

DECISION OF THE CARE TRIBUNAL

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

BETWEEN

APPELLANT

Patrick Gerry McDermott

AND

RESPONDENT

Northern Ireland Social Care Council

Tribunal Panel:

Chairman: Mr Harry Black
Lay Members: Ms Christine McLaughlin
Mr Malachy O'Loan

Date: 28th and 29 July 2014

Venue: Dungannon Courthouse, The Courthouse, 46 Killyman Road
Dungannon, BT71 6DE

Decision: The appeal is **dismissed**

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 17th December 2012 refusing to register him.
2. The appellant appeared in person and was not represented. 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 2012.

4. Rule 4(9)(b) of the 2012 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 2012 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 12th December 2012 and by decision dated 17th December 2012 refused the application, not being satisfied as to the appellant's good character, conduct and competence. The appellant appealed the decision.
9. The background to the case centred on an incident which occurred on 24th March 2008. At that time the appellant had been employed as a Care Worker by Praxis Care at one of its premises in County Fermanagh. The evidence available to the Registration Committee was that the appellant, on the night in question, was performing a sleep over duty but left the premises for a period of time during which he consumed alcohol in a public house.
10. The Registration Committee also considered evidence relating to the completion by the appellant of his application form for registration with the Council. The form did not contain any reference to his employment with Praxis nor reference to the termination of that employment subsequent to the March 2008 incident.
11. The Tribunal had at its disposal all the written documentation relative to the investigatory and disciplinary process conducted by Praxis subsequent to the March 2008 incident. Copies of the application form referred to at 10 above were also available. Relevant copies

of correspondence were available and the full transcript of the proceedings before the Registration Committee was also within the bundle.

12. The appellant participated in the disciplinary process and attended the subsequent appeal which was dismissed. He attended in person before the Registration Committee. It should be noted that the proceedings before the Registration Committee were recorded and the transcript reveals that the appellant gave sworn evidence to that Panel.
13. The record of evidence given by the appellant in the various documents referred to reveal that although he took issue with some parts of the evidence compiled from witnesses, in general terms he accepted that he had left the premises on the night in question without authority and during his period of absence he had gone to a nearby pub where he consumed two pints. He attributed this lapse to personal and domestic difficulties and he deeply regretted his conduct which was not in keeping with his previous good work record and character.
14. For example notes of an Investigatory Interview on 2nd April 2008, Appendix 10 page 49 (67 in the bundle) document the appellant as saying **And I went into the pub and I consumed a few pints.** Page 51 (69 in the bundle) **I know the time, it was about 12.10 when I went into the pub. And I knew I drank two pints.** Page 54 (72 in the bundle) **No, I only had them two pints.** Page 56 (74 in the bundle) **I deeply regret it and it won't happen again.**
15. Notes of the Disciplinary Meeting held on 22nd April 2008, Appendix 13 page 71 (92 in the bundle) document a question: **Can you clarify for me how many pints you had?** With the answer, **Two, no more than two.** Page 72 (93 in the bundle) **Well the pub was packed. I didn't mix up with any other staff. I was at the corner and I bought a pint, then I bought another pint, and I said I shouldn't be here.**
16. In a letter written by the appellant in his own hand writing dated 19 July 2012 and sent to NISCC personnel (page 120 in the bundle) he states **While walking I had two pints of shandy.** In the transcript from the Registration Committee proceedings at page 22 (154 in the bundle), the appellant is recorded as saying: **I am deeply ashamed of what I did that night. I was under severe pressure but I didn't leave the premises, if it's in mitigation, for the intention of consuming alcohol. It was that I was walking past the M pub and I'd stopped and I had two pints of shandy there.**

17. In oral evidence before this Tribunal the appellant completely denied that he had gone to the pub on the night in question. He denied that he had left the vicinity of his work premises. He stated that he had gone outside into the car park on about three occasions to take phone calls from his wife and had been outside for about one hour in total. He said that he didn't consume any alcohol or shandy.
18. On questioning about the contents of his attendances at the Investigatory Interview and the Disciplinary Meeting and the notes made which revealed a different version of events he said that he no longer accepted this and the documents were 'not worth the paper they were written on and were of no relevance.' He also stated that he had not challenged the accuracy of the notes at the proceedings before the Registration Committee because that Committee had already read the notes and had made their minds up.
19. On further questioning regarding the admission to the Registration Committee that he had drunk two pints of shandy he stated that he didn't recall saying that but while he had been in the car park he had drunk one can which he had in his car. He said this was a low alcohol drink and 'You could call it shandy.' He accepted that he had not mentioned this before.
20. The appellant stated in evidence that the version of events about him leaving the premises and going to the pub was untrue. He said that this account had been 'concocted' and it was his manager at the premises who came up with the story and that he (the manager) would sort it out as he (the manager) was afraid of the employee who apparently had provided the initial information about the appellant being in the pub. The appellant also stated that he (the appellant) had previous difficulties with this employee and he had reason to make complaints about her. The Tribunal had some difficulty following the logic of this explanation but rather than providing any clarity the appellant simply maintained that he had gone along with a 'made up story' and that the information provided about him going to the pub was untrue.
21. As regards the details provided in the Application Form for Registration the appellant stated in evidence that he had never received a letter of dismissal and claimed that he had given in a letter of resignation to his employers. He said that he was not sure precisely when this was done and he did not keep a copy and unfortunately the person to whom it was given is now deceased. He said that as he had not been dismissed he had ticked the relevant box as **No** but accepted on questioning that he should have ticked the box **Yes** as it also referred to resignation during disciplinary proceedings. He also said that he did not

enter details of his employment with Praxis, which he accepted that he should have done but stated that he didn't pay too much attention to the form and had filled it in quickly and signed it. He denied that he had withheld any relevant information.

22. The appellant concluded his evidence, as he had opened it, by stating that the entire bundle of documents used in evidence against him was not reliable, consisted of hearsay evidence and unsigned statements and in the absence of witnesses giving oral testimony there was no credible evidence against him and the Tribunal should make a decision in his favour in the interests of natural justice.
23. The Tribunal has a duty to consider all the evidence before it. Where there is other material which bears on the issues the Tribunal may properly consider that other information and weigh it up against the appellant's account even if it comes in statement form or as the result of an interview or investigatory process. The Tribunal is entitled to consider hearsay evidence even though the author of the evidence cannot be cross examined. Regulation 23(1) of the Care Tribunal Regulations (N.I.) 2005 specifically states that the Care Tribunal may consider any evidence, whether or not such evidence would be admissible in a court of law. The important factor is that it is for the Tribunal to consider what weight if any should be given to any particular evidence before it and to apply the appropriate standard of proof which is the balance of probabilities.
24. We have carefully considered the written documentation before us provided by the Respondent and the correspondence from the appellant which is contained in the Tribunal bundle. We have also observed and heard the appellant giving his oral evidence. In our assessment the appellant has presented as an entirely unsatisfactory witness both in the manner of giving his evidence and in the nature of his oral evidence. As one inconsistency, contradiction or absurdity became piled upon another it became impossible to believe the appellant.
25. His oral evidence that he did not visit the pub is entirely inconsistent with previous evidence provided by him. His evidence about the amount he had to drink is inconsistent with previous accounts and contradicts with a letter written in his own hand. The claim that he did not dispute previous evidence at the Registration Committee as they had already made up their mind is entirely unconvincing. The claim that he went along with a made up story concocted by his manager is in our view absurd as the 'made up story' puts him in a more damaging position and he provides no rational explanation as to how such a story was necessary to protect his manager from one of the employees. We are deeply

concerned at the serious allegation made against the manager who provided evidence during the investigatory process. It is rather ironic for the appellant to claim that he has been deprived the right to cross examine witnesses yet is prepared to attack the character of an individual in his absence, some years after the incident in question.

26. The appellant had numerous opportunities during the investigatory process, disciplinary hearing and Registration Hearing to state his case. We are satisfied that these hearings and enquiries were conducted fairly and properly in line with accepted principles. We have no reason to doubt the accuracy of the notes made during the various stages of the process. We attach appropriate weight to that evidence. We are satisfied that the appellant made the admissions which are attributed to him in the written records and we find that he left his place of employment and consumed alcohol on the night in question. We completely reject the evidence which he has given to this Tribunal. He is not a credible witness. We simply do not believe him. If we did accept that his evidence to this Tribunal was truthful, which we don't, it follows that he consistently lied during the investigatory process, the disciplinary hearing and when giving evidence on oath to the Registration Committee.

27. Nor do we believe him regarding his evidence about the Application Form for Registration. He was unable to produce the letter of resignation which he says was given to his employers. This, he says, is the report which has been omitted, referred to in his grounds of appeal. It is at the very least questionable if this letter exists as a search has failed to locate it while a letter of dismissal has been retrieved and is within the bundle. In any event if he did forward a letter of resignation and he believed that he did resign as opposed to being dismissed, the weight of the evidence favouring the latter, he was still required to enter this on the form. Further, he provides no convincing evidence as to why he did not enter details of his employment with Praxis. The conclusion which we reach is that, on balance, he intentionally withheld these details.

28. We have had regard to the relevant Code of Practice and we have no hesitation in coming to the conclusion that on the evidence before us the appellant does not meet the requirements of being honest and trustworthy or being reliable and dependable in accordance with 2.1 and 2.4. In leaving his work without authorisation, it was understaffed and there was potential risk to service users. Clearly he did not honour his work commitments in accordance with section 2.5 and with the inherent risk to service users and his conduct on the night in question we find that sections 5.7 and 5.8 are also

relevant regarding public trust and confidence in social care services and his general suitability to work in social care services.

29. The Tribunal takes into account the fact that the appellant has over 30 years of experience in the Care sector and there is no evidence of any other matter for concern. However given the seriousness of the incident in March 2008 and the manner in which the application form was completed coupled with our assessment of the manner in which he has conducted and engaged in the entire process to conclusion, the Tribunal finds that the appellant has not demonstrated that he is of good conduct, is competent and of good character in accordance with Rule 4(9)(b) of the 2012 Rules.

30. It is the unanimous decision of the Tribunal that the appeal be dismissed and the decision not to register the appellant onto the Social Care Register is confirmed.

31. Finally, The Tribunal states that it is a matter of great concern that the appellant was issued with a Certificate of Registration with an accompanying letter in January 2013 despite the decision of the Registration Committee refusing his application a few weeks previously. We had a written statement in the bundle from Mr. McCracken, Registration Manager of NISCC and it was also appropriate for him to attend the Tribunal in person to give oral evidence as to how this error occurred. While we completely accept that this arose as the result of human error in manually registering the appropriate recommendation on the computer and that the matter was swiftly rectified when it came to light, it is, in our view something which should not have happened. The appellant is fully entitled to the apology which he was given. We sincerely hope that the new procedures described by Mr. McCracken which are now in place remove the risk as far as possible of something like this happening in the future.

Signed: Harry Black

Chairman of the Care Tribunal for Northern Ireland

Date: 7th August 2014