

DECISION OF THE CARE TRIBUNAL

The Health and Social Services Act (Northern Ireland) 2001(Section 15)

BETWEEN

APPELLANT

Tracey Andrews

AND

RESPONDENT

Northern Ireland Social Care Council

Tribunal Panel:

Chairman: Harry Black
Lay Members: Monica Culbert
Eileen Thomson

Date: 5th August 2014

Venue: Tribunals Hearing Centre, Bedford House, Bedford Street, Belfast,

Decision: The appeal is **allowed**

Reasons:

1. The appellant appeals under section 15 of the Health and Personal Social Services Act (N.I.) 2001 against the decision of the Registration Committee of the Northern Ireland Social Care Council dated 24th March 2014 refusing to register her.
2. The appellant appeared in person and was not legally represented. She was assisted and accompanied by Jackie McMaster of NIACRO. The respondent was represented by Mr. Mark Scott, Solicitor of the Directorate of Legal Services.
3. Section 3(1) of the Health and Personal Social Services Act (N.I.) 2001 requires the respondent to maintain a register of social workers and social care workers. Section 4(1) of the Act states that an application for registration must be made to the Council in accordance with the relevant rules which, in this case, are the NISCC (Registration) Rules 2013.

4. Rule 4(9)(b) of the 2013 Rules states 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)'.
5. Section 9 of the 2001 Act provides for the preparation by the Council of Codes of Practice laying down standards of code and practice expected of social care workers and a requirement for the Code to be taken into account by the Council making a decision and also in any proceedings on an appeal against such a decision.
6. Rule 15(1)(a) of the NISCC (Registration) Rules 2013 require the Council to refer to the Registration Committee any application for registration which it is not minded to grant.
7. Section 15(2) of the 2001 Act provides for the right of appeal to the Care Tribunal against a decision refusing an application for registration and section 15(3) states that the Tribunal may confirm the decision or direct that it shall not have effect.
8. The Council had not been minded to grant the appellant's application for registration and referred the matter to the Registration Committee which sat on 21st March 2014 and by decision dated 24th March 2014 refused the application, not being satisfied as to the appellant's good character or conduct. The appellant did not attend the hearing before the Registration Committee. The decision was made in her absence and she subsequently appealed the decision.
9. The main issue for the Council and subsequently the Registration Committee centred on the appellant's criminal record and also the extent of the information which she provided on the application form relating to the record. She had been working as a Care Assistant and applied for registration towards the end of 2013. Under section 7 of the form in answer to a question about criminal convictions she entered the following details: **Details of conviction:** *Driving offence. Date of conviction: 01/12/2010. Court where you were convicted: Belfast. Sanction applied: Banned 1 year.* On further enquiry from the Council she was asked for further details of the circumstances of the offence and replied on the relevant form: *1 year bann (sic). My car had been parked at a friends neighbours driveway and she had asked me to move it, a few feet after a few drinks + police were involved.*
10. The reality of the situation however was somewhat different. Information obtained from the Police and held by the Council revealed that the appellant had a number of Court

appearances and convictions for offences committed between 14th February 2010 and 16th October 2010. The appellant does not dispute the convictions which are fully documented in the papers. In summary she was in Court on 4 occasions, beginning on 18th March 2010 for driving with excess alcohol for which she was fined £250 and banned from driving for 1 year. She then committed further offences on 23rd May 2010 of driving while disqualified and no insurance. She committed a similar offence of driving while disqualified and no insurance on 8th July 2010 and again on 16th October 2010 she committed further offences of driving while disqualified and no insurance. In total she was in Court on 4 occasions, namely 18th March 2010, 9th December 2010, 21st March 2011 and finally on 19th September 2011. There were various sanctions imposed by the Courts including fines, driving disqualifications, probation, and suspended sentences of imprisonment. On her last appearance (19th September 2011) she was disqualified from driving for 15 months and the sentence of imprisonment was suspended for a period of 18 months.

11. In the absence of the appellant from the hearing in March 2014 the Registration Committee was not satisfied on the evidence before it that the applicant was of good character and conduct. They were influenced by the type and number of criminal convictions and the period of time over which they were committed. They concluded that the appellant had displayed a blatant disregard for the rule of law and that she was not a suitable person to work in social care. The application for registration was refused.
12. The Tribunal had first to deal with an issue concerning service of notification to the appellant regarding the date of the Registration Committee hearing. The Respondent called one witness Miss Cumberland, the Committee Manager who told the Tribunal that notification had been sent by special delivery. The appellant accepted in evidence that she had received notification from Royal Mail that an item had been sent to her house and required collection at the depot but she was unaware as to its origin and had failed to obtain it due to being away from home attending to family members who were unwell at the time. It was clear to the Tribunal that the appropriate service had been effected in accordance with the relevant rules, no real issue arose on this point.
13. The representative for the Respondent maintained the position that the Council had concerns about the appellant's conduct and character due to her criminal record and submitted that the decision of the Registration Committee should be upheld.
14. The Appellant gave evidence on her own behalf. She told the Tribunal that she was now 35 years old and had been working as a Care assistant for the last 7 years. She described

how she had been working in Nursing Homes looking after the elderly and that she had also worked in the community and in hostels. Presently she was not working because of the refusal of registration.

15. She fully accepted her criminal record and described to the Tribunal that at the time of the offences she was experiencing mental turmoil due to abuse from her then partner. She was no longer with that partner but was now in a stable relationship and continued to live with her 15 year old son. She had re-sat and passed her driving test in September 2013.
16. As regards the information which she provided on the application form she said that she had put down the details of the first offence to the best of her memory as she did not have any official documentation about the specific offences. She said that her employer was aware of her criminal convictions and had all the details, as she was required to have a Police check each year. She further stated that it was her understanding that NISCC would have access to the precise record having obtained details from the Police. She was adamant that she did not deliberately withhold relevant information.
17. Kirsty Thornton, a careers mentor with IMPACT TRAINING, an organisation tasked with helping people back into the workplace gave evidence on behalf of the appellant. This witness has known the appellant for 10 years and stated that she, the appellant, had always worked hard, that she was satisfied that the appellant fully regretted her actions, and that the offences were entirely out of character. She said that the appellant was fully committed to working in the Care sector and was genuinely determined to continue with that career.
18. Jackie McMaster from NIACRO also gave evidence on behalf of the appellant. She had been assisting the appellant in the appeal process from May 2014. She was also convinced that the appellant was remorseful, that she accepted full responsibility for her actions and that she was keen to get back to work to provide for herself and her family. She also indicated to the Tribunal that research has shown that people in stable employment are at a much lower risk of re-offending.
19. The Tribunal also had documentation submitted by the appellant in support of her appeal. A letter from Jayne Burns confirmed that the appellant had attended a Learn to Earn programme in Belfast Metropolitan College, during May and June 2014 and had participated very well during the work-shops. She completed and passed all of the examinations and qualifications which were offered on the course.

20. A further reference had been obtained from her employer at Lucas Love Healthcare. This confirmed that she had been working from 2009 to 2014 and had worked in various settings, both as a Care Assistant and as a Support Worker. It was stated that she was a very kind-hearted individual and was a compassionate person and had displayed a keen awareness of protection of vulnerable person issues and had raised issues at various sites where she had worked.
21. We make no criticism of the Committee for proceeding in the absence of the appellant. They were perfectly entitled to do so and the absence of the appellant from the hearing was really of her own making. Nor are we surprised at the decision which they reached given the limited information and the material which was available to them. Section 5.8 of the Code of Practice states that you must not 'behave in a way, in work or outside work, which would call into question your suitability to work in social care services.' The criminal record documented 4 separate Court appearances for a number of offences and this in itself gave sufficient cause for concern regarding the appellant's suitability to work in social care services.
22. However, this Tribunal has to make its own judgement and has a duty to conduct a rational assessment of all the evidence before it. Unlike the Registration Committee we have had the benefit of hearing and observing the appellant giving her evidence. We have also been provided with additional evidence from other sources, both oral and documentary, which was not available to the Committee.
23. On the evidence we find that the appellant did not set out to deliberately mislead NISCC about her criminal record when she entered the limited information on the application form. She believed that it was inevitable that the full extent of her record would be available in due course and in any event it was confirmed at the hearing that NISCC had already been provided with the details by the Police shortly after each of the Court appearances. (We are grateful to Mr. Wilkinson, Conduct Officer, NISCC, who was present at the hearing for explaining how this information is processed and the limited powers available when dealing with records relating to unregistered care workers.) Given the evidence which we have heard relating to her character and our own assessment of the appellant we do not believe that she embarked on a sophisticated or calculated attempt to conceal information which was likely to be prejudicial to her application and we accept her evidence on this point.

24. The appellant presented as a credible witness in her assertions that she is remorseful and deeply regrets the conduct which led to her Court appearances. On the face of it the record makes very bad reading and without the benefit of any rational explanation or mitigation one could not fault the Committee's description of a display of 'a blatant disregard for the rule of law.' However, we make a number of observations regarding the record. Firstly, it is highly unusual for an offender, with no prior record to reach their early 30's and quickly amass a significant record over such a short period of time, unless some underlying event or reasons can be identified as contributory factors. The appellant has explained that in her case the background was set against mental turmoil in an abusive relationship with a former partner which lasted for about one year. We have no reason to doubt this evidence. The fact that she had no record before 2010 and no record since (almost 4 years) is indicative, in our view, of something extraordinary happening in her life at the material time. The character evidence from Ms Thornton in particular, upon which we have placed appropriate weight, further supports a finding that the pattern of offending, confined to this 8 month period, was out of character.
25. A second point which we make about the record is that fortunately the consequences of the appellant's conduct did not impact on children or vulnerable adults. Thirdly, while not seeking to minimise the seriousness or gravity of the offences they do not include convictions for violent conduct or dishonesty, which would be significantly incompatible with a role in a social care setting. Finally, the offences in question were not committed in the course of the appellant's employment as a care worker, a point perhaps we make with less force given the expectation of good conduct both in work and outside work as required by Section 5.8 of the Code of Practice. However it is a point which, in our view, is worthy of mention.
26. The appellant's competence to work in a social care setting is not in issue. The evidence suggests that she has a good work record in social care and it should be noted that she continued to be employed in the sector despite her employer being aware of the criminal convictions and it was likely that she would have continued in that employment until the necessity of registration arose.
27. We are entitled to take a broad view of the appellant's suitability to work in social care services and to have regard to the degree of risk posed by the appellant and the issue of public confidence. **CN v Secretary of State (2004) 398PC**. In exercising our discretion we have taken account of a number of factors including the appellant's past performance, the gravity and nature of the offences, the relatively confined period during which they were

committed, her personal circumstances at the time of commission of the offences, her remorse, her hitherto clear record, her subsequent positive conduct, her present circumstances and the evidence about her character from other sources. There has been no suggestion at any stage of any risk to vulnerable service users.

28. In our judgement, while the commission of the offences in 2010 have resulted in the appellant having a criminal record with its various consequences, we find that that her actions and conduct during that particular period were not representative of her overall general character and way of life. We consider that the risk of re-offending is low. This case has been finely balanced but having given careful consideration to all the factors before us, we can, on the weight of the evidence available to us, make a finding in the appellant's favour regarding good character and conduct, thereby removing the question mark over her suitability to work in social care services.

29. It is the unanimous decision of this Tribunal that the appeal is allowed and direct that the decision of the Registration Committee shall not have effect in accordance with section 15 (3) of the 2001 Act.

Signed: HARRY BLACK
Chairman of the Care Tribunal for Northern Ireland

Date: 14th August 2014