



Tribunals Service
Care Standards

**A Digest of Cases Heard
by the**

**FIRST –TIER TRIBUNAL
CARE STANDARDS**

**SERIES Four:
July 2008 - March 2009.**



 **May 2009** 

INTRODUCTION

The Care Standards Tribunal, as a separate entity, was in existence for a six year period between 2002 – 2008. All of the cases decided by the Tribunal have been published on the official Tribunal website, and I have summarised most of the cases in a Digest, which has been available on the website and in hard copy.

Series One contains summaries of cases decided by the Tribunal during 2002 – 2005. Series Two contains summaries of cases decided during 2006 – 2007. Series Three contains summaries of cases decided during 2008 up until the end of June 2008.

This new Series Four (July 2008 – end of March 2009) contains summaries of cases decided under the former Regulations, namely the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002 (SI 2002/816 as amended), and for post November 3rd 2008 decisions, those cases decided by the First Tier Tribunal (HESC) under the Tribunal Procedure (First Tier Tribunal) (Health, Education and Social Care Chamber) Rules (2008 (SI 2008/2699)).

The summaries appear on the Care Standards Tribunal website (<http://www.carestandardtribunal.gov.uk>). All the cases are published in full on the website, and are published also on the British and Irish Legal Information website (<http://www.bailiii.org/ew/cases/EWCT>) for the cases up until the end of October 2008 and <http://www.bailii.org/uk/cases/UKFTT/HESC> for the First Tier Chamber (HESC) cases. Some of the cases are reported also in Social Care Law Today and the Journal of Community Care Law (subscribe online at <http://www.ardendavies.com>). Decisions by the courts are not reported here because those cases are more generally available. During the period covered by this series, the two most important cases are the House of Lords decisions; *R (On the application of Wright and others) v Secretary of State for Health* [2009] UKHL 3, and *Trent Strategic Health Authority v Jain and another* [2009] UKHL 4

Decisions on how both Care Standards cases, and applications to the Upper Tier Tribunal for permission to appeal from decisions of the Independent Safeguarding Authority will be reported, and how they will be summarised, will be made by the new Tribunals structure. It is expected however that both the full decisions, and summaries, will continue to be made available on the appropriate websites.

His Honour Judge David Pearl
Principal Judge, Care Standards
May 2009.

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APPEALS AGAINST REFUSAL TO REGISTER A DOMICILIARY CARE PROVIDER

Garda Beddows

-v-

The Welsh Ministers

[2008] 1312.EA-W

[Ms Roberts, Mr Harper, Mr Jobbins]

The application was refused by the Regulatory body on two grounds (i) the Appellant (who is 80 years of age) has not provided sufficient evidence to demonstrate that she is physically and mentally fit to carry on a domiciliary care agency; and (ii) the Appellant has not provided an acceptable standard of documentation to demonstrate compliance with regulatory requirements. It was the Respondent's case that the Appellant did not fulfil the statutory criteria for registration when the decision to refuse registration was made and that the Appellant continues not to fulfil the statutory criteria at the date of the hearing. The Tribunal agreed with this submission.

Appeal dismissed

APPEALS AGAINST A REFUSAL TO VARY CONDITIONS IMPOSED ON A CARE HOME

Aloysius Onyerindu

[The Lime Trees Residential Care Home]

-v-

CSCI

[2007] 1041.EA

[2008] 1269.EA

[Ms Roberts, Ms Wiggin, Mr Beeden]

The Appellant has registration for 16 residents in the category Old Age, not falling into any other category. He wished to be able to admit, in addition, clients with a primary need or diagnosis of dementia, mental disorder, and physical disability. This was opposed by the Respondent. The Respondent submitted that overall, the home run by the Appellant was of a poor standard and that until he had improved his rating in the inspections, it would be inappropriate to agree to additional categories of resident who would inevitably have greater needs.

On an analysis of all of the evidence, the Tribunal allowed the appeal to the extent to allow him to admit residents with dementia. The maximum number of service users who can be accommodated was limited to 15.

Appeal allowed in part.

**APPEALS UNDER SECTION 21(1) CARE STANDARDS ACT 2000 AGAINST
DECISION OF A JUSTICE OF THE PEACE TO CANCEL REGISTRATION
UNDER SECTION 21(1) CARE STANDARDS ACT 2000**

Janice Hutton

-v-

**Commission for Social Care Inspection
[2007] 1133 EA-JP**

[Mr Hunter, Ms McGregor, Mr Sarll]

The Tribunal allowed this appeal. It said: “The basis of an application under s 20 is where there is a serious risk to a person’s life or well being. It is not in our view designed to be used in circumstances where the registration authority has concerns about the running of an establishment, serious though those concerns maybe, where there is not an immediate risk to a person’s life or well being.” The Tribunal pointed to the often expressed concerns of the use of s 20. It said: “The effect of an immediate closure may have a traumatic effect on the service users concerned, many of whom are likely to be very vulnerable. It will also have a dramatic effect on the care home concerned, even if they successfully appeal to this Tribunal, that is likely to be many months after the home has closed and the original residents have been moved elsewhere.” There was no immediate risk in this case.

Appeal allowed.

Active Care Partnership Ltd

-v-

**Commission for Social Care Inspection
[2008] 1360.EA-JP**

[2008] UKFTT 5 (HESC)

[Mr Oliver, Dr Low, Mrs Lowcock]

This was an appeal from an Order made by a JP on the evening of August 7th 2008 pursuant to section 20 of the CSA 2000. The JP found that unless an order for closure were made there will be a risk to a “person’s wellbeing and health.” The Tribunal said that the appropriate test was “a significant risk of harm within the timescale that would otherwise be required under the ordinary procedure.” A significant number of matters relating to service users gave CSCI cause for concern on August 6th 2008, including care plans, nutrition and hydration treatment and management of pressure sore wounds. There was another inspection at 1.00pm on August 7th 2008 when the inspector found that one service user whose condition had given rise to particular concern the previous day had died. There had been no urgent call out to the GP to deal with his chest infection.

The majority decision of the Tribunal was to allow the appeal subject to nine consequential conditions. The majority had criticisms about the way the Care Home was managed, and in particular expressed concern that the higher management were unaware of the situation at the care home. The majority were satisfied that the plan

put forward on the last day of the hearing was suitable for the residents, and that the steps that would be taken in the next six months would be sufficient to ensure that the situation found on August 7th never happens again. The majority therefore did not see that there would be a significant risk that the residents will suffer harm either within the timescale that would be required under the ordinary closure procedure, or given the intense scrutiny the home has received as a result of the proceedings, at all.

Appeal allowed with conditions

APPEALS UNDER SECTION 21(1) CARE STANDARDS ACT 2000 FROM DECISIONS TAKEN BY CSCI TO CANCEL REGISTRATION OF A CARE HOME.

John Lewis Hughes

-v-

Commission for Social Care Inspection

[2008] 1239.EA

[Mr Hunter, Mr Flynn, Mr Tomlinson]

The Respondent, in a recent inspection report described the services as follows: “F is a family run business set up to provide accommodation for up to four adults with a learning disability. The home is a terraced property situated close to the centre of Great Yarmouth. All the residents have a single bedroom and there is ample communal space. The registered provider also owns and manages a house in multiple occupation accommodating 29 people, in the adjoining properties. Access between the home and the house in multiple occupation is provided through at least 3 interconnecting doors, which are usually kept unlocked.”

In the Notice to Cancel, 12 requirements were cited that the Appellant had failed to meet. The Tribunal agreed with the Respondent that in the context of running a care home, he was not someone of integrity. For example, the Appellant had not attempted to enter into a meaningful dialogue with the inspectors to try to resolve issues such as care plans. The Tribunal also agreed that he was in breach of the Regulations 10(1), 4(1), 5, 12(1)(a), 13(1)(b), 13(4)(a)(b)(c), 14(2), 15(1)(2), 18(1), 23 and 24. The Tribunal formed the view that the breaches were serious and that they have continued over a long period of time. The Tribunal concluded: “...we have given careful consideration to the effect that a closure of F will have upon the staff, the local agencies, and the service users currently at F and potential future users. We acknowledge that the current users appear to be content living at F...however...we are of the view that F is not providing the type of care that service users have a right to expect from a registered care home.”

Appeal dismissed

Marjorie Marshall
(Harvest Residential Care Home)
-v-
Commission for Social Care Inspection
[2007] 1189.EA
[Mr Robertson, Ms Funnell, Ms Wade]

The application in this case relates to a Care Home known as “Harvest 1”. It was registered as a care home for up to 3 persons in the category of mental disorder. In 2005, Ms Marshall submitted an application to be registered as a provider of a new care home “Harvest 2.” It transpired that on that application form, Ms Marshall gave a false date of birth, failed to disclose previous convictions and failed to reveal details of a previous surname that she had been known by. The application in relation to “Harvest 2” was refused, and her appeal to the Tribunal was dismissed [2006] 754.EA (Digest, series 2, p 19). The Commission therefore looked carefully at the running of “Harvest 1” and the documentation presented to the then regulator when it was first registered in 2001. It became apparent that the same deception had been used. The Commission also had concerns about her probity in other areas of her practice and about her running of the home generally. A Notice of Cancellation was served, citing breaches of Reg 7 (personal integrity), Reg 10 (management issues), and Reg 19 (employment of staff).

On the question of burden of proof, the Tribunal said: “ Where there is a judicial finding that goes to the heart of a person’s fitness it appears to us clear that the burden shifts even in cancellation cases. In this particular case there has already been a finding by this Tribunal that Ms Marshall is not a fit and proper person. It would make a mockery of the legislative scheme, which is designed to ensure that the regulatory framework protects the vulnerable, to ignore that finding and require the Commission to prove over again that she is unfit. The burden must shift in this case and it is for Ms Marshall to prove that she is a fit person as at the date the Tribunal sits to consider the matter.”

The Tribunal were not persuaded. Indeed, it said: “...what we found was that the lies and deceit were deeper and more profound than found by the Tribunal in 2006. ...Not only had Ms Marshall failed to learn from the mistakes, she has compounded them, by failing to recognise why integrity and trust are so important”.

Appeal dismissed.

Jeremy Walsh and Sally Anne Roberts
-v-
Commission for Social Care Inspection
[2008] 1261.EA
[2008] 1262.EA
[2009] UKFTT 18 (HESC)
[Mrs Tudur, Mr Churchill, Mrs Hyland]

Gloucester Care Centre was first registered in 1999 under the Registered Homes Act 1984, with Mrs Roberts as the registered provider. In 2002, it was reregistered with Mrs Roberts and Mr Walsh as partners and identified as the registered provider. It

would appear that Mr Walsh has not taken any active part in the day to day running of the home. The home provides nursing care for 40 persons over the age of 65; 25 beds for persons with dementia and 12 for persons with Sensory Impairment. The home was rated as “Poor” in 2006 (February) and “Adequate” in 2006 (July). It has attained “poor” ratings since then. The Cancellation Notice was confirmed in February 2008, and the Appellants appealed. The Notice of Proposal to Cancel identified breaches of Regulation 10, 12, 13, and 18. Following an unannounced inspection in December 2008, the Respondent concluded that the improvements to the quality of care at the home had not been sustained and the case therefore proceeded to a final hearing.

The Appellants presented their appeal on the basis that the central issue was whether the quality of care at the home at the time of the hearing was so poor that the closure must be ordered for the protection of service users. It was submitted on their behalf that the past failings were of less significance than the quality of the present care provided to the service users, and that as a remedy of last resort, closure should not be used in this case. The Respondent submitted that cancellation remained justified and was the only option available to safeguard the service users. Of particular concern were medication issues and staffing matters, and it was submitted on behalf of the Respondent that there were no conditions that the Tribunal could impose which would serve to protect the residents and ensure their safety.

The Tribunal held that the breaches relied on in the cancellation notice were all of significant seriousness. The Tribunal went on to consider future risk. It said: “The risk of future harm is, in our view, a very real risk, given the inability of the registered provider to address the shortfalls and the very specific requirements set out by the inspectors.” The Tribunal felt that the threshold of closure as a last resort, relevant only when it is really necessary to protect the residents from serious risks of harm, was met in this case.

Appeals dismissed.

APPEALS UNDER SECTION 74(1) CHILDCARE ACT 2006

Best Friends Private Day Nursery Ltd

-v-

OFSTED

[2008] 1247.EY

[Mrs Singleton, Mrs McLoughlin, Mr Hutchinson]

The cancellation notice to Mr Grant (the nominated individual) following an Ofsted Objection panel in this case states: “the panel considered that you consistently fail to comply with the necessary requirements and the panel are of the opinion that you are unable to maintain compliance with the national standards over a sustained period of time.” In particular, the cancellation notice states that he failed to ensure that day care was consistently provided in a safe and suitable environment, that he failed to recognise potential risks to children, and was therefore no longer qualified for registration as a day care provider. At the date of the hearing there were approximately 30 children who attend, spending an average of 30 hours in the building. The Tribunal came to the conclusion that the situation after the cancellation

notice was issued had changed significantly from what prevailed before, and in particular the involvement of two new employees, who had applied to be joint registered persons. The Tribunal decided that there had been fundamental improvements. The decision of the Tribunal was that the cancellation notice shall cease to have effect subject to a condition that Mr Grant has CRB clearance.

Appeal allowed.

RC
-v-
OFSTED
[2008] 1339.EY
[2009] UKFTT 5 (HES)
[Mr Askham, Mr Cook, Ms Wade]

The initial incidents that had to be considered by the Tribunal in this case involved a two year old boy with learning and communication difficulties. OFSTED received a phone call from a Child Minder who at that stage wished to remain anonymous expressing her concerns about two separate incidents which had occurred at the local toddlers group. As a result of enquiries, OFSTED suspended her registration. Her appeal against suspension was heard by the Tribunal (*RC v OFSTED* [2008] 1272.EYSUS). The Tribunal concluded that the suspension should continue until the investigation was completed. At the conclusion of the investigation, OFSTED decided to cancel her registration. A panel was convened, and the intention to cancel was upheld. As a result, the Appellant lodged an appeal.

The Tribunal dealt with all of the incidents as a full merits appeal, rather than simply being engaged in reviewing the decision of OFSTED. Applying *C v OFSTED* [2002] 87 EY, the Tribunal decided that a failure to comply with National Standards might make an Appellant unsuitable and in many cases would do so, but that it did not necessarily follow that this will be the case. When examining the evidence, the Tribunal concluded that there was little or no evidence to support the notion that the Appellant has been in breach of any National Standard so as to bring into doubt her suitability to be registered as a child minder. It found beyond doubt that no child has ever been at risk of physical harm under her care and that there is no child protection issue. The Tribunal also found no evidence that supports the suggestion that there might have been some risk to the emotional well being of the children in her care.

Appeal allowed

Ms Adegoroye
-v-
OFSTED
Re: The School Lane Nursery
[2008] 1244.EY
[2009] UKFTT 10 (HESC)
[Mr Askham, Ms Cross, Mr Cook]

The Appellant became a nursery nurse in 1972 and for the past 30 years has worked in a variety of placements in London including being the manager of a day care nursery in the early 1990's. She then opened a nursery in Kent. A Notice of Intention to Cancel was made by OFSTED in November 2007, identifying 15 reasons. OFSTED's case was that the Appellant was simply unable to understand the regulatory framework in which the nursery must operate and as a result the nursery had been unable to provide the standard of care which is required, and there was little prospect that it would do so in the future. Children were being cared for by staff who had not been properly vetted, the premises were inadequate, safeguarding and safety issues had not been addressed.

The Tribunal said that for the purposes of assessing past breaches, it would consider the facts in the light of the standards applicable at the time. In terms of assessing the prospects of future compliance, it would have regard to the Early Years Framework document, since this is now the applicable standard. The Tribunal found that there had been persistent and ongoing breaches of the national standards. It felt that any improvement which had taken place seemed not to have been maintained. The Tribunal saw no evidence to show that the Appellant has the capacity to properly manage a nursery setting to ensure that there is compliance with the Early Years Framework.

Appeal Dismissed.

**APPEALS UNDER SECTION 86(3) CARE STANDARDS ACT 2000 FROM
DECISIONS TAKEN BY THE SECRETARY OF STATE TO PLACE A
PERSON ON THE POVA LIST AND APPEALS BROUGHT UNDER
SECTION 4(1)(a) PROTECTION OF CHILDREN ACT 1999 FROM
DECISIONS TAKEN BY THE SECRETARY OF STATE TO PLACE A
PERSON THE POCA LIST.**

BP
-v-
Secretary of State
[2007] 1127.PC
[2007] 1128.PVA
[Mrs Singleton, Mr Radley, Mr Williams]

The Appellant was a leader within the Scout movement from 1993 until 2004 when he resigned. Following his resignation, he continued to be involved with the Scouts as a musical director of shows. In October 2006, he was convicted of two offences of making indecent photographs or pseudo photographs of children contrary to section

1(a) of the Protection of Children Act 1978. He was fined and placed on the Sex Offenders Register. One photograph found on the Appellant's computer is described as a girl "not in any sense undressed but she is in a highly provocative posture, with her legs apart." The other image, found on a floppy disk, "shows a boy on his back with his legs apart, naked and his genitals fully exposed." He was placed on both the PoCA and PoVA lists as from August 14th 2007, and appealed. A Police Officer gave evidence at the hearing about the items that were seized, and the forensic examination of the computers. She said there were between 70 and 223 indecent images of children and that there was no evidence of the computer having been tampered with.

The appeal in relation to PoCA was dismissed, but the Tribunal decided that it did not consider that he was unsuitable to work with vulnerable adults and directed that his name be removed from the PoVA list. It acknowledged that he had the qualities which enabled him to be a very successful and inspirational organiser, and that those qualities could easily transfer to dealing with the adult population.

PoCA appeal dismissed.

PoVA appeal allowed.

[The Secretary of State appealed the decision of the Tribunal relating to the PoVA appeal, and the High Court [2009] EWHC 866 (Admin) (Munby J) allowed the appeal, and the question of BP's PoVA listing has been returned to the Tribunal for reconsideration.]

Gary Peach

-v-

Secretary of State

[2007] 1056.PC

[2007] 1055.PVA

[Mr Robertson, Mr Cook, Ms Wade]

The Appellant's name was confirmed on the PoCA and PoVA lists pursuant to a referral from the Football Association, following his suspension as a junior Football Referee. He had been convicted of 13 counts of making indecent images (downloading child pornography at levels 1 and 2), and given a community sentence. He is 20 years old, and was 18 at the time the offences were committed.

PoCA appeal dismissed

PoVA appeal dismissed

Leigh Davies

-v-

Secretary of State

[2007] 1129.PC

[Mr Reddish, Mrs Caporn, Ms Cross]

The Appellant is a Judo Coach. It was argued by the Secretary of State that he was guilty of misconduct because (i) his drive for success with his elite students was such

that bullying, abuse, intimidation and an absence of concern as to their physical or emotional well-being became the norm; (ii) teenage girls were most at risk of his controlling or abusive behaviour, (iii) the undoubted success of his Judo Club was such that he was effectively unchallenged until complaint was made to the British Judo Association in 2004; (iv) that there 10 specific illustrations of misconduct; and in consequence he was unsuitable to work with children. The Tribunal took full account of the extensive evidence to the effect that the Appellant has made a very substantial contribution not only to his sport but also to his local community by promoting beneficial activities in his club and guiding potential young people away from criminality. However, the Tribunal decided that his methods have been questionable and sometimes indefensible. The Tribunal said that his preparedness to control and exploit the young and otherwise vulnerable and his predisposition to distort the truth constitutes a model which should certainly not be admired or followed. It said “children and vulnerable adults do need to be protected from his obsessive, unprincipled and often dangerous approach to the achievement of sporting success for others and consequent approbation for himself.”

PoCA appeal dismissed
PoVA appeal dismissed

Brian Linton
-v-
Secretary of State
[2008] 1287.PC
[2008] 1288.PVA
[2008] UKFTT 2 (HESC)
[Mr Reddish, Mrs Howell, Mr Thompson]

The applicant was born in 1947. Throughout his working life, he has worked usually as a volunteer but occasionally for reward, as a youth leader, particularly, but not exclusively as a member of the Scout Association. The Appellant was confirmed on the two lists as a result of a referral subsequent to a scouting weekend on 11th – 12th June 2005. It was alleged that the Appellant had engaged in sexual activity with a child (“S”) contrary to section 9 of the Sexual Offences Act.

The Tribunal was satisfied that the Appellant did cause or permit “S” to consume alcoholic drink during the camping activity. The Tribunal stated that this constituted misconduct. The Tribunal also decided that, to a limited extent, the Appellant did engage in physical contact with “S” which was not sexual but could have been misconstrued as such. On a detailed analysis of all of the evidence, the Tribunal was satisfied that the Appellant had physical contact with “S” on several occasions during the weekend, but that almost all of this contact did not amount to misconduct. The contact that did amount to misconduct was not held to be sufficiently serious to justify the conclusion that he is, *ipso facto*, unsuitable to work with children. After consideration, the Tribunal stated that the Appellant was entitled to rely upon his long and exemplary record of service as showing that he is suitable to work with children.

PoCA appeal allowed
PoVA appeal allowed

VP
-v-
Secretary of State
[2008] 1251.PVA
[2008] 1252.PC
[Ms Singleton, Ms Tynan, Mr Greenacre]

The Appellant was employed as a care worker. She was dismissed following a disciplinary hearing. The reason for her dismissal was that she had falsified client log books on four separate occasions. The Appellant did not deny any of these. The Tribunal was satisfied that pre-recording of log sheets amounts to misconduct. It decided also that by doing so, she placed service users at risk of harm, and that she was unsuitable to work with vulnerable adults or with children.

PoVA appeal dismissed
PoCA appeal dismissed

Lien Hong Phan
-v-
Secretary of State
[2008] 1259.PVA
[2008] 1260.PC
[2008] UKFTT 1 (HESC)
[Miss Roberts, Ms Chatfield, Mr Lim]

The Appellant worked in a residential home for two years before she started work as a carer with day and night duties at the Lyndhurst Rest Home in March 2005. All the residents at Lyndhurst have some level of dementia or confusion. She was found to be sleeping on duty on a number of occasions. She admitted this in the evidence before the Tribunal. She said that she needed to sleep and that as she knew the service users so well there would be no problem. The Tribunal found that it was not the case that she occasionally had a short nap, but that she deliberately settled down to sleep for 3 or 4 hours. The Tribunal decided that she was guilty of misconduct, that this placed service users at risk, and that she was unsuitable to work with both vulnerable adults and with children.

PoVA appeal dismissed
PoCA appeal dismissed

Sharon Mhembere
-v-
Secretary of State
[2008] 1291.PVA
[2008] UKFTT 4 (HESC)
[Ms Rivers, Mrs Alford, Mrs Stafford]

The Appellant worked as a night care assistant at a Nursing and Residential home. She had a number of convictions for offences of dishonesty, and none of this information had been disclosed on the Appellant's application form, and that indeed the form showed that she had specifically denied having any criminal convictions. The convictions appear to have been for false accounting, receiving stolen goods, and forgery. On appeal against confirmation of her name on the PoVA list, the Tribunal found the evidence of her dishonesty to be overwhelming, and said that: "We could not accept that she was a changed person and that her honesty could now be relied on, because, as we have found, she continued to give untruthful and inconsistent evidence to us in these proceedings." The Tribunal found that she is not a suitable person to care for vulnerable adults.

Appeal dismissed.

Rhodora Carranza
-v-
Secretary of State
[2008] 1221.PVA
[2008] 1220.PC

Elizabeth Gulzaman
-v-
Secretary of State
[2008] 1217.PVA
[2008] 1218.PC

[Mr Bennett, Ms Graham, Ms Harris]

This appeal deals with events at Parklands Court, a 150 bed care home which consists of 5 units, each of 30 beds. Mrs Carranza and Mrs Gulzaman are nurses who had both completed adaptation for UK registration at Parklands Court. Both ladies were confirmed on the PoVA and PoCA lists subsequent to events that occurred on October 9th and 10th 2006. They were both on duty that evening, and it would seem that a service user (A) was admitted to hospital.

It would seem that during the combined hearing, the Respondent withdrew its opposition to the appeal brought by Mrs Carranza.

The Tribunal made a number of findings. Primarily, it found that there had been management difficulties at Parklands Court, but found that A's catheter care was inadequate during the October 9th day shift staffed by both Mrs Carranza and Mrs Gulzaman. The Tribunal said that Mrs Gulzaman did not monitor A's fluid balance

and was involved in the falsification of records. Indeed she admitted that she had made false entries on the fluid balance chart. It said that the falsification was patently dishonest, but that this was compounded by the fact that she then tried to shift blame on to Mrs Carranza. The Tribunal said: “We find that Mrs Gulzaman...was in the room whilst Mrs Carranza was changing A’s heel wound. She had not drained the catheter but subsequently told Mrs Carranza she had and on that basis falsified records.” The Tribunal concluded that Mrs Gulzaman was guilty of misconduct and was unsuitable to work with vulnerable adults and with children.

Appeals with respect to Mrs Carranza allowed
Appeals with respect to Mrs Gulzaman dismissed.

Mrs Carranza then applied for an Order with respect to Costs under Rule 10(1)(b) in the sum of £19,089.69. The Tribunal accepted that Rule 10 is similar in effect to the relevant 2002 Regulations, and that therefore the Tribunal can take guidance from earlier cases, in particular *AR v OFSTED* [2006] 769.EA. The Tribunal made No Order as to Costs. It said: “From our knowledge of the case...we do not consider it unreasonable that the Secretaries of State opposed the appeal. Mrs Carranza was closely involved in events which have led to the listing of Mrs Gulzaman whose appeal was dismissed and it would not reasonably have been possible to have forecast or determine what emerged during the hearing.” The Tribunal concluded that the Respondent properly withdrew opposition in the light of the emerging evidence at the hearing.

JM
-v-
Secretary of State
[2008] 122 PVA
[2008] 1246.PC
[2009] UKFTT 12 (HESC)
[Mr Hunter, Mrs Elliot, Mr Sarll]

On September 13th 2005, the Appellant made a written application for a post as a staff nurse. He gave a work history which included details of what he stated to be his previous three employers and the reasons for leaving those jobs. He gave details of two referees, and in due course references were submitted in the name of each of these two referees. It came to light that this information was not true, and that the names of the referees had been given to him by a friend and he had never met these people. It also came to light that a reference used by the Appellant’s then wife had been forged by the Appellant. As a result of these matters, he lost his job, and following a referral he was confirmed on both the PoVA and PoCA lists.

The Tribunal concluded that the Appellant’s conduct in trying to mislead potential employers was in each case premeditated and intentional. It said that it was vital that employment procedures for all those working with vulnerable adults are robust and thorough, because of the nature of the work that they will be undertaking. It is absolutely crucial that an employer is able to trust an applicant’s past history. The Appellant was unable to convince the Tribunal that he had fully understood the

implications of his conduct, and as such the Tribunal regarded him as being unsuitable to work with vulnerable adults or with children.

Appeals dismissed.

Sini Joyce
-v-
Secretary of State
[2006] 813.PVA
[2006] 814.PC
[2009] UKFTT 4 (HESC)
[Mrs Singleton, Mrs Last, Mr Radley]

There were lengthy proceedings in this matter. The appellant was employed as a RGN at a Care Home for dementia patients in September 2005, and as a result of certain allegations of misconduct, she was dismissed. After a referral, she was placed on both the PoVA and the PoCA list. The alleged misconduct was defined as “sleeping on duty.” The Appellant appealed, and the Secretary of State gave reasons for opposing the appeal which included as incidents of misconduct not only the misconduct referred by the provider, but other matters gleaned from the documentation sent by the provider to the Secretary of State when the reference was made. After a Preliminary Hearing, the President directed that the Tribunal was not limited to considering only the referred allegation. The appellant appealed to the High Court which held that on a true construction of s 86(3) Care Standards Act 2000 there was no restriction on the misconduct which could be considered by the Tribunal, and the appeal from the President’s decision was dismissed. (See [2009] 1 All ER 1025 (Goldring J)).

The matter accordingly returned to the Tribunal, which considered all the allegations of misconduct. The Tribunal said that the most serious allegations faced by the Appellant related to her sleeping whilst on duty, failing to untie the doors to the lounge and failing to unblock the doors. The Tribunal concluded that in this case, somewhat exceptionally, this did not amount to misconduct. It said: “In the majority of cases, falling asleep on duty will amount to misconduct, but the Tribunal considers that, in the appellant’s case, it was concomitant with her attempts to calm and soothe GH rather than a deliberate intention on her part to sleep.” The Tribunal was not satisfied that the Appellant knew the doors were blocked by chairs. However, it found that her failure to untie the doors did amount to misconduct. However, it found that although this did amount to misconduct, the risk to other residents was minimal and on the facts of this case did not render her unsuitable to work with vulnerable adults or children.

Appeals allowed

JVS
-v-
Secretary of State
[2008] 1283.PVA
[2008] 1284.PC
[2009] UKFTT 6 (HESC)
[Mrs Singleton, Ms Chatfield, Ms Trencher]

The appellant in this matter was formerly employed as a driver and part-time support worker by London Borough of Barnett, working at a residential care home for people with learning difficulties. A resident of the home (HT) made allegations of a sexual nature concerning the Appellant. This resident suffers from communication problems with features of autism. The Appellant was subsequently charged with rape and sexual assault and acquitted. However, he was dismissed from his employment and confirmed on both PoVA and PoCA lists. The resident had been ABE interviewed and the Tribunal watched the video of this interview. The Tribunal stated that it was manifestly obvious that if any of the allegations made by the service user were true, then the Appellant was guilty of misconduct and unsuitable to work with vulnerable adults. There were of course no independent witnesses to the allegations and quite simply it was a case of HT's word against the Appellant's and the credibility of each had to be weighed in the balance. On a careful consideration of the evidence, the Tribunal arrived at the conclusion that it could not be satisfied on a balance of probabilities that all or any of the allegations made by the service user about the Appellant took place.

Appeals allowed.

Sujith Wimalasena Arambe Gedara
-v-
Secretary of State
[2007] 1158.PVA
[2007] 1159.PC
[2009] UKFTT 20 (HESC)
[Mr Oliver, Dr Ariyanayagam, Dr Walsh-Heggie]

The Appellant in this case appealed against confirmation of his listing on PoVA and, in consequence PoCA. He worked as a day nurse and was the named nurse for some but not all of the residents. This case arose as a result of the death in hospital of a resident (JC). The Appellant was not the named nurse for JC. The specific allegations were a failure to complete risk assessments having identified a potential danger with regard to the control of JC's bed, the failure to monitor his blood levels, the failure to review the nutrition care plan, and the failure to update the tissue care plan. The Tribunal concluded, in relation to all of these allegations, that whilst the Appellant's conduct in relation to JC was not perfect, the degree of imperfection did not equate to misconduct. Accordingly, the appeals were allowed.

Appeals allowed

Elvis Kuteh
-v-
Secretary of State
[2008] 1345.PC
[2008] 1346.PVA
[2009] UKFTT 9 (HESC)
[Mr Robertson, Ms Cross, Mr Lim]

The Appellant is a registered nurse, and a qualified mental health nurse. On September 1st 2007, he was sent by his agency to work at a secure unit for young people. During the course of that day, the young people appeared to have planned a major disturbance and during the course of this it was alleged that the Appellant punched and kicked a 15 year old girl. Upon investigation, it was discovered that the Appellant had received a police caution for an assault upon his daughter just two months previously. He was confirmed on the PoCA and the PoVA list. The allegations of misconduct were threefold; namely the assault on his daughter, the events on September 1st 2007, and the failure to inform the agency that he had been the subject of a caution for an assault.

The Tribunal found that the failure to disclose the caution amounted to misconduct. As to the events on September 1st 2007, the Tribunal found as a fact that the Appellant did assault the resident by punching her in the face and kicking her in the leg. As to the events involving his daughter, the Tribunal said that this amounted to a serious loss of control. The Tribunal went to say that he is not a person who is suitable to work with children or with vulnerable adults.

Appeals dismissed.

Wendy-Ann Blackman
-v-
Secretary of State
[2008] 1377.PVA
[2008] 1376.PC
[Ms Roberts, Mrs Prewitt, Mr Cook]

The Appellant in this case was employed as a live-in carer by a domiciliary agency from April 24th 2006 until her dismissal on January 19th 2007. On November 17th 2006, the Appellant was at work living-in with two residents (JH and CH) both with Downs Syndrome. In the morning, one of the clients (JH) became disturbed whilst carrying out a domestic chore and hit the Appellant in the face. The Appellant responded by hitting the client back. It was also alleged that on November 14th, the Appellant had left the two clients alone one evening for an hour when she went to a meeting. The employer took the view that there had been two instances of gross misconduct which justified dismissal and the matter was referred to the Secretary of State, who confirmed her name on the two lists.

The Tribunal accepted that the Appellant was guilty of misconduct which harmed or placed at risk of harm a vulnerable adult. Both incidents of misconduct, the striking of JH and the leaving of the clients unattended, were admitted by the Appellant. The issue therefore that the Tribunal had to address was suitability. The Tribunal took the

view that the test of suitability is not an evidential test as such, but an exercise of discretion by the Tribunal applying its experience to the evidential matters which it has considered previously. The Tribunal was of the view that the Appellant showed no remorse at the time of the incident and did not apologise to JH. She did not report it. The Tribunal said: “nothing can excuse the Appellant’s action in hitting JH who was clearly distraught and upset. She should have defused the situation. The living-in nature of her work accentuated the difficulties of the situation.” The Tribunal were concerned that leaving two vulnerable clients alone for an hour in the evening put the clients at risk, and was a total failure to comply with the policies of the domiciliary care agency.

Appeals dismissed.

APPEALS BROUGHT UNDER EDUCATION (PROHIBITION FROM TEACHING OR WORKING WITH CHILDREN) REGULATIONS 2003 reg 12 GIVEN BY THE SECRETARY OF STATE UNDER SECTION 142 OF THE EDUCATION ACT 2002 (List 99).

Josef Norford

-v-

Secretary of State

[2007] 960.PT

[2009] UKFTT 14 (HESC)

[Mr Hunter, Ms Fowler, Mr Harper]

The hearing of this appeal was delayed because of the direction made by the Tribunal that the Secretary of State disclose to the Tribunal the written memorandum of Sir Roger Singleton to the Secretary of State providing the Secretary of State with advice. The Respondent appealed that Disclosure Direction. The appeal was heard in the Administrative Court in front of Dyson LJ (*Secretary of State v JN* [2008] EWHC 1199 (Admin)). The Judge drew a distinction between the body of evidence gathered by officials in the course of a List 99 process, and any advice or views expressed in response to that evidence in order to assist the Secretary of State in arriving at a decision on the basis of the evidence. The Judge accepted the submission that the public interest is best served by the maintenance of an environment in which Ministers can receive free and frank advice from their advisers. Accordingly, the Direction from the Tribunal was quashed.

The Tribunal considered all of the evidence presented to it. It had concerns about allegations made back in 1991 in that these allegations were not prosecuted, and were not thought to be of a sufficiently significant nature for the Appellant to be placed on List 99 at that point. In relation to other matters, he was acquitted by a Jury in the Crown Court. It formed the view that certain written statements cast serious doubts on the truthfulness of the alleged victim. It reached the view that it did not consider that the direction to place him on List 99 was a proportionate one, and it allowed the appeal.

Appeal allowed.

Trevor Brazier
-v-
Secretary of State
[2007] 1085.PT
[Mr Oliver, Ms Hyland, Ms Diamond]

The Appellant came to the attention of the Respondent by way of a letter from Ellesmere College, following his resignation as a result of allegations that he had engaged in an inappropriate relationship with one of the college's 17 year old female weekly boarders. He was barred from performing work to which s 142 applies on the grounds of his misconduct.

The Tribunal reached the conclusion that the Appellant had crossed the boundaries between staff and pupils. The Tribunal decided that the Appellant did not appear to have understood this, and that accordingly, it could not be satisfied that he would not cross the boundary again.

Appeal dismissed.

MG
-v-
Secretary of State
[2007] 1170.PT
[Mrs Singleton, Ms Tynan, Mr Radley]

The Appellant in this case was a voluntary canoe instructor. On a day in June 2003, he arranged for two teenage girls to assist him. After he had finished teaching the group, he drove the two girls back to the area where they lived. He dropped off one of the girls at a pre-arranged place, and continued with other girl (EP), a 14 year old. Apparently he engaged in an intimate discussion with her, he stopped the minibus, hugged her, and said that if he were to have sex with her he would be committing a criminal offence. He was cautioned and placed on the Sex Offenders Register for 5 years. He was included on the s 142 list on the grounds he was unsuitable to work with children.

The Tribunal stated that in accordance with Reg 13(2) it is required to decide whether the Secretary of State had sufficient evidence upon which to decide that a specified ground existed and whether or not it is an appropriate or proportionate response. The Tribunal, whilst critical of the Police for the fact that it took four years to refer the matter to the Respondent, stated that the Respondent was entirely dependent on matters being referred to it. The Tribunal concluded that on balance the Appellant demonstrated a serious lack of judgement when the incident occurred and is satisfied that the Respondent had sufficient evidence to make a direction that the Appellant should be barred on the ground of unsuitability, and that it is a proportionate response.

Appeal dismissed

APPEALS UNDER SECTION 68 CARE STANDARDS ACT 2000 FROM DECISIONS TAKEN BY THE REGISTRATION COMMITTEE, GENERAL SOCIAL CARE COUNCIL TO REFUSE REGISTRATION AS A SOCIAL WORKER

Good character: s 58(1)(a) Care Standards Act 2000.

Christopher Onyeka Nwokoro
-v-
General Social Care Council
[2007] 1086.SW
[Mr Oliver, Ms Last, Mr Wilson]

The Appellant's application to register as a social worker was rejected, and he appealed. The Tribunal concluded that there was evidence before the Committee that the Local Authority concerned had concerns about the quality of Mr Nwokoro's work as a result of failures to visit clients at the required frequency; failure to implement care plans; failure to complete assessments in court proceedings, and poor record keeping. The Tribunal also found as a fact that he had been dismissed for issues relating not only to his poor performance but also for falsified timesheets and references. There was also evidence, which the Tribunal accepted, that the Appellant had provided a false reference. Finally the Tribunal found that he had failed to respond to repeated requests by the GSCC, and did not provide a completed application form, and failed to provide the mandatory registration fee.

Appeal dismissed.

Babajaide Ajao
-v-
General Social Care Council
[2007] 1155.SW
[Ms Goldthorpe, Mr Wilson, Mrs Cross]

The Appellant appealed against the refusal of the General Social Care Council to register him as a social worker. The Tribunal made clear that the onus is on the Appellant to demonstrate that he is a person who meets the requirements of s 58(1) Care Standards Act 2000, namely to prove that he is competent and of good character. The Tribunal said that an understanding of the importance of openness and integrity is material to a judgement as to whether an Appellant is of good character. The Registration Committee refused registration because of breaches of the Code of Practice relating to his keeping confidential documents for some three years after working in a particular Local Authority, and that he had said that he saw nothing wrong in making and keeping copies. He had also submitted documents with forged signatures. He told the Tribunal that he had kept these documents in order to improve on his report writing skills. The Tribunal decided that the Appellant had failed to satisfy it that he could meet the requirements as set out in s 58.

Appeal dismissed

Overseas qualifications: s 64 Care Standards Act 2000

Catherine Burgesson
-v-
General Social Care Council
[2008] 1367.SW
[2009] UKFTT 11 (HESC)
[Ms Lewis, Mr Beeden, Ms Cross]

The Appellant in this case is from Ghana. The decision under appeal was to refuse the Appellant registration as a Social Worker although identifying that she could undergo 80 hours of supervised and assessed practice supervised by a qualified social worker within two years, to make good the gaps as set out in the IRS assessment. The Tribunal found that the practice placements in her Ghana Social Work degree fell far short of the requirement of the DipSW.

Appeal dismissed

APPEALS UNDER SECTION 68 CARE STANDARDS ACT 2000 FROM DECISIONS TAKEN BY THE PRELIMINARY PROCEEDINGS COMMITTEE, GENERAL SOCIAL CARE COUNCIL TO IMPOSE AN INTERIM SUSPENSION ON THE REGISTRATION AS A SOCIAL WORKER

RRY
-v-
General Social Care Council
[2008] 1306.SW-SUS
[Ms Rivers, Mrs Caporn, Mrs Prewett]

The PCC imposed an ISO for six months on the Appellant in this case on the grounds that it was “necessary in the interests of the protection of members of the public and in the public interest.” The facts of this case were not in dispute; namely that the Appellant put into her own Bank account a cheque from an elderly service user made out by the Appellant and signed by the service user in the sum of £5000.

Appeal Dismissed.

CG
-v-
General Social Care Council
[2008] 1282. SW-SUS
[Ms Lewis, Mr Thompson, Ms Redford]

The PCC imposed an ISO for six months on the Appellant to protect the members of the public. He was alleged to have had a sexual relationship with a vulnerable service user with alcohol problems. It was a key part of the Appellant’s case that he no longer

wished to work as a social worker but wanted to start work as a plumber. The Tribunal said that there must be a proper investigation of and resolution of the allegations.

Appeal Dismissed.

APPEALS AGAINST DECISIONS MADE BY THE GENERAL SOCIAL CARE COUNCIL, CONDUCT COMMITTEE UNDER SECTION 59 CSA 2000 TO REMOVE THE APPELLANT FROM THE REGISTER.

Tricia Forbes

-v-

General Social Care Council

[2008] 1267.SW

[Ms Roberts, Mr Lim, Mr Thomson]

The Appellant appealed against the sanction imposed by the Conduct Committee to remove her name from the Register. The Conduct Committee took the view that the Appellant had failed to recognise and act upon clear child protection issues; a failure to inform colleagues of her prior involvement in a case at a strategy meeting; a failure to make any notes of her involvement; and that it was not satisfied that she had demonstrated a consistent insight into her failings.

The particular incident occurred over a relative short period. On May 5th 2005, Child A presented at the Family Services Unit at around 12.30pm asking to see a family support worker. Various telephone conversations took place, the FSU spoke to Social Services and, as a result, Child A agreed to go over to the Social Services offices and she arrived around 3.35pm. Child A said that on the previous day she had arrived home at 4.30pm and that her father had hit her with the hi-fi system because she was late coming home. She said that he threatened to kill her and had thrown a plastic pole at her head. Child A had a scar and lump on the right side of her forehead after being hit. She said that she did not want to go home. The Appellant arrived in the office that day (from a course) at 4.40pm, and spoke to Child A. She drove Child A (with two colleagues) to Child A's home, but dropped her off before arriving because Child A said she wanted to return a jacket to a friend. Child A stayed with a friend that night, and was admitted into hospital on May 9th with alcohol poisoning. There was a strategy meeting that day, which the Appellant chaired. She did not inform the meeting of her involvement with Child A.

The Tribunal accepted the factual basis of the incident in this case. However, it formed the view that the sanction imposed was too severe. It was concerned by the apparent chaos within the team. It said: "...a suspended manager, an interim manager and an apprentice deputy team manager should have triggered higher management action to ameliorate the inevitable pressures bearing upon front-line staff....[I]n terms of public protection we accept that the Appellant has learnt her lesson and there is very little risk of her acting in such a way again. With respect to public confidence in the services we find that in the context of what happened and the Appellant's role in it, that an alternative sanction would have been appropriate and proportionate."

Appeal allowed

Solomon Beckford
-v-
General Social Care Council
[2007] 1154.SW
[Mr Wadling, Mr Harper, Mr Williams]
As reviewed by
[Ms Lewis, Mr Beeden, Dr Low]

The Appellant has worked in a variety of social care settings providing direct support over a period of sixteen years. The Tribunal found all the facts of misconduct proved except for those as set out in Part 9 of the Response. The Tribunal found the decision of the Conduct Committee to remove the Appellant's name from the Register to be proportionate. The Appellant had made a large number of Formal Admissions.

Both the Appellant and the Respondent sought a review, although the Respondent did not wish to overturn the decision, only to amend the reasons for the decision by way of corrections, so that it was accurate in all respects.

So far as the Appellant's application for a review was concerned, the newly constituted panel decided that his application was no more than a disagreement with the decision. So far as the Respondent's application was concerned, these were all addressed by the new panel and the decision was amended by certificate as provided for under the 2002 Rules.

Appeal dismissed

VL
-v-
General Social Care Council
[2008] 1302.SW
[Mr Reddish, Ms Halstead, Ms Joffe]

The Appellant was allocated to act as a social worker for a child (S) who was on the child protection register, and was the subject of care proceedings. The father of this child (Mr D) removed his son from his foster parent and endeavoured to care for him as a lone parent. The Local Authority decided that close supervision of Mr D and his parenting skills was required, and the Appellant was instructed to undertake that supervision and to make that assessment. Mr D and the Appellant commenced a sexual relationship, and the Appellant failed to notify her superiors that she had formed an intimate relationship with Mr D. None of this information was provided to the GSCC Registration Committee. The Conduct Committee found her guilty of misconduct and decided to remove her from the register. It said that the seriousness of the misconduct, in particular the dishonesty in May 2005, when she applied for registration, was such that removal could be the only response.

She appealed. The Tribunal decided that in the particular circumstances of this case, the sanction of removal was unnecessarily severe and disproportionate. It did not share the Conduct Committee's view that the dishonesty in relation to her application

for registration was the most serious of her offences. The Tribunal said: “The Appellant did bring her profession into disrepute in 1998-99. However, her dedication and commitment and her high level of performance at all other times was just sufficient to counterbalance her serious but uncharacteristic misconduct at that time”.

The Tribunal considered whether to recommend that the Appellant’s registration should be suspended for a period of up to two years and concluded that such a sanction would not now be appropriate having regard to the fact that no interim suspension order was made following the Appellant’s disclosures in August 2005 and that the final decision as to her registration was delayed until April 2008. It said that a decision to suspend the Appellant’s registration might well have been the appropriate sanction to mark the seriousness of her offence, but that if it had been imposed expeditiously, it would now have expired. It therefore recommended that the Appellant be admonished in the strongest terms and that a record of her admonishment be placed on her entry in the register for a maximum of five years.

Appeal allowed

APPEALS UNDER SECTION 68 CARE STANDARDS ACT 2000 FROM DECISIONS TAKEN TO REMOVE APPLICANTS FROM THE REGISTER AS THEIR REGISTRATION HAS LAPSED

Paul Stothart Breeze

-v-

General Social Care Council

[2008] 1411.SW

[Mr Askham, Mrs Caporn, Mr Winn]

The Applicant in this case was registered as a social worker on March 10th 2005 for a period of three years. His registration was due for renewal on March 10th 2008. He had been living in Venezuela for two and half years. It would appear that the Respondent allowed his name to remain on the Register beyond March 10th 2008. there were difficulties regarding correspondence between GSCC and the Applicant, and his name was removed from the Register by a letter that was not received by the Applicant in Venezuela until November 17th 2008. The Tribunal decided: “...in our view it appears that the Applicant’s name was removed from the Register without due warning being given to him. Given the correspondence between the parties to do so was unfair and gave the Applicant no opportunity to comply with the timescale being imposed on him.” The Tribunal felt that on the facts this was unreasonable.

Appeal allowed

Sandra Moore

-v-

General Social Care Council

[2008] 1414.SW

[2009] UKFTT 13 (HESC)

Margaret Ann Smith

-v-

General Social Care Council

[2008] 1423.SW

[2009] UKFTT 15 (HESC)

Rosemary Snell

-v-

General Social Care Council

[2008] 1429.SW

[2009] UKFTT 16(HESC)

[in each of the above: Ms Lewis, Mr Beeden, Ms Cross]

Bridget Williams

-v-

General Social Care Council

[2008]1446.SW

[2009]UKFTT 22 (HESC)

Geoffrey Haworth

-v-

General Social Care Council

[2008] 1446.SW

[2009] UKFTT 24 (HESC)

Peter Baird

-v-

General Social Care Council

[2008] 1449.SW

[2009] UKFTT 23 (HESC)

[in each of the above Mr Robertson, Ms Adolphe, Ms Redford]

Michelle Susannah Evans

-v-

General Social Care Council

[2009] 1462.SW

[2009] UKFTT 26 (HESC)

Helen Ardern

-v-

General Social Care Council

[2009] 1461.SW

[2009] UKFTT 25 (HESC)

Eulyn Sheila Joseph
-v-
General Social Care Council
[2009] 1465.SW
[2009] UKFTT 27 (HESC)
[in each of the above Ms Lewis, Dr Low, Mr Thompson]

In each of these paper cases, the Applicant appealed to the Tribunal pursuant to s 68 Care Standards Act 2000 against the removal of his or her name from the Social Work Register because of failure to submit the documents and fee as required by Rules 7 and 9 of the GSCC Registration Rules 2008. The Tribunal considered in each of the cases that removal was a proportionate response and that the Applicants had the opportunity to apply for restoration to the register under Rule 10 of the Registration Rules 2008. In *Smith*, the Tribunal said: “The appropriate course now is for the Appellant to apply for renewal of registration. We emphasise that she must take responsibility for this and cannot leave it to her employer or anyone else. It is also for her to take such steps as she considers necessary to protect her position should these administrative processes go wrong. We were also mindful that being familiar with relevant legislation, working within regulations, dealing with large bureaucratic organisations and processes are all part of the core competences of a competent social worker and as such are matters with which the Appellant is fully familiar”.

Appeals dismissed.

**APPEALS FROM DECISIONS TAKEN UNDER SECTION 69 CHILDCARE
ACT 2006 TO SUSPEND A CHILDMINDER OR DAYCARE PROVIDER**

Gary and Wendy Martin
-v-
OFSTED
[2008] 1396.EY-SUS
[2008] 1397. EY-SUS
[2008] UKFTT 6 (HESC)
[Mr Lindqvist, Mr Cohen, Mrs Rabbetts]

The Appellants appealed under reg 12(1) of the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regs 2008 against the suspension under reg 8 of their registration as childminders. The question for the Tribunal is whether there is a reasonable belief that continued childcare by Mr and Mrs Martin would expose any child in their care to a risk of harm. Of the children looked after by Mr and Mrs Martin, “A” had been admitted to hospital with possible fractures to his skull and leg, probably occurring on separate occasions. “A” is now with foster parents and the local authority had obtained an interim care order and in the light of investigations the Social Services and the Police would decide on future action. OFSTED said that the suspension was for the purposes of aiding the investigation. The Tribunal decided it was not reasonable to believe that the continued provision of childcare by the Appellants to any child might expose such a child to a risk of harm.

Appeal allowed.

[Permission was granted for the Respondent to appeal to the Upper Tribunal, the appeal has now been heard by the Upper Tribunal which has upheld the decision of the FFT]

DETERMINATIONS UNDER SECTION 166(5) EDUCATION ACT 2002

**The Managers of the Jewish Senior Boys' School, Salford
(Keser Torah)**

-v-

Secretary of State

[2008] 1317.IS

(His Honour Judge Pearl, Mr Braybrook, Ms McGregor)

The Respondent sought an Order under s 166(5) that the Appellant is be regarded as not registered for the purposes of s 159 of the Act until the Tribunal determines the substantive appeal against Notice of Deregistration. The Application stated that the Secretary of State took the view that the risks identified are sufficiently serious that matters cannot be allowed to continue until the hearing of the appeal, but that the pupils' welfare should be safeguarded in the meantime to prevent any such risk eventuating. The Secretary of State then withdrew his application for an immediate closure.

The Tribunal decided that it had the statutory power on its own motion to form a view that "there is a serious risk occurring to the welfare of pupils before the determination of the appeal." After careful consideration of the evidence, and after a site visit, the Tribunal concluded that this was not a case where it should exercise its discretionary powers under section 166(5). The Tribunal said: "In making this decision, we are aware of the consequences of an immediate closure and its impact on the pupils, the staff and the community at large. We evaluated the immediacy of the risk, and have reached the conclusion that the school should continue to function, and that the matter should now proceed to a final hearing."

In fact, the Secretary of State then withdrew its opposition to the appeal, and the matter was resolved, without a hearing, in favour of the School.

Order accordingly.

STRIKE OUT

Heritage Court Ltd

-v-

Commission for Social Care Inspection

[2007] 1135.EA-JP

[Mr Oliver]

The Respondent applied to strike out the appeal on the grounds that it had no prospect of success. The application was made pursuant to Reg 4A of the 2002 Regulations.

[Rule 8(4)(c) of the 2008 Rules is to the same effect, although the wording is different: “no reasonable prospect of the applicant’s case succeeding.”]

A JP ordered under s 20 of the Care Standards Act that the registration of Heritage Court Ltd in respect of the premises at Heritage Court Nursing Home be cancelled on the grounds that there would be serious risk to life, health or well being of a person unless the Order was made.

Heritage Court has now been sold, although the Appellant owns another premises. In the Strike Out application, the Respondent submitted that as there are no premises to which the registration in this case can relate, the Appellant’s appeal must fail. It is further submitted that there is “no practical advantage to be gained” in allowing a finding of fact by the Tribunal.

The Tribunal agreed.

Appeal Struck Out.

Mohammad Sajid Khan
-v-
Commission for Social Care Inspection
[2008] 1347.EA
[Mr Reddish]

The Respondent applied to strike out the appeal pursuant to Regulation 4A of the 2002 Regulations. The Appellant had applied for registration as the manager of a care home for young adults with learning disabilities. The inspector was unable to recommend him for approval. She reported that the Appellant was a “pleasant young man” who “was eager to provide good service in the home” but had “very little idea of the legal framework” and the “day to day management of finances.” Notice of Decision to refuse registration was sent to him on April 22nd 2008. In June 2008, the Appellant informed the Respondent that he had not received the Notice, so it was sent again. He received this Notice on June 21st 2008. The Appeal Form was received by the Tribunal on July 28th 2008.

Mr Reddish followed Collins J in *OFSTED v Care Standards Tribunal* [2007] EWHC 341 (Admin). Mr Reddish said that the period of 28 days expired on Saturday, July 19th 2008. The appeal was initiated several days out of time, and there is no discretion to extend the time limit for the initiation of this type of appeal.

[NOTE: This still remains the case. See Rule 5(3)(a) footnote (a). s 32(2) Health and Social Care Act 2008]

Appeal Struck Out

David Palmer
-v-
Secretary of State
[2008] 1292.PC
[His Honour Judge Pearl]

The Appellant in this case served an application for leave to appeal against the refusal of the Secretary of State to remove his name from the PoCA list pursuant to his powers under s 1(3) POCA 1999. The Secretary of State sought to strike out the application for leave to appeal.

He was placed on the Consultancy Index as from January 25th 2000 and was transferred onto the PoCA list as from October 2nd 2000. He exercised his right of appeal. He admitted an “affair” with a consenting adult who had left his care, when he was her foster carer, some years before. His appeal was dismissed.

The Tribunal concluded that the Secretary of State was fully justified in transferring the Appellant on to the list in 2000, and there was nothing in the evidence that led the Tribunal to conclude that that decision was wrong. Thus, the application under s 4(1)(b) for leave to appeal the decision taken under s 1(3) has no reasonable prospect of success. The application by the Respondent to strike out the application for leave to appeal was granted.

Appeal Struck Out.

Patrick Edwards
-v-
Secretary of State
[2008]1311.PC
[Mrs Singleton]

The application to strike out the appeal in this case was based on the fact that no reasons are given in the application form why he should not be included on the PoCA list. This meant that the application was not made in accordance with the mandatory procedures set out in the 2002 Regulations, and the application was accordingly struck out. Under the 2008 Rules, (Rule 20(1)(g)) it is mandatory to include in the application notice “the grounds on which the applicant relies” and accordingly, it may well be that a case such as this one, would be struck out under Rule 8(4)(b).

Appeal Struck Out

Rodney Bronger
-v-
Secretary of State
[2008] 1334.PC
[Mr Rowland]

The Appellant was placed on the PoCA and PoVA list, having been imprisoned for two and half years upon his plea of guilty to three offences involving sexual activity with a female with a mental disorder. He did not challenge his inclusion on the PoVA list, but appealed his inclusion on the PoCA list. The Secretary of State applied for the appeal to be struck out on the grounds that it has no reasonable prospect of success. The Tribunal agreed with the Secretary of State.

Appeal Struck Out.
