

IN THE CARE TRIBUNAL

BETWEEN:

LESLEY VICTORIA GLENN

Appellant

-and-

NORTHERN IRELAND SOCIAL CARE COUNCIL

Respondent:

**Tribunal Panel: Stephen Quinn Q.C. (Chairman);
Agnes Lunny OBE; Fergus Cullen**

Date: 22nd May 2018
**Venue: The Tribunals Hearing Centre,
Royal Courts of Justice, Belfast**
Decision:

1. The Appellant applied for registration as a Social Care Worker with the Northern Ireland Social Care Council ("NISCC") by submitting a form received by the NISCC on the 23rd March 2017. At the time of the application the Appellant was employed by Lucas Love Health Care ("Lucas Love") – an employment agency – who submitted an Employer Referral Form ("the form") received by NISCC on the 9th May 2017. This form alleged, among other things, poor work performance and failure to report for previously agreed domiciliary care shifts allegedly resulting in service users being unattended to. The Appellant's application was considered by NISCC who decided to refer the application to the Registration Committee ("the Committee") in accordance with Rule 15(1)(a) of the NISCC (Registration) Rules 2017 ("the Rules"). NISCC raised a concern based on matters set out in the form and further, there was an issue of alleged dishonesty relating to the completion of an application form for employment with First Choice Selection Services Limited ("First Choice"). The Appellant appeared before a meeting of the Committee on the 22nd January 2018, she gave evidence and was represented by Mr Gordon Lyons, MLA. By way of their written decision dated the 25th January 2018, the Registration Committee decided that the Appellant should not be registered onto the Social Care Register. The Appellant appeals that decision under Section 15 of the Health & Personal Social Services Act (NI) 2001.
2. The Appellant appeared in person and was not represented. The Respondent was represented by Mr Anthony Gilmore, Solicitor, Directorate of Legal Services ("DLS"), Belfast.

3. Section 3(1) of the Health & Personal Social Services Act (NI) 2001 requires the Respondent to maintain a Register of Social Workers and Social Care Workers. Section 9 of the 2001 Act provides for the preparation by NISCC of Codes of Practice laying down standards of behaviour expected of Social Care Workers and a requirement for the Code to be taken into account by the NISCC when making a decision and also in any proceedings on appeal against such decision. Section 4(1) of the Act states that the application for registration must be made to the NISCC in accordance with the relevant rules which, in this case, are the NISCC (Registration) Rules 2017 ("the Rules"). Rule 4(9)(b) of the 2017 Rules states that the Council should 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)*". The burden of proof is on the Appellant. The standard of proof is the civil standard, that is, the balance of probability.
4. The Tribunal has been provided with a comprehensive Trial Bundle and on the day of the hearing received some further documentation relative to the Appellant's shift rota, wages documentation, employment information from Lucas Love and a copy of an email dated 4th May 2017 between Michella Dooley and the Appellant dealing with, inter alia, organising the Appellant's shift and rota arrangements ("supplementary documents").
5. Mr Gilmore opened the hearing and took the Tribunal through the documents contained in the Trial Bundle and explained the supplementary documents received today. The main points of his opening were:
 - (i) Lucas Love, the Appellant's employer up to the 8th May 2017, employed both domiciliary care staff and health care staff and the Appellant could work in either branch.
 - (ii) On the 23rd March 2017, the Appellant applied for registration.
 - (iii) On the 8th May 2017, there was an Employer Referral Form from Lucas Love received by NISCC on the 9th May 2017.
 - (iv) The Referral Form raised a number of issues regarding the Appellant's suitability and work performance, referring to a letter to the Appellant on the 5th May 2017 inviting her to a disciplinary meeting on the 11th May 2017 and noting that she resigned as an employee of Lucas Love on the 8th May 2017 before the disciplinary hearing took place.
 - (v) The Appellant applied for employment with First Choice on the 8th May 2017. The Appellant failed to mention that she had been employed by Lucas Love when she completed her written application for work with First Choice though the Tribunal noted, from the Bundle, that the application form was not signed by the Appellant.
 - (vi) At the hearing of the Committee the Appellant:

- (a) Took full responsibility for her shortcomings and failed in her responsibility towards service users in relation to missing shifts allocated for the 7th and 22nd April 2017.
 - (b) Admitted that failing to include her previous employment with Lucas Love on the application form was dishonest and the Committee noted that the Appellant had *"candidly admitted acting dishonestly when she failed to disclose to an employer in an application form that she had worked with another employer in the social care field"*.
 - (vii) Mr Gilmore submitted that the Registration Committee had considered the Appellant's evidence, the fact that she had accepted her actions were wrong and appeared before them with genuine contrition and whilst the Committee were prepared to accept that the Appellant demonstrated a developing insight in relation to this type of conduct, that a high threshold must be maintained in relation to admission to the Social Care Register.
6. Mr Gilmore reminded the Tribunal that the Appellant must establish, on balance, that she is of good character and is competent. There were two incidents when she failed to fulfil her obligation on shift work when it is alleged that she failed service users, though there was no evidence before the Tribunal of any hardship suffered by any of those users. There were also the important issues regarding dishonesty in relation to the completion of the employment application form with First Choice. The Tribunal was directed to:
- (a) Page 45 of the Bundle exhibiting a series of text messages passing between the Appellant and her shift manager wherein she agreed to take a shift on the 24th April 2017 and agreed that she would fulfil this work commitment on every other week.
 - (b) Page 47 of the Bundle containing an email of rotas that were attached to the email to the Appellant at pages 48 and 49 of the Bundle. Page 48 of the Bundle records the shift that she failed to attend.
7. No oral evidence was called on behalf of the Respondent by Mr Gilmore. He relied on the material in the Trial Bundle opened to this Tribunal.
8. By virtue of Regulation 23 of the Care Tribunal Regulations (NI) 2005 ("the Regulations") the Appellant exercised her right to give evidence on Oath. She confirmed her date of birth as the 22nd August 1991, that she left school at age 17 and, from leaving school, worked in the care industry around the Larne area, working in various nursing homes as a Care Assistant. She gave a brief history of some of her work experience in Tamlagh Nursing Home as a Care Worker where she was not registered. She referred to her references within the Trial Bundle that relate to her work history. She confirmed that she worked with Lucas Love in both a nursing home environment and a community care environment from February to May 2017. She then worked with First Choice between May 2017 and August 2017 and last worked in

August 2017 at Antrim Area Hospital as a Care Worker. There is no evidence of any employment history, checks or references before she commenced work with First Choice and no issues were raised that would be in any way critical of her work performance or attendance record when employed by First Choice. She told the Tribunal that she valued and enjoyed her work in the care industry and wanted to make a career out of this type of work.

9. The Chairman took the Plaintiff through the evidence contained in the Trial Bundle and she confirmed:
 - (a) That she agreed her rota by text and confirmed that she got the texts on page 45 of the Trial Bundle. She told the Tribunal that she agreed to work every other weekend and that this was first agreed on the 12th April 2017.
 - (b) She confirmed that she fully intended to attend to this community work and fulfil her shift duties as recorded in the text. However, she explained that she had some difficulties in that her car failed, she had no transport and she had car difficulties for a number of weeks. She explained that she did get the rota email, but didn't open it and conceded that this was her mistake. She accepted her failings and took responsibility.
 - (c) She told the Tribunal that missing her shift was down to her own stupidity, she confirmed that she was aware of the consequences in not opening the rota email and apologised for her failures.
10. In relation to missing her "sit shift" on the 7th April, she told the Tribunal that she was working for the same employer, Lucas Love, in one of their nursing homes when she should have been engaged on the "sit shift". This evidence was not challenged and the Tribunal accepts that the Appellant took a shift in the Nursing Home but failed to check her rota sent to her by email. Once again, the Appellant apologised to the Tribunal for her mistake but added that there was no confirmation by the employer about her ability to accept the "sit shift" nor did her employer ever recognise that she was double booked. She explained, after questioning by the Panel, that there is now a system of checks operated by this employer to ensure that the worker who has been allocated a shift has opened the rota, understands the rota and is aware of the obligations that they are committed to. She told the Tribunal that she was not telephoned on the Saturday or Sunday to enquire why she had missed her shift on the 22nd April 2017.
11. On questioning from the Tribunal members, she frankly admitted that she had submitted the employment application form to First Choice and didn't include her previous employment with Lucas Love. She apologised profusely and sincerely for this. It was noted by the Panel that she hadn't signed or dated the form committing to the Declaration; *"I affirm the information given is true and correct. I understand a physical examination may be required and any offer of employment made will be subject to a satisfactory medical report. I also understand that any false information or deliberate omissions may disqualify me from employment or may render me liable to dismissal"*, but she confirmed that it was her writing on the form and, after further questioning,

admitted that she was frightened to disclose her previous employment with Lucas Love because of the disciplinary issue hanging over her. She admitted that she would behave differently if this situation arose again, regrets her actions and admitted that she had acted dishonestly.

On further questioning:

- (i) Agreed that she had missed two shifts covering a number of people who needed her help and assistance within the community and it was her fault that she didn't record the shift or post a reminder on her phone.
- (ii) Concedes that she has now learnt a lesson and confirmed that she had no reason to miss the shift other than her failure to open her email.
- (iii) Agreed that she had confirmed the text of the 12th April and agreed to do the shift nine days later but stated that, without posting a reminder to herself, she forgot about it.
- (iv) Conceded that she had been dishonest when she chose to submit the form to First Choice without recording her previous employment with Lucas Love on that form.
- (v) The Appellant confirmed she had completed sixteen training courses (mostly online), that she would not have been allowed to start work with Lucas Love without the various training certificates that she had gained after completing the online training.
- (vi) She got no "in-house" training from her Line Manager, no induction training and the only training that she had was that she was taken round the route by another employee and shown what to do.
- (vii) In relation to the "sit shift" on the 7th April between 2pm and 5pm, she confirmed that she was definitely working for Lucas Love in a different capacity, in that she was working for Lucas Love at a nearby nursing home (Drumhalla) and admitted that she had double-booked herself. There was no evidence to contradict this case.
- (viii) Told the Tribunal that she would have got extra pay for working a weekend shift and therefore there was no reason for her to miss the shift on the 22nd April 2017 as it would have been financially beneficial to her.

12. Mr Gilmore did not cross-examine the Appellant and the Tribunal therefore accept her evidence and take into account the evidence contained in the Trial Bundle.

13. The Tribunal Panel recognise that there was no evidence presented that any service user had suffered any serious inconvenience by reason of the

Appellant's failure to attend to her shift pattern. However, that could be put down to good fortune and the Panel accept that there could have been serious repercussions due to the Appellant's non-attendance. Nevertheless, they also recognise that the case reveals some question marks regarding how rotas are organised and confirmed, how failures to attend to a shift are remedied and rectified and that a new system has now been put in place to ensure that there is no repeat of the failures experienced in this Appellant's case. There was no explanation as to how or why an employer was not aware that an employee was double-booked for the same shift. The Panel take into account that when the Appellant appeared before the Registration Committee, she accepted that in resigning from Lucas Love and applying to work for First Choice without revealing her full employment background, she had made a serious error but that she had been motivated by fear that she would not get employment if she disclosed her previous employment history. The Panel also recognises that the Appellant made no attempt to deny her actions, admitted that she was dishonest and had learnt a salutary lesson and that there would be no repeat of this type of behaviour. This Panel acknowledge the detailed analysis of the Committee's decision of the 25th January particularly in setting out the Appellant's admissions and her acknowledgment of the impact her conduct would have in undermining confidence in the social care professions. She openly admitted, under Oath before this Tribunal, that she had failed in her work duties and that she had been dishonest in her job application form. However, the Tribunal accept that she was genuinely contrite and apologetic and also recognised that this behaviour was not repeated during her time with First Choice at Antrim Area Hospital nor did she have any history of disciplinary, timekeeping or attendance issues from her previous employment. We also recognise the strength of her references, her genuine remorse and her obvious eagerness to get back into the workplace particularly within the care industry.

14. This Tribunal views the Plaintiff's dishonesty as a case of dishonesty by omission and see this in a completely different light as dishonesty such as theft from a service user, a fraudulent expenses claim or failure to declare a criminal conviction. The disciplinary issue with Lucas Love, that was never resolved, arose out of missing work shifts, there was no falsification of records and when Ms Glenn appeared before the Registration Committee, she admitted fault, admitted dishonesty and the Committee recognised that the Appellant accepted that she had made a serious error, but that she was motivated out of fear of not getting future employment. Mr Gilmore referred the Tribunal to a number of cases and in the leading case of *Bolton -v- Law Society* (1994) 1 WLR. 512, CA concerning the misuse of client's money by a solicitor, it was held that there are two principal purposes to the imposition of a sanction:

- (a) First, to ensure that the offender does not have the opportunity to repeat the offences; and
- (b) Secondly, the most fundamental of all, to maintain the reputation of the profession.

In this case, there is of course, the need to reassure the public that a proper threshold of good character must be maintained and we were reminded by Mr Gilmore that registration should not be granted unless we can be satisfied "*as to the Applicant's good character, conduct, competence and health*". The cases of *Jideofo -v- The Law Society, Evans -v- The Solicitor's Regulation Authority* and *Begum -v- The Solicitor's Regulation Authority* (2007) EW. MISC 3(EWLS) sets the threshold that Applicants have to satisfy to be entered to the solicitor's roll. In the aforementioned case of *Bolton*, Sir Thomas Bingham MR stated that "*It is required of lawyers practising in this country that they should discharge the professional duties with integrity, probity and complete trustworthiness.*" The same stringent test does not apply, in our view, to the role of a care worker but they do have to satisfy the public as to their good character and competence. The *Jideofo* case and others refer to undeclared criminal convictions when applying for entry to the Law Society. In our view, the cases relied upon by Mr Gilmore fall into a different category. We see dishonesty dealing with money and disbursements of money and failing to declare criminal convictions when applying to the Law Society for admission as a solicitor; to be in a different calibre than failing to declare employment with a previous employer on a subsequent employer's application form.

15. We take into account that there was no allegation of any dishonesty in any of the Appellant's employment history. This affair arose out of missed shifts and a proposed disciplinary hearing by Lucas Love. The Appellant was not convicted of any criminal offence nor was there any criminality surrounding the issues that would have been the subject matter of the disciplinary hearing at Lucas Love. We are reassured by the Appellant's unblemished employment record before her employment with Lucas Love and her subsequent good record with First Choice. There has been no repetition of any report of poor standards of work, poor performance or absenteeism. Our assessment of the Appellant is that there is little likelihood of a repeat of this behaviour.
16. We do not see the Appellant's action as a malicious attempt at dishonesty but rather as a foolish action to allow her to gain access to the work that she loved. We assessed the Appellant as a person who was fearful that she would not get back to work in the role that she loved so much. We also had a good opportunity to assess the Appellant's demeanour during the hearing and we assessed the Appellant as contrite, apologetic and willing to learn from her mistake. We also see her as a victim of a poor system of organisation in relation to her shift rota and note that the organisation of the structure of the rotas and confirmation of the shift pattern has now been changed. We also take into account that though the original oversight by the Appellant in relation to missing the various shifts may have had serious consequences for the service users there was no evidence that any service user actually suffered harm.
17. The Panel Members considered all the various aspects of this case, carefully considered Mr Gilmore's opening statement, the comprehensive Trial Bundle and the evidence given by the Appellant. It is our unanimous decision that we should allow the appeal, permit this

Appellant to be registered on the Social Care Register but that her registration must be subject to the following conditions:

Referring to the Conditions of Practice Bank ("Conditions of Practice Bank") of the NISCC, we impose standard conditions 1 to 4 for a period of 12 months, those conditions that apply to the Appellant, Lesley Victoria Glenn are:

(1) You must notify NISCC within 7 days of any Social Care appointment (whether paid or unpaid) you accept in the UK or elsewhere and provide NISCC with contact details of your employer.

(2) You must immediately inform the following parties that you are subject to a Conditions of Practice Order under the NISCC's Fitness to Practice Procedures, and disclose the conditions listed at 1 to 4, to them.

- Any organisation or person employing, contracting with or using you to undertake social work or social care.
- Any agency you are registered with or applied to be registered with (at the time of application).
- Any prospective employer (at the time of application).

(3) You must inform NISCC of any professional investigation started against you and / or any professional disciplinary procedures taken against you within 14 days of you receiving notice of them.

(4)

(a) You must, within 14 days of accepting any post or employment requiring registration with NISCC, or any course of study connected with social care and provide NISCC with the names / contact details of the organisation offering the post, employment or course of study.

(b) You must within 14 days of entering into any arrangements required by these conditions of practice provide NISCC within the name and contact details of the individual / organisation with whom you have entered into the arrangement.

(c) You must confine your work to residential nursing care for 12 months from the date of registration on the Social Care Register.

Stephen G Quinn Q.C.
Chairman of the Care Tribunal
9th July 2018

