

Between

LE (Appellant)

and

NISCC (Respondent)

Tribunal Panel:

Chairman : Diane Drennan

Lay Members: Patrick McAteer
Arthur Rainey

Dates: 27th June, 20th & 30th August 2018

Venue: Tribunal Hearing Centre, Royal Courts of Justice, Belfast.

Decision: The appeal is dismissed

Appeal:

1. The appellant LE appeals under section 15 of the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended and substituted by section 5 of the Health and Personal Social Services (Amendment) Act (Northern Ireland) 2016), against the decision of the Registration Committee of the Northern Ireland Social Care Council ('the Council') dated 29th January 2018, to refuse to register her on the Social Care Register.

The Law

2. 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 the relevant Rules, which are the NISCC (Registration) Rules 2017 ('the 2017 Rules').
3. Section 5 of the 2001 Act deals with the grant or refusal of registration, with a requirement by section 5(1) (a) that the Council be satisfied that the applicant is of good character.
4. 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 is the '*Standards of Conduct and Practice for Social Care Workers*' ('the Code of Practice') issued by the Council in November 2015.
5. The Code of Practice contains the values, attitudes and behaviours expected of social care workers in their day to day work. The standards are intended to reflect existing good practice and public expectations of the behaviour and practice of social care workers. By standard 2, "*..a social care worker ...must strive to establish and maintain the trust and confidence of service users and carers*". This includes in 2.1: "*Being honest and trustworthy*". Standard 5 states: "*As a social care worker, you must uphold public trust and confidence in social care services*". In 5.8, a social care worker must not: "*Behave in a way, in work or outside work, which would call into question your suitability to work in social care services*".
6. Rule 4(10)(b) of the of the 2017 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...*".

Rule 15(1)(a) requires the Council to refer to the Registration Committee ('the Committee') "*any application for registrationwhich it is not minded to grant*". Under Rule 20(16), the Registration Committee may, *inter alia*:

- (a) *Grant the application for registration*
- (b) *Refuse the application for registration*
- (c) *Impose conditions on registration for a specified period.*

7. Section 15 of the 2001 Act (as amended and substituted by section 5 of the Health and Personal Social Services (Amendment) Act (Northern Ireland) 2016), provides for an appeal against a decision of the Council in respect of registration to the Care Tribunal. By section 15(2): "*On the appeal, the Care Tribunal may -*

- (a) *confirm the decision,*
- (b) *set aside the decision, or*
- (c) *substitute for the decision appealed against any other decision that could have been made*".

Evidence and submissions

8. The Tribunal Panel carefully examined all the documents within the Tribunal Bundle, including a character reference received on behalf of the appellant from Miss Y, as well as correspondence received from the Disclosure and Barring Service (DBS), addressed to the appellant, the respondent and the Chairman, dated 24th July 2017, 27th June 2018 and 19th July 2018 respectively. The appellant chose not to have an oral hearing before the Tribunal, but to have the appeal decided on the papers only.

Preliminary Hearing and Issues

9. On 29th March 2018, a preliminary directions hearing was held, dealing with the exchange of documents, preparation of a Tribunal bundle and the fixing of a hearing date. The appellant was advised by the Chairman to seek legal

advice and was given examples of the type of documents she should lodge in support of her case. She was also advised that this appeal was from a decision of the NISCC and was not an appeal against a decision of DBS.

On 6th August 2018, the Chairman stated her intention to make a restricted reporting order under regulation 19 of the Care Tribunal Regulations (Northern Ireland) 2005 (as amended). This order came into force on 14th August 2018 and was confirmed by the Care Tribunal on the 30th August 2018. The order continues in force. The decision will be anonymised and the appellant will be referred to by the initials LE.

Burden and Standard of Proof

10. The burden of proof is on the appellant LE. It is for the appellant to show that she is a person who meets the standards of good character, conduct etc, as set down in Rule 4(10(b) of the 2017 Rules. [DS v NISCC] NISCC/1/2009 at paragraph 9: [Eilish Donnelly v NISCC]: NISCC10/14 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: paragraph 73:

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

Grounds of Appeal

11. The appellant set out her grounds of appeal, dated 14th February 2018. By section 3, she stated: *"I wish to appeal against a decision to:*

- (i) Refuse my registration in a relevant part of the register and*
- (ii) Remove me from a part of the register.*

In section 5, the appellant detailed her grounds of appeal. The principal ground related to the Committee's finding that she produced no evidence of remorse. The

appellant refuted this, referring to her sorrow at what she had done, to a letter of apology to the victim's family and to the repayment of the money. LE also stated: "*I do not condemn what I did at all and if I could change things I would as I loved my job. But please could I be taken off the barred list?*"

By section 6, the appellant elected to have her appeal determined on the written evidence alone, a decision she has maintained.

Background

12. The appellant LE was employed as a care assistant by X Home Care. She worked there from 6th March 2017 to 17th July 2017 when she was dismissed. On 17th May 2017, an online application for inclusion in the Social Care Register was made by her.

13. During a meeting which took place on the 17th July 2017, with SJ, the manager of X Home Care, another manager, PM and the appellant, LE admitted taking money from client B's wallet, having initially denied the allegation. She said she didn't know why she had been doing it and said she was sorry. In a letter of 18th July 2017 from X Home Care to the appellant, described as a letter to summarise the discussions and the outcome of the meeting, SJ stated "*During the meeting you admitted that you had taken money from (B's) wallet on more than one occasion*".

14. On 18th July 2017, Ms SJ, the manager of X Home Care, sent an employer referral form to NISCC. The form stated that a report had been received from the family of a male client B, alleging that money had been going missing from their father's wallet for a number of weeks. The family stated that the money had gone missing after the appellant attended the house to deliver care. The police and DBS were also informed.

15. On 18th October 2017, the appellant LE accepted a police caution in respect of an offence of theft. The date noted on the caution was 15th July 2017 and it stated: "*£60 cash taken from victim's bedroom*".
16. At a meeting of the Committee on 24th January 2018, the decision (dated 29th January) was made to refuse LE's application for registration. The appellant was not present at the meeting, nor did she provide written submissions.
17. The Committee stated that "*the question for the Committee was whether, in light of the employer referral from (X) Home Care and the Certificate of Caution, the Applicant has demonstrated that she meets the standards of good character and conduct*". The Committee based its decision on the established facts surrounding theft from a male client. It determined that public confidence in NISCC as a regulator could be undermined if an applicant with a caution for theft was admitted to the register. "*The Committee considered the applicant's actions in taking £60 from a vulnerable client were serious and the applicant has produced no evidence of remorse, insight or her otherwise good character*". The Committee considered the principle of proportionality and the potential impact on the applicant, but concluded that any hardship to the applicant was justified when balanced against the risk to the public and the public interest.
18. In her grounds of appeal, the appellant asked: .. "*please could I be taken off the barred list?*" (paragraph 11). "The Tribunal Panel has seen correspondence from the Disclosure and Barring Service (DBS) (see paragraph 8). DBS are considering whether to include the appellant in one or both barred lists (Children's Barred List and Adults Barred List). To date no decision has been made by DBS as to whether to include the appellant in one or both barred lists.

Conclusions/reasons

These conclusions and reasons for the decision made have been reached unanimously by the Tribunal Panel.

19. This is a case where the Tribunal Panel must decide whether the Registration Committee of NISCC were correct in refusing to register the appellant LE on the social care register. The Panel has to consider whether LE has produced sufficient evidence as to her good character and conduct, as required under Rule 4 (10)(b) of the 2017 Rules.
20. The Tribunal has decided that when the appellant LE ticked boxes (i) and (ii) in section 3 of the appeal form, she made a clerical slip by seeming to ask for an appeal both against (i) a refusal of registration in the relevant part of the register and (ii) removal from a part of the register. She obviously intended to appeal under ground (i) alone and the Tribunal endorses this. Removal from a part of the register has no relevance to this appeal and this aspect of the appeal is struck out.
21. The Tribunal accepts that there is a typing error in section 5 of the appellant's appeal where she states "*I do not condemn what I did at all*". It agrees with the respondent's view expressed in paragraph (c) of their response to the appeal dated 2nd March 2018, that the appellant intended to use the word "condone".
22. In this case, the appellant, while employed in a position of trust, as a social care worker with X Home Care, stole £60 from the bedroom of B, a vulnerable adult in her care. LE having initially denied the allegation, admitted the theft, was summarily dismissed from her employment and subsequently accepted a police caution. The Tribunal have to decide whether to confirm the decision of the Registration Committee not to register the appellant as a social care worker, whether to set this decision aside, or whether to substitute any decision which could have been made, such as the imposition of conditions on the appellant's registration.
23. The appellant LE has admitted stealing the £60 from a vulnerable client in her care, but states she is sorry for her actions, that she expressed this remorse

by writing to the family involved and paying back the money. She states in her grounds of appeal that if she could change things that she would and that she couldn't do any more to let the family know how sorry she was.

The Tribunal accepts that the appellant LE was sorry about the consequences of her actions. However, it is of the opinion that her failure to provide any reason for the theft, which took place on more than one occasion, her initial denial of the offence (which included a reference to her own grandparents as a reason why she would not steal money) and the failure to provide independent references from those with knowledge both of her work environment and the theft, casts serious doubt on whether the appellant was truly remorseful for her actions, as opposed to the consequences of those actions.

24. In reaching the decision in this case, the Tribunal have considered the effect which the appellant's actions had on B, the vulnerable adult in her care. This was an opportunistic crime, invading B's privacy by removing money from the wallet in his bedroom. Although the Panel have seen no record of how B felt after the theft was discovered, it is entitled to infer that he must have suffered some upset and that such an incident might have made him wary of care workers and the whole social care system. An offence such as this would have resulted in B and his family experiencing a loss of confidence in the social care system.

25. When the Tribunal makes a decision, it is entitled to consider its effect on vulnerable individuals and the wider community.

In the English case of **CN v The Secretary of State** [2004] EWCST 398 (PC), Judge Pearl stated at paragraph 29: *"We cannot underestimate the importance we attach to public confidence. When the Tribunal considers the question of unsuitability, it must look at the factual situation in the widest possible context"*.

The Tribunal agrees with the Council that the appellant, if registered, could pose a risk to the public. If LE was registered as a social care worker, without

any conditions imposed on her registration, having stolen from a vulnerable person in her care, this would definitely send a negative signal to the community at large and would undermine public confidence.

However, under the current legislation, (section 15(2)(c) of the 2001 Act), the Tribunal can "*substitute for the decision appealed against any other decision that could have been made*". This power could include the registration of the appellant with conditions. The Tribunal Panel has carefully considered whether it would be advisable or possible to register the appellant with conditions on such registration. The Panel has decided, after lengthy discussions, that it would not be possible or practicable to impose such conditions.

26. The Tribunal has fully considered the effect of this decision on the Appellant and realise that it will cause some hardship to her as she will be unable to take up employment as a social care worker. However, despite the caution for theft which she accepted in October 2017, other forms of employment will be open to her.

27. The Panel has not had the benefit of seeing the appellant in person. While it is LE's right to have her case decided on the papers only, this means that the Panel has no opportunity to clarify any points or to ask the appellant any questions. The case must stand or fall on the documents alone. The papers on behalf of the appellant consist of the grounds of appeal and one character reference from Miss Y. While the Tribunal Panel have carefully examined all the papers and have considered the reference, it is undated and seems to be from a friend who would not have had knowledge of the appellant at work and who may not have been aware of the caution for theft. The Tribunal Panel therefore gives limited weight to this reference.

28. Regarding the appellant's wish, set out in her grounds of appeal, to "*be taken off the barred list*", the Tribunal would emphasise that this appeal is from the Registration Committee's decision dated 29th January 2018. It is not an appeal from a decision of DBS, who have not in fact made any decision in relation to LE's case.

29. In relation to the Standards of Conduct and Practice for Social Care Workers, the appellant has clearly breached standard 2 (“..a social care worker ...must strive to establish and maintain the trust and confidence of service users and carers”), especially 2.1 (“Being honest and trustworthy”). There has also been a breach of standard 5: (“As a social care worker, you must uphold public trust and confidence in social care services”). In 5.8, a social care worker must not: “Behave in a way, in work or outside work, which would call into question your suitability to work in social care services”.

By her actions in stealing money from B, a vulnerable client in her care, the appellant has been dishonest, untrustworthy and has behaved, in work, in a way which calls into question her suitability to work in social care services.

30. The Tribunal has decided that the appellant LE has not produced sufficient evidence as to her good character and conduct, as required under Rule 4 (10)(b) of the 2017 Rules.

31. For all the reasons set out above, the Tribunal has decided to confirm the decision of the Northern Ireland Social Care Council Registration Committee dated 29th January 2018. The appellant’s appeal is therefore dismissed.

Diane Drennan: Chairman of the Care Tribunal

Date Diane Drennan
5th October 2018

Date recorded in the register