

APPEAL NO: NISCC/1/2008

IN THE CARE TRIBUNAL

MA

v

NORTHERN IRELAND SOCIAL CARE COUNCIL

Before:

Harry Black (Chairman)

Monica Culbert

Maureen Ferris

Hearing Dates: 23rd and 24th February 2009

1. The appellant appeals under Section 15 of the Health and Personal Social Services Act (NI) 2001 against refusal of the Northern Ireland Social Care Council (the respondent) to register her as a social care worker on the register maintained under Section 3(1) of the Act.
2. The appellant represented by Mr Ferguson, Union Representative and Ms Donaghy from the Directorate of Legal Services represented the Respondent.
3. Prior to the commencement of the hearing the Tribunal made a Restricted reporting order under Regulation 19(1) of the Care Tribunal Regulations (NI) 2005 to protect the identities of the appellant, witnesses and the vulnerable adults referred to in the proceedings.
4. The Law: The Northern Ireland Social Care Council was established by virtue of the Health and Personal Social Services Act (NI) 2001 with the responsibility for promoting high standards of conduct and practice and training among social care workers. By section 3(1) of the Act it is required to maintain a register of social workers and social care workers. Section 4(1) of the Act provides that an application for registration must be made to the Council in accordance with the relevant rules. These are set out in the NISCC (Registration) Rules 2007.
5. Rule 4(9)(b) of the 2007 Rules state that the Council shall not grant an application for registration unless it is satisfied as to the applicant's good character, conduct, competence and health (including physical and mental fitness to perform the work of persons registered in the part of the register in which registration is sought).
6. Section 9 of the 2001 Act provides for preparation by the Council of Codes of Practice laying down standards of conduct and practice expected of social care workers and a requirement for the code to be taken into

account by the Council in making a decision and also in any proceedings on an appeal against such a decision.

7. Rule 15(1) of the 2007 Rules requires the Council to refer to the Registration Committee any application for registration which it is not minded to grant.
8. Section 15 of the 2001 Act provides the right of appeal to the Care Tribunal against a decision to refuse an application for registration and section 15(3) states that the Tribunal may confirm the decision or direct that it shall not have effect. Section 15(4) enables the Tribunal to make decisions with regard to conditions.
9. Burden of Proof: The tribunal follows the general principles adopted by the Care Standards Tribunal in England and the onus is on the Appellant (or the Applicant before the Registration Committee) to demonstrate that he or she is a person who meets the requirements of good character, conduct, competence and health as set out in Rule 4(9)(b) of the 2007 rules. The standard of proof is the civil standard, that is, the balance of probability.
10. The Council had not minded to grant the appellant's application and referred the matter to the Registration Committee which sat on 31st July 2008. The Registration Committee considered the case and by decision dated 1st August 2008 refused the application for registration, not being satisfied as to the appellant's good character, conduct and competence. The appellant appealed that decision.
11. The Respondent called four witnesses at the hearing. Three of the witnesses had been former work colleagues of the appellant who gave evidence about a number of incidents at the work premises which eventually led to the appellant's dismissal. The respondent relied on this evidence in support of their submission that the appellant posed a risk to service users and therefore the Council could not be satisfied as regards her character, conduct and competence. The fourth witness was a Professional Adviser employed by the Northern Ireland Social Care Council who investigated and compiled a Report to the Registration Committee. The Tribunal has also sight of the various documentation including correspondence between the parties, notes and records relating to the disciplinary process. The Code of Practice was also available. The appellant gave evidence in person. No witnesses were called on her behalf. Written references were available.
12. The appellant MA had been working as a social care worker from early 2006 and in March 2007 she was employed in a Residential Unit in Belfast which catered for about 14 adults who had very complex care needs. The Tribunal heard evidence from SF, a Residential Worker who had been in charge of the care home, about an incident which occurred on 15/16th March 2007. One particular resident was so profoundly disabled that she required to be fed and received medication through a tube inserted into her stomach. This was known as a peg tube feed and was operated by a

machine which required to be switched on and off at times to facilitate administering of food, water, medication etc. The resident and machine required constant monitoring to ensure that the correct amount was dispensed and that no blockages occurred. SF stated in evidence that she had no concerns when going off shift at around 10.00 pm on 15th March 2007 when she handed over to the appellant who was beginning the night duty. SF slept on the premises that night, as was part of her duty, and recommenced work at 7.30 am the next morning. She stated that she discovered that the machine was switched off and consequently over half the food (about 550ml.) was still in the container, most of which should have been administered during the night. If there had been any problems she would have expected to have been woken by the appellant or informed of any problems at handover the next morning. She stated that there was no conversation with the appellant the next morning as she, (the appellant), had already left the building. SF was the senior member of staff on duty and she duly contacted her manager about the incident.

13. In evidence the appellant did accept that there had been a problem with the peg tube feed. She stated that she had checked it at about 3.00 am, it was not functioning properly and it required adjustment and thereafter it was working normally. In correspondence she had referred to turning on the feed but later discovered that the clip had been left closed. In evidence she suggested that the resident may have been sick and accordingly the feed may not have been dispensed as normal. The appellant's evidence was vague about her departure from the premises on that morning. She claimed that she did speak to one of the other staff but accepted that she did not speak to SF or report any problem with the peg tube feed. She said that SF was not there when she left at about 7.45 am.
14. The Tribunal also heard evidence from AW who began her shift on the morning of 16th March 07, shortly after the departure of the appellant. She stated that she was tasked to a particular resident PI and had noticed that he was wet, his bed was stained with urine and it was her assessment that the urine would have been present for a few hours. It would have been the responsibility of MA to make regular checks on the residents and to attend promptly to such incidents. She stated that the daily notes provided by MA did not disclose any problems and she (AW) recorded the matter in the daily notes and subsequently reported the matter to senior staff. MA denied the allegations and stated that she had made regular checks and did not leave any residents in such a state.
15. The third witness, JK, described an incident at other premises on 14/15th May 07 and stated that she had concerns about a particular resident MM while she was on duty and sleeping over at the care home. She said that she had impressed on MA at handover about the necessity of waking her if MM's behaviour became challenging. JK said that she got up during the night to check on MM and during these checks she did not come across MA until she went into the sitting room at about 4.00 am where she found MA, the appellant, seated on a chair with her head rested back and her eyes were closed. She said that MA was startled, but she could not be

sure if MA had been sleeping. JK stated that she documented the incident in the daily notes and reported the matter to the manager later that morning. MA stated that nothing untoward had occurred during the night. She denied that she had been sleeping but accepted that JK had startled her to an extent when she appeared in the room.

16. We did take into account that the incident complained of occurred some time ago and that the memory of witnesses may have been affected given the passage of time. Indeed JK for example, was honest to admit that she couldn't remember much about the lighting when she claims to have seen MA with her eyes closed. One major concern for the Tribunal however was that witnesses claimed to have documented their concerns in the daily notes yet it was revealed during the course of the hearing that these notes were no longer available. The Respondent was unable to produce any documentation containing entries made at the time detailing the alleged failings by MA during the course of her duties. In the current climate it is vitally important for both employees and employers to maintain proper records. This is as much for their own protection as for the individuals in their care. There are likely to be few employer/employee settings which currently do not have a daily incident book of some form to record matters of any particular significance. The maintenance and production of appropriate records goes a long way to help resolve issues of fact and dispute which may arise at a later stage and can also aid memory recollection of witnesses where there has been a significant passage of time.
17. We do not question the veracity of the evidence of AW or JK but it is impossible for us to reach any firm conclusion as to how long PI, in March 07, had endured his wet state from the time that he was previously checked and we cannot be satisfied, on the evidence, that MA was asleep or had been neglecting her duties in the May 07 incident. The assessment by AW that he must have been wet for a few hours is in reality an assessment and no more. The significance of the incident was allegedly entered in the daily notes but we have not had an opportunity to inspect these notes. Similarly we have not seen the daily notes in which JK recorded her concerns about the May 07 incident and we also take account of the fact that AW did accept in evidence that she did not challenge or complain to MA about her alleged conduct at that particular time. For these reasons and taking into account the appellant's denials, we find that the evidence in relation to these incidents, as presented by the Respondent, is not so compelling whereby an adverse decision could be reached on the appellant's character, conduct or competence.
18. As regards the incident concerning the peg tube feed we reach a different conclusion. The resident in question was profoundly disabled. She required the most careful attention and the equipment providing essential nutrition required the utmost supervision and monitoring. We accept the evidence of the witness SF in full. She has been a Residential Worker for 8 years and was the senior member of staff on duty at the time in question. Her evidence, although not supported by the daily notes which we have

previously referred to, finds some support in the appellant's own admission of a problem with the peg tube feed at the time and her admission that she did not report it at handover the next morning. The appellant in our view, failed in her duty to report the problem to SF, the senior member. We find, on the evidence that MA did not monitor and attend to the peg tube feed as would have been expected of her. On balance we doubt very much if the appellant spoke to any member of staff before she left the premises. The consequences of her actions posed an extremely high risk to the welfare of the resident.

19. In the light of the findings we have made in respect of the matters set out above and given the standards of professional conduct and practice required of social care workers as they go about their daily work, as set out in the Code of Practice, the appellant has failed to satisfy us that she can meet the requirements set out in Rule 4(9)(b) for registration as a social care worker. In our view the appellant has failed to demonstrate sufficient insight or understanding of the standards to be expected of a social care worker and given the shortcomings revealed in evidence as regards her conduct and competence we conclude that she would not be able to inspire the necessary public trust.

It is the unanimous decision that the appeal is dismissed and the decision of the Council is confirmed.

HARRY BLACK (Chairman)
MONICA CULBERT
MAUREEN FERRIS

Dated 6th March 2009