

IN THE CARE TRIBUNAL

Between

Eilish Donnelly (Appellant)

and

Northern Ireland Social Care Council (Respondent)

Tribunal Panel:

Chairman: Diane Drennan

Lay Members: Agnes Lunny and Fergus Cullen

Date: 14th April 2016

Venue: Tribunal Hearing Centre, Royal Courts of Justice, Chichester Street, Belfast BT1 3JF

Representation: The appellant was represented by Peter Murphy Solicitor of Peter Murphy Solicitors Ltd of 28 Church Place, Lurgan, County Armagh. The respondent was represented by Mark Scott of the Directorate of Legal Services (DLS) solicitor.

Decision: The appeal is allowed

Appeal

1. Eilish Donnelly ('the appellant') appeals under section 15 of the Health and Personal Social Services Act (Northern Ireland) 2001 against the decision of the Registration Committee of the Northern Ireland Social Care Council ('the Council') dated 17th February 2015 to refuse to register her on the Social Care Register.



Preliminary Directions hearing

2. At a preliminary directions hearing on the 2nd October 2015, directions were made by the Chairman dealing with the exchange of documents, the preparation of a Tribunal bundle and the filing of hearing dates. A third party disclosure order was directed on the same date asking for relevant documents, including the appellant's personnel file from the Senior Resource Adviser of the Southern Health & Social Care Trust.

The Law

3. Section 3(1) of the Health & Personal Services Act (Northern Ireland) 2001 ('the 2001 Act') requires the respondent to maintain a register of social workers and social care workers. Section 4(1) of the 2001 Act states that an application for registration must be made to the Council in accordance with relevant rules which are the NISCC (Registration) Rules 2014 ('the 2014 Rules').
4. Section 5 of the 2001 Act deals with the grant or refusal of registration under section 4(1), with a requirement by section 5(1)(a) that the Council be satisfied that the applicant 'is of good character'. By section 5(4): *'For the purposes of subsection (1)(a), in considering whether a person is of good character, the Council may have regard to whether he is included in a barred list (within the meaning of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.'*
5. Section 9 of the 2001 Act provides for the 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. The relevant code of practice was issued in September 2002.
6. Rule 4(9)(b) of the 2014 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)'.

7. Rule 15(1) (a) of the 2014 Rules require the Council to refer to the Registration Committee *'any application for registration, or renewal of registration, which it is not minded to grant'*.
8. Section 15(2) of the 2001 Act provides for an appeal against a decision of the Council in respect of registration to lie to the Care Tribunal. By section 15(3) of the 2001 Act: *'On an appeal against a decision, the Care Tribunal may confirm the decision or direct that it shall not have effect'*.

Burden and Standard of Proof

9. The burden of proof is on the Appellant. It is for the appellant to show that he or she is a person who meets the standards of good character, conduct etc, as set down in rule 4(9)(b) of the 2014 Rules (Northern Ireland Care Tribunal: **DS v NISCC** at paragraph 9.

The standard of proof is the civil standard, that is, the balance of probability, as defined in **Re H and others (Minors) [1995] UKHL 16** at paragraph 73:

'The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not'.

Background

10. Mrs Eilish Donnelly ('the appellant') was born on the 11th January 1967 and has been employed in the care sector since 1994 in a number of private establishments, as well as being employed as a domiciliary care worker by the Southern Health and Social Care Trust ('the Trust') in Dungannon

(1996–2009) and in the Armagh/Dungannon locality (October 2002 – 4/2/2013).

11. The appellant is currently employed as a care assistant at CL care home by FS Health Care, by the G Day Centre & Residential Care and by H I L, which also provides care in the community.
12. During her employment in the Trust, the appellant was supervised by Ms VC who arranged training, organised team meetings and carried out supervisions on the domiciliary care workers. These supervisions were documented on forms to be signed by supervisor and care worker.
13. In September 2012, the appellant's supervisor in the Trust, Ms VC, contacted the Trust's HR Department in relation to concerns about allegedly excessive mileage claims made by the appellant. In the weeks which followed, VC reported other alleged claims regarding failure on the part of the appellant to provide essential care to clients on her rota.
14. A decision was taken by the Trust to place the appellant onto a precautionary suspension while an investigation was carried out. An investigation team consisting of Mr MB, Domiciliary Care Manager and Ms SM, Senior HR Advisor Human Resources, were appointed to carry out the investigation.
15. On 6th November 2012, a meeting was held by the investigation team with the appellant. The purpose of this meeting was to advise the appellant of the alleged concerns raised against her, as well as advising her of the precautionary suspension.
16. A letter was sent on 7th November 2012 to the appellant by Ms GR, locality manager, domiciliary care, confirming the issues discussed at the meeting of 6th November. In this letter, the appellant was advised that:

'Suspension is not a disciplinary sanction, but a means of facilitating proper investigation and/or preventing further misconduct or allegations'.

The appellant was also advised that the Trust would be informing the Council of the disciplinary investigation.

17. Further meetings were held by the investigation team with the appellant on 21st and 28th November 2012. A statement, prepared by the investigation team and purporting to contain information given to the team by the appellant, was sent to her on the 20th December 2012, with a request for review, signature and return to Ms SM. Two further letters were sent on the 7th and the 23rd January 2013 with similar requests. The appellant did not sign or approve the statement.
18. On the 5th December 2012, Ms VT, head of employee relations at the Trust, completed an Employer Referral form, received by the Council on 21st December 2012, referring to the disciplinary investigation.
19. An investigation report was prepared and dated January 2013. It contained 9 allegations made against the appellant summarised as follows:
 - i. Excess mileage claims : April – July 2012
 - ii. Failure to adhere to rota timing re Mrs S
 - iii. Failure to report that Mrs SG had bruising
 - iv. Failure to provide a satisfactory and timely service to Mrs SG
 - v. Failure to provide a satisfactory service to Mr WG and Mrs FG
 - vi. An issue regarding a dose of medicine given to Mrs L when the appellant was not required to do this.
 - vii. Failure to provide care to Mr O'H: May - October 2012 – failure to report that Mr O'H did not require a service.
 - viii. False entries in Mr O'H's care plan.
 - ix. Covering calls for another worker without prior approval from a line manager. In breach of the DCW procedure: *'Adhering to the rota'*.

In the 'conclusions/summary of findings' section, the 9 allegations noted were supplemented by a 10th allegation:

'That (the appellant) failed to adhere to the DCW procedure 'Reading and recording of information in a service user agreement' in respect of Mrs S, Mr WG, Mrs FG, Mrs SG and Mr O'H'.

In this 'conclusions/summary of findings' section, the following statement was made before a list of 'findings' in relation to the 10 allegations noted above:

'The investigation team are of the view that the following allegations are, on the balance of probability, proven and that they amount to gross misconduct as per the Trust's disciplinary procedures'.

20. On 30th January 2013, the appellant was informed by letter from Mr MB of the completion of the investigation and the convening of a disciplinary hearing on 6th February 2013. The letter stated:

'Following the completion of this investigation, you are informed that the investigation team had concluded that there was a case to answer and therefore the matter would have to be referred to a disciplinary hearing'.

The 10 allegations noted at paragraph 19 were listed and a copy of the report was enclosed.

21. On the 4th February 2013, by letter addressed to Ms SM, the appellant resigned from her job as a domiciliary care worker with the Trust.
22. On 30th May 2013, Ms SM wrote to the appellant informing her both of the employer referral to the Council (noted in the letter of 7th November 2012) and that the Trust was obliged to notify the Independent Safeguarding Authority (ISA) of the concerns raised. (The ISA has now been replaced by the Disclosure and Barring Service (DBS)).

23. A referral form dated 2nd July 2013 was completed and sent to the DBS by Ms VT, head of employee relations at the Trust. On 30th July 2013, the DBS wrote to the appellant referring to the referral from the Trust and enquiries made by the Service. The casework decision maker stated:

*'Having now concluded our enquiries we have carefully considered all the information received. On the basis of this information we have reached our final decision that it is **not** appropriate to include you in the Children's Barred List or the Adults' Barred List'.*

24. An application for inclusion on the Social Care Register as a social care worker was received from the appellant by the Council on 3rd September 2014.

25. A report dated 12th February 2015 and signed on the 9th January 2015, was prepared for the Registration Committee. The report referred, among other issues, to the Council's concerns about the applicant's character and conduct and stated that:

'The Council's concern is based upon information received from the Southern HSC Trust regarding a disciplinary investigation'.

The report, in its assessment of the evidence, stated that: *The Council considers that the Applicant has not demonstrated that she is of good character by virtue of the allegations levelled against her by the Southern Trust ... The Southern Trust's investigation team concluded that, 'the allegations are on the balance of probabilities proven'.*

26. A notice of referral, dated 13th January 2015, was sent to the appellant referring to Rule 4(9)(b) of the Registration Rules in relation to character, conduct, competence and health and stating that the appellant's application for registration would be considered at a meeting of the Registration Committee on the 12th February 2015. Under: 'Reasons for Proposal', the Council stated *'you have not demonstrated that you are of*

good character by virtue of the allegations levelled at you by the Southern Trust and because you provided false, and arguably dishonest, information in your application form'.

The notice under 'Procedures' referred first to the right to make written representations to the Council and then stated the right to attend in person and be heard or to be represented.

27. The appellant forwarded a written submission, together with a copy of the letter dated 30th July 2013 from the DBS (referred to at paragraph 23), to the Committee. These documents were received by the Council on the 29th January 2015.
28. On 12th February 2015, the Registration Committee met to make a decision regarding the appellant's application for registration on the Social Care Register. The decision, dated 17th February 2015, referred to the non-attendance of the appellant and to her written submission. No specific reference was made to the letter from DBS enclosed with the submission.
29. The decision made reference by way of background to :
 - a) The application form being '*erroneously dated*'.
'At 6.1 ...the Applicant ticked the box which indicated that she had never been dismissed from social care employment or resigned during a disciplinary investigation or disciplinary proceedings. The Committee ... formed the view that this assertion was untrue'....the Applicant's completion of the form misrepresented the facts and had the potential to mislead the NISCC'.
 - b) '*...the applicant declared she was employed by the Trust from 1996-2009, whereas ...she was actually in the employment of that Trust until ...February 2013*'.
 - c) Conduct which was being investigated by the Trust, including the claiming of mileage payments, failure to provide appropriate care and a failure (by her resignation) to answer the disciplinary charges. '*The applicant would have known from the investigation report the view (that) had been taken by the Trust's*

investigation team, that the allegations against her had been proven on the balance of probabilities and that they amounted to gross negligence'

30. The decision concluded: The Registration Committee *'having considered all of the material before it, including the written submission provided ...and having given due consideration to issues of fairness and proportionality...decided to refuse the application for Registration. The Committee accepts the submission of the Council that the Applicant has not satisfied the requirement of good character, which is a precondition for Registration'*.

The Committee referred to the completion of the application form (see paragraph 29 (a) & (b) above). The Committee also considered the circumstances leading to the applicant's resignation:

'The Committee has noted that the Southern Trust had gathered cogent evidence, which tended to show that the Applicant had engaged in dishonest conduct, as well as other serious offences while she was occupying a role as a social care worker'.

While noting that no disciplinary finding was made against her, the Committee drew an inference that the Appellant's resignation was a deliberate decision to avoid the allegations made against her, that if she had had an adequate defence to those allegations, she would have attended the disciplinary hearing. The Committee also concluded that such allegations required a satisfactory explanation from the appellant but that none was forthcoming.

Summary of grounds of appeal

31. The appellant, in her notice of appeal, dated 5th March 2015, made the following submissions:
- i. She denied that the form was erroneously dated
 - ii. She agreed that she had resigned from her employment but submitted that this course of action was forced upon her by the respondent's failure to

adequately investigate the allegations of misconduct against her and by her view that *'those who were investigating had made up their mind without considering all of the evidence..'*

- iii. The appellant referred to her failure to declare her most recent employment as *'a simple oversight'*, stating that ... *' my employer already had in their possession all relevant information as to my employment and employment periods both in Dungannon and Armagh'*
- iv. She disputed that she had made inappropriate mileage claims.
- v. She denied that she had in any way behaved dishonestly and disputed that she had failed to provide appropriate care to a number of service users.
- vi. The appellant disputed that she had failed to answer the disciplinary charges, reiterating that that she had been forced to resign as *'the investigation team clearly had made their decision before hearing all the evidence...'*

Evidence and submissions

32. The Tribunal panel viewed all the documents within the Tribunal bundle, including documents from the appellant's personnel file. At the beginning of the hearing, the panel received copies of the appellant's written submission which had been placed before the registration committee, with a copy of the letter of 30th July 2013 from the DBS (referred to at paragraph 23).

Summary of Respondent's submissions

33. The respondent's representative Mr Scott (MS) did not call oral evidence, but relied on the documents contained in the Tribunal bundle. In his opening submission, he referred to the events leading to the decision of the 17th February 2015 (such as the employer referral form noted at paragraph 18 and the report referred to at paragraph 25) and to the points made by the appellant in her notice of appeal. He referred to the documents submitted to the Committee by the appellant, which were received on 29th January 2015, but stated that the appellant did not attend the Committee.

Regarding the allegation of excess mileage referred to in the report, MS referred to the appellant's written submission to the Committee where the appellant stated (referring to her mileage claims) that an excess amount had been deducted by the Trust.

Having dealt with the issues relating to the appellant's completion of the application form (noted at (a) & (b)) of the decision, as well the allegations raised by the Trust in their investigation (referred to at (c)), MS submitted:

'The appellant disputes that she has in any way behaved dishonestly, but the Council takes the view that the issues raised pursuant to the application form when considered in tandem with each of the 10 issues raised in the disciplinary investigation leaves the Council with real concerns regarding the appellant's honesty. It is for those reasons that the Council continues to take the view that the appellant has not demonstrated her good character and good conduct.'

The closing submission for the respondent referred to the protection of the public as the primary obligation of the Council and to the entire registration process as a means of protecting the public. MS referred to the Code of Practice (noted at paragraph 5) and to the requirement that social care workers must be trustworthy and honest. He argued that there had been a pattern of inaccuracies, misleading information and failures to record and report on the part of the appellant and commented on the Council's view that a continuance of such a pattern had a real potential to damage the relationship with the public which is built on trust and honesty.

Summary of Appellant's submissions and evidence

Opening submission

34. The appellant's representative, Mr Murphy (PM), in his opening submission, referred to the 3 broad allegations which formed the case against the appellant – excessive mileage claims, failure to attend calls at service users' premises and inadequate care provided to service users.

Regarding the allegation of excessive mileage claims, PM outlined the number of shifts worked by the appellant from April to August 2012, the relevant period, ranging from 57 shifts in April to 74 in July, with the resultant increase in mileage driven. He stated that the appellant would dispute that she claimed excess mileage, mentioning the increased number of call-outs in July and the fact that some roads driven by the appellant during her shifts were closed at certain times due to road-works and detours had to be taken. PM stated that, while the appellant would acknowledge that an excess amount was deducted by the Trust in respect of mileage claims, she would state that this was a unilateral decision taken by the Trust.

PM referred to the appellant's denial that she had in any way behaved dishonestly and her rejection of the claim that she had failed to provide appropriate care to a number of service users (as noted in her grounds of appeal: paragraph 31). He accepted that the appellant did not attend the disciplinary hearing, but stated: *'When the appellant saw the paperwork served by the Trust she thought that the Trust had already made their decision'*. PM referred to the appellant's statement in her grounds of appeal that: *'the investigation team clearly had made their decision before hearing all the evidence'*.

Regarding the completion of the application form, PM accepted that the question at 6.1 (referred to at paragraph 29(a) above) was a straight forward question and that the appellant had answered it incorrectly. PM also mentioned that when the appellant signed the form she had noted her date of birth, instead of the date of signing. In relation to the appellant's failure to include her final period of work with the Trust, which ended with her resignation in February 2013, PM contended that the appellant never sought to mislead anyone regarding her work record and referred to her statement regarding this in the grounds of appeal.

Appellant's evidence

35. The Appellant gave sworn oral evidence. She initially outlined her length of service as a care worker which began in 1994

and described her previous employments, including her work for the Trust and her current employments, noted at paragraph 11.

36. Regarding the alleged excess mileage issue (referred to at 19(i) above), the appellant gave evidence that the increase in her claims for mileage payments were largely due to road-works in the area and extra shifts which she worked in July 2012. She stated that her claims for mileage payments were correct and that her supervisor Ms VC signed off her mileage sheets and knew the roads in the area. The appellant gave evidence that no questions were raised as to her mileage claims until an investigation of her daughter's mileage took place. The appellant's daughter had also been employed by the Trust as a care worker in the same area as the appellant.

Under cross-examination from MS regarding mileage distances noted on her claim forms, compared with distances calculated by 'Google', the appellant maintained that she drove the mileage claimed. In her own words, she *'drove it the way it was. The mileage was the mileage we drove over the safest roads'*. She stated that the claim forms were never queried. Answering a question about a supervision form dated 19th April 2012, referring to reminders about travel and travel audit, signed by VC, but not by the appellant, the appellant stated that she did not remember being with VC on that date, but agreed that VC did tell the care workers about their mileage.

She conceded that she did not use a diary to record mileage and referred to the use of pieces of paper which she later destroyed. Under cross examination, the appellant agreed that her supervisor VC did discuss mileage at team meetings where she informed the team that a route used must be the safest route.

Under cross-examination by MS in relation to the excess amount of around £700 deducted by the Trust, the appellant stated that at that time she *'was not in a good place'* and therefore did not contest the deduction.

37. The appellant gave evidence that when she received the documentation from the Trust she decided to resign. She accepted that she did not attend the disciplinary hearing but was heavily influenced by the statement in the 'Conclusions/Findings' section of the report referring to the 10 allegations and stating:

'The investigation team are of the view that the following allegations are, on the balance of probabilities, proven and amount to gross misconduct as per the Trust's disciplinary procedures'.

The appellant also stated that her union representative, CM, had informed her that the Trust had made up their mind and the advice of CM had also contributed to her decision. The appellant maintained this stance in cross-examination, stating that she was exhausted and took the advice of CM. She referred to the meeting of 20th November 2012 (continued on the 28th November) as very daunting with questions being fired at her.

38. Regarding the completion of the application form, in answer to questions from MS, the appellant gave evidence that she completed the form in one of her places of employment, CL care home, sometime in the summer of 2014. She could give no clear explanation as to why her employment history did not include the period of time she worked in the Armagh area, from 2009-2013. However, she stated that she had completed the form in work on her breaks and had put the issues regarding her most recent employment with the Trust to the back of her mind. In relation to the completion of question 6.1, she stated that she did not read the question properly and agreed that this was a convenient oversight. She could give no reason why this was not raised by her in her submission or in the grounds of appeal.

39. In relation to the allegation regarding a failure to adhere to the rota for Mrs S, the appellant maintained that she prepared the lady for bed, rather than actually putting her to bed. Regarding timing, she maintained in cross examination that Mrs S's family were happy for her to attend at a time which suited her, rather than at a set time of 9pm.

40. The appellant, when questioned by PM about the allegation of failing to report that service user Mrs SG had bruising, stated that she had seen the bruising, which was '*old bruising*', about 2 weeks old, but accepted an explanation from the lady's husband, Mr EG, that Mrs SG had fallen at the side of the bed. The appellant accepted the explanation from Mr EG, as she knew the couple well.

In cross examination, she admitted the bruising should have been reported. However, the appellant gave evidence that she had noticed bruising to Mrs SG on a second occasion, had reported it and there was no follow-up from the Trust.

41. Regarding an alleged failure to provide a satisfactory and timely service to Mrs SG, the appellant stated and maintained under cross-examination that she was not allowed to shower Mrs SG as there was a tripping issue in the shower room because of a step. She gave evidence that a wet room was installed shortly before she left the Trust.

The appellant accepted under cross examination that Mrs SG needed a priority service (due to her attendance at a day centre) and that she should have recorded her visits in more detail, but stated that Mrs SG never made any complaint about how she carried out her duties.

42. Regarding an alleged failure to provide a satisfactory service to Mr WG and Mrs FG, the appellant gave evidence that although, at times, she could not gain access to the Gs house, a return call would have been made and all the caring duties were carried out, when Mr WG allowed her to provide care.

Under cross-examination, the appellant continued to assert that personal care tasks were carried out and that recording took place, but accepted that her recording could have been better. She denied that by using the phrase (in her recording on the care plan) '*W up washed and dressed*', she was being dishonest or misleading and clarified that this phrase meant that W had washed and dressed himself.

43. In relation to the issue about a dose of medicine given to Mrs L when the appellant was not required to do this, resulting in a repeat dose being given to the service user by her daughter, the appellant accepted that she had misread the rota, as she was covering for another care worker.
44. Regarding allegations concerning Mr O'H that care was not provided and that there was a failure to report that he did not need a service, the appellant stated that she knew Mr O'H as he lived quite close. She gave evidence that, although there were times that Mr O'H, an MS patient, did not require assistance, she always called as part of her shift. The appellant stated that she still cared for this gentleman as part of her employment as a care worker.
45. In relation to the allegation about false entries being made in Mr O'H's care-plan, the appellant stated that, at times, she could not find the care-plan and therefore made some entries at a later date.
46. Regarding covering calls for another worker without prior approval from a line manager in breach of the DCW procedure: '*Adhering to the rota*', the appellant gave evidence that if she covered for another worker, she rang into the Trust office. When referred by PM to the '*Adhering to the Rota*' document, the appellant stated that she never saw it and had no memory of specific instructions regarding it being given. She gave evidence that the team of care workers on her team were close knit and covered for each other and that her supervisor, VC was aware of this.

Although, under cross-examination, the appellant accepted that she might have received the '*Adhering to the Rota*' document, she maintained that she had not actually seen it.

47. Regarding the final allegation that the appellant failed to adhere to the DCW procedure '*Reading and recording of information in a service user agreement*' in respect of Mrs S, Mr WG, Mrs FG, Mrs SG and Mr O'H, she gave evidence that she did record on the care plans of these service users, but

that the recording had been basic at times. She denied that she had failed service users. Under cross-examination, the appellant accepted that care workers should record accurately in the service users' agreement.

48. The appellant answered questions from the Tribunal Panel in relation to her evidence and the documentation in the case. She stated that in her work with the Trust, she covered approximately 14 houses per day. Referring to the statement (noted at paragraph 17), the appellant stated that she did not recognise the statement as hers and that this was the reason she did not sign it, although she had accepted in cross-examination that she had suggested some amendments to it.

The appellant stated, when asked why she went into social work, that she had looked after her mother during a serious illness and also stated that caring for people was a very fulfilling job, which gave her the opportunity to promote their well-being and hear their stories.

In relation to the completion of the registration application form, the appellant stated that she found the form daunting and that she had relied on help from an administrator at CL care home to complete the form. The appellant confirmed that she had obtained a job at CL care home after leaving the Trust and that CL had obtained a reference from the Trust.

49. In answer to questions from the panel members as to training and induction, the appellant stated that although she remembered someone going through the forms with her when she moved to the Armagh/Dungannon locality, she had no real induction. She also commented that the team meetings were very informal but that mileage and recording were probably explained.

Closing Submission

50. PM referred to 3 references given in support of the appellant. These were from the Home Manager of CL care home

(1/4/15), the Parish Priest of E, the Reverend ES (15/10/15) and JR, Director of G Day Care (15/10/15).

PM accepted on the appellant's behalf that her record keeping was not good, but stated that induction into the Trust should have included one on one instructions. He stated that the appellant wanted to continue to work in the care field and that she considered herself an honest and trustworthy person. He finally referred to the letter from DBS of 30th July 2013, where the service stated, that after investigation of the allegations (mentioned at paragraph 19), the appellant was not included in a children's or adults' barred list.

Conclusions/Reasons

51. The Tribunal panel has carefully examined all the evidence placed before it in the form of documents, oral submissions and testimony, even if we have not specifically referred to all of it.
52. This appeal is concerned with 2 broad issues. First, the 10 allegations made by the Trust against the appellant and second, the appellant's completion of the registration application form. The appellant Eilish Donnelly is a mature and very experienced social care worker with more than 20 years experience of working in the care sector. She gave evidence that she had been inspired to enter the care sector after caring for her own mother. There has been no evidence presented to the Tribunal of any complaints made against her in respect of any employment, apart from the allegations mentioned above.
53. This has been a challenging case with many documents to consider and assess. Two opposing facets of the appellant's character have been presented to the Tribunal panel. The first emerges from the documents and submissions presented on behalf of the respondent and the second from the documents, letters and references presented on behalf of the appellant, as well as the oral submissions and oral evidence given on her behalf and by her in person.

54. The documents for the respondent largely consisted of material extracted or prepared by the Trust's investigation team while considering the 10 allegations which, as noted in paragraph 19, ranged from excessive mileage claims to failing to adhere to the DCW procedure *'Reading and recording of information in a service user agreement'*.
55. The investigation report, dated January 2013, which was used in the preparation of the Council's Report which was placed before the Registration Committee, presented the appellant in a very negative light, as someone who, over a period from April-August/September 2012, made excessive claims for mileage she did not drive, and failed to properly carry out or record her care duties. It therefore painted the appellant as a dishonest person who was not trustworthy, was therefore not of good character and consequently was not suitable for registration as a social care worker.

However, it is crucial to note that this was an investigation report, no disciplinary hearing had taken place and there were therefore no formal findings against the appellant. As noted above, the appellant was a care worker of many years standing, who had worked for the Trust for a long period without any complaints being noted. The allegations which were the subject of the investigation report took place over a short time-span from April to August/September 2012.

56. A copy of the application form for registration as a social care worker and completed by the appellant was included in the Tribunal bundle and was dated with the appellant's date of birth, instead of the date of signing. The form stated incorrectly that the appellant had not resigned from employment during a disciplinary investigation and did not include her latest period of employment with the Trust which ended on 4th February 2013.
57. The Decision of the Registration Committee dated 17th February 2015 resulted in the appellant's application for registration being refused, with the Committee deciding that *'the Applicant has not satisfied the requirement of good*

character, which is a precondition for registration'. The Tribunal's task is to decide on the basis of the evidence before it whether the appellant has satisfied this requirement.

58. The appellant did not attend before the Registration Committee and therefore did not take the opportunity to give oral evidence, but produced a written submission as she was entitled to do under the Rules. That submission, which included the letter from the DBS, noted at paragraph 23, was not included in the Tribunal bundle, but was handed to the Tribunal panel on the morning of the hearing.
59. Documents presented on behalf of the appellant included some supervision and training documents produced on foot of the 3rd Party Notice. The Tribunal panel has noted the positive comments made on supervision forms signed by both the appellant and her supervisor, VC, such as those of the 22nd September 2010 and the 13th August 2011. In both of these, the appellant was rated over 6 different areas, ranging from '*manual handling*' to '*communication*' and '*confidentiality*' as '*excellent*', with no problems noted. In a supervision form signed by VC and dated 25th July 2012, the appellant was again rated '*excellent*' in all 6 areas and no problems were noted in an action plan.
60. The references produced on behalf of the appellant (noted at paragraph 50 above), which were unchallenged by the respondent, presented the appellant in a positive light. For example, PG, the Home Manager of CL care home, commented that '*E is trustworthy and an excellent team member*', JR, Director of G Day Centre, stated: '*...she is a very caring professional person who carries out her duties to a high standard. She is trustworthy, reliable and considerate*'. Reverend ES, the parish priest of E stated: '*I can testify that I consider E to be very pleasant, hardworking, reliable, caring and trustworthy*'. Also included in the appellant's documentation, was a letter dated 10th November 2015, from MM, CEO of H I L Care, one of the appellant's employers, who wrote, referring to a compliment from a client JR, '*Ms R*

advised that you go above and beyond for her....it is recognised within the company that you do a good job'.

61. The appellant, in her written submission to the Committee, referred to learning the *'paramount importance to recording my work, in respect to my patients and to keep a diary for the purposes of also keeping myself covered detailing my experiences'*. In the same document, she gave as her reason for not attending before the Registration Committee, sickness in her stomach and *'the detriment of my mental health'*.

The allegations made by the Trust

62. The Tribunal panel makes its conclusions first, as to the allegations brought by the trust. It notes that it had to rely solely on the documentation in the Tribunal bundle, without the benefit of oral evidence from the Trust. It has weighed all the evidence given by the parties, both written and oral. It adopts the numeration used in paragraph 19

- i. Excessive mileage claims* – the panel accepts the appellant's evidence that she drove the miles she claimed. It does not consider 'Google' a reliable audit tool to calculate mileage and places weight on the fact that, while the mileage forms were in places incomplete, they were approved and signed off by appellant's supervisor, VC. It is also accepted that the deduction of money by the Trust in respect of the alleged excess was a unilateral decision and that the appellant did not pursue this because she was exhausted by the disciplinary process. The panel therefore finds this allegation not established.
- ii. Failure to adhere to rota timing re Mrs S* – the panel accepted the appellant's oral evidence that she prepared Mrs S for bed at a time suitable to herself and also accept that the family were happy with this. The panel therefore finds this allegation not established.
- iii. Failure to report that Mrs SG had bruising* – The Tribunal Panel accepts the appellant's version of the facts that this was *'old bruising'* and that an

explanation was given by Mrs SG's husband, Mr EG, who was well known to the appellant and that this was the reason the appellant did not report it to the Trust. However, the Tribunal notes that the appellant now fully accepts that she should have reported the bruising. The panel also accepts that the appellant noticed bruising on Mrs SG on another occasion and reported this but there was no follow - up by the Trust. The Tribunal panel therefore, in the light of the foregoing, does not consider that this series of events impacted upon the appellant's good character.

- iv. *Failure to provide a satisfactory and timely service to Mrs SG* - the panel accepts the appellant's evidence that there was an issue about showering Mrs SG due to a tripping hazard in her shower room. Despite imperfect record keeping, the Tribunal accepts that the appellant carried out her duties to the best of her ability. The panel therefore finds this allegation not established.
- v. *Failure to provide a satisfactory service to Mr WG and Mrs FG* - the panel accepts the appellant's evidence that she carried out all her caring duties, including those involving Mr WG, when he allowed her to care for him. It does not consider that by using the phrase '*W up washed and dressed*' that the appellant was being dishonest and intentionally misleading. The panel would have wanted a representative from the Trust to give oral evidence in relation to this allegation. In the absence of such evidence, the panel have accepted the appellant's version of the facts. This allegation is therefore not established.
- vi. *An issue regarding a dose of medicine given to Mrs L when the appellant was not required to do this.* The panel accepts that the appellant made a mistake in relation to Mrs L's medication and this allegation is therefore established. However, the panel accepts the appellant's explanation as to how the mistake occurred, in that she was taking over someone else's duties.
- vii. *Failure to provide care to Mr O'H: May - October 2012 - failure to report that Mr O'H did not require a service* - the panel accepts the appellant's evidence that she did

provide proper care for this gentleman during the relevant period, when he accepted such care. In the absence of sufficient evidence from the Trust, the panel must accept that the calls were made. From May to October 2012, it would appear that Mr O'H's care plan was not reviewed (as to whether he needed a service) but the panel considers that such a review was not part of the appellant's duties as a DCW. This allegation is therefore not established.

- viii. *False entries in Mr O'H's care plan* – the panel accepts the appellant's evidence that at times the care plan was not available and that she did therefore record some visits retrospectively. The appellant accepts that her mode of recording was not as it should have been. However, the panel, in the absence of adequate evidence from the Trust, accepts that in her actions the appellant had no intention to act dishonestly.
- ix. *Covering calls for another worker without prior approval from a line manager. In breach of the DCW procedure: 'Adhering to the rota'* – Having heard the appellant's evidence as to a 'culture' of covering calls, the panel accept that the appellant worked in a close knit team and that such a culture existed. Without oral evidence from the Trust to clarify issues, it is unclear whether the appellant saw the 'Adhering to the rota' document, although the panel accepts that the appellant signed as having received it. It also accepts that the appellant's supervisor VC was aware of the practice. The panel therefore do not consider that the actions of the appellant affected her good character or her trustworthiness.
- x. That (the appellant) failed to adhere to the DCW procedure *'Reading and recording of information in a service user agreement'* in respect of Mrs S, Mr WG, Mrs FG, Mrs SG and Mr O'H – having heard the appellant's oral evidence, the panel accepts the appellant's evidence that she did record on the care plans of these service users, but that the recording had been basic at times. It also accepts that her recording should have been more accurate. However, the panel considers that the appellant's good character

was not affected by her less than perfect record keeping.

The decision of the Registration Committee dated 17th February 2015

63. The panel, having read the decision dated 17th February 2015, have serious concerns as to the following:

- i. Among the matters which the Committee noted as being referred to them by the Council was the Trust's investigation of the allegations noted above. The decision states at (c), '*The applicant would have known from the investigation report, the view had been taken by the Trust's investigation team, that the allegations against her had been proven on the balance of probability, and that they amounted to gross misconduct*'. Although the Committee noted that the Trust did not make disciplinary findings against her, the panel considers that too much weight was placed on the findings of the investigation report, which seemed to have been adopted in the Council report (referred to at paragraph 25 above) and which were not tested by a disciplinary hearing.
- ii. The panel is also concerned by the fact that no detail was given as to how the Committee considered '*issues of fairness and proportionality*', given the serious impact their decision would have had on the appellant's future employment as a social care worker.
- iii. The panel also has concerns about the use of the phrase '*as well as other serious offences while she was occupying a role as a social care worker*', when considering the circumstances which caused the appellant to resign. Although the tribunal panel recognises that the phrase must have been used in a general way, not indicating criminal offences, it considers nonetheless that the words '*serious offences*' should not have been used in the decision.
- iv. The panel's final concern relates to the omission of any reference to the letter from the DBS dated 30th July 2013, (noted at paragraph 23), which was included with the written submission put before the Committee

by the appellant and was stamped as received by the Council on 29th January 2013. Given that section 5(4) of the 2001 Act states:

'For the purposes of subsection (1)(a), in considering whether a person is of good character, the Council may have regard to whether he is included in a barred list (within the meaning of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, the Tribunal panel would have expected this issue to have been specifically dealt with in the decision.

64. The panel sets out its conclusions regarding the matters (a)–(c), as noted on the decision as follows:

a) Dating of the application form – having heard the submissions and evidence, the panel is agreed that this was a genuine mistake on the appellant's part and is therefore irrelevant.

Regarding the answer given at 6.1 of the application form, the panel accepts the appellant's evidence that she did not read the question properly and that she completed the form in work during breaks and with the help of an administrator at CL care home. Although the panel also accepts that this was a convenient oversight, it does not consider that it affects the appellant's good character.

b) Referring to the lack of information given as to the appellant's later employment with the Trust. The Tribunal panel has taken into account the statement given in the second paragraph of her grounds of appeal (noted at paragraph 31(iii) above), as well as her oral evidence that her employer at CL care home had all the information about her previous employment in their possession and that the manager of CL had endorsed her application form. We accept the appellant's explanation that the omission was '*a simple oversight*' on her part. The panel therefore finds that there was no intention to mislead the Council.

c) Given the conclusions noted regarding the allegations at paragraph 62, and the fact that the appellant had no actual disciplinary findings made against her and having taken into account the appellant's view noted in

her notice of appeal that *'those investigating the allegations had made up their mind without considering all of the evidence'*, the panel agrees that the wording of the investigation report made it appear that a view had been taken by the Trust before the disciplinary hearing took place.

65. The panel considers that the appellant did not attend either the disciplinary hearing or the Registration Committee as she thought a view had been taken as to the allegations against her. The panel accepts this explanation as reasonable.
66. The panel accepts in relation to record keeping and the use of a diary, that there was poor practice on the part of the appellant during her time working for the Trust. The appellant made mistakes in the completion of the registration application form, relying on help to complete the form and not reading over it carefully before it was submitted. However, the Tribunal panel does not consider that these issues, serious as they were, rendered the appellant dishonest, untrustworthy and therefore not of good character. In her submission to the Committee, the appellant refers to the experience teaching her the paramount importance of recording her work and keeping a diary. The appellant, in giving her evidence, presented herself as a credible witness who is committed to her work in the care sector. The panel therefore concludes that the appellant is an asset to the sector and presents no risk whatever to the public.
67. The panel therefore decides that, by her oral evidence, which the Registration Committee did not have the benefit of hearing and because of the very positive references and letter submitted on her behalf, as well as the submissions made by her legal representative, the appellant has discharged the burden of proof and it has been shown that she is a person of good character and therefore suitable for registration as a social care worker.

68. It is therefore the unanimous decision of the panel that the appellant's appeal be allowed. The Council is directed to register the appellant as a social care worker at the earliest opportunity.

Diane Drennan

Care Tribunal Chairman

 Diane Drennan

Date: 19th May 2016

Date recorded in Register: 20 May 2016