

IN THE CARE TRIBUNAL

BETWEEN:

RAYMOND WHITEHOUSE

Appellant

-and-

NORTHERN IRELAND SOCIAL CARE COUNCIL

Respondent:

Tribunal Panel: Stephen Quinn Q.C. (Chairman);
Harry Murray; Roberta Brownlee

Date of Hearing: 7th August 2019 and 16th September 2019

Venue: The Tribunals Hearing Centre,
Royal Courts of Justice, Belfast

Decision: Appeal Dismissed

1. The Appellant, born on the 3rd September 1966, applied for registration on the Northern Ireland Social Care Council (“NISCC”) Register on the 12th November 2018. This application was forwarded to the NISCC Fitness to Practice (FTP) Department on the 3rd December 2018. The Appellant had returned to university as a mature student, he obtained a 2:1 Honours Degree in Psychology from the University of Ulster in June 2015. Having applied for a number of jobs without success, the Appellant decided to go back into education and was accepted by the University of Ulster, Jordanstown on a Social Work Degree Course in 2018. It is a requirement of that course that the Appellant should apply for inclusion on the Social Work / Student part of the Register; his inclusion on the Register was referred to the NISCC Registration Committee in accordance with Rule 15(1)(a) of the NISCC Registration Rules 2017 (“the Rules”). The Registration Committee, having dealt with the Appellant’s application by way of a hearing on the 10th May 2019 and having considered the background of the case, the evidence submitted and the oral evidence of the Appellant, was not minded to grant the Appellant’s application for registration. Rule 4(10)(b) of the Rules state that the Council shall not grant an application for registration unless it is satisfied as to the Applicant / Appellant’s good character, conduct, competence and health.
2. The Appellant appeals the decision of the NISCC Registration Committee under Section 15 of the Health & Personal Social Services Act (Northern Ireland) 2001. He completed an Appeal Application Form dated the 24th May 2019, received by the Care Tribunal within the time limits specified.

3. The Appellant was represented by Mr Michael Donaghy, Barrister at Law. The Respondent was represented by Ms Helen Bergen, Solicitor, Directorate of Legal Services (DLS), Belfast. There was an agreed "Hearing Bundle" prepared by DLS properly indexed and paginated, setting out the necessary documents, the legislation applying to the Application for Registration and case law relied upon by the parties. The Hearing Bundle included, inter alia:
 - (a) The Appeal Application Form dated 28th May 2019.
 - (b) NISCC Response.
 - (c) Appellant's documents including submissions and references received from Mr Whitehouse.
 - (d) Respondent's documents including the report to the Registration Committee from the FTP Department and the decision of the Registration Committee of 10th May 2019.
4. It was not disputed during the course of the hearing that the Appellant must satisfy the registration procedure set out in the Northern Ireland Social Care Council (Registration) Rules 2017 and that one of the considerations for not granting an application for registration is set out in Rule 4(10)(b);

"The Council shall not grant an application for registration unless:

(b) 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 this Register in which registration is sought."

The burden of proof is on the Appellant. The standard of proof is the civil standard, that is, the balance of probability.

5. At the hearing on the 10th May 2019 (an afternoon session only), Ms Burgen took the Tribunal Panel through the documents contained in the Hearing Bundle. She also provided a brief background to the case, stating that the Appellant had been accepted onto a Social Work Degree Course at the University of Ulster and had completed two semesters. He was then required to apply for registration. The main points addressed during this session were:
 - (i) The Appellant has a significant criminal record, at the time of his application he declared this criminal record and details appear in the Hearing Bundle (Page 32) on the Enhanced Disclosure Certificate. The Appellant declared this criminal record and it appears in the Hearing Bundle on the Enhanced Disclosure Certificate. The most serious part of that criminal record is a conviction for Aggravated Burglary with Intent to Commit Grievous Bodily Harm and Criminal Damage, dated, in the Certificate, 11th October 2010. Arising out of this conviction, the Appellant was sentenced to fifteen months imprisonment and thereafter fifteen months on licence. There were a number of

other convictions (nine in total) starting with an assault on the Police in 1989 and ending with a conviction for No Insurance in 2011.

- (ii) Record of a telephone message to Mr Conan O'Brien, Fitness to Practice Officer, on the 20th December 2018 where it is claimed the Appellant told Mr O'Brien that he was innocent of the offence of Aggravated Burglary but had made a poor decision by getting involved in an altercation involving his son and some of his son's friends.
 - (iii) A note of a meeting between Mr O'Brien and the Appellant on the 7th January 2019 setting out a brief history of the circumstances of the Aggravated Burglary conviction and providing details of the dispute that he had with a Police Officer whilst on bail for the Aggravated Burglary charge and his subsequent separate conviction for Disorderly Behaviour arising out of the dispute. Mr O'Brien also recorded the Appellant complaining of constant Police harassment at that time.
 - (iv) There was substantial debate between the Chairman, Panel Members and Ms Burgen in relation to the decision of the Registration Committee dated the 5th May 2019 and set out between pages 71 and 77 of the Hearing Bundle. The Panel were particularly interested in what "insight" the Appellant would have to have in relation to the effect of his criminal record on service users, social work colleagues and members of the public and it was agreed that the test for registration of a student is set out in the 2017 Rules at Rule 4(10)(b) that the Appellant must satisfy the Tribunal as to his good character, conduct, competence and health. The Tribunal also recognises that any application for registration under the Rules should include details of any criminal convictions (whether or not spent in accordance with the Rehabilitation of Offenders (NI) Order 1978, formal cautions issued by the Police in any part of the United Kingdom or any other country, any binding over of fixed penalties (other than minor motoring offences) and any charges pending). The registration procedure is set out in Part 2 of the 2017 Rules.
6. When the hearing recommenced on the 16th September 2019, Ms Burgen provided a detailed Opening of the case, setting out all of the relevant facts, referring the Tribunal Panel to the Hearing Bundle in detail including reading from notes prepared by Mr Conan O'Brien who was in attendance at the hearing and would give evidence if required by either party. The Tribunal was reminded that he didn't give evidence before the NISCC Registration Committee at their hearing on the 10th May 2019. It was left open for any party to call Mr O'Brien if it would be helpful to their case. Ms Burgen confirmed that the Appellant gave evidence at the Registration Committee hearing on the 10th May 2019, though appeared as a personal litigant and she confirmed that he was cross-examined by the DLS Solicitor, Ms Kelso.

7. No oral evidence was called on behalf of the Respondent by Ms Burgen. He relied on the material in the Hearing Bundle opened to this Tribunal, reminded the Tribunal of the test to be applied, in that the Appellant must establish, on balance, that he is of good character.
8. The Appellant exercised his right to give evidence on Oath and was taken through his evidence by Mr Donaghy. The first issue that was raised was the conviction for Aggravated Burglary with Intent to Commit Grievous Bodily Harm. He explained that he was a taxi driver in the City of Derry, he had been at work on the 18th December 2009 and, when he came back to his house in the early hours of the morning of the 19th December 2009, he noticed a light on in his garage and, upon entering the garage, he saw his son and two of his son's friends in the garage dressed in gloves, caps and scarves. He challenged them as to what they were doing, they explained that the family car was damaged, the Appellant saw that his wife's car was badly damaged with the windows broken and his son specifically blamed a gang of persons in an adjoining neighbourhood with whom they had been in dispute for a number of years. The Appellant was told that a group of men drove up to his son and friends in the town centre and shouted "*Wait til you see your mum's car*". Mr Whitehouse was told that this group of persons were at a party in the locality and that his son and friends wanted to confront them to put a stop to the feud. He told the Tribunal that he made a moral decision to try to deal with it in the softest way possible and said that he was weighing up his options. One of the considerations was the moral dilemma of explaining to his wife why he didn't go if indeed there was a confrontation and people were injured. They reached a nearby house, no one came out when they knocked the door and one of the boys kicked the door in but the house was in darkness and it seemed that nobody was at home. The boys recognised a car used by the other group which was parked nearby. This was a red VW Passat and they said it was definitely the one they were in when they challenged them about damage to his mother's car so they broke one of the windows with a baseball bat.
9. The Appellant admitted that he was at the scene and therefore he realised he was committing an offence but he never touched the property in any way and did not damage the property or car. The Police arrived shortly after the criminal damage occurred, the group were arrested and taken to Antrim Police Station where they were interviewed and remanded in Police custody. He told the Tribunal that he was remanded in custody for three and a half months and was then on bail for over a year. Part of Mr Whitehouse's bail conditions was that he was not to enter the Waterside of the City, that he was under curfew between 7.30pm and 7.30am and he had to sign Police bail every day. He explained to the Tribunal that this incident caused a rift in his marriage, he split up with his wife and got the children at the weekend. When his 7 year old daughter was with him for a weekend, she was to attend a children's party, she had forgotten her tights and the Appellant drove back to his old address in the Waterside whereupon he was stopped by the Police for breach of bail conditions. There was an altercation between himself and a detective who was with the group of Police, he was arrested for breaching his bail conditions and arising out of this incident with the detective he was charged with disorderly behaviour, pleaded guilty and was fined £250.00.

10. When asked why he pleaded guilty to the Aggravated Burglary, which was disposed of at the Crown Court on the 12th May 2011, he told the Tribunal that he intended pleading not guilty as he was at the scene to try to prevent an offence occurring. He always said that he would plead guilty to being there but that he had no criminal intent whatsoever. He told the Tribunal that his solicitor, MacDermott McGurk & Partners had told him that there was no forensic evidence to link him with the crime other than him being in the car. He referred the Tribunal to a letter that appears in the Hearing Bundle from his solicitor (page 61) explaining that they represented Mr Whitehouse at Belfast Crown Court in 2011 and that he "*did eventually plead guilty on the basis that he wished to avoid a very young co-accused receiving a lengthy custodial sentence*". In answer to this, he told the Tribunal Panel that the Barrister representing the co-accused was bargaining for prison time and it was eventually put to him that if he didn't plead guilty then his co-accused would get five years, not the three year sentence that was eventually handed out. He knew the boys involved, had known their families for a number of years and felt that he was morally obliged to plead guilty on the basis that everyone involved in the offence was getting the same sentence – three years split between fifteen months immediate imprisonment and fifteen months licence. He now realises that he should have phoned the Police or taken steps to stop the boys from going out, masked and armed as they were.
11. He explained that even though he has a good degree in psychology, he can't get a job because of his criminal record. That is why he decided to go back to university on the Social Work course to allow him to get qualifications to give him more options for employment. He explained that he wanted to move forward and put the past behind him. He told the Tribunal that when he went to enquire about a future in Social Work, he was told that his prison sentence is part of his life experience and that it should not count against him. He went to Millennium House, Belfast (NISCC Office), told a representative there that he had applied for the Social Work course and, at this meeting with NISCC, he was told that his conviction should not be a bar to entry onto the course. The Tribunal noted that he had travelled from Derry to make contact and a number of questions were asked about this contact hoping that lessons could be learnt by the university and NISCC in respect of advice that was given and the Appellant's entry onto the degree course.
12. He was asked about his educational background and explained that he did an IT course in prison (GCSE IT). He explained that he finished his psychology degree at Jordanstown University in June 2015 attaining a 2:1. He then explained that he tried to get various jobs and even the local Call Centre turned him down. It was then that he decided to apply for Social Work as he was motivated by:
 - (a) Experience with his handicap sister.
 - (b) Seeing young boys coming in and out of prison like "revolving doors".
 - (c) He thought his life experience could assist him in understanding people who get involved in criminal offending.

He was interviewed by the university, he was contacted about his criminal record and the Enhanced Disclosure and he was allowed onto the course. He explained that he had been back and forward to NISCC as he needed to be registered and to get a placement for work experience. He has now finished his second semester and his marks would indicate that he was predicated a 2:1 degree. In relation to the registration with NISCC, he explained that he applied in October 2018, there was a small space on the form for details of any criminal record, he filled it in and was then contacted by Mr O'Brien. They had a conversation on the phone, he told the Panel he went to meet Mr O'Brien and that his case was then referred to the Registration Committee.

13. The Appellant was then cross-examined by Ms Burgen. She initially went through his convictions and he agreed that they were correct. He agreed that he was guilty of Aggravated Burglary and Criminal Damage. He said that he had paid the price, that it is in his past, that he served his fifteen months in prison and that there was no paramilitary connection with any of the offences. The Tribunal noted his answers in relation to the following issues:

- He did not involve the Police at an early stage in the Aggravated Burglary matter.
- Telling the Tribunal that a one to one fight and a few punches would sort it out. We feel this was not appropriate.
- He said that at the time of his offending in 2010, he was not as mature as he now was. He had learnt a lot from his time at university; he would not make the same decision if he was met with the same circumstances today. However, we note he was 44 years old at that time.
- He accepted that he was in breach of bail during the disorderly behaviour incident arising out of his breach of bail conditions and explained in detail how the offence occurred. However, he did concede he had his two daughters in the car while he was in heated discussion with the Police Detective.
- It was directly put to him whether he thought he should be registered to do Social Work when he took the risk of breaching bail to get a pair of tights for his daughter. In the opinion of this Tribunal, his answers were not convincing and when asked why he got into a "heated discussion" with the Police detective when he was on bail, he conceded that it was the wrong attitude to take.
- He told the Tribunal that he got onto the Social Work course, beating hundreds of other students onto the course, there were sixty eight places and over eight hundred applicants.. When the university got the Enhanced Disclosure he had to attend a second interview and he was accepted for the course despite his criminal record.

14. Tribunal Member, Mrs Brownlee asked a number of questions regarding his contact with NISCC and his enquiries about registration before his Social

Work course commenced. There was no dispute by the Respondent in relation to Mr Whitehouse's version of events and, through Ms Burgen, Mr O'Brien accepted that it probably did occur as Mr Whitehouse described it. The Respondent agreed that the Appellant probably did attend NISCC offices and that he would expect some professional advice but they couldn't take the matter further as they don't know who Mr Whitehouse spoke to at the Belfast offices. It is worth noting that an early failure to warn Mr Whitehouse about the effect of his criminal record upon registration has wasted time and money on behalf of Mr Whitehouse and has probably also affected the public purse. These matters cause us concern and the issues involved should be reviewed by the authorities in control of education and registration.

15. Mrs Brownlee also asked whether or not the public should be concerned about the Appellant's criminal record, to which he said that it was behind him, was in his past and that he hoped he would not be judged on it. He would hope that he could offer his experience as an aid to any future client that he encounters as part of his social work. He stated that he would hope that he would not be judged on what is on the Enhanced Disclosure Certificate stating "*We are taught not to be judgmental*". He also referred to his references as an indication that he has changed and that he has put these matters behind him. He conceded that the convictions are evidence of bad judgment but stated that he should be judged on what he has achieved now.
16. On questioning from the Panel, it was suggested that he had limited insight into his offending when he gave evidence before the Registration Committee and was asked what had changed between the evidence given then and his evidence now. He told the Tribunal that he attended the previous hearing without legal representation as he was relying on his good character as it is now and that he was not there to defend his past. He reminded the Panel that people can change and that his earlier offences were in his teens and twenties but the Chairman reminded him that the first offence in 1989 was when he was 25 years old. He was then asked to explain each of the criminal convictions in detail:
 - (i) 1989 - Assault on the Police. He said that a Police Officer had tripped over a bag that he had left on the ground. He felt that he didn't do anything wrong. He fought the case but was found guilty.
 - (ii) 1994 - Common Assault. There was a doorman at a nightclub, there was a melee in the club and he was caught dragging a man out in a headlock and he was charged and convicted of assault.
 - (iii) 1995 - Excess Alcohol. This was when he was caught the next morning, having come home late from a night out.
 - (iv) 1996 - Resisting Arrest. Again, this was an offence in relation to a nightclub. He was bound over.
 - (v) 1997 - Common Assault. A nightclub incident - there was a punch up at the front door.

- (vi) 2010 – Obstructing Police. A nightclub incident when he wouldn't let Police enter a nightclub he was in charge of.
- (vii) 2011 – No Insurance. Suspended for driving for six months. He couldn't remember much about this and believes it arises out of a motoring conviction in a taxi.

17. Ms Burgen closed the hearing on behalf of NISCC and she referred the Tribunal to:

- (i) The report of the NISCC Registration Committee.
- (ii) Rule 4(10)(b) of the 2017 Registration Rules and reminded the Tribunal that the Appellant has to discharge the burden of proof in relation to his good character.
- (iii) The legislation and the options the Tribunal would have to grant registration, refuse registration or impose conditions / restrictions on registration.
- (iv) The main weight of her submissions was in relation to the fact that the Appellant had limited insight into the serious nature of his convictions, he failed to give sufficient recognition to the effect of those convictions on members of the public and that it is up to the Applicant / Appellant to provide to the NISCC evidence in accordance with Rule 4(4)(a). She submitted that her main concerns would be:
 - The number of the convictions and the span of years over which they were gathered.
 - The seriousness of the convictions and the range of convictions.
 - The Appellant's lack of insight into the seriousness of those convictions and the detriment to the confidence of the profession if the Appellant were admitted onto the Register. She reminded the Tribunal that the burden of proof remains on the Appellant and that Rule 4(4)(a) states that the "Applicant shall provide" the evidence as to his good character, good conduct and physical and mental fitness.

18. Mr Donaghy made a number of closing points on behalf of the Appellant. He drew our attention to, inter alia:

- (i) The convictions should not be a bar to registration. We were referred to the case of *CR -v- General Social Care Council* [2006] EWCST 0626(SW). This was a case where an Appellant failed to disclose previous convictions and we were referred to paragraph 3(b) of the Judgment where it was noted that the extensive previous convictions of the Applicant, had they been declared, would not have prohibited registration. It was the failure to

declare them in an open and honest fashion that concerned the Committee. In this case, Mr Whitehouse has declared his convictions and there is no issue of dishonesty in that respect.

- (ii) There was a reason for his offending in 2010, in that he was trying to spare two co-accused a heavy jail sentence. We were referred to a letter from his solicitor, MacDermott & McGurk, that appears at Page 61 of the Hearing Bundle.
 - (iii) He is of good character, this offence occurred nearly a decade ago, he has made progress with his life, contributed to society and his last conviction of any type was eight years ago.
 - (iv) He has good references and those appear in the Hearing Bundle.
 - (v) He has turned his life around and his educational achievements reflect this. He helps young people through the Charity, Praxis and he has moved on with his life.
 - (vi) The Tribunal should reflect on the issue of proportionality and we were referred to the case of *Glenford Skervan -v- General Social Care Council* [2007] 1067. SW.
 - (vii) Referring to upholding the profession, we are directed to the Northern Ireland Social Care website, Section 6, referring to criminal offences where it states that previous criminal offences will “not necessarily prevent registration”.
19. We wish to express our thanks to Ms Bergen and Mr Donaghy for their very professional approach to this case, their grasp of the facts, interpretation of the materials and the succinct way that they dealt with the opening and closing submissions.
20. The Tribunal have considered all of the evidence presented. We give weight to the character references that appear in the Hearing Bundle. We have given careful consideration to the issue of rehabilitation and recognise that this is an important issue in modern society in the United Kingdom and particularly in Northern Ireland. We recognise the Appellant’s achievements in life; his academic achievements are praiseworthy particularly in the context of his past and that he has achieved those academic standards through hard work, perseverance and patience. We recognise that his last offence, a motoring conviction, was over eight years ago. However, this Tribunal, after much consideration and debate, have decided, unanimously, that this appeal should be dismissed. We can understand how the Appellant was drawn into the offence of Aggravated Burglary with Intent to Commit Grievous Bodily Harm in 2010; there was family involvement, there was poor decision-making after a long day at work, there was a desire to ensure that matters did not escalate. However, it seems clear to us from the evidence that the Appellant was aware that some violence may have occurred as his evidence was that there may be some punches and that would end the matter. That was poor judgment but something upon which

the Appellant has reflected and explained. However, the following issues cause us difficulty:

- (a) The Appellant was guilty of an offence of Disorderly Behaviour arising out of him being stopped by the Police due to a breach of his bail conditions. It is difficult for us to understand the lack of insight into his position regarding law and order and allowing himself to let this matter escalate out of control when he knew that that escalation could lead to immediate incarceration. We note that Mr O'Brien has recorded that the Appellant told him that the breach of bail was due to constant Police harassment. He also mentioned Police harassment in his evidence to the Tribunal.
 - (b) On page 69 of the Hearing Bundle, there is a letter from Professor Kristian Lasslett dated the 10th February 2019. This provides details of a complaint made against Mr Whitehouse by a former partner in the context of contact on the Ulster University campus. This demonstrates a lack of control when it was absolutely fundamental that the Appellant control his behaviours with the knowledge of his past offending.
21. Upon observing the Appellant giving evidence and in answering questions on cross-examination and questions from the Tribunal Panel, it was noted that the Appellant had a lack of control of his emotions. We fully understand how difficult it can be to give evidence before a Tribunal in the circumstances in which Mr Whitehouse finds himself but we found some of his answers to be argumentative, challenging and demonstrating a lack of insight into his predicament. It is our opinion that the Appellant does not demonstrate that he is completely reconciled with his past or that he accepts and recognises that the offences in his past were as a result of poor decisions that he made himself and not the fault of others. We listened very carefully to his explanation regarding each of the convictions on the Enhanced Disclosure Certificate and we hold the opinion that the Appellant has not come to terms with the period of his life between 1989 when he first offended and his last offence of no insurance in June 2011. We have carefully considered the comments made by the Registration Committee in their decision of the 15th May 2019 and we also find that there is a lack of insight into the impact the Appellant's past may have on service users, work colleagues and the public. We are very aware of the financial impact on the Appellant of any decision regarding his future career. We have already commented upon the lack of coordinated thinking between the university authorities who accepted him on the course with knowledge of his previous convictions and their seemingly uncoordinated approach and contact with NISCC. There should be some method of enquiring about the prospect of registration for someone like Mr Whitehouse, with a previous criminal record, who might find himself in difficulty after doing two semesters at university and the obvious cost in money and time.
22. We found that some of Mr Whitehouse's answers regarding the impact of his convictions lacked remorse and weight. Mr Whitehouse provided us with a statement that was clearly written with much consideration and thought (pages 64 and 65). In that statement he referred to the debate and

consultation before he took the moral decision to accept the sentencing deal that was “against the wishes of his Defence team”. Even though he stated that he would explain this at the hearing, he did not explain in any great detail why he was convinced that he should accept a deal. We accept he attempted to rehabilitate himself in prison, he was not idle and completed a GCE in IT. He then attained a 2:2 Honours Degree in Psychology after his release from prison. He has also written that he has now successfully completed his first semester in the Social Work course and states “The course has had a strong emphasis on morals and reflection which has gave me cause for thought”. Therefore it is difficult to understand the comment from Professor Lasslett when his letter describes a complaint from a former partner. The Appellant never denied that this occurred.

23. We recognise that rehabilitation is extremely important in society and agree with the Appellant’s reference;

“Just because you have a past does not mean you can’t have a future.”

However, on careful consideration and reflexion upon all of the issues, we feel that we must refuse this appeal on the basis that the Appellant demonstrates a lack of insight, remorse and control which is apparent in his evidence on oath before this Tribunal. We feel that this would not work well within the Social Work setting and, as we have to weigh the interests of the public against those of the Appellant, we do not accept that Mr Whitehouse has demonstrated and proved, on balance, that he satisfies the good character test in accordance with the Rules.

24. Appeal Dismissed.

Stephen G Quinn Q.C.
Chairman of the Care Tribunal
15th October 2019