

In the Care Tribunal

DM (appellant)

and

The Northern Ireland Social Care Council (respondent)

Decision following review

Representation: Ms O Sheils of Donnelly & Kinder solicitors (appellant)
Mr A Gilmore of DLS (respondent)

Chairman: Diane Drennan
Lay Members: Maureen Ferris
Patrick McAteer

Date: 25th November 2019

Venue: Tribunal Hearing Centre
Chichester Street,
Belfast

1. A decision was made by the Care Tribunal ('the Tribunal') on a preliminary issue on the 18th October 2019 whereby the appellant's appeal in respect of the respondent's decision on the 20th September 2018 not to adjourn and to proceed in her absence was allowed. The substantive matters raised in the appeal in relation to the findings of misconduct noted in the decision were to be dealt with at a full rehearing by the Tribunal on dates to be listed.
2. On the 23rd October 2019, at a Directions hearing before the Chairman, the legal representatives addressed the Chairman on the way forward. After hearing both parties, it was decided that the case should not be listed for a full rehearing on the substantive issues. At the hearing, Mr Gilmore stated his intention to write to

the Tribunal Office requesting a review of paragraph 43 of the Tribunal's decision dated 18th October 2019, referred to in paragraph 1. Such review request was to be made under Regulation 26 of the Care Tribunal Regulations (Northern Ireland) 2005, as amended.

3. It was also noted at the Directions hearing that, following the Chairman's decision on the review application, the appellant intends to withdraw her appeal on the substantive issues. This withdrawal is to be made by agreement of the parties.
4. On the 29th October 2019, Mr Gilmore wrote to the Tribunal on behalf of the respondent, stating that he wished to apply for a limited review of the Decision dated 18th October 2019 *"in order to clarify the test used by the Tribunal in respect of fairness in paragraph 43"*. He applied on the ground that *"there was an obvious error (Rule 26(c))"*. (Regulation 26(1)(c) *"there was an obvious error in the decision"*).
5. Mr Gilmore suggested removing the words *'to her'* in paragraph 43 of the decision, stating *"I believe the intention was to deal with the preliminary issue of fairness in respect of the overall fairness to include the issue of fairness to DM and fairness to the Council"*. The clarification was sought *"to ensure that any published decision properly reflects the Tribunal's considered intention as set out in the body of the Decision"*.
6. The letter also referred to paragraph 8 of the decision, where the appellant's Trade Union representative was described as "CW", stating that the representative at that time was Mr JMC.
7. The appellant's representative, Ms Sheils wrote to the Tribunal on the 13th November 2019, referring to the review application. No objection was raised to the amendment of paragraph 8 (regarding the identity of the TU representative), although it was pointed out that the appellant herself had no clear recollection of who the TU representative was.
8. Ms Sheils explored the principle of fairness generally, stating that *"the case for the appellant was that the fitness to practise committee's decision to proceed in her absence was unfair to her in light of her particular circumstances and unfair to any other registrant in those circumstances also"*.
9. The letter also stated that removing the words *"to her"* was unnecessary, as the Tribunal had considered a range of factors and conducted a balancing exercise, conscious that fairness encompasses fairness to the appellant and the NISCC. Various suggestions were made by the appellant's representative regarding the possible amendment of paragraph 43, including an extension of the sentence in

paragraph 43 to read: "*the decision dated 20th September 2018 was unfair to her in all the circumstances*".

10. The parties referred to the points made in their respective letters referred to above and confirmed that they had no further issues to raise.
11. The Tribunal Panel retired for a brief time to consider their decision. It was unanimously decided by the Tribunal that, for the purpose of clarification, in accordance with Regulation 27(1)(a) (Powers of the Tribunal on review), the decision should be varied by certificate signed by the Chairman as follows:
 - i. Paragraph 8 (line 4) is to be amended to read "*attending with her then trade union representative Mr JMC*", rather than "*attending with her then trade union representative Ms CW*".
 - ii. Paragraph 43 (lines 2 & 3) is to be amended to read "*the decision dated 20th September 2018 was unfair to her in all the circumstances, as set out above*", instead of "*the decision dated 20th September 2018 was unfair to her*".
12. A certified copy of the decision dated 18th October 2019, including the above amendments, is annexed to this review decision.

Order accordingly

Signed

Diane Drennan

Chairman

Date

5th December 2019