

APPEAL NO: 2008/7PC and 2008/7PVA

IN THE CARE TRIBUNAL

AK (Appellant)

-v-

**DEPARTMENT OF HEALTH, SOCIAL SERVICES AND PUBLIC SAFETY
(Respondent)**

BEFORE:

**Harry Black (Chairman)
Arthur Rainey
Sally O'Kane**

Hearing Dates: 1st December 2008

1. The Appellant appeals against two decisions of the Respondent dated 27th May 2008, namely to include her on the Disqualification from Working with Vulnerable Adults (DWVA) List and the Disqualification for Working with Children (DWC) List.
2. The Appellant was represented by Mr. McEvoy of Counsel, instructed by Copeland McCaffery Solicitors and the Respondent was represented by Mr. McArde of Counsel instructed by the Departmental Solicitor.
3. Prior to commencement of the hearing the Tribunal made a Restricted Reporting Order under Regulation 19(1) of the Care Tribunal Regulations (Northern Ireland) 2005 to protect the identities of the appellant, witnesses and the vulnerable adult referred to in the proceedings.
4. **THE LAW:** Appeals against inclusion in the DWC and DWA Lists are governed by Acts 11 and 42 of the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003. Act 42(3) provides that:- if on appeala Care Tribunal is not satisfied of either of the following, namely
 - a. that the individual was guilty of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult; and
 - b. that the individual is unsuitable to work with vulnerable adults, the Tribunal shall allow the appeal.

Act 11(3) is similar in terms with regard to children.

Thus, in order to dismiss the appeal, the tribunal must be satisfied that:

(i) there was misconduct;

(ii) the misconduct harmed or placed a vulnerable adult at risk of harm; and

(iii) the individual is unsuitable to work with vulnerable adults.

5. The burden of proof is on the Department and the standard of proof is the civil standard, that is, the balance of probability.
6. The appellant was employed as a Care Assistant by G.C Services and in the course of her employment she provided care to JS, a frail, elderly man. He lived alone in his home and at the time of the subject incidents, in February 2008, he was 91 years old. It was not in dispute that the appellant stole money from JS's wallet during her visits to his home. She was apprehended by the Police and prosecuted for the thefts. At Court, she pleaded guilty to four counts of theft. A total sum of £120 covered three of the counts and the fourth count referred to money to the value unknown. She was fined, ordered to pay compensation and in addition to a Conditional Discharge she also received a prison sentence for six months, suspended for two years. Certificates of conviction were made available to the Tribunal. She had been summarily dismissed from her job for gross misconduct. The Tribunal heard oral evidence from LB, the manager of GC Services, concerning the circumstances of the incident and the immediate termination of the appellant's employment. Her evidence was not in dispute.
7. The Tribunal heard oral evidence from GMcF and had sight of his written statement. He was a relative of JS, he had become suspicious about money missing from JS's wallet and he was instrumental in bringing about the detection and arrest of the appellant. He confirmed that, on being made aware of the events which occurred, JS was visibly shocked and upset and suffered some distress. His evidence was not in dispute.
8. It was the Respondent's case that the appellant was guilty of misconduct, JS had suffered harm and the appellant was therefore unsuitable to work with vulnerable adults and children.
9. On behalf of the appellant it was conceded that misconduct and harm were not an issue but that the main thrust of the appeal concerned the appellant's suitability to work with vulnerable adults and children.
10. On the evidence available the Panel were satisfied that the criteria for misconduct and harm were established. Theft from JS in the circumstances described clearly amounted to misconduct. The immediate consequences and his reaction to the events resulted in harm in terms of the upset and distress which he suffered. We have in no doubt that it would have had an effect on his wellbeing and would have caused anxiety.
11. The Tribunal heard evidence for the appellant and accepted that she was genuinely remorseful for her actions. She immediately accepted that she had caused hurt and pain not only to JS but also to his family. She did not seek to downgrade her conduct and freely acknowledged that she had let everyone down including her employers and her own family. She stated that she did not need the money and was unable to explain her actions but she did describe family and

domestic stressors at the time of the incident in addition to working fairly lengthy hours. She had now moved back to live with her parents and if given another chance she said that she would never put herself in the same position as before with regard to her family circumstances and working pattern. She was deeply ashamed of her conduct.

12. There was no doubt that the appellant had a hitherto unblemished record and reputation. She had worked for GC Services for three years. Her employers had held her in high regard and we heard evidence that the quality of physical care which she was capable of providing was of the highest level. Written references were considered at the hearing and three witnesses were called to give character evidence on her behalf. The witnesses were fully supportive of the appellant and gave evidence that the appellant had previously provided care in their homes and they would be happy for her to do so again.
13. Undoubtedly we had sympathy for the appellant. We took account of the matters referred to above in addition to the information provided in the Probation Report and the report from the Consultant Psychiatrist which concluded that she was of low risk of re-offending. Nevertheless the sheer gravity of the offences and the circumstances in which they were committed were a major consideration in our deliberations. It was not a single opportunist type of offence. It required, in our view, some premeditation to carry out four thefts in a short period of time. A pattern of serious misconduct was evident. One can only speculate as to how or when it would have ended but for the timely and fully warranted intervention of GMCf. The offences were perpetrated against a vulnerable adult in the sanctity of his own home by the appellant who was entrusted to care for him. The appellant betrayed not only the trust of the vulnerable adult but also the trust of her employers. She had three years of experience working in a care environment and knew what was expected of her and was fully aware of the weight of responsibility entrusted upon her. We were not totally convinced that the appellant's stressful domestic circumstances or pressure of work had a direct bearing on her conduct. While the degree of risk posed by the appellant is at the lower end of the scale, the tribunal is required to take a broad view of suitability and the issue of public confidence. Having committed offences of this nature any employer would have doubts as to her integrity and honesty irrespective of the fact that her ability to provide quality physical care would not be an issue. We repeat the authority of previously decided cases that the public at large and those who entrust vulnerable adults or children into the hands of professionals have a right to expect, indeed to demand, that such people who are placed in such important positions of trust are beyond reproach. Having taken all matters into account we are not persuaded that the appellant can be given the trust which is so essential in the circumstances and we conclude that she is unsuitable to work with vulnerable adults.
14. So far as the DWC list is concerned there was of course no suggestion that any child had been placed at risk nor do we say that we consider a child would be at risk of harm from the appellant. The law does not require such evidence. An individual may be deemed unsuitable to work with children by virtue of the

misconduct which placed a vulnerable adult at the risk of harm. The appellant's integrity and honesty would equally be of paramount importance in positions of trust in childcare situations. We believe that public confidence in the provision of services to children would be undermined if it became known that she was prohibited from working with vulnerable adults. We have formed the view that continuation of her name on the DWVA list makes her unsuitable to work with children.

15. It is our unanimous decision that both appeals be dismissed.

Ernest Kayle
Mr HARRY BLACK (Chairman)
ARTHUR RAINEY
SALLY O'KANE

21st DECEMBER 2008