

APPEAL NO: NISCC/1/2009

IN THE CARE TRIBUNAL

DS

v.

NORTHERN IRELAND SOCIAL CARE COUNCIL

**Before: J. A. Kenneth Irvine
(Chairman)
Paul Archer
Linda Eagleson**

Hearing Date: 10th November 2009.

DECISION

APPLICATION

1. The Appellant appealed under Section 15 of the Health and Personal Social Services Act (N.I.) 2001 against refusal of the Northern Ireland Social Care Council (the Respondent) to register him as a social care worker on the register maintained under Section 3(1) of the Act.
2. The Appellant was represented by Mr. Thomas Brownlee, NIPSA Union Representative. The Respondent was represented by Ms. Lisa Donaghy from the Directorate of Legal Services.
3. At the Directions Hearing held on 24th August 2009 the Tribunal made a Restricted Reporting Order under Regulation 19(1) of the Care Tribunal Regulations (N.I.) 2005. That Order remains in force.

THE LAW

4. The Northern Ireland Social Care Council (referred to throughout this Decision as 'NISCC') was established under the Health and Personal Social Services Act (N.I.) 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 2008.

5. Rule 4(9)(b) of the 2008 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. Such Code of Practice was issued by NISCC in September 2002.
7. Rule 15(1) of the 2008 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. The Tribunal follows the general principles adopted by the Care Standards Tribunal in Great Britain 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 2008 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 30th March 2009. The Registration Committee considered the case and by decision dated 1st April 2009 refused the application for registration, not being satisfied as to the Appellant's good character, conduct and competence. The Appellant appealed that decision.

THE EVIDENCE

11. The Respondent called two witnesses at the hearing. The Tribunal had also sight of the various documentation including correspondence, notes and records relating to the disciplinary process. The Appellant gave evidence in person. No witnesses were called on his behalf but a number of written testimonials were furnished.
12. Appellant, through his Representative, did not question the facts of the case but relied on an argument of mitigation.
13. The respondent had lodged two witness statements, one by Denise Rooney, Conduct Officer with the Northern Ireland Social Care Council, and the other by CM, the Manager of the care home at which Appellant had been employed for some years prior to the introduction of compulsory registration for Social Workers and Social Care Workers. Both witnesses adopted their statements as evidence. Ms. Rooney also was questioned by the Tribunal with regard to a number of points arising.

THE FACTS

14. As stated at paragraph 12, there was no dispute as to the facts of the case. It is helpful to set them out in sequence:
 - a. 14th November 2005: DS was involved in an incident which led to subsequent Court proceedings.
 - b. 10th February 2006: He was interviewed by Police Service of Northern Ireland and told that a report would be submitted to the Public Prosecution Service.
 - c. 20th November 2006: He completed and signed an application to register as a social care worker. That form specifically asks in Section 7, 'Do you have a formal criminal charge pending in the UK, or any other country?' Appellant did not reply to that question. The application form also contains an undertaking by the applicant to 'tell the NISCC as soon as reasonably practicable about: ... any events that call into question my good character such as criminal convictions, criminal proceedings or formal cautions.'
 - d. 10th January 2007: The application was received by NISCC.
 - e. 13th February 2007: He was convicted at Belfast Magistrates Court of an offence of intentionally engaging in a sexual activity contrary to Section 71 of the Sexual Offences Act 2003 and fined £250.
 - f. 23rd November 2007: NISCC, having obtained a report from

- a Police check enquiry, wrote to the Appellant seeking verification that he was the person named in the Criminal Records Check.
- g. 3rd December 2007: He so confirmed.
 - h. 19th December 2007: NISCC wrote to him asking, inter alia, whether he had informed his employer of the conviction, to complete the missing answers on the application form and to explain why he did not disclose an offence pending when he originally completed the form.
 - i. 3rd March 2008: NISCC wrote to him asking him to respond to its letter of 19th December 2007 without delay.
 - j. 14th March 2008: He telephoned to discuss his response and was advised to let his employer know about the conviction.
 - k. 21st March 2008: NISCC received correspondence from Appellant with completed form and covering note giving his explanation for the delay and for the failure to disclose as being embarrassment. He also said, 'I have also spoken informally to management and as advised I am forwarding a copy of this letter to my line management.' This was not correct.
 - l. 28th March 2008: He was asked by CM about progress with his registration and told her that the letters had gone to the wrong address and that he had had to resubmit some information for which they had asked. This was not correct.
 - m. 28th April 2008: Ms. Rooney asked him to confirm in writing that he had given the necessary information to his manager and to indicate the name of the manager involved.
 - n. 6th May 2008: Appellant wrote to the Director of Daycare Services and Learning Disability Services of the Belfast Health and Social Care Trust enclosing details of his conviction and stating that a duplicate copy had been submitted to NISCC. This was not correct as the copy letter sent was not a true copy and different in a material element.
 - o. The Trust then instigated disciplinary proceedings and the NISCC dealt with the application in its statutory manner.

15. Mr. Brownlee argued that Appellant had already been punished for his offence and should not be punished again. He asked Tribunal to consider the issue of proportionality and also to look at mitigating circumstances. He referred Tribunal to the Decision of the Care Standards Tribunal in the case of *Tricia Forbes v. General Social Care Council* [2008] 1267.SW. Tribunal gave consideration to that Decision but concluded that the circumstances there were sufficiently different to render it of limited usefulness in the present case. Mr. Brownlee said that the nature of the events was unusual and that Appellant had shown genuine

remorse. The testimonials submitted indicated that he had always given of his best at work and wished to have a second chance. Tribunal considered the testimonials but felt that they were of limited assistance as the status of many of the persons making them was unclear and also as the points made by them were not really relevant to the issue before Tribunal.

16. Appellant addressed Tribunal (with consent, as he had not lodged a Witness Statement). He expressed his sorrow and his desire to work again in the care field. He realized that with hindsight he should have acted differently. Under cross-examination by Ms. Donaghy he acknowledged that some of the referees were aware of his offence but some were not. He accepted that his conduct was not becoming of a social worker but said that he was not thinking rationally. He concluded that the offence was not likely to happen again.
17. This Tribunal accepts the Decisions of the Care Standards Tribunal in Great Britain as giving valuable guidance and would only deviate from the principals established by it if there were very good reason to do so.

It drew helpful guidance from a number of CST Decisions, in particular:

CR v. General Social Care Council [2006] 0626.SW:

The conduct of an Applicant in relation to the Application process is clearly a matter that can be taken into account when determining whether the Applicant has demonstrated that she is of good character.

The information provided by an Applicant is fundamental to the process and the importance of its accuracy is set out in the Application Form. The Appellant knew of the significance of the information she set out in her Application.

The Appellant knew that she had a number of criminal convictions. She chose to disclose only one when she first submitted her Application. Her disclosure was not qualified in any way. When the Application was returned to her and the details of the conviction were sought she added just two further convictions to the information she provided. The dates were inaccurate and no details were provided. Again her disclosure was not qualified in any way. The Application was resubmitted with that disclosure which was, to the knowledge of the Appellant, incomplete. When the Application was again returned there was a meeting with her managers to clarify the position. At that meeting she confirmed there were the three convictions disclosed on the Application and it was resubmitted with that disclosure alone. The Appellant knew that was not full and frank disclosure.

We are satisfied that the Appellant's conduct in relation to her Application was reprehensible and relevant to the question whether she discharged the obligation to demonstrate that she was a person of good character. It was open to the Registration Committee to find that material non disclosure occurring in this way on a matter of such significance resulted in a failure to discharge the onus of demonstrating good character and with that conclusion we agree.

Glenford Skervin v. General Social Care Council [2007] 1076.SW:

In many respects the Appellant has acknowledged his mistakes, but he seems unable to understand that he has demonstrated a pattern of behaviour both in his actions and in his responses to the consequences of them. Whatever his remorse, that pattern has continued to some extent into the appeal process itself. There is no doubt that in the face of unfolding events, he has been increasingly desperate to reclaim an opportunity to prove himself, but this has also led him to seek to blame external factors for his predicament. Remorse together with the assurance as to future conduct are not in themselves sufficient to re-establish confidence in the Appellant's professionalism or to overcome the serious issues of integrity and competence raised in this case

In his past and present conduct, the Appellant has failed to convince us that he understands the crucial importance of maintaining the standards set out in the Code of Practice. He has also failed to persuade us of his integrity, honesty and good conduct and we have no alternative but to conclude that he has not demonstrated he is of sufficiently good character to justify directing that the original decision of the Registration Committee should have no effect.

18. In the light of the findings of fact 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 Tribunal that he can meet the requirements set out in Rule 4(9)(b) for registration as a social care worker. In Tribunal's 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 his conduct it concludes that he would not be able to inspire the necessary public trust. Tribunal was concerned that not only had he failed to disclose the vital information at the outset, he persisted in denying what had happened and on numerous occasions in the course of the procedure over a prolonged period he gave untrue statements (some of which have been noted in the recital of the facts in paragraph 14). Tribunal was particularly disturbed by the fact that in reply to the reminder sent by NISCC to the Appellant on 3rd March 2008 and received by NISCC on 21st March the Appellant states that he had informally informed his management which was

untrue as his management did not know before receiving a letter from him dated 6th May 2008. In this letter the Appellant stated 'A duplicate of this letter has been forwarded to NISCC'. This is untrue because the letter of 6th May materially omits the reference to informing management. This did not appear to be the action of someone 'hiding his head in the sand' as claimed. He had many opportunities to redeem the situation but his pattern of behaviour only succeeded in making the situation worse and giving serious concern as to his fitness under the Regulations. In his statement to the Tribunal Appellant said that he was sorry for what he had done. Tribunal was not convinced that this amounted to remorse for his actions but rather regret for the consequences.

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

J.A. Kenneth Irvine (Chairman)
Paul Archer
Linda Eagleson

Dated 13th November 2009.