

IN THE CARE TRIBUNAL:

NISCC/1/2011

Between:

RODERICK McCREESH

Appellant

And

NORTHERN IRELAND SOCIAL CARE COUNCIL

Respondent

Before: Harry Black (Chairman), Agnes Lunney, Harry Murray.

Hearing held at the Tribunal Hearing Centre, Bedford House, Belfast, on 2<sup>nd</sup> June 2011.

1. The appellant appeals under Section 15 of the Health and Personal Social Services Act (Northern Ireland) 2001 against the decision of the Conduct Committee of the Northern Ireland Social Care Council of 11<sup>th</sup> Feb 2011 imposing a suspension order upon his registration as a social worker for a period of eighteen months.
2. The appellant was represented by Mr. A. Travers, Solicitor and the Respondent was represented by Ms. D. Crawford, Solicitor.
3. Four counts of misconduct had been brought against the appellant relating to his employment as a social worker with the Southern Health & Social Care Trust namely that:
  - (1) between 10 August 2005 and 26 January 2006 he failed to deal with a referral concerning child S and put forward a file for closure without full investigation;
  - (2) between 01 August 2006 and 13 October 2006 he failed to make an initial assessment regarding child T in accordance with the Trust's Children in Need Policy.

- (3) between 31 July 2006 and 31 October 2006 he failed to deal with a referral concerning Mr. P within an appropriate time period.
  - (4) On 19 June 2006 he took a course of action concerning child A contrary to a specific direction from his line manager.
4. At the Conduct Committee hearing the appellant admitted facts relating to the fourth count but denied that he had been guilty of misconduct in any of the matters. The Committee found the appellant guilty of misconduct on all four counts, having determined that he was in breach of Sections 5.7, 5.8 and 6.1 of the NISCC Code of Practice for Social Care Workers.
5. Misconduct is defined in the Northern Ireland Social Care Council (Conduct) Rules 2007 as **conduct which calls into question the suitability of a Registrant to remain on the Register.**
6. Upon a finding of misconduct the available sanctions as laid down in paragraph 25 of Schedule 2 of the 2007 Rules are:
  - (1) admonishment
  - (2) a Suspension Order
  - (3) a Removal Order
  - (4) power to revoke an Interim Suspension Order.
7. In deciding what sanction is to be imposed the Committee is obliged to take into account:
  - (a) the seriousness of the Registrant's misconduct;
  - (b) the protection of the public;
  - (c) the public interest in maintaining confidence in social care services;
  - (d) the issue of proportionality.
8. By virtue of Paragraph 25 (1) (b) of the 2007 Rules the maximum term of a Suspension Order is limited to two years. In the present case the Committee imposed a Suspension order for a term of 18 months.
9. **THE LAW:** The right to appeal to the Care Tribunal is to be found in S 15 of the Health and Personal Social Services Act (Northern

Ireland) 2001. S 15(3) states that **On an appeal against a decision, the Care Tribunal may confirm the decision or direct that it shall not have effect.** S 15(4) provides power to vary conditions and make directions regarding such conditions. S 15(4), in the view of this Panel, was not relevant to the present case.

10. It had been previously indicated at the Preliminary Hearing that the appellant no longer contested the Committee's findings of misconduct. The appellant's Solicitor Mr. Travers confirmed that position at the outset of this hearing and informed the Panel that the thrust of the appeal was entirely against the sanction ie. the 18 month Suspension Order.
11. The Panel had at its disposal a full written transcript of the hearing before the Conduct Committee at which the appellant was represented by counsel. This was included in the Tribunal bundle. The written decision with full reasons was also available. Ms. Crawford, on behalf of the Respondent, fully outlined the background to the case and explained in detail how the Committee had arrived at its decision. She submitted that all relevant matters had been properly considered and given the specific facts and circumstances of the case a Suspension Order was the appropriate sanction and an 18 month term was not disproportionate. She referred to, among other things, the seriousness of the misconduct, the risk of harm to children, the protection of the public, the reputation of the profession and the impact of the appellant's behaviour before the Conduct Committee in impugning the integrity of two superiors.
12. Mr. Travers made submissions on behalf of the appellant challenging the severity of the sanction. He stated that 18 months went beyond what was reasonably required in the case and argued that the lesser sanction of admonishment would have been a more appropriate sanction. In particular he drew the Panel's attention to testimonials and character references submitted on behalf of the appellant and also that the subject offences giving rise to the findings of misconduct occurred in 2005 and 2006. The appellant had continued in Social Work employment until 2009 and there was no previous record of disciplinary proceedings.

13. By virtue of Reg. 23(2) of the Care Tribunal Regulations (Northern Ireland) 2005 the appellant exercised his right to give evidence at the hearing. He gave the Tribunal details of his previous work in Social Care settings. He said that he valued being a Social Worker, he accepted that he had made mistakes but would not have intentionally put anyone at risk. He accepted responsibility for his shortcomings within a system which he said had its faults and he described the impact of the sanction on his professional and personal life.
14. It was common ground between the parties that no child had suffered actual harm as the result of the appellant's misconduct. However that was entirely a matter of good fortune. Failing to act more diligently with referrals and making initial assessments in cases where there were child protection issues is undoubtedly a serious breach of professional responsibility, contrary to accepted practice. The protection of the public is compromised and the public interest in maintaining confidence in social care services is adversely affected. Taking a course of action contrary to specific directions from a line manager has no place in any employment setting regardless of any crisis of conscience which may have been troubling the appellant. This Tribunal had no difficulty in determining the gravity of the misconduct in question. The appellant ought to have known that what he was doing was contrary to the code having application to his profession and was likely to call into question his suitability to remain on the Register.
15. The Panel also had concerns regarding the timing and degree of recognition by the appellant that his actions constituted misconduct and that it had potential to harm. Acceptance of the fact that he bore primary and continuing responsibility for his failings and shortcomings at an earlier stage may have cast him in a more favourable light.
16. Nevertheless, other matters require consideration and appropriate comment. The evidence in this case reveals serious question marks over the apparent structure and level of supervision within the work setting at the appropriate time. We also find that the process and system of management and monitoring of cases which was then in place left a lot to be desired. There were staff shortages at holiday times and the staff who were on duty were likely to have been

working under significant pressure to cope with the workload. It is clear from the documentation that the appellant did voice his concerns about his ability to cope with the work load and it is also clear in the documentation that management accepted, to a certain degree, that there were additional pressures on the work team at the relevant time. The subsequent restructuring of the entire process, the transition from Child Protection Team with a change of location and focus to the Initial Assessment Team was clearly a necessary transformation.

17. The shortcomings and failings in the overall system and the question marks over the adequacy of the supervision does not excuse the appellant's misconduct but this Tribunal does place a significant amount of weight on these issues in determining the appropriateness of the sanction in the case.
  
18. We also place weight on the fact that a considerable period of time has elapsed since the misconduct. It is accepted that a process can take a very long time to finalise but in this case we note that well over 4 years has elapsed since the misconduct occurred and when the sanction was imposed in Feb. 2011. In the leading case of **Bolton v Law Society (1994) 1 W.L.R. 512, CA** it was held by the then Master of the Rolls that where professional discipline is in issue, there are two principal purposes to the imposition of a sanction : first, to ensure that the offender does not have the opportunity to repeat the offences and secondly, and the most fundamental of all, to maintain the reputation of the profession. In this case there is of course the need to send out the right signals to the profession and to the public and to mark the seriousness of the misconduct but the imposition of a suspension order well over 4 years after the subject events does not, in our view, achieve the purpose of preventing an opportunity to repeat offences given the facts of this case disclose that the appellant continued to work as a Social Worker, and for a period a Social Work Manager, until 2009. The evidence in this case, which we rely on, does not disclose proof of any repetition of misconduct in the intervening period. We also determine that the testimonials which have been provided to the Tribunal can be afforded appropriate weight and do not indicate any immediate or ongoing risk posed by the appellant.

19. The Panel members considered all the various aspects of the case. We concluded that given the seriousness of the misconduct a suspension order was not inappropriate especially from the point of view of considering the protection of the public and maintaining public confidence in the profession and social care services generally. However the issue which troubled the members was the length of the suspension. The maximum term permissible is two years and at 18 months this suspension is at the upper end of the scale. Collectively the members felt that for a Social Worker with 19 years experience, with no evidence before us of any previous disciplinary record and taking into account the matters as set out in paragraphs 16 to 18 above, a suspension order for 18 months is punitive and disproportionate in the circumstances. The members were agreed that on the facts and circumstances of this case a suspension order at the lower end of the scale would have been more appropriate.
20. However, our decision making powers are constrained by Section 15(3) of the 2001 Act. We either confirm the original decision or direct that it shall not have effect. In other words we either allow the appeal or dismiss it. We cannot replace the original order by imposing a lesser suspension period or imposing a different sanction. This is an unsatisfactory position and was the dilemma faced by the First Tier Tribunal in the English case of **S C-W (2010) UKFTT 600 (HESC)** where the equivalent legislation is found in Section 68 of the Care Standards Act.
21. Such was the dilemma posed by the constraints of Section 15(3) of the 2001 Act that one member, in the minority, felt that a suspension was proper in the case and while it was set at the higher end of the scale by the Conduct Committee it would not be appropriate to allow the appeal, as this would result in the original decision having no real effect. The majority however decided to adopt the approach taken by the English tribunal in **S C-W** where, in allowing the appeal, account was taken of the fact that the appellant had already suffered a sanction by enduring a period of suspension prior to the appeal hearing. Accordingly the majority considered that in all the circumstances the decision to suspend for 18 months was disproportionate and in view of the fact that the appellant has presently been suspended for a period in excess of 4 months, the original decision could not be allowed to stand.

22. By a majority decision the appeal is allowed and a direction is given that the original decision shall not have effect.

HARRY BLACK

CHAIRMAN  
CARE TRIBUNAL

**Date decision recorded in register and issued to parties:**

*24 June 2011*