not have failed to see the equipment as there was nowhere to store it. It would have been hard for her to miss the sandpit.

There was competition with the neighboring C Primary School once that school opened a Reception Class because both the school and the group were attempting to seek the same children for funded places. This competition had not existed in the early days because CNPG did not at that time have funded places.

ii. SC

Mrs. C had started child minding in 1994 and wished to be registered. The Social Worker involved with her at that time was Mrs. Bond.

In her evidence SC dealt with some of the earlier complaints made. The June 1998 incident, when an underage child was found on the premises, was a one-off to help a friend for a day and did not happen again. There was a similar complaint in September 1998 but the alleged incident simply did not occur. In October 1998 there was an allegation of smacking. No child was ever threatened with smacking. Likewise, she categorically denied that a child was hit or threatened in March 1999. On the O'H complaint (June 2000), she was at a loss to explain how the allegation had originated. She categorically denied that it had happened. As regards the C complaint (June 2000), this child had attended their 'F' group which was an informal means for parents and children to get used to the location. The child was very

attached to his Father and stayed with him at the 'F' group. He just did not settle at the play group itself. As regards the D complaint, she also said that there was no problem with having a third party on the premises; the real problem was the lack of space. In respect of the McL complaint, she totally refuted it; it simply did not happen. As for the allegation regarding Mr. McL, she did not report it because they knew the family and did not feel that the child was at risk. SC felt that Miss. Gregory had not fully investigated the allegation because she did not come to them, the Appellants, and put the allegations to them. She accepted that she had had a good relationship with Mrs. McL and that there would have been no reason for Mrs. McL to make an unfounded complaint.

Assessment of the evidence

19. Because there were numerous witnesses and a considerable volume of documentary evidence and the events were spread over a long period of time, Tribunal thinks it helpful to set out initially a chronology of the main relevant events:

8 th Oct.1991	CNPG became registered with the Trust
Sept 1994	LM became leader and SC assistant at CNPG
2 nd June 1998	Anonymous complaint re baby in premises
3 rd June 1998	Social Worker called at CNPG and found year-old child on premises
Oct. 1998	Anonymous complaint
11 th Feb. 1999	1998 Annual Report contains two pages dealing with concerns re complaints
March 1999	Anonymous complaint
June 2000	C complaint
June 2000	O'H complaint
20 th Sept.2000	2000 Annual Inspection Report had addendum re concerns about complaints made by parents. 'Ongoing monitoring to be continued'
2000	Alleged M incidents (not reported until 2004)
2002	D complaint
19 th Jan.2004	Alleged McL incident
9 th Feb.2004	Anonymous complaint
11 th Aug.2004	Early Years Panel decided LM & SC were not fit persons
12 th Aug.2004	Notice of Intention to take a Step under Art.131

29 th Sept.2004	Strategy Meeting: Contacts had been made with parents who had previously expressed concern. LM & SC were both interviewed. Notice of Intention issued.
21 st Jan.2005	Appeals Panel hearing
22 nd Feb.2005	Decision of Appeals Panel to impose restriction on group on 'balance of probability' on grounds of failure to refer child protection concerns, clear evidence of falsification of diary entries, failure to maintain complaints register and unequal treatment of children. Board of CNPG submitted detailed response to allegations made with numerous references attached
5 th May 2005	Trust referred matter to the Department for listing
24 th Aug.2005	Department received detailed response to points made by Trust
20 th June 2005	Provisional listing of the Appellants
8 th Mar.2006	Objections Panel recommended confirmation on DWC and DWVA lists
13 th Mar.2006	Listing confirmed
12 th June 2006	Appeal received by Department.

20. In considering the evidence before it Tribunal bears in mind that the alleged incidents took place several years ago. The recollection of witnesses as to precise words can be fallible after such lapse of time. Nonetheless, the incidents alleged were all of sufficient seriousness as to have made some impact on all concerned.

21. A. The Parents' Evidence

A number of common threads emerged from the evidence of the parents:

- i. They all appeared to be generally satisfied with the care provided by CNPG although feeling that perhaps the attitude of one of the Appellants was not of the warm nature which might reasonably be expected.
- ii. In each case the matters complained of seemed to be isolated incidents.
- iii. There was at least circumstantial evidence that the complaints to the Social Services were prompted by C Primary School.

Tribunal found the evidence of the parents who gave oral evidence convincing. They were straight-forward and consistent in their evidence. They all freely acknowledged that they were mostly very pleased with the standards of care etc. provided by the group. Their complaints related to individual incidents; apart from Mrs. M (where it appears that a similar incident occurred '2 or 3 times', none of them had more than one occurrence to report. The isolation of the incidents in the midst of an otherwise satisfactory record tends to give weight to the genuineness of the allegations. Of course, none of the parents were able to give direct evidence of an actual event, merely to report what the child had said (or in the McL case also the faint mark on the child's face).

The fact that the alleged events were spread over such a period of years also adds to the likely veracity of the claims. There was no evidence of any collusion by the parents over that number of years. It is accepted that there may have been some discussions prompted by the Headmistress of the Primary School in the latter stage of the history. It might be questioned as to how proper it was for the head of one educational establishment to seem to be promoting action against another one. However, so far as the issues before the Tribunal are concerned, this would only be a matter for concern if it appeared that the allegations being promoted by the school were false and there is no suggestion that the school was involved in any such activity.

B. The Social Work Evidence

The evidence of Mrs. Kirkpatrick and of Mrs. Gordon was by way of proving records and was not itself contentious.

Mrs. O'Kane's evidence was challenged by both LM and SC and it is unfortunate that she was not available for examination. In the absence of oral evidence from her Tribunal finds it difficult to determine what weight, if any, to place on her statement.

Miss. Gregory's evidence was a straightforward report of what had happened in her enquiries. Tribunal would have been happier with her evidence had there been some attempt to gently ascertain from J the context of the alleged striking. He had simply said to her that, 'S hit me'. It would not have been too much to ask for her to try to ascertain why and in what circumstances this had happened. She said that she did not do so because the child was 'traumatised'. She later accepted that this was much too strong a word to use; he had merely been upset (which would have been understandable which ever version of the event is accepted).

Mrs. Bond's evidence was accepted as accurate reporting of her observations over the years that she has been dealing with LM and SC. She was frank both with regard to the positive aspects of her observations and to the negative ones. Tribunal found no reason to question the veracity of her observations.

C. The Appellants' Evidence

Throughout the hearing the Appellants were adamant that no child had ever been harmed in the playgroup. Tribunal must accept that this is their honest view at this distance in time. It also accepts that they ran the group with the best intentions and put much of their respective lives into it. There was indeed much evidence of good practice in the group over the years. Tribunal noted the amount of time spent fund-raising for the facility. Perhaps it would have been better for all if the Committee had accepted more responsibility for this and allowed LM and SC more time to deal with necessary documentation for the group.

There is clear conflict between the evidence of the parents and that of the Appellants. Applying the test cited at paragraph 16 above, Tribunal finds that it was more likely than not that at least some of the events complained of did occur. There was no attempt to explain why the parents should have fabricated the stories which covered a period of several years. Indeed, the Appellants frankly admitted that they could not think of any reason why the stories should have been fabricated. The parents had told Tribunal that, apart from the individual incidents, they were very pleased with the group. This would, in Tribunal's view, add weight to the genuineness of the isolated complaints. Likewise, the social work evidence showed a considerable degree of satisfaction with the group but an ongoing concern that certain aspects were not

being addressed. Tribunal noted the comments regarding the burden of record-keeping. However, in the current climate it is vital for all child-care professionals to maintain proper records. This is as much for their own protection as for the protection of the children in their care. While the Appellants stated that they had regular contact with the parents when the children were being collected from the group there does seem to have been a lack of formal reporting which might have been expected in such a group. There was also some evidence that some of the children had an ongoing apprehension resulting from the alleged experiences at the group (for example, the evidence of Mrs. O'H). With regard to the McL case, it is noted that there appears to be a degree of selectivity in the Appellants' approach to J's statements. They accept his statement that his father hit him and also that his father would sometimes 'give me a kick up the arse' while at the same time rejecting his statement that SC hit him.

22. There was a very considerable amount of evidence before Tribunal and it is not necessary to make findings of fact in respect of all the allegations. The weight of the evidence, as summarized above, leaves Tribunal no option but to conclude that there was misconduct as alleged, that such misconduct harmed or placed at risk of harm a child or children and that the Appellants are unsuitable to work with children.

The whole procedure was triggered by the McL incident and, crucially, Tribunal finds that whatever version is accepted there has been misconduct which harmed a child or placed a child at risk of harm. The Appellants frankly admitted that they had been at fault in not reporting the allegation that Mr. McL had struck his son. It was their considered judgment not to report it. Unfortunately, Tribunal must find that such judgment was flawed.

So far as the DWVA List is concerned, there was of course no suggestion that any vulnerable adult had been placed at risk. However, the law does not require such evidence in circumstances where a Tribunal has found that a child was placed at risk. (The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 sections 42(3) and 40(5)). It is sufficient to satisfy the test in s.42(3) (set out at paragraph 9 of this Decision) that a person is unsuitable to work with vulnerable adults by virtue of misconduct which placed a child at risk of harm. This Tribunal follows the view of the Care Standards Tribunal in Great Britain that public confidence in the provision of services to vulnerable adults would be undermined if it became known that the Appellants (or either of them) were employed to work with vulnerable adults, given the fact that they were prohibited from working with children.

Decision

It is the unanimous decision of the Tribunal that Appellants' appeals be disallowed.

Appeals disallowed.

J.A.Kenneth Irvine (Chairman)

8th March 2007