

DECISION OF THE CARE TRIBUNAL

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

BETWEEN

APPELLANT

Claire Anderson

AND

RESPONDENT

Northern Ireland Social Care Council

Tribunal Panel:

Chairman: Harry Black
Lay Members: Maureen Ferris
James McCall

Date: 26th February 2015

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

Decision: Unanimous: **Appeal disallowed.**

Reasons:

1. The appellant appeals under s.15 of the Health and Personal Social Services Act (N.I.) 2001 against the decision of the Conduct Committee of the Northern Ireland Social Care Council (NISCC) of 22nd May 2014 imposing a 12 month suspension order upon her registration as a Social Care Worker.
2. The appellant was represented by Mr. Greene of McCann and McCann Solicitors and the respondent was represented by Mr Dickson of Tughans Solicitors.
3. The appellant did not attend before the Conduct Committee on 22nd May 2014. In her absence she was found to have been guilty of misconduct arising out of incidents which occurred in Portstewart on 30th May 2012 such as to call into question her suitability to remain on the Social Care Register and a 12 month Suspension Order was imposed.
4. The appellant had been convicted of 2 counts of common assault, one count of disorderly behaviour and one count of assaulting a Police Officer. Pleas of guilty had been entered at Court on 28th June 2013 and she was fined and ordered to pay

compensation in respect of the 3 offences of assault and also received a fine for the offence of disorderly behaviour. Total fines and compensation amounted to £1350.

5. The convictions were not in issue before the Care Tribunal. Neither was it in issue that the appellant was guilty of misconduct. Mr. Greene, for the appellant, confirmed that the thrust of the appeal was against the 12 month term of the Suspension Order.
6. The right to appeal to the Care Tribunal is found in s.15 of the Health and Personal Social Services Act (N.I.) 2001. S.15 (3) provides that on an appeal against a decision, the Care Tribunal may confirm the decision or direct that it shall not have effect.
7. The Rules relevant to this case are the NISCC (Conduct) Rules 2013 and the available sanctions upon a finding of misconduct are set out in paragraph 25 of Schedule 2 namely :
 - (i) Admonishment, a note of which can remain on the Register for 5 years.
 - (ii) A suspension order for a maximum of 2 years.
 - (iii) A removal order.
 - (iv) Power to revoke an interim suspension order.
8. When deciding what sanction to be imposed the Committee must take into account :
 - (i) The seriousness of the Registrant's misconduct.
 - (ii) The protection of the public.
 - (iii) The public interest in maintaining confidence in social care services.
 - (iv) The issue of proportionality.
9. The Panel had been provided with the Tribunal Bundle which contained relevant documents relating to the incident which occurred on the 30th May 2012, resulting in the appellant's Court appearance on 28th June 2013. Included in the bundle were witness statements from the Police Officers who were tasked to the scene of the incident and who dealt with the appellant subsequently.
10. The Tribunal Bundle did not contain witness statements from the 2 females who had been assaulted inside licensed premises by the appellant. It was difficult for the Tribunal to fully ascertain the background to the incident or to assess the level of force or violence attributable to the appellant in the commission of these assaults.
11. However the Tribunal was left in no doubt about the level of aggression, verbal abuse and violence perpetrated by the appellant against the Police Officers who were tasked to the scene. The Tribunal had copies of the statements made by the Police Officers. In fairness to the appellant she pleaded guilty to all the offences at Court and did not seek to challenge the contents of the Police evidence either at her Court appearance or during the conduct of her appeal before the Tribunal.
12. Nevertheless the evidence of the Police officers, in the view of the Tribunal, is a significant feature of the entire process in which the appellant finds herself. It is documented that the appellant was placed in the police car because she was

shouting abuse and getting aggressive. In the police car she said that she would smash every xxxxxxx window and proceeded to hit the window of the car with her hands. She shouted and swore at the WPC who was with her in the rear seat and spat in her face. She kicked the officer twice in the face and tried to bite her hand. She called the Police scummy xxxxxxx.

13. Such was the ferocity of the onslaught against the Police officers that the car was stopped, she was removed from the car and a cell van was requested to transport the appellant onwards to custody. She was handcuffed and leg restraints were applied. She continued to scream and spit while waiting on the van and called the female Police Officer a fat xxxx. In the course of a subsequent Police interview she also claimed that the Police Officer had punched her in the ribs.
14. The appellant gave oral evidence at the hearing. She stated that she bitterly regretted her behaviour and she was disgusted, ashamed and embarrassed by her conduct. Too much alcohol had been consumed. She had never been in trouble before. She fully accepted that her conduct had put herself and others at risk and that it called into question her suitability to work in Social Care.
15. The Tribunal accepted that her remorse was genuine. Weight was given to the fact that she had not been in trouble before, and there had been no repetition of similar conduct since the incident which occurred nearly three years ago. It was acknowledged that she had a good work record and was fortunate to have been able to continue in employment albeit with significant restrictions in her present job and with some financial impact. It was accepted that her offences were not committed in the course of her work and of course there was no risk to vulnerable service users.
16. The Tribunal had also been provided with a reference from the appellant's employer and a document detailing the extensive training programmes which the appellant had completed. It was clear that the appellant is competent in her job and her employer has no issues with her work or her overall work ethics including her conduct within the work place. We gave this documentary evidence appropriate weight and noted that this had not been available to the Conduct Committee.
17. The Tribunal had no difficulty in making a finding that the appellant was in breach of paragraphs 5:7 and 5:8 of the Code of Practice for Social Care Workers. As a registrant on the Social Care Register she must uphold public trust and confidence in social care services. By her own admission, the realistic approach taken by her representative and the nature of the evidence before the Tribunal, it was clear that she had put herself and others at unnecessary risk and had behaved in a way, outside work, which called into question her suitability to work in social care services.
18. Equally it was clear from the evidence that a finding of misconduct was inevitable and having considered the relevant criteria contained in the Indicative Sanctions Guide the Tribunal was in no doubt that a Suspension Order was appropriate, particularly in view of the serious nature of the misconduct. The Tribunal acknowledged that the findings of the Committee with regard to misconduct and the imposition of a Suspension Order, in itself, was not contested.
19. It has been said that where professional discipline is in issue one of the most fundamental purposes of a sanction is to maintain the reputation of the profession.

There is also a requirement to maintain public confidence in the profession. Having properly arrived, in the view of this Tribunal, at a Suspension Order sanction, the Committee were entitled to make an order up to a maximum of 2 years. The Committee arrived at a period of 12 months.

20. This Tribunal accepts that the Committee did not have the benefit of hearing oral evidence from the appellant or considering the additional documents which were submitted on her behalf. We have fully considered these matters. The Tribunal also accepts that, having been referred to the case of **Andrews v NISCC 1/2014**, the appellant's conduct was out of character, the offences were not committed in the course of her work, there was no risk to children or vulnerable adults and her general competence to carry out her duties within the workplace has not been called into question. However, unlike Andrews, the appellant was guilty of violent conduct, having committed assaults on two civilians and then went on to launch a shocking and ferocious onslaught on Police Officers who had extreme difficulty in restraining her. We repeat the dicta in the **Andrews** case about convictions for violent conduct being incompatible with a role in a social care setting.
21. Having considered all the evidence available to us and having taken account of the seriousness of the misconduct in question, the protection of the public, the public interest in maintaining confidence in social care services and the issue of proportionality we were not satisfied, that a Suspension Order for 12 months was inappropriate or disproportionate on the facts of this case and accordingly we confirm the decision of the Conduct Committee and disallow the appeal. The extremely high level of violence and abuse perpetrated by the appellant against the Police Officers weighed heavily against her.
22. It is apparent that the term of the Suspension Order is due to end in a few months. We would expect that this will be the end of the matter from the point of view of both the appellant and NISCC. We would therefore not expect any future application for Registration by the appellant to be adversely affected by the subject matter of these proceedings alone or their outcome.



HARRY BLACK
CHAIRMAN CARE TRIBUNAL

12th March 2015