

**IN THE CARE TRIBUNAL**

**R A M**

**Appellant**

**And**

**NORTHERN IRELAND SOCIAL CARE COUNCIL**

**Respondent**

**Before:**

**Diane Drennan (Chairman)**

**Malachy O'Loane**

**Kerry O'Halloran**

Hearing dates: 24<sup>th</sup>, 25<sup>th</sup> and 29<sup>th</sup> November 2011

**The Application**

1. RAM ("the appellant") appealed under section 15 of the Health and Personal Social Services Act (NI) 2001 against the refusal of the Northern Ireland Social Care Council (the respondent) to register him as a social care worker on the register maintained under section 3(1) of the Act.

**Representation**

2. The appellant was unrepresented and Ms Donaghy from the Directorate of Legal Services represented the respondent at the preliminary hearings. The case was determined, in accordance with the appellant's request, without an oral hearing.

**Preliminary Hearings**

3. On the 2<sup>nd</sup> June 2011, a direction was given to clarify the matters at issue between the parties, to timetable the exchange of documents and to consider whether an oral hearing was appropriate. The appellant indicated to the Tribunal office that he would attend a preliminary hearing on 16<sup>th</sup> June 2011.
4. On the 16<sup>th</sup> June 2011, a preliminary hearing was held to consider the above matters. The appellant failed to attend, could not be contacted and the Tribunal office received no explanation for his non attendance. To date, no specific reason for his non-attendance has been received by the office. The hearing was adjourned until the 23<sup>rd</sup> June 2011. The appellant was contacted by the Tribunal

on the 21<sup>st</sup> June 2011 and stated that he realised the importance of attending the preliminary hearing and discussing the matters at issue, but indicated that he could not attend on 23<sup>rd</sup> June. Having suggested a date for which the Tribunal Chairman was unavailable, he later e-mailed mentioning the obtaining of legal advice and asking that the hearing be adjourned indefinitely.

5. At the adjourned preliminary hearing on the 23<sup>rd</sup> June 2011, which the appellant did not attend, the Chairman considered the appellant's e-mailed application for an indefinite adjournment and heard the respondent's representative. Bearing in mind the appellant's indication that legal representation was being obtained and the need to progress the case in the interests of both parties, the preliminary hearing was adjourned until the 21<sup>st</sup> September 2011. A restricted reporting Order under Regulation 19(1) of the Care Tribunal Regulations (NI) 2005 to protect the identities of the appellant, witnesses and the vulnerable adults referred to in the proceedings was made. That Order remains in force. The appellant was also asked to send a witness statement setting out the facts to be relied on by him, which was to be sent to the tribunal by the 29<sup>th</sup> July 2011.
6. On the 21<sup>st</sup> September 2011, at the adjourned preliminary hearing, the appellant again did not attend. The issue of the appellant's lack of representation, despite indications of some Union involvement, was discussed (an e-mail from the appellant to the Tribunal office of 12<sup>th</sup> September 2011, where he stated that his Union had told him that the case was too far ahead to offer assistance, had been received). The need to obtain as much information as possible in order to deal with the case fairly was emphasised and, having considered correspondence from the appellant and hearing the respondent's representative, an Order for third party disclosure, under the provisions of regulation 13(2) of the Care Tribunal Regulations (Northern Ireland) 2005, was made requiring the appellant's former employer ('O Housing Association') to disclose relevant documents.

## The Law

7. The Northern Ireland Social Care Council ('NISCC') was established under the Health and Personal Social Services Act (N.I.) 2001. It is responsible for the promotion of high standards of conduct, practice and training among social care workers. Section 3(1) of the Act requires it to maintain a register of social workers and social care workers. Section 4(1) provides that applications for registration must be made to the Council in accordance with the relevant rules. These are set out in the NISCC (Registration) Rules 2009, which were the relevant rules in force at the time of the appellant's application.
8. Rule 4(9)(b) of the 2009 Rules stated 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)"*.

9. Section 9 of the 2001 Act provides for 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. Such a Code of Practice was issued by NISCC in September 2002.
10. Rule 15(1) of the 2009 Rules requires the Council to refer to the Registration Committee any application for registration which it is not minded to grant.
11. Section 15(2) of the 2001 Act provides the right of appeal to the Care Tribunal against a decision to refuse an application for registration and section 15(3) states that the Tribunal may confirm the decision or direct that it shall not have effect. Section 15(4) enables the Tribunal to make decisions with regard to conditions, while by section 15(5), NISCC shall comply with any direction given by the Care Tribunal under the section.
12. The Council had not minded to grant the appellant's application and referred the matter to the Registration Committee which sat on 25<sup>th</sup> November 2010. The Registration Committee considered the case and by decision dated 25<sup>th</sup> November 2010 refused the application for registration, not being satisfied as to the appellant's good character, conduct and competence. The appellant appealed that decision.

### **Burden of Proof**

13. The Tribunal follows the general principles adopted by the Care Standards Tribunal in Great Britain. It is therefore for the appellant (or the applicant before the Registration Committee) to demonstrate that he or she is a person who meets the requirements of good character, conduct, competence and health as set out in Rule 4(9(b) of the 2009 Rules. (Jones v Commission for Social Care Inspection [2004] EWCA Civ 1713, CR V General Care Council [2006] 0626. SW and Beverley Joy Peek v General Social Care Council [2010] 1753.SW) The standard of proof is the civil standard, that is, the balance of probability, as defined in Re H [1996] 563 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*".

### **Facts and Evidence**

14. The appellant had chosen on his appeal form to have his appeal determined on the written evidence alone and without an oral hearing (a 'paper' hearing) and maintained this choice throughout these proceedings. The Tribunal therefore did not have the opportunity to ask the appellant questions, to clarify issues or to assess his credibility or that of other witnesses. It therefore had to reach its decision on the basis of a very careful and detailed examination of the papers before it.

## The Respondent's Evidence

15. The core issue considered by the Tribunal centred around the respondent's refusal to include the appellant in the Northern Ireland Social Care Register, following a decision of the Registration Committee, on the grounds that he failed to meet the requirements of Rule 4(9) (b) of the NISCC Rules, which state that the Council must be satisfied as to an applicant's "*good character, conduct, competence and health*". The respondent submitted four witness statements. The statement of DR, Conduct Officer with NISCC exhibited, among other documents, the NISCC confidential report to the Registration Committee. The statement of ES, Acting Project Supervisor at M Sheltered and Supported Accommodation ('M accommodation'), included the appellant's job description, check-lists, a support plan, a report and entries in the communication book and daily diary. The statement of SC, Project Supervisor at M accommodation and the appellant's line manager, exhibited, among other documents, notes of an investigatory meeting dealing with concerns about the appellant's work. The statement of NS, Support Worker at M accommodation, exhibited a work rota and a diary note. Copies of the NISCC (Registration) Rules 2009 and 2011 and the NISCC Codes of Practice for Social Care Workers and Employers of Social Care Workers, as well as the relevant legislation, were also provided to the Tribunal.

## The Appellant's Evidence

16. The Tribunal considered the appellant's appeal application form which set out his grounds of appeal, his letter to the respondent dated 22<sup>nd</sup> July 2010 and his correspondence to the Tribunal dated 15<sup>th</sup> March and 26<sup>th</sup> July 2011. The Tribunal also considered the appellant's personnel file (obtained by a 3<sup>rd</sup> Party Disclosure Order from O Housing Association) and three character references received by the Tribunal. The Tribunal has also examined the party and party correspondence and relevant papers contained in the hearing bundle.

## The Facts

17. From its examination of the said evidence, the Tribunal unanimously found the following facts, applying the burden of proof as set out in paragraph 13 above:
- a) The appellant was born on the 7<sup>th</sup> February 1978 and had experience of working as a social care worker since 2002. His curriculum vitae also notes work experience in marketing and personnel.
  - b) The appellant has five 'O' levels, a diploma in marketing and public management, a certificate in personnel practice (14<sup>th</sup> September 2005) and a certificate stating that he is an associate of the Chartered Institute of Personnel and Development (14<sup>th</sup> Sept 2005).
  - c) As part of his work for the certificate in personnel practice referred to above, the appellant prepared a detailed work based project proposal setting out details of the project, a research plan, methodology, time scale and potential problems.

- d) On 19th July 2004, the appellant was appointed as an active night support worker: level 1, working at M accommodation, which is a part of O Housing Association.
- e) On 28<sup>th</sup> July 2004, the appellant signed the main conditions and terms of employment which referred to a job description. This referred to 'specific responsibilities' and divided these into lists applicable to tenants and administrative matters. At number 3 on the tenant's list, provision is to be made, where appropriate of "*personal assistance to tenants...maintaining good household skills and promoting personal good hygiene and household management*". At number 2 on the administrative list, there is a mention of assistance with monitoring the overall safety of the scheme in accordance with the Health and Safety Regulations.
- f) From July 2004 to June 2005, the appellant undertook training courses in manual handling, dignity at work, food hygiene, fire safety, first aid, harassment and communicating with persons with dementia and managing violence and aggression.
- g) On 28<sup>th</sup> April 2005, the appellant had a probationary interview with his line manager SC. The notes of the interview state the main tasks which the employee is required to perform as being, in order of importance, "*Responsible for the welfare of tenants. Safety and security of scheme*". The appellant was found to be "*competent and completes all aspects of his job role*"; the only issue commented on at the interview was administration of medication. On 12<sup>th</sup> May 2005, MM, the Personnel and training manager at O Housing Association, wrote to the appellant confirming his employment as an active night support worker level 1, following the completion of his probationary period.
- h) No formal work appraisals appeared to be noted on the appellant's personnel file, apart from the probationary interview notes on 28<sup>th</sup> April 2005. However, brief letters referring to salary review and including thanks for work carried out were sent to the appellant on the 27<sup>th</sup> February, 13<sup>th</sup> June and 25<sup>th</sup> October 2006 and on the 15<sup>th</sup> August and the 22<sup>nd</sup> November 2007. A letter was sent to the appellant on 2<sup>nd</sup> May 2008 regarding salary, but with no mention of thanks.
- i) An investigation meeting was held on 15<sup>th</sup> February 2006 with the appellant, JC, support housing officer and ED, personnel officer, to discuss an absence from work at M accommodation on 18<sup>th</sup> July 2005 while allegedly working elsewhere. The appellant did not admit the allegation. Further evidence was to be obtained, but no conclusion or further documentation was noted and no particular weight was attached to this allegation by the Tribunal.
- j) On 30<sup>th</sup> March 2006, the appellant was sent a note mentioning an exceptional contribution following a recommendation from management and awarding a bonus. It is not known how many workers received this bonus payment.
- k) On the 21<sup>st</sup> April 2008, an investigatory meeting was held by O housing Association regarding five work concerns, raised by colleagues in relation to the appellant, an active night support worker at M accommodation. In

attendance were the appellant, his baby son, his line manager SC and E McL, personnel officer. These concerns related to :

- i. Failure to empty bins and clean floors on a number of occasions including 6<sup>th</sup>, 7<sup>th</sup>, 12<sup>th</sup>, 26<sup>th</sup> & 28<sup>th</sup> March 2008.
- ii. Failure to provide personal care to a tenant on the 28<sup>th</sup> March 2008.
- iii. Sleeping on duty on the 27<sup>th</sup> & 28<sup>th</sup> March 2008.
- iv. Failure to secure the building on the 9<sup>th</sup> & 10<sup>th</sup> April 2008.
- v. Failure to carry out hourly checks of the tenants on the 10<sup>th</sup> April 2008.

The meeting concluded that the appellant had a case to answer in relation to all five concerns. A report was prepared giving the substance of the meeting, noting responses from the appellant and providing supporting information.

Each of these concerns will be dealt with in turn.

**i. Failure to empty bins and clean floors on the 6<sup>th</sup>, 7<sup>th</sup>, 12<sup>th</sup>, 26<sup>th</sup> & 28<sup>th</sup> March 2008**

The Tribunal has examined the investigation report, the signed statement of SC, the active night checklist and the staff notes exhibited thereto, particularly the note in the communications book from SC marked '*clarification about the emptying of bins*' written on the 13<sup>th</sup> March 2008.

The appellant's response to this concern during the investigation meeting of 21<sup>st</sup> April 2008 was to at first refer to a discussion with SC about the possibility of reducing his working hours. SC stated that the appellant needed to make a formal request in writing to have his hours reduced and that he had been previously advised to do this. When reminded of the concern in question by SC, he stated that bins were not to be emptied when they had a tissue in them or when they were half full and then suggested that he had emptied the bins on every occasion since he had seen the note of the 13<sup>th</sup> March. No further submissions or comments were made by the appellant refuting the statements made on behalf of the respondent.

The Tribunal accepted that the toilet bins, which contained soiled incontinence pads, were not emptied and the toilet floors were not cleaned on a regular basis and were stained with urine on occasion. These duties were clearly stated as part of the duties to be carried out on the active night checklist, exhibited to SC's statement and the appellant would have known that these tasks were part of his job. It found that the appellant did not empty the bins and clean the toilet floors on the 6<sup>th</sup> and 26<sup>th</sup> of March 2008. It further found that the bins were not emptied on the 12<sup>th</sup> and 28<sup>th</sup> March 2008.

The Tribunal considered this failure on the appellant's part to perform duties clearly stated to be part of his job to be a serious matter. The presence of urine on floors and unemptied bins containing soiled incontinence pads would have resulted in very unpleasant odours, as well as possible slipping hazards, constituting health and safety hazards to frail elderly residents. The odours may also have extended into surrounding areas, thus affecting the atmosphere of the building generally for staff, residents and visitors.

**ii. Failure to provide personal care to a tenant JM**

The Tribunal has examined the investigation report, the witness statement of ES, Acting Project Supervisor, a job description referring to an active night support worker, the support plan of Mrs JM, staff notes and the active night checklist exhibited thereto. It has also considered the witness statement of NS, Support Worker. It has reflected on the correspondence between DR, conduct officer for the respondent and the appellant dated 13<sup>th</sup> and 22<sup>nd</sup> July 2010, the copy training certificates enclosed with the 22<sup>nd</sup> July letter, dated 7<sup>th</sup> June 2010 and 1<sup>st</sup> May 2009, the appellant's appeal form and the letters to the Care Tribunal dated 15<sup>th</sup> March and 26<sup>th</sup> July 2011, which are in identical terms.

This concern involved an allegation that an elderly and frail female tenant, Mrs JM, was not assisted with personal care on the morning of the 28<sup>th</sup> March 2008. This resulted in the lady not being properly dressed and left with dried faeces around her legs and ankles. Her condition became apparent when she appeared in communal areas of M accommodation in a soiled and undignified state. Also, her bed was soiled with urine and faeces. During the investigation meeting of 21<sup>st</sup> April 2008, the appellant is quoted as saying, referring to Mrs JM : "*She sometimes dresses her self, I normally check her, on that occasion I may have been running late, didn't check her*". The appellant also said that he had told a colleague, NS, about JM.

In a note in the communications book exhibited to the statement of ES, dated 27<sup>th</sup> March 2008 and headed "*Thursday night*" which detailed any issues arising during the appellant's shift, which extended into 28<sup>th</sup> March 2008, the appellant wrote : "*JM and... both up, breakfast made meds given out to ....JM.*" There was no mention in the note of a need for personal care or difficulties in completing duties, nor was there any indication that the appellant had told any colleague to deal with Mrs JM's personal care and hygiene.

In his letter dated 22<sup>nd</sup> July 2010 to DR, conduct officer for the respondent, the appellant stated in relation to this allegation :

*"...every morning I would assist to wash and dress some residents who needed assistance, there was a resident who occasionally I would assist in the morning, on that particular night I did not assist her to get washed and dress, she was capable of getting her self dressed with minimum assistance. When I left the building she was still in bed.*

*It only came to my knowledge that she had dressed and got herself up. And that she did not wash herself properly, she had faeces on her legs. I explained to my manager at that time that I did not assist her that morning.*

*I would not intentionally leave a patient in my care in neglected state with faeces”.*

The appellant then refers to training in the protection of vulnerable adults which he attended in 2009 and 2010 which he stated has helped him to understand abuse and neglect of vulnerable adults.

In his appeal form, the appellant does not refer to this issue directly stating in his grounds of appeal .... *“the accusation levelled against me was apparently according to O (housing association) happened once or twice...”*

In his letter of 15<sup>th</sup> March 2011, received by the Tribunal Office on 14<sup>th</sup> April 2011, the appellant states :

*“Yes I am remorseful of the incident against me and since I left O Housing Association 4 years ago, I have worked in other organisation, and have been trained to enhance my competence, this has completely changed my performance and enhanced my skills in care work.”* The appellant repeats this statement in his letter to the Tribunal of 26<sup>th</sup> July 2011. No further submissions or comments were made by the appellant refuting the statements made on behalf of the respondent.

The Tribunal accepted the evidence of ES set out in her statement, that the part of the scheme where the appellant was on duty was the supported part of the scheme for vulnerable tenants and that the applicant was solely responsible for the welfare of these tenants as the only person on duty at night. There may have been comments to be made as to why only one worker was on duty and responsible for a number of tenants, but no submissions have been made to the Tribunal by the appellant in relation to this.

The Tribunal found that the appellant would have been aware of the requirement to check the tenants hourly as stated on the active night checklist. It also accepted that at no time did the appellant state that hourly checks were unnecessary. It found from an examination of Mrs JM's support plan that she was a frail elderly lady with health problems connected with diabetes, but that, with some assistance, she was able to undertake some personal care, such as washing and dressing herself, although assistance was to be offered with showering. There is no mention on the support plan of any incontinence problems.

The Tribunal has carefully considered the description of Mrs JM's condition on the morning of the 28<sup>th</sup> March 2008, given in the statement of ES, where it describes that JM was not properly dressed and that there was a pool of urine below the chair where she was sitting in the dining room. It has also examined the notes signed by ES and dated



the 28<sup>th</sup> March 2008 and marked 'ES4' and 'ES5', which describe Mrs JM as having dried faeces on her ankles and legs, having two pairs of pants on, but no incontinence pad, petticoat or tights. The note marked 'ES5', made in the communication book, also states : "*JM's bottom sheet wet and faeces stain on it...*".

The Tribunal accepted that JM's physical condition and state of dress were as stated by ES in her statement. It also found that the pool of urine below her chair in the dining room occurred because Mrs JM was improperly dressed and was not wearing an incontinence pad. It also found that her bed clothes were wet and soiled.

The appellant's statement (in the investigation meeting of 21<sup>st</sup> April 2008) that Mrs JM "*sometimes dresses herself...*" is accepted and is borne out in her care plan. However, the Tribunal also found that, as the appellant himself stated in his responses during the investigation meeting,

*"I normally check her, on that occasion I may have been running late, didn't check her"*. It is accepted that the appellant normally checked Mrs JM because of her frailty and the reason he did not check her on this occasion was because he was running late in relation to the duties he had to perform, as there was no suggestion that he was late in arrival/departure terms.

The appellant stated, during the investigation meeting of 21<sup>st</sup> April, that he had told NS about Mrs JM on the 28<sup>th</sup> March 2008. He produced no evidence either at that meeting or subsequently to the respondent or this Tribunal to show that NS was in work that day. Having read the statement of NS and examined the copy work rota exhibited to it, the Tribunal found that NS was not in work that day and that therefore the appellant could not have passed information about Mrs JM's need for personal care on to NS.

The Tribunal found that, in accordance with the appellant's contemporaneous statement headed "*Thursday Night,*" and dated 27<sup>th</sup> March 2008, that when he left work Mrs JM was up, which conflicts with his later statement in his letter to DR dated 22<sup>nd</sup> July 2010, "*When I left the building she was still in bed*".

It also accepted that no hygiene problems regarding JM were highlighted in this note. Referring again to the appellant's letter of the 22<sup>nd</sup> July 2010 to DR, the respondent's Conduct Officer, the Tribunal found that the appellant did not assist JM to wash and dress on the morning of the 28<sup>th</sup> March 2008. The Tribunal also noted the appellant's statement in the same letter that he "*would not intentionally leave a patient in my care in a neglected state with faeces*" and found that if the appellant had not been running late, as he said in the investigation report of 21<sup>st</sup> April 2008, he would have checked Mrs JM, discovered her state and given her care.

The Tribunal considered that this incident was very serious, involving both neglect of an elderly, frail and vulnerable lady in relation to her personal care, but also a complete loss of her dignity in public areas of the complex, where she was seen by staff and other residents. Although the Tribunal has no evidence before it of the effect upon Mrs JM, it found that this incident would have adversely affected the atmosphere in this part of the complex. It considered that this lady was in the appellant's sole care during the night and early morning and that he was therefore responsible for her soiled and undignified state and also for the wet and soiled state of her bed clothes. If the appellant had carried out regular checks as he was required to do, he would have realised from the odour that both her bed and her person required attention.

The Tribunal accepted that some remorse and acceptance of responsibility were shown by the appellant in correspondence, but noted that there were no detailed submissions from him regarding this matter, no specific reference to it in his appeal form and no attendance at any hearing except the investigation hearing of 21<sup>st</sup> April 2008. Given the clear statement of duties contained in the Code of Practice for Social Care Workers, which the appellant would have read as part of his application for registration and the training courses he undertook in 2009 and 2010 in relation to vulnerable adults, the appellant should have accepted full responsibility and provided detailed submissions and explanations regarding this incident.

### iii **Sleeping on duty**

The Tribunal has examined the investigation report of 21<sup>st</sup> April 2008, the statement of ES and the report made by her, referred to in the investigation report and exhibited to her statement. This concern relates to two incidents on the 27<sup>th</sup> and 28<sup>th</sup> March 2008. ES refers to the appellant on both occasions sitting in a chair "*apparently asleep*". She refers, again on both occasions, to the fact that the appellant did not appear to have moved since ES had first approached him and states in her report that on neither of these two occasions did she attempt to awaken the appellant. The Tribunal has examined the statements of the appellant noted in the investigation report where he states "*I cannot confirm or not if I was sleeping*" and "*I definitely don't sleep*".

The Tribunal found that the appellant denied the allegations of sleeping on duty made against him. It also found that the sole witness ES did not categorically state, either in her report or in her witness statement, that the appellant was actually asleep on the 27<sup>th</sup> or 28<sup>th</sup> March 2008. It also found that ES did not awaken the appellant. In the absence of any clear evidence before it, the Tribunal could not come to any conclusion as to whether or not the appellant was asleep on the 27<sup>th</sup> or 28<sup>th</sup> March 2008 and therefore made no finding of fact on this area of concern.

**iv Failure to secure the building on the 9<sup>th</sup> & 10<sup>th</sup> April 2008**

The Tribunal has examined the investigation report of 21<sup>st</sup> April 2008, the witness statements of SC, ES and NS and the note made by NS in the communications book and exhibited to her statement.

This concern referred to an allegation that the appellant had failed to lock external doors, contrary to a check-list of required duties, on the 9<sup>th</sup> and 10<sup>th</sup> April 2008. In her statement, NS refers to arriving at work on the morning of the 10<sup>th</sup> April and to bringing in bins from outside the building and noticing that ...*"the bin store doors and gate were unlocked"*. In her note she refers to locking the doors and gate herself, raises concern about the security of the tenants and also refers to the requirement, contained in the active night check-list, for the active night support worker to ensure that all doors are secured and locked. The Tribunal accepted the evidence of NS, given in her witness statement and exhibited note as to the unlocked bin store doors and gate, although it also accepts that that she cannot categorically state who may have been responsible for leaving the doors unlocked. It also accepted her evidence in relation to the check-list and the requirement to check and secure the doors. However, there was no evidence before the Tribunal as to how frequently this type of security check was required.

The Tribunal was aware from the statement of ES that, on occasion, other members of staff, apart from those on duty, stay over-night and exit the building. However, there was no detailed evidence before the Tribunal in relation to this and no statements or submissions have been made by the appellant in relation to it.

SC referred in her statement to arriving at M accommodation at 11.50pm and being able to access the building without having to use any key as the bin store was unlocked. The Tribunal accepted her evidence.

During the investigation hearing, the appellant responded to the above allegations by stating that on the morning of the 10<sup>th</sup> April 2008 NS had locked the doors. He denied the allegation, stating that he always checked the doors were locked. He implied that whoever had last used the doors should have locked them. The appellant made no further remarks or submissions in relation to this allegation.

In the investigation report, reference was made to an incident a few weeks before the date in question where prowlers had been reported on the premises. The Tribunal accepted that there had been an incident involving prowlers on the premises a few weeks before the above dates. The appellant did not contest this and the Tribunal also found that the appellant would have been aware of this incident which would have required members of staff, especially those working at night, to be especially vigilant, given the vulnerable tenants living in M accommodation.

The Tribunal found that responsibility rested with the appellant to ensure that the building was secure and, on the papers before it, found that the appellant did not secure or check the security of the building on these occasions. This was a serious matter given the frailty of the tenants and the fact that prowlers had been detected before.

**v Failure to carry out hourly checks of the tenants on 10<sup>th</sup> April 2008**

The Tribunal has examined the investigation report of 21<sup>st</sup> April 2008 as well as the witness statements of SC and ES, the active night check-list exhibited to these statements and the note made by SC relating to her visit to M accommodation on the 10<sup>th</sup> April 2008.

In the investigation report, the appellant stated that he had checked the tenants after 12 midnight; he also said he checked the tenants every hour but not necessarily on the hour. There have been no further statements or submissions from the appellant in relation to this allegation.

The Tribunal accepted from the account given in her witness statement and the note referred to above, that SC attended M accommodation and observed the appellant for more than an hour and during the time she was there he did not carry out hourly checks as clearly listed on the active night check-list.

Although the Tribunal do not know what specific instructions the appellant had, it concluded that the failure to carry out hourly checks as stated in the check-list was a significant omission by the appellant, given the vulnerable condition of the tenants.

- l) On the 1<sup>st</sup> May 2008, a letter was sent to the appellant by CE, Supported Housing Manager of O Housing Association, listing the five concerns alleged against him and setting up a disciplinary meeting. The appellant was suspended on full pay from 1<sup>st</sup> May 2008. On 3<sup>rd</sup> June 2008, a further letter was sent to the appellant mentioning a rescheduled disciplinary meeting on 2<sup>nd</sup> June 2008 which the appellant did not attend and again rescheduling the meeting.
- m) On 30<sup>th</sup> May 2008, the appellant wrote a resignation letter giving as his reasons for resigning his wish to follow a career in human resources and personal family matters.
- n) The appellant continued to work as a social care worker for various agencies.
- o) On 1<sup>st</sup> September 2008, the respondent received a letter from O Housing Association, written by SC, advising that the appellant had been suspended from employment pending investigations into allegations of misconduct, including the neglect and abuse of vulnerable tenants and that he had subsequently resigned. The appellant's details were entered on a database and he was advised by the respondent on the 4<sup>th</sup> September 2008 that the information supplied would be retained and taken into consideration should he

apply to be included in the Social Care Register at a different date. No reply to this letter was received from the appellant.

- p) An application for inclusion on the Social Care Register was received by the respondent from the appellant on 21<sup>st</sup> May 2010. The appellant filled out the application form for registration and ticked the 'no' box in relation to questions regarding current disciplinary investigations or findings. The form was verified by Mrs LM, healthcare manager at Premier Recruitment, who stated that she had known the appellant for five months.
- q) Section 12 of the registration form contains a personal declaration which states: "*I have read, understand and agree to comply with the Code of Practice for Social Care Workers*". Section 5 of the Code reads: "*As a social worker, you must uphold public trust and confidence in social care services*" and at 5.1 "*you must not abuse, neglect or harm service users...*" The appellant signed beneath this declaration.
- r) From the 1<sup>st</sup> June to the 15<sup>th</sup> October 2010, documents were sought by the respondent from O Housing association. On 9<sup>th</sup> July 2010, a copy of the investigation report dated 21<sup>st</sup> April 2008 was sent by O housing association and on the 15<sup>th</sup> October, an active night check-list, a report from project worker ES and an e-mail giving an overview of concern 5 in the investigation report were sent by SC.
- s) On 13<sup>th</sup> July 2010, DR, conduct officer for the respondent, wrote to the appellant updating him, referring to the letter from O Housing Association received by the respondent on 1<sup>st</sup> September 2008 and requesting further information from him. He replied on 22<sup>nd</sup> July 2010, confirming that he had worked for O Housing Association and "*resigned during the allegation which was levelled against me, however my resignation was nothing to do with the investigation but was a personal circumstance that I was in during the time*". The appellant commented on the allegations made regarding Concern 2 (quoted at (k) ii above) and referred to training courses undertaken by him in May 2009 and June 2010. He also stated that the main reason he resigned from O Housing Association was because of pressure involving looking after a child during the day while working night shift. He stated that he had requested changing his hours to day shift but that request was denied. In relation to this issue of a request to reduce hours, the Tribunal has no evidence before it as to why the appellant, a married man, was looking after his child during the day while working at night. It also has the statement of the appellant's line manager SC in the investigation report of 21<sup>st</sup> April 2008 where she mentions to the appellant that such a request would have to be put in writing. The appellant has not denied that this was said by SC and such a request would appear to be in accordance with good working practice. The Tribunal found that while the appellant may have had family pressures on him, he could have requested a change in working hours and did not appear to have made such a formal request to his line manager, SC.
- t) On 2<sup>nd</sup> September 2010, the appellant was sent a copy of the investigation report provided by O Housing Association and asked if he wished to comment on it. No response was received from the appellant.

- u) On 21<sup>st</sup> October 2010, a notice of referral was sent to the appellant stating that the council was not minded to grant his application for registration and stating that it was to be referred to an independent registration committee, copies of the documents the Council intended to put before the Committee (including the investigation report of 21<sup>st</sup> April 2008) were also sent. On an application form in relation to attendance at the registration committee, dated as received on the 4<sup>th</sup> November 2010, the appellant stated that he did not want to make oral submissions, be represented or request a change of date.
- v) A confidential report dated 19<sup>th</sup> October 2010 and signed by the respondent's conduct officer DR was prepared and submitted to the Registration Committee. The Committee's decision was issued on the 25<sup>th</sup> November 2010 refusing registration and the reason given was that ...*"the Committee is not satisfied as to the Applicant's good character, conduct and competence"*. A notice of decision dated 26<sup>th</sup> November 2010, giving brief details of the decision and its effect was forwarded to the appellant on that date.
- w) The appellant appealed the decision and the form was received by the Tribunal Office on the 29<sup>th</sup> December 2010, asking that the case be dealt with on the written evidence only.
- x) Preliminary hearings took place and directions were made as set out in paragraphs 3 to 6 above. Documents were exchanged and the case was prepared and set down as a 'paper' hearing.
- y) On the 16<sup>th</sup> November 2011, the appellant was contacted by letter and e-mail by the Tribunal. He was informed that the case would be dealt with on the papers only, no witnesses would be called and the panel could not question witnesses on their evidence. On the same day the appellant again confirmed that he wished the decision to be based on the papers only.

### **Tribunal's Conclusions**

- 18. The Tribunal has considered in detail all the evidence put forward by the respondent and the appellant. It noted the lack of detailed evidence from the appellant, but has carefully examined the appeal form and any documents submitted by him. This case presented considerable difficulty to the Tribunal as there was no opportunity to clarify any issues arising from the papers by putting questions to the parties or witnesses, nor was there any opportunity to assess the credibility of the appellant or the witnesses.
- 19. The appellant states on his appeal form that *"the NISCC did not take into account I had worked for O housing for 5 years"*. The appellant in fact worked for O Housing Association at M accommodation for approximately 4 years, this was stated on his application form and the investigation report before the registration committee. Although the Tribunal do not know what weight the Committee placed on the length of time the appellant was employed by O Housing Association, this appeal is a re-hearing of the evidence (Beverley Joy Peek v General Social Care Council [2010] 1753.SW). The Tribunal is fully aware of the length of the appellant's employment as stated in his personnel file.

20. The appellant refers on his appeal form to ...*"the accusation levelled against me ...apparently...happened once or twice"*. The Tribunal has no indication as to which "*accusation*" the appellant is referring among the five concerns the subject of the investigation report, a copy of which was forwarded to the appellant on 2<sup>nd</sup> September 2010 and which formed the part of the documents placed before the Registration Committee, sent to the appellant on 21<sup>st</sup> October 2010. Each of these concerns were serious as each involved vulnerable people in the appellant's care. It should have been quite clear to the appellant that these were significant concerns, happening more than "*once or twice*" which required comment and explanation.
21. The appeal form refers to the appellant working for the NHS for more than three years and his professionalism greatly improving due to the training he goes through year to year. The appellant is certainly to be commended for undertaking training. However, given that the training certificates (sent to the respondent with the letter of 22<sup>nd</sup> July 2010), relate to '*Protection of Vulnerable Adults Awareness*' and '*Safeguarding vulnerable Adults and Child Protection*', this enhanced knowledge should have also given the appellant insight into the need to deal with *all* the matters raised in the investigation report, realising their serious nature, taking responsibility and giving explanations where necessary. Although the Tribunal has certainly looked at the references given by work colleagues in the NHS and notes their praise for him as a hard-working member of the hospital team, it has no information before it as to whether the referees knew of the incidents referred to on the investigation form when writing their references. The fact that the appellant may well be an excellent worker now is relevant to these proceedings but cannot erase the incidents listed in the investigation report from the record. The Tribunal, in its findings of fact, has decided that four out of the five concerns occurred and were the responsibility of the appellant.
22. These serious matters had to be dealt with by the appellant as part of his duty to show to the Registration Committee and to this Tribunal that he is a person (in the terms of Rule 4(9)(b) of the Registration Rules 2009) of good character, conduct, and competence, as stated on the decision and the notice of decision. Health, which is also mentioned in the Rule, did not form part of this decision. These issues were not addressed by the appellant in any detail, neither at a disciplinary hearing which he avoided by resigning, or at the registration committee hearing which he could have attended, had representation or sent detailed submissions, but took none of these options. This appeal, which operates by way of a re-hearing, has received no information from the appellant about four of the five concerns beyond the brief comments stated on the investigation form of 21<sup>st</sup> April 2008. It only had the appellant's comments in correspondence about the incident concerning Mrs JM. The appellant is an intelligent able person with considerable experience in the social care sector and should have realised that proper engagement with these concerns was necessary.
23. The appellant on his appeal form finally refers to his family commitments which have taken his responsibility and care to a higher level. The appellant's stable family back-ground is very commendable, but is not of itself relevant to these

serious incidents which required detailed explanation by the appellant and robust defence where necessary.

24. In his letter of 15<sup>th</sup> March 2011, repeated on the 26<sup>th</sup> July 2011, the appellant enlarges on his grounds of appeal and refers to "*this incident which happen*", again to "*a one off allegedly incident*" and later states "*Yes I am remorseful of the incident against me..*", again neither identifying the incident or commenting on the other four concerns set out in the investigation report, which the appellant was very familiar with. This is another example of a pattern of non-engagement and a lack of candour regarding these serious matters.
25. In the letter mentioned above, the appellant mentions performance appraisals with O Housing Association. On the basis of his statements about these appraisals and so that the Tribunal would have as much information as possible before it, the Tribunal Chairman made an Order for 3<sup>rd</sup> party disclosure of the appellant's personnel file on 21<sup>st</sup> September 2011. The papers were duly lodged with the Tribunal on 20<sup>th</sup> October 2011 and copies were sent to the parties. Apart from a note of a probationary interview on 28<sup>th</sup> April 2005, a note mentioning an exceptional contribution on 30<sup>th</sup> March 2006 and very brief notes dealing with salary reviews in 2006, 2007 and 2008, there are no formal work appraisals dealing with the appellant's work. No comments were made by the appellant in relation to the personnel file.
26. The appellant then raises an issue in relation to the NISCC Registration Rules, having a concern that the said rules ban him from registering for life and mentioning the need to support his family. He also states that "*this is the only work I know and have done over the past 10 years*". The first issue, relating to the rules, seems to be at variance with the provisions of rule 12, providing for repeat applications. The point about the appellant's career choice is not entirely correct, as his curriculum vitae, noted on his personnel file, mentions experience in management and personnel and, in his 30<sup>th</sup> May 2008 resignation letter to O Housing Association, he gives as his reasons for resignation, first, his wish to follow a career in human resources and personal family matters.
27. It would appear from the 2009 Rules, in force at the time of the appellant's application to register, now superseded by the 2011 Rules, which are unchanged in relation to rule 12, that the appellant can re-apply to the respondent Council for registration, although the rule does mention having to wait for two years where there are two refused applications for registration. Although it is accepted that the appellant's main work in previous years has been in social care work, it concludes that he has qualifications and experience in other work areas, such as human resources.
28. After carefully considering all the evidence, examining the documents, including the character references provided by the appellant, as well as the case-law and legislation, and being aware of the appellant's personal circumstances, the Tribunal has treated this case as a re-hearing of the evidence and has come to a majority decision.
29. The majority decided that, given the burden of proof on the appellant or applicant before the Registration Committee, that this burden of demonstrating that he is a person of good character, conduct and competence, has not been



discharged, as the appellant failed to address the issues brought against him which were the five concerns dealt with at the investigatory meeting of 21<sup>st</sup> April 2008, in any detail or at all, either at the hearing before the Registration Committee or before this Tribunal. Given the findings of fact against the appellant, where the Tribunal found that the appellant was responsible for four out of the five concerns and taking into account his failure, recited above, to deal with these matters, it decided that the appellant does not meet the standards of a social care worker who is working with vulnerable people and that the registration Committee were entitled to refuse him registration on the grounds that it was not satisfied as to his good character, conduct and competence. In arriving at their decision, the majority took into account the case of CR v General Care Council [2006] 0626 SW, where it was held ... "*any doubts must be resolved against registration*" (paragraph 23).

30. The minority agreed with the majority that the appellant was responsible for four out of the five concerns set out in the investigation report of 21<sup>st</sup> April 2008 and recited in the findings at paragraph 17. (k) (i) to (v) above and also agreed that those incidents were very serious, involving vulnerable people. However, the minority arrived at a different decision. It decided that a refusal to register the appellant, given his references and his previous employment history, would be a disproportionate sanction. However, given the serious nature of the incidents, the minority view was that any registration should be subject to strict conditions of supervision and training.

### Human Rights issues

31. In his letters to the Tribunal of 15<sup>th</sup> March and 26<sup>th</sup> July 2011, which are in identical terms, the appellant raises an issue of Human Rights. The Tribunal has considered what bearing (if any) the European Convention on Human Rights (ECHR) has on this case. It considered the relevant Articles to be Articles 6 (right to "*a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*") and Article 8 ("*right to respect for his private and family life, his home and his correspondence*") (see further: R [on the application of Wright and others] v Secretary of State for Health and another [2006] EWHC 2886 & [2009] UKHL 3 and R [on the application of the Royal College of Nursing] v Secretary of State for the Home Department [2010] EWHC 2761).
32. Dealing first with Article 6, the Tribunal unanimously found that this Article was engaged. The Tribunal, having noted the appellant's opportunities to be heard and to make representations before the Registration Committee and having taken account of the appellant's opportunities to make representations and to be heard before this Tribunal, was of the unanimous opinion that there was no breach of Article 6 in this case.
33. In relation to Article 8, the majority did not consider disqualification from specified employments or areas of work in general engaged the Article or conferred any right to engage in a chosen profession and did not consider, on the facts of this case, that there was such an impact on personal relationships so great as to constitute an interference with the right to respect for private life (see further: R [on the application of Wright and others] v Secretary of State for

Health above). Even if Article 8 was engaged, since the majority of the Tribunal was not satisfied as to the appellant's good character, conduct and competence, in the circumstances and for the reasons stated above, the majority were therefore satisfied that any such interference, affecting his ability to obtain employment, as a social care worker, arising from his non-registration, was proportionate and justified. The minority was satisfied that there was such interference and that Article 8 was therefore engaged and the interference affecting his ability to obtain employment, as a social care worker, arising from his non-registration, was disproportionate, in view of the overall context, including the appellant's good employment record, other than the incidents referred to above.

## Decision

34. Section 15 of the 2001 Act provides the right of appeal to the Care Tribunal against a decision to refuse an application for registration and section 15(3) states that the Tribunal may confirm the decision or direct that it shall not have effect. Section 15(4) enables the Tribunal to make decisions with regard to conditions while by section 15(5) NISCC shall comply with any direction given by the Care Tribunal under the section.

35. By a majority decision, for the reasons set out above, the decision of the Registration Committee is confirmed and the appellant's appeal is dismissed.

The Tribunal unanimously states that it is a matter of concern that the decision of the Registration Committee was in brief terms. While "*the general principle is that each party must provide sufficient evidence to support their case....*" (Beverley Joy Peek v General Social Care Council [2010] 1753.SW at paragraph 13) and the burden of proof is, as stated, upon the appellant (or applicant before the Registration Committee), a much fuller statement of the reasons for the decision and not a mere quoting of the relevant portion of the Registration Rules, would be helpful to the Tribunal in determining these cases. However, since this hearing by the Tribunal has involved a re-hearing of all the evidence in this case, it was not necessary for the Tribunal to consider this issue any further.



Diane Drennan (Chairman)  
Malachy O'Loane  
Kerry O'Halloran

TRIBUNALS UNIT

11 JAN 2012

Date Decision recorded in Register and Issued to Parties: