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## INTRODUCTION

Series One of the cases decided by the Care Standards Tribunal comprises summaries of cases decided by the Tribunal during 2002 – 2005.

Series Two contains summaries of cases decided during 2006 – 2007.

Series Three, of which this is the first issue, will contain summaries of cases decided during 2008 up until the current Regulations, namely the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations 2002 (SI 2002/816 as amended), are replaced by the First Tier Tribunal Rules (for what are now Schedules 1,2,3,6,7, and 9 of the 2002 Regulations) and the Upper Tribunal Rules (for applications to appeal and appeals from decisions taken by the new Independent Safeguarding Authority). On-going appeals relating to List 99, PoCA and PoVA (which will be decided under Schedule 4 and 5 of the current Regulations) will be reported as part of Series Three.

The summaries appear on the Care Standards Tribunal website ([www.carestandardstribunal.gov.uk](http://www.carestandardstribunal.gov.uk)). All the cases are published in full on the website, and are published also on the British and Irish Legal Information website ([www.bailiii.org/ew/cases/EWCT](http://www.bailiii.org/ew/cases/EWCT)). Some of the cases are reported also in Social Care Law Today and the Journal of Community Care Law (subscribe online at [www.ardendavies.com](http://www.ardendavies.com)).

Decisions on how Care Standards Appeal cases in the future will be reported, and how they will be summarised, will be decided 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  
President, Care Standards Tribunal  
August 1<sup>st</sup> 2008.



**N.B. The schedules refer to the Schedules set out in the Protection of Children and Vulnerable Adults and Care Standards Tribunal Regulations (SI 2002/816) as amended.**

## **Schedule 1**

### **Appeals against a refusal to register as a provider of a care home**

**Glenda Hunt v Commission for Social Care Inspection  
[2007] 1045.EA  
[Judge Pearl, Mr Flynn, Mr Tomlinson]**

This was an appeal under section 21 of the Care Standards Act 2000 against the decision taken by the Respondent to adopt the proposal of the Respondent to refuse to register her as the registered proprietor of a care home. The Respondent submitted that she was not fit to carry on a care home for five reasons: failure to demonstrate the skills or competency to carry on a care home (Regulation 10(1)); a failure to put plans in place to ensure financial viability and a failure to illustrate appropriate business skills (Regulation 25(1)); fitness of premises (Regulation 23(2)(d)); failure to appoint a manager (Regulation 8(1)(a)(b)(c)(ii)(iii)); failure regarding requirements as to health and welfare (Regulation 13(2) and 13(6)). The Tribunal concluded that all the reasons for failure to comply with regulation 10(1) were amply justified by the evidence. The Tribunal agreed also that there was a failure to put financial plans in place as required by Regulation 25(1). Reliance on Regulation 8 and Regulations 13(2) and 13(6) were equally justified by CSCI. The Tribunal concluded: “There is no evidence of an objective, calm and measured approach to this project. Although we have much sympathy for Mrs Hunt...[she] has failed to satisfy us that she is a fit person to manage the care home.”

**Appeal dismissed.**

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**Rufina Joseph v Commission for Social Care Inspection  
[2007] 1052.EA  
[2007] 1116.EA  
[Ms Goldthorpe, Mr Coleman, Mrs Howell]**

There were two appeals in this case, against the decision of the Respondent to refuse the Appellant her application to become a Registered Proprietor and to refuse her application to become a Registered Manager. The proposed premises were Culita Care. Prior to the hearing, the Appellant conceded (in relation to the first appeal) that the proposed premises did not comply in some respects with the National Minimum Standards. Nonetheless, and following the decision of Davis J in *The Welsh Ministers v CST and H* [2008] EWHC 49 (Admin) the Tribunal concluded that a practical advantage existed to give the Appellant a fair opportunity to challenge the

Respondent's grounds for refusal of registration. It became common ground that the Proprietor's appeal should be dismissed due to the Appellant's concession about the unsuitability of the premises; and that in relation to the fitness to be a Manager appeal, Regulation 9(2) (i) (skills and experience) was the relevant requirement. In this context, the Tribunal noted that its role is to engage in a total examination of all of the evidence and it can admit evidence previously overlooked or which relates to events that occurred after the original decision.

The Respondent maintained that the Appellant had failed to prove that she had the knowledge and experience, as demonstrated specifically by:

- Her lack of experience of working with the relevant client group, in particular in a residential setting;
- The competence issues arising from her role as manager of a previous home (Ryecroft) and latterly at nursing and domiciliary agencies;
- Her failure to demonstrate satisfactory knowledge of the local authority vulnerable adults protection protocol;
- Her inadequate responses to the pre-interview questionnaire.

The Respondent submitted also that the Appellant had failed to demonstrate a general competence to manage, as shown by a lack of detail or care in her application documents and a lack of consideration and thought given to the suitability of the premises. In response, the Appellant submitted that the Commission's decision-making process was unfair and biased in that it had concentrated on her time at the former home (Ryecroft) and had failed to consider the evidence of her skills and experience as a whole.

The Tribunal heard evidence about the "Fit Person Interview" but did not consider this to be reliable. In particular, the matters that the inspectors claimed to have established in order to support the refusal of registration did not correlate with the facts. The Tribunal was concerned about the lack of transparency in the decision-making process. It remarked that Article 6 of the European Convention is relevant not only to hearings, but also to the process of decision-making by public bodies. On a detailed analysis of the evidence, the Tribunal concluded that the Appellant possesses the requisite qualifications, skills, experience and understanding of mental disorder and client needs and the issues involved in caring for the needs of the proposed client group. The Tribunal decided also that the evidence relating to her time as Manager in Ryecroft did not support a finding of unfitness.

The Tribunal continued: "Under normal circumstances...our decision would have been that the Commission's decision has no effect. However, in the absence of premises that is a moral victory for the Appellant with no practical effect. She cannot be registered in a vacuum because fitness to manage a care home must be judged against specific premises." Accordingly, the Tribunal had no choice but to dismiss the Manager appeal, "albeit in the recognition that our findings of fact may assist both parties in any future application for registration."

### **Appeals dismissed**

## **Appeals against refusal to register as a manager of a care home**

### **Peter Eckford v Commission for Social Care Inspection [2007] 1161.EA [Mr Askham, Ms Derrick, Ms Chatfield]**

The evidence in this case concerned two issues:

- The behaviour of the Appellant, in support of the contention that the Appellant was not of integrity and good character;
- Whether the Appellant has the necessary skills and experience to be registered as a manager.

The Tribunal said that it is for the Appellant to prove to the Tribunal that he is a fit person to manage a care home. Any doubts must be resolved against registration. The Tribunal makes the decision on the basis of the evidence which exists at the date of the hearing. The first question that the Tribunal has to decide on is, “Is the Applicant of integrity and good character?” If the Tribunal were to conclude that the answer to that question was “no”, the appeal would have been dismissed. If the answer were to be “yes”, then the second question is whether he has the necessary skills and experience.

As to integrity and good character, the Tribunal decided in favour of the Appellant. It said: “Having seen [the Appellant] over four days before us we find nothing which would lead us to conclude that he was not of good character and integrity. It then turned to the question of competency and skills. The Tribunal said: “We noted the Commission’s evidence that it was in a very small minority of cases that application for registration of a manager was refused. We are mindful of their evidence that they believe that the history of Mr Eckford’s management is that he achieves improvement, that improvement plateaus out and then falls away. Whilst we understand the fear and see that there may have been some evidence to support that at [the first home] there seems to us absolutely no evidence to support that conclusion at [the current home] at the date of the hearing.”

**Appeal allowed.**

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## **Appeals against refusal to register as a domiciliary care agency**

### **Janine Webber -v- The Welsh Ministers [2008] 1235.EA-W [Ms Tudur]**

The Applicant appealed against the notification to her of the decision of the Respondent to adopt the Notice of Proposal to refuse her application for registration of Cilgerran Domiciliary Care (CDC) as a domiciliary care agency. The decision was taken primarily because the Respondent considered that CDC did not meet the criteria for a domiciliary care agency, but rather fulfilled the description of a care home. In

the Response, the Respondent sought a Preliminary decision on whether CDC was a domiciliary care agency or whether it fulfilled the description of a care home.

The nominated Chair considered the case of *R (Moore and others) v Care Standards Tribunal* [2005] EWCA Civ 627 where the Court of Appeal had stated that service user choice in the context of the provision of services is essential to the delivery of care services.

The nominated Chair concluded that it was the Applicant's intention to provide a whole package of accommodation and care. There was no evidence to corroborate the Applicant's statement that there would be no problem if a service user expressed a wish for care to be provided by another agency. The nominated Chair concluded that on the basis of the evidence presented in the appeal, and on an analysis of the business plan, the Tenancy Agreement, the Aims and Objectives and the Service User Enquiry forms, and the Applicant's own use of the term 'home' in referring to the CDC, that the proposed provision by CDC is a package of accommodation and care. Accordingly, it fits the description of a care home under section 3(1) Care Standards Act 2000 rather than the description of a domiciliary care agency under section 4(3) of that Act.

**Appeal Struck Out.**

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## **Schedule 4**

### **Protection of Children Act 1999. Appeals under s 4(1) (a).**

**JM v Secretary of State  
[2007] 920.PC;  
[2007] 921.PVA  
[Mr Robertson, Mrs Lowcock, Mr Jobbins]**

In this PoCA and PoVA appeal, the Respondent relied on six allegations of misconduct against the Appellant, a qualified nurse who was working in a local authority children's home. These were as follows:

- Maintaining a relationship with a vulnerable child N (now deceased) after that child left the children's home, and in so doing failing to respect professional boundaries between himself and the late N.
- Concealing the fact of his relationship and his contact with her from staff at N's residential placement.
- Purchasing various gifts for the late N while she was staying at the residential placement.
- Meeting N, unsupervised, on numerous occasions when he had no authority from those caring for her to do so.
- Being complicit in N's absconding from the residential placement.
- When applying for another position, failing to disclose a period of employment with a previous employer

The Tribunal said that JM was in a position of trust and having formed a relationship with N in a professional capacity, the scope for abuse and grooming of this incredibly vulnerable young woman was obvious and real. However, the Tribunal said also that it was important to treat what she had said with caution. She was a girl with serious behavioural and mental health problems. Tentative diagnoses of Schizophrenia had been made, she was described as lying and manipulative, would self harm and use drugs and alcohol. The Tribunal thought that, with the known possession of expensive gifts, she may have been "laying down a smoke screen" to hide other activities, including ongoing relationships with a number of men. On an analysis of the evidence, the Tribunal concluded that there was insufficient evidence to satisfy the first five of the grounds set out above. As to the last ground, it decided that this omission, which it found proved, was not such as to amount to misconduct. In conclusion, the Tribunal said: "... this is yet another example of a case that only took shape once oral evidence was heard and tested. There was a clear prima facie case on the papers and the Secretary of State brought the case entirely appropriately."

#### **Appeals allowed**

**AJ v Secretary of State**  
**[2006] 767.PC**  
**[2006] 768.PVA**  
**[Mr Oliver (Deputy President), Mrs Howell, Mr Lim]**

The decision in this case is 44 pages and contains 180 paragraphs. The Appellant was an instructor with the Sea Cadets Corps until 1985 when his employment with the navy meant he returned to sea. In 1997, he returned to the Sea Cadets. It would seem that AJ had an exemplary naval career; and his employment involves danger and courage in relation to submarine escape techniques.

In April 2002, he stood trial on three counts of indecent assault on three minors. He was found not guilty on all counts. He was placed on the PoCA and the PoVA lists in 2006. He appealed.

In the appeal, the Respondent particularised 10 instances of misconduct. Four involved permitting a sea cadet to consume alcohol whilst being under the charge of the Appellant; five involved a sexual assault; and one involved providing a youth with one or more magazines with pictures showing human sexual penetration. The Appellant denied the allegations made against him in relation to the sexual assault and sex magazine misconduct. As for the alcohol charges, he stated that in one of the allegations, the boy was not in his charge at the time suggested; in relation to the second charge, he accepted that he permitted the boy to drink alcohol although he disputed the quantities stated; and in relation to the third allegation, he denied permitting him to consume alcohol on that occasion.

In addition to these allegations, there were a series of allegations that when in the navy, between April and August 2000, he “uninvited and without excuse, manually contacted each of the twelve naval ratings genitals in a manner and for a duration that is inconsistent with it being an accident.” These arose during “demonstration training”, and the Tribunal agreed with the Naval Prosecution Authority that such training involved contact that could be construed as touching the area around the genitals.

As to the other allegations of misconduct, with limited corroborative evidence to draw upon, the Tribunal concluded that there was insufficient reliable evidence for it to be satisfied that all but one of the allegations were made out. The allegation that was made out was permitting a sea cadet to drink alcohol, which the Appellant admitted he allowed to happen. The Tribunal then asked itself the question; does this one proven and accepted particular of misconduct make it come to the conclusion that the Appellant is unsuitable to work with children and/or vulnerable adults? It decided this question in the negative: “We cannot conclude that [the Appellant’s] lax approach to allowing the cadets to drink is sufficiently serious to say that he is unsuitable. It was ill advised and in hindsight foolhardy. We have no doubt, however, that if [the Appellant] was to find himself working with young men again he would not allow them to drink at all.”

The Tribunal expressed a concern about the new regime as set out in the Safeguarding Vulnerable Groups Act 2006. It said: “If ever there was a case that shows how wrong the decision to restrict a merits appeal, this is it. If a person is placed on a list without

having a right, at some point, to seek to have an analysis of the evidence as we did over the 5 days, there is a risk of a miscarriage of justice.”

## **Appeals allowed**

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### **Appeals for leave to appeal under section 4(1) (b) after a refusal to remove a name from the List under section 1(3) Protection of Children Act 1999.**

**Robert Anthony Soper v Secretary of State**  
**[2007] 1194.PC**  
**[2007] 1195.PVA**  
**[His Honour Judge Pearl]**

This is an application for leave to appeal the decision of the Secretary of State not to remove the Applicant from both the PoCA and the PoVA list. The Applicant is an organist. A referral was made to the Respondent by the Diocese, and he was confirmed on the two lists on 2<sup>nd</sup> November 2004. He appealed but he withdrew his appeal prior to the hearing. An Application was made to the Secretary of State that his name should be withdrawn on the grounds that he should not have been included on them. By letter dated 6<sup>th</sup> September 2007 he was advised by the Secretary of State that a decision had been made not to remove his name. He sought leave to appeal.

The Tribunal stated that the appropriate test to be considered in these cases is that set out in PD v Secretary of State [2006] 651.PC. The Tribunal accepted the submission that the task for the Tribunal at leave stage upon a section 1(3) application, is to consider whether the Applicant has demonstrated that the Secretary of State should not have included him on the list. In other words, in the case of a referral after a dismissal, that the Secretary of State should not have reached the opinion that (a) the organisation reasonably considered the individual to be guilty of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm; and (b) that the individual is unsuitable to work with children. Counsel submitted that the material before the Respondent gave him ample grounds for reaching the view that the Diocese reasonably considered Mr Soper to be guilty of misconduct which harmed a child or placed a child at risk of harm. There was extensive material to support the contention that Mr Soper had engaged in sexual relations with children between 16-18 years old, having abused his position of trust in order to do so.

The President considered this material and concluded that it was reasonable for the Diocese to have considered the Applicant to be guilty of this misconduct. The President made no decision on whether the Applicant was guilty of misconduct; simply on whether the Diocese reasonably considered him to have been guilty of misconduct.

The Applicant raised the discrete point that the Diocese was not his employer, and he referred to the canon law to support this position. The submission was to the effect that as the Diocese was not his employer, accordingly it was not a competent organisation to refer his name to the Secretary of State. This submission was rejected.

First, the President said that as the point could not be argued at the substantive appeal, it was difficult to submit that he could argue it at leave stage. The President said: “These are not matters within the statutory jurisdiction of the Tribunal...if Mr Soper wished to challenge the validity of the referral by the Diocese, then this should have been done by way of judicial review rather than by seeking leave to appeal the refusal to have his name removed from the statutory list.” As to the specific arguments raised by Mr Soper, the President said that the law in this area is not as fixed as Mr Soper would have believed. He said: “In this case, there is an intention to create legal relations. In particular, the Applicant is responsible for complying with child protection matters; and these are no less part of his contractual responsibilities than those concerning playing the organ and leading the choir. That latter matter may well be one between him and the vicar; the former however is between him and the individual within the Church who is responsible ultimately for child protection policy, namely the diocese...The diocese has the ultimate responsibility...the “framework of control”...to make referrals to the Secretary of State under section 2(7)...To argue otherwise would be to totally undermine the purpose of the legislation.”

The Application for leave was dismissed. The Applicant then requested reconsideration under schedule 4 paragraph 6 and schedule 5 paragraph 6. The reconsideration was dealt with by Mr Oliver, the Deputy President. There were two bases for the reconsideration; first, that he should have been allowed to submit new or previously unavailable evidence; and secondly, that the President was wrong to determine that the diocese could be regarded as his employer. As to the first ground for reconsideration, he referred to schedule 4 paragraph 2(4)(e) which states that an application for leave must include “details of any new evidence or material change of circumstances since that appeal was determined which might lead the Tribunal to a different decision.” Mr Oliver said that new evidence since his first appeal is available to be considered but, armed with this new evidence, the test that has to be applied is whether or not the Applicant has demonstrated that the Secretary of State should not have included him on the list. Mr Oliver looked at this new evidence. It was submitted that the sexual relationship started after the girl attained 18. Mr Oliver said: “The fact that the relationship might have started after the girl’s 18<sup>th</sup> birthday does not, to my mind, make any difference. The issue is that the relationship was an abuse of a position of trust.” Similarly, whether there was one or four incidents of grooming made no difference: “the core issue is that again the incidents (isolated or not) were an abuse of a position of trust.” Mr Soper’s arguments relating to his employer were rejected by Mr Oliver.

**Application for leave to appeal dismissed**

**Application for reconsideration of refusal for leave dismissed.**

**Appeals brought under Education (Prohibition from Teaching or working with Children) Regulations 2003 reg 12 from Direction given by the Secretary of State under section 142 Education Act (list 99)**

**DAS v Secretary of State  
[2006] 796.PT  
[Mrs Singleton, Ms Joffe, Mr Radley]**

The facts of this case are as follows. In March 2002, twin sons were born to the Appellant and his wife. By mid April 2002, one of the twins began to show symptoms which were subsequently recognised as evidence of fits. He was admitted to hospital. Both boys were found to have sustained brain injuries. The cause of these injuries was found to be that the Appellant had played rough physical games with the twins, virtually from birth. In 2003, the Appellant pleaded guilty to three offences in relation to the twins, two being for cruelty and one being for neglect. Care proceedings were instituted relating to the twins and the Appellant's daughter, ultimately leading to adoption orders being made. Subsequently, a direction was made under section 142 of the Education Act 2002, barring the Appellant from work to which that section applies on the grounds that the Appellant is unsuitable to work with children and young people. He appealed.

The Tribunal decided on balance that the Appellant did not deliberately set out to hurt the babies, but felt that his actions displayed an inability to assess risk. The Tribunal said that not only did the Appellant fail to assess the possible impact of what he did on his newborn sons, but he also ignored advice when it was given to him by his wife, parents and friends. The Tribunal accepted that the Appellant is an excellent teacher; however on the evidence available to the Secretary of State when the direction was made, a conclusion that the Appellant behaved recklessly was justified. It said that the Tribunal has a duty to ensure that children are properly protected and to maintain public confidence. An absolute bar was proportionate.

**Appeal dismissed.**

---

**Kevin Philliskirk v Secretary of State  
[2007] 1115.PT  
[Ms Roberts, Ms McLoughlin, Mr Black]**

The Appellant, a 26 year old language teacher, appealed in this case against the decision of the Respondent made under section 142 Education Act 2002 in a decision letter dated 15<sup>th</sup> June 2007. The facts of the case were not in dispute. He taught languages at a school in West Yorkshire from February 2005 until September 2006 when he resigned from his post after admitting to the headmaster that he had had an inappropriate relationship with a 16 year old female pupil. On a school trip to Germany, he and the girl sat next to each other on the coach and they engaged in touching each other in the genital area over their clothes. In the following days they communicated by email and internet messenger and the Appellant went to her home where they kissed and touched each other. They did not have sex. There was a further

meeting in a park when they talked and kissed and mutually agreed to end the relationship. After he had informed his headmaster, the matter was reported to the Police. The Appellant was offered and accepted a caution for “engaging in sexual activity other than sexual intercourse with a person under 18 when in a position of trust.” (An offence under section 16 of the Sexual Offences Act 2003)

The Tribunal stated its jurisdiction as follows: “The Tribunal is required, in effect, to decide whether the Secretary of State had sufficient evidence upon which to base a determination that the specified ground relied upon existed and, further, to decide whether the direction was an appropriate or proportionate response in all of the circumstances known to the Secretary of State.”

The Tribunal was influenced by the Report from Professor Grubin that was before the Secretary of State. This Report stated “we do not believe that there is any reason why he should not continue to work with children generally.” The Tribunal stated that it had had the opportunity to hear from the Appellant and to observe his demeanour. The Appellant said to the Tribunal: “I don’t deny what I did was wrong, terrible and I wouldn’t do it again. I can see why a case of misconduct was given against me but I am not a danger to children.” The Tribunal decided that the Appellant was a truthful witness with no guile or hidden agenda. It felt that he had not sought to minimise his behaviour or the potential effect it had had on the student.

The Tribunal concluded: “Whilst we appreciate the issue of public confidence, on the evidence we have read and heard, we do not feel that with the knowledge of the circumstances of this particular case, public confidence would be breached.” The Tribunal was therefore not satisfied that it was appropriate or proportionate that the Appellant should have been placed on List 99.

**Appeal allowed.**

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**MC v Secretary of State [Interlocutory Decision]  
[2007] 1193.PT  
[Mr Robertson]**

This matter was listed for preliminary argument regarding the role and jurisdiction of the Tribunal in appeals brought by persons included on ‘List 99’. There was common ground between Counsel that the effect of the scheme is that any appeal to the Tribunal is ‘frozen in time’, *i.e.* that the Tribunal has to consider appropriateness at the time it was considered by the Secretary of State (as contrasted with the suitability test under the PoCA scheme which is considered at the date the Tribunal sits). The major area of disagreement between the Appellant and the Respondent is the nature of the appeal. Is it a review of the Secretary of State’s decision or is it a full rehearing ‘fixed in time’ hearing the same information, but where the Tribunal may substitute its own view for that of the Secretary of State? The nominated Chairman concluded that a Tribunal is entitled to hear evidence in respect of the information that was available to the Secretary of State and determine whether, at the time the matter was considered by the Secretary of State, the Appellant falls into one of the grounds specified under section 142(4) and if so whether a direction should be made under

section 142(1). The nominated Chairman said that the Tribunal is entitled to make its own decision on the former and exercise its own discretion on the latter. It is entitled to substitute its own views for that of the Secretary of State.

**Order Accordingly**

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## **Schedule 5**

### **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.**

**Linda Johnston v Secretary of State  
[2007] 1064.PC  
[2007] 1065.PVA  
[Mr Bennett, Ms Rabbetts, Mr Harper]**

The Appellant in this case is a domiciliary care support worker who was part of a team supporting three service users who are tenants in a supported living arrangement. Each service user has significant care requirements arising from learning difficulties and mental health difficulties. One of them also has a visual impairment and tendency to self-harm and one of them has diabetes. The Respondent's decision to include the Appellant on the two lists was based on twelve allegations of misconduct arising from information provided to the employer (Alternative Futures) by two of their employees. These allegations included forcing a service user to retrieve his "comfort stick" from the toilet; knowingly sending another service user to bed without an evening meal; deliberately wetting a service user with the shower; and suggesting to colleagues that a service user would look like a "slaughtered pig" when menstruating. The Tribunal was satisfied that the Respondent had discharged the burden of proof that was on him. It said: "She appears to have operated a regime which centred upon the establishment of a strict and inflexible routine so that staff controlled the lifestyles and activities of the service users to a degree beyond that appropriate for their status as tenants. The imposition of that regime led to a lack of flexibility or tolerance..." The Tribunal concluded also that she was unsuitable to work with vulnerable adults and children.

**Appeals dismissed.**

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**Ellen Nkala v Secretary of State  
[2007] 1015.PVA  
[Mr Robertson, Ms Adolphe, Ms MacGregor]**

The Appellant in this case was contracted by a private sector agency as a live-in carer. The agency provided clients with carers for a fee, the worker being paid by the direct payment scheme by the client and therefore being self employed. The agency was notified by a severely disabled client that she had given the Appellant a blank cheque to enable her to buy herself some glasses. The Appellant cashed the cheque for £2500 and the Bank queried the transaction. The client confronted her, the Appellant apologised, paid £2000 back and agreed that the balance should be deducted from her pay. She was placed on the PoVA list. The Tribunal dismissed the Appellant's appeal. It said: "The purpose of the legislation is to prevent people from working with vulnerable adults who may exploit, abuse, mistreat or take advantage of such

persons...We consider that [the Appellant] acted in a wholly calculating way and further that she is singularly unsuited to being a carer and should not be allowed to be one in the future.” The Tribunal also made the observation that the case illustrated the importance of oral hearings. It said: “It was only by hearing [the Appellant] and testing her evidence through cross examination and questions from the Tribunal that the true picture of her unsuitability arose.”

## **Appeal dismissed**

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**Rachel Close v Secretary of State**  
**[2006] 852.PVA**  
**[2006] 853.PC**  
**[Mr Reddish, Ms Graham, Ms Hyland]**

The Appellant in this appeal was employed as a social care worker by Rhondda Cynon Taff County Borough Council from 1987. In 1993, she became a retained fire fighter and then worked, pursuant to a part-time contract, at Clwyd Wen Respite Care Home for Adults with Learning Difficulties. The Appellant’s elder sister was the Manager. For many years, Clwyd Wen provided respite care for a Mr Adam Morris, a young man who had cerebral palsy and a severe learning difficulty. He was wholly reliant on others. During the night, he often experienced muscle spasms and would use his considerable strength to push himself towards the head of his bed. When this happened, his carers would have to pull him back down his bed and move him into a comfortable position to enable him to sleep.

In the morning of 27<sup>th</sup> April 2003, his head had become wedged under a pillow in the gap between the headboard of his bed and the guard rails. He sadly died. The Appellant was on duty earlier that morning. The Coroner reported that Mr Morris had suffered “accidental death contributed to by neglect.” On 27<sup>th</sup> May 2004, the Appellant was arrested and charged with the unlawful killing of Mr Morris, although in April 2005 the manslaughter charge was withdrawn. She was acquitted of an offence of neglect under section 127 of the Mental Health Act 1983. She was dismissed by the County Borough Council in October 2005 for gross misconduct after a disciplinary hearing. The Employment Tribunal found that the Appellant was dismissed for a potentially fair reason (misconduct) but that the Council had not acted reasonably in relying on police reports rather than conducting their own investigation. At the time of the current hearing, there is an appeal pending on this point to the Employment Appeal Tribunal.

She was confirmed on the PoVA and PoCA lists in September 2006. She appealed. The Secretary of State submitted, in particular, that the Appellant was guilty of misconduct in that she repeatedly slept on duty when she should have been awake; that she was disrespectful to and abusive of service users on several occasions; that she failed to provide a service user with the constant attention and monitoring that she knew she needed; that she failed to complete her night reports at the proper time; and that she attempted to falsify her night report on 27<sup>th</sup> April 2003. In particular, it was submitted that between 3.15 am and 6.00 am on 27<sup>th</sup> April 2003, the Appellant failed to provide Mr Morris with the constant attention and monitoring that she knew he

needed. The Appellant submitted that she had been victimised by incompetent managers, that she was not on duty at the time Mr Morris died, that she did not sleep on duty, that she had not asked another worker to change her night report, and that she had an unblemished record of 18 years work in social care.

The Tribunal found as a fact that there was ample evidence that the Appellant slept during “night awake” shifts in 1999, the summer of 2002, in December 2002, and in March 2003. It found that the Appellant’s denial was wholly unconvincing. In particular, the Tribunal arrived at the conclusion that the Appellant slept between 3.15 am and about 6.00 am on 27<sup>th</sup> April 2003, and during that period failed to provide Mr Morris with the constant attention and monitoring that she knew he needed. The Tribunal found also that the Appellant was guilty of not complying with procedures in relation to the completion of night reports, and guilty of misconduct towards several service users which constituted ill-treatment of them.

As to suitability, the Tribunal said: “...the Appellant’s approach to the allegations made against her, her conviction that there had been an unjust apportionment of the blame for the death of Mr Morris and her determined insistence that there was a conspiracy against her, together demonstrated a lack of understanding and insight which rendered her unsuitable to work with either vulnerable adults or children.”

### **Appeals dismissed**

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**NJ v Secretary of State**  
**[2006] 727.PVA**  
**[2006] 728.PC**  
**[Mr Lindqvist, Mrs Trencher, Mr Greenacre]**

NJ is a care worker of some 34 years standing with, until the events giving rise to this appeal, an unblemished record. The Tribunal accepted the evidence presented to it that he was a devoted, conscientious and sympathetic carer. In March 2004, he was the manager of a small home for four adult men with severe learning difficulties. On 26<sup>th</sup> March 2004, one of the residents (‘A’) made communications largely by gesture suggestive of a sexual assault (anal penetration) by NJ. ‘A’ suffered from cerebral palsy and had lived in institutions since the age of nine. In order to communicate, ‘A’ used a communication board, pointing to symbols on it. ‘A’ had a relationship with an older man on a different ward, and, within his communication skills, openly discussed with staff his sexual activities with his partner. NJ was suspended, interviewed by police and bailed. The CPS decided that there was insufficient evidence to prosecute NJ. He was dismissed by his employer, and an appeal to the Employment Tribunal and to the Employment Appeal Tribunal failed. He was placed on both the PoCA and the PoVA lists, and he appealed both these decisions on 20<sup>th</sup> June 2006.

On an analysis of the evidence, the Tribunal arrived at the conclusion that there was very considerable doubt about whether there had been anal penetration of ‘A’ by NJ. The police surgeon found no evidence at all to support it. The Tribunal said that it was not at all clear that that was what ‘A’ was trying to communicate. The Tribunal concluded: “...the Tribunal was not satisfied that NJ perpetrated any sexual assault on

‘A’. Placing in the evidential balance, NJ’s not only unblemished but wholly creditable record as a nurse and carer for over thirty years, made it impossible to be satisfied even to the unheightened civil standard of simple balance of probability that NJ was guilty of any misconduct of the sort alleged.” As that misconduct was the only ground on which it is said that NJ is unsuitable to work with vulnerable adults, it followed that there could be no finding of unsuitability either.

### **Appeals allowed**

[NB: This decision is at present the subject of an appeal by the Secretary of State to the High Court].

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**JGD v Secretary of State**  
**[2007] 1122.PVA**  
**[2007] 1121.PC**  
**[Mr Robertson, Mr Williams, Mrs Williams]**

The Appellant is 23 years of age who started work as a Care Assistant at a Nursing Home when aged 18. He worked with a challenging group of people with communication difficulties in an advanced stage of dementia. On 25<sup>th</sup> October 2005, an incident occurred with a patient, JB. It appears that, at lunch time, he strapped JB into a wheelchair using a lap strap, left JB and forgot about her. Within the home, there is a policy of nil restraint. He was suspended. He was reported to the police and he was offered a caution by the police for an offence under section 127 of the Mental Health Act. He accepted this caution. He was summarily dismissed, and reported to the Secretary of State. He was confirmed on the PoCA and the PoVA lists on 20<sup>th</sup> June 2007. He appealed.

The Tribunal was satisfied in this case that, with the existence of the caution, there was misconduct and actual or likely harm to JB. The Tribunal stated the onus switches to the Appellant and it is therefore for the Appellant to satisfy the Tribunal that he is a suitable person to work with vulnerable people (and children).

On an examination of the evidence, the Tribunal concluded that JGD has no history of anything but good quality care of Residents he has worked with. It decided that the incident with JB was a one off and out of character. The original decision to strap JB in, whilst wrong, was motivated not by malice but misplaced concern. It found that he did not act in a deliberately cruel or abusive manner but rather immaturely and inappropriately. The Tribunal did not see him as a risk to vulnerable people in the future.

### **Appeals allowed.**

**LU and DH v Secretary of State**  
**[2007] 1092.PVA; 1093.PC**  
**[2007] 1123.PC; 1124.PC**  
**[Ms Rivers, Ms Elliot, Mr Beeden]**

The confirmation of both Appellants on the PoVA and PoCA lists resulted from an incident on 27<sup>th</sup> April 2006 when both had been found sleeping in the course of their employment as night care staff at a Home that provided care for up to 42 elderly residents, some of whom required nursing care and some of whom suffered from dementia. During an inspection at 2.45am, the Manager and her Deputy found both Appellants asleep in armchairs and each with their feet up on another chair.

At the hearing, both Appellants accepted that they had fallen asleep on duty, and in consequence the Tribunal decided that this constituted misconduct. The Tribunal decided also that by falling asleep when they should have been available to deal with any problems which might arise, the Appellants had placed the vulnerable adults who were in their care at risk of distress and serious harm. The only issue before the Tribunal therefore was whether the Appellants were unsuitable to work with vulnerable adults and children. The Tribunal decided that the Appellants did not deliberately plan to fall asleep; rather that they inadvertently fell asleep having first put their feet up on nearby chairs. The Tribunal decided also that they considered both Appellants to be extremely remorseful about what they did. The Tribunal said: “each showed genuine distress and emotion and demonstrated to us that they bitterly regretted what they had done, and would do everything possible to ensure that it did not happen again.” Accordingly, the Tribunal allowed the appeals.

**Appeals allowed.**

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**Richard John Gordon Hall-Turner v Secretary of State**  
**[2007] 972.PVA**  
**[2007] 973.PC**  
**[Ms Tudur, Mr Harper, Mr Hutchinson]**

The Tribunal in this case allowed the appeals when the Secretary of State withdrew his opposition. However, the Tribunal identified four matters that it wished to draw attention to the parties.

1. Although outside the jurisdiction of the Tribunal for the purposes of a remedy, the Tribunal noted that there were significant errors in the referral process, both by the Borough Council in its failure to identify a clear reason for the referral and the Secretary of State for the failure to adhere to the statutory procedures when the second referral (from CSCI) was received;
2. The Adult Protection Strategy Meetings lacked focus. Decisions were made on the basis of “feelings” and “felt fear”;

3. The Sexual Offences Prevention Order contained an incorrect reason, which does not appear to have been picked up by any professional until the hearing of the appeal;
4. The appeal was opposed without sufficient consideration being given to the reason for the opposition, and an expert's report was prepared on a false premise.

**Appeals allowed.**

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**CW v Secretary of State**  
**[2007] 1182.PVA**  
**[2007] 1223.PC**  
**[Ms Lewis, Mr Flynn, Ms Tynan]**

CW was employed by Jewish Care, a domiciliary care agency, as a Home Care assistant providing personal care to vulnerable adults, all elderly frail people living in their own homes. Concerns arose about the care of Mrs E, Mrs G, Mrs S and Mr B. The allegations relating to Mrs E were the most numerous and serious. CW was reported to have repeatedly stood on the foot of Mrs E. She was also reported to have disregarded her dignity, and told her to do things that she knew Mrs E was incapable of doing. She was referred to the Secretary of State, and was confirmed on both the PoVA and the PoCA lists. The Appellant denied all of these and the other allegations, saying that they were motivated by her fellow workers seeking to get back at her.

The Tribunal heard evidence from witnesses to the various alleged events of misconduct. It had no hesitation in accepting these accounts as truthful. The Tribunal found as a fact that the Appellant was inflexible in her work and failed to respond to the needs and requests of her clients, thereby failing to respect their independence and dignity. The Tribunal was satisfied that she was verbally aggressive. In particular, the Tribunal found that she was physically abusive to Mrs E on at least 14 occasions.

When considering “suitability”, the Tribunal said that she had shown no remorse, and “quite simply she is not prepared to listen to any criticism of her.” The Tribunal concluded that she is unsuitable to work with vulnerable adults or with children.

**Appeals dismissed.**

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**TM v Secretary of State**  
**[2007] 1118.PVA**  
**[2007] 1119.PC**  
**[Ms Goldthorpe, Mr Flynn, Mr Sarll]**

The reason that the Respondent confirmed the Appellant on the PoVA and the PoCA lists was that his employer had reasonable cause to believe that he was guilty of misconduct consisting of neglect, in that he regularly left service users unattended,

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which placed them at risk of harm since two were prone to seizures, one to falling and another to choking on food.

On an examination of the evidence in this case, the Tribunal arrived at the conclusion on the balance of probabilities that the allegations that the Appellant was guilty of repeated incidents of leaving residents was simply not proven. There was only one admitted leaving incident, when he left the premises for a short period of time to collect bedding. The Tribunal was satisfied that that single incident amounted to misconduct. When considering that one incident, the Tribunal said: “this was his first job in a field with which he was wholly unfamiliar and these failings should have been picked up by the manager and dealt with in supervision.” The Tribunal did not regard this one admitted incident of misconduct as sufficient to show unsuitability.

The Tribunal in this case made a number of important observations regarding the issues of disclosure and due process, and the approach that the Tribunal should adopt when hearing evidence from vulnerable adults.

### **Appeals allowed.**

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**Barbara Chapman Smith v Secretary of State**  
**[2007] 1174.PVA**  
**[2007] 1175.PC**  
**[Ms Goldthorpe, Mr Braybrook, Ms Funnell]**

The Appellant was confirmed on the PoVA and the PoCA lists for the following reason; that her employer reasonably considered her guilty of misconduct by verbally and physically abusing service users and failing to divulge that she had been previously dismissed from a care home.

The Tribunal reaffirmed that the standard of proof was the ordinary civil standard (on the balance of probabilities) and cited *Re B (Children)* [2008] UKHL 35, where Baroness Hale had stressed the importance of oral evidence, especially “from those who were present when the alleged events took place.”

There remained for the Tribunal’s consideration, four allegations of misconduct.

- That on an unspecified date in January 2005, the Appellant had struck a service user on his head;
- That on 23<sup>rd</sup> May 2005, the Appellant had behaved in a threatening and intimidating manner to another service user;
- That on June 28<sup>th</sup> 2005, the Appellant had negligently ignored a third service user’s discoloured left eye;
- The Appellant’s admission of lying about being dismissed from her previous employment.

The Appellant made a number of admissions, and as to the other matters, the Tribunal found that the Respondent had established to the requisite standard of proof that the

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misconduct occurred. The Tribunal decided also that the Appellant was unsuitable to work with vulnerable adults by her lack of understanding of the serious nature of her actions and the risk to which this exposed them. The Tribunal said: “She lacked insight into the consequences of these events and, throughout the appeal process and the hearing, she continued to demonstrate a lack of suitability by her responses to key issues. Her admissions came late in the process and her assertions during the hearing that she understood the issues involved were not sufficiently persuasive of a capacity to respond appropriately in the future”.

The Tribunal made a number of pertinent remarks concerning the importance of a proper investigation, record keeping, and the basic principles of disclosure.

**Appeals dismissed.**

## **Schedule 6**

### **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: section 58(1) (a) Care Standards Act 2000**

**Glenford Skervin v General Social Care Council**  
**[2007] 1076.SW**  
**[Ms Goldthorpe, Ms Reid, Mr Jobbins]**

This was an appeal by the Appellant under section 68 Care Standards Act 2000 against the decision of the Respondent to refuse to register the Appellant as a social worker on the register maintained under section 56. The Registration Committee of the General Social Care Council was not satisfied as to the Appellant's good character and conduct as required by section 58(1)(a) and section 58(3). The Suitability Assessment Service Manager of the GSCC had recommended to the Committee that registration be refused for four reasons:

- Dismissal from Peterborough having not completed his probationary period, his failure to inform Peterborough about the conflict of interest, and the concerns about his timekeeping. In addition, that after dismissal he had asked his former team manager to lie by providing him with a satisfactory reference;
- Dismissal by Bridgegate having tested positive for cannabis, his failure to provide an appropriate explanation for the allegation about supplying cannabis, and putting the Company's integrity and reputation at risk by his conduct;
- Dismissal from Direct Care for irresponsible conduct and his failure to work within the Company's terms and agreements;
- Failure to inform Lincolnshire about his dismissal from Bridgegate.

The Registration Committee rejected the allegation that the Appellant had asked his previous manager to lie for him in providing a reference. It also found that there was insufficient evidence to implicate the Appellant in any way in the supply of cannabis when at Bridgegate. However, the Registration Committee of the GSCC concluded that the Appellant's conduct leading to his dismissal by three employers in a relatively short period of time, together with the non-disclosure of disciplinary findings to both Lincolnshire and the GSCC, demonstrated significant departures from key provisions of the Code of Practice.

The Appeal was unsuccessful. The Tribunal said: "In his past and present conduct, the Appellant has failed to convince us that he understands the crucial importance of maintaining the standards set out in the Code of Practice. He has also failed to persuade us of his integrity, honesty and good conduct and we have no alternative but to conclude that he has not demonstrated he is of sufficiently good character to justify

directing that the original decision of the Registration Committee should have no effect.”

**Appeal dismissed.**

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**DSH v General Social Care Council  
[2007] 1098.SW  
[Ms Roberts, Miss Halstead, Dr White]**

The Appellant appealed under section 68 of the Care Standards Act 2000 the refusal of the General Social Care Council to register him as a social worker on the Register maintained under section 56(1). The Appellant’s application for registration as a social worker was refused by the Registration Committee of the Respondent because:

- The relationship which the Appellant had embarked upon with ‘J’, a user of mental health services;
- The Appellant’s failure to make an application for registration before 1<sup>st</sup> April 2005, when the title “social worker” became a protected title.

There was an issue before the Tribunal as to whether ‘J’ was a service user. It found that she was. She received mental health services from the local health authority; she was under the care of a consultant psychiatrist and had a support worker. It was as a service user that she attended the MIND facility where she met the Appellant who was present in a professional capacity. There was accordingly no disagreement about the core issue in this case; namely that the Appellant entered into an inappropriate relationship with a service user and is therefore in breach of GSCC Code 5.4; and that he applied to register outside the GSCC deadline.

The Tribunal made the following finding: “We note that the Appellant’s registration was refused on the grounds that he was not of good character. We find this is not made out and we find that the Appellant is of good character. By his own admission he acted foolishly, crossed boundaries and had an inappropriate relationship with ‘J’. However weak and foolish this may have been, it was not done with ulterior or hidden motives. He had strong feelings for ‘J’, wanted to help her and was prepared to stand by her to the end. He has an exemplary work record, supportive references and this was an isolated incident. In giving evidence, the Appellant showed remorse for his actions and a willingness to attend training courses to fully understand the boundaries that a social worker must work within. He said that his life was, and is, about being a social worker. We see little risk that he will ever make such an error of judgement again.”

The Tribunal decided that the late application was not fatal to his application.

**Appeal allowed, with a recommendation that the GSCC register the Appellant as a social worker subject to such conditions that they may impose. The Tribunal recommended the following as the minimum requirement:**

**For the period of his three-year registration he must**

- **Undertake such training as may be directed with special reference to ethics and professional boundaries**
  - **Not to supervise social work students**
  - **To ensure, and provide evidence, that he is receiving regular and appropriate supervision, if necessary by an independent social worker at his expense.**
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**LA v General Social Care Council  
[2007] 985.SW  
[Mr Oliver, Mrs Gladwyn, Mrs Williams]**

The appellant, Ms Arthurworrey, was the front line social worker in the tragic case of Victoria Climbié. In this case, she was appealing against the decision of the Registration Committee of the GSCC not to register her as a social worker. Her appeal to the Tribunal, against the decision to confirm her on the PoCA list, had been successful [2004] 268.PC (Summary in Digest of Cases, Series One p 48).

On the general question of credibility, the Tribunal said: “We do not see Ms Arthurworrey as a liar yet at the same time we cannot accept that she is entirely trustworthy. We regard Ms Arthurworrey as being a person who is currently affected by her state of health and mind as a consequence of what she has been through – the death of Victoria, the internal inquiry, Lord Laming’s inquiry, the previous CST hearing and the attack by her neighbours. There is no doubt that Ms Arthurworrey wants to have her professionalism restored. We see her behaviour as being acts of a person desperate to get back to square one and that of a person whose mental health is not as secure as it could be.”

On whether the Tribunal could accept the findings relating to misconduct made by the Tribunal that considered the PoCA appeal, the present Tribunal concluded that it would be prepared to “read across any findings” if they were directly comparable. However, it concluded that none were. The Statutes do not make a “read across” appropriate or possible. The Tribunal concluded that she was not exemplary in her conduct in relation to Victoria Climbié. However, it said that the key question was whether her conduct was *so* poor that she should not be allowed to practice in the future. The Tribunal had to bear in mind the professional environment in which she was operating. The Department was chaotic, she had no detailed supervision, there was no obvious benchmark against which she could self-assess and the Tribunal assumed that there was no appraisal scheme in place. The Tribunal decided that the case against Ms Arthurworrey as to good conduct was not made out.

As to issues of competence, the Tribunal arrived at a similar conclusion in favour of Ms Arthurworrey. For instance, on failing to challenge the medical opinion, the Tribunal said: “casting our minds back to 1999, we wonder whether it would have been accepted as appropriate for a junior social worker to question the opinion of at least two consultant paediatricians.” On other poor practice, the Tribunal found that there was a lack of supportive and competent managers to provide Ms Arthurworrey with the guidance she needed.

The Tribunal then went on to consider events since the decision of the Registration Committee. As to the criminal convictions (a restraining order, and a fine for breach of this order, and a failure to disclose this conviction in her application for registration), the Tribunal did not regard these matters as of sufficient serious a nature so that it would prevent registration.

Of more concern was her current mental health. The Tribunal set this out in its judgement, and said that whilst there were doubts over her mental health there should be no attempt at registration.

The Tribunal allowed the appeal in that it decided that the decision of the Respondent shall not have effect. It went on to recommend that Ms Arthurworrey be registered but subject to stringent stipulations; namely:

- That she should undergo a period of retraining given that she has not been in practice for some time;
- That she is the subject of intensive supervision;
- That she should serve a probationary period;
- That she should be regularly assessed for at least three years.

The Respondent sought a review of the Decision on the basis that the Decision contained an obvious error, namely that given the findings relating to the Appellant's health it should have dismissed the appeal. In the Review, the Tribunal acknowledged that it was concerned about her mental health, but not in terms of long-term psychiatric difficulties. It said: "We did not regard Ms Arthurworrey as having a psychiatric illness, just that at present we were concerned that she might be under stress. If we had had any concern about her long-term mental health we would have rejected the appeal on the grounds of health. However, as we saw this as a transitory phase we believed that in general Ms Arthurworrey did fulfil the criteria set out in section 58(1)(b) of the Act and that all that was required was the assessment [from an occupational psychologist]."

**Appeal allowed.**

**Review application refused under Regulation 25(3).**

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**Physical and mental fitness: section 58(1)(b) Care Standards Act 2000.**

**Paul Thomas Phillips v General Social Care Council**  
**[2007] 1197.SW**  
**[Ms Lewis, Mr Winn, Mr Greenacre]**

The Appellant was refused registration as a social worker because it was said by the Respondent that he could not satisfy the requirements set out in s 58(1)(b) of the Care Standards Act 2000 due to his longstanding mental health problems; and he could not satisfy the condition under Rule 4(3)(iv) of the GSCC (Registration) Rules 2005 that

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he was competent to be registered due to his lack of employment history and relevant training. The appeal was determined on the papers.

The Tribunal examined all of the evidence before it, and concluded that his mental health was so persuasive and longstanding that it was wholly relevant to have disclosed it on his application for registration, which he had not done. The Appellant has been unable to work since 1983, and the Tribunal decided therefore that he cannot meet the requirements of competence evidenced by recent employment and training.

**Appeal dismissed.**

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### **Overseas qualifications: section 64(1) (b) Care Standards Act 2000**

**Nigel David Bourne v General Social Care Council  
[2008] 1216.SW  
[Mr Reddish, Ms Joffe, Mr Lim]**

This was a “paper appeal” from the refusal of the GSCC to register him as a Social Worker. The Appellant holds a Master’s Degree in Clinical Psychology from Azusa Pacific University of Azusa, California. From September 2001 to date, he has been employed as a Senior Social Worker by the County of Orange Social Services Agency, first as a “case carrying” worker and latterly as an emergency worker. He has completed a “Core Practice Course” at the Public Child Welfare Training Academy, and a “New Employee Orientation Schedule” which included some courses meeting the qualification for continuing education credits for Marriage and Family therapists and licensed clinical social workers in California.

In his application for inclusion on the register of social workers, the Appellant declared in his personal statement, the “core competences” that he said that he had acquired during his university course and subsequent employment.

In January 2007, the Respondent’s International Recognition Service referred the application to an external assessor for advice as to whether it demonstrated that the Appellant’s qualifications and training were equivalent to the requirements of the UK Diploma in Social Work. The external assessment was negative. This assessment was accepted by the Respondent and the Appellant was notified of the decision on 16<sup>th</sup> October 2007. The Tribunal agreed with the Respondent’s position. It said: “The Applicant is highly trained but in a different field. He does not have the additional training in social work that the Respondent, with justification, requires before granting an application for registration.”

**Appeal dismissed.**

## **Appeals against the decision of the Conduct Committee to remove the name from the Register**

### **James McNicholas v General Social Care Council [2007] 1179.SW [Mr Hunter, Ms Redford, Ms Stafford]**

The Appellant appealed pursuant to section 68 Care Standards Act 2000 against the decision of the GSCC dated 24<sup>th</sup> October 2007 to remove his name from the social care Register, following a finding of misconduct.

He was the duty social worker within the mental health team for 'Y'. On 21<sup>st</sup> October 2004, 'Y' complained to his GP that the Appellant had engaged in a lengthy out of hour's telephone call with him, where sexually inappropriate comments had been made by the Appellant. The complaint by 'Y' was put in writing.

The Conduct Committee of the GSCC found the allegation proven. It found that he had breached a number of the provisions of the Code of Conduct and decided to make an order for his removal from the Register.

In the appeal to the Tribunal, the Appellant signed a witness statement in which he stated that prior to the incident in October 2004 he had had an excellent reputation and was committed to his work. He had a heavy case load and there was an absence of supervision. He said that he was inordinately stressed between April 2002 and November 2004 and he had resorted increasingly to alcohol. He said that on the day of the incident he had been to the dentist and had received intravenous sedation. His behaviour he said had occurred as a result of dental sedation and alcohol consumption. He said that he experienced an alcoholic blackout. He had now joined a programme in Alcoholics Anonymous.

The Tribunal concluded, taking into account the Appellant's behaviour in its totality, that the decision of the Conduct Committee to remove his name from the Register was appropriate.

**Appeal dismissed.**

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## **Schedule 7**

### **Care Standards Act 2000 section 79H; Child Minding and day Care (Suspension of Registration)(England) Regulations 2003**

**XZ and YZ v OFSTED  
[2008] 1210.EY-SUS  
[2008] 1211.EY-SUS  
[Ms Tudur, Ms Tynan, Mr Jobbins]**

A statutory notice of suspension with respect to the two Appellants (both child minders), mother and daughter, was hand delivered on 3<sup>rd</sup> January 2008. The Appellants requested that the Respondent remove the suspension, and on 10<sup>th</sup> January 2008, both Appellants were notified by letter of the refusal of the request to lift the suspension. They appealed. It appears that on 19<sup>th</sup> December 2007, OFSTED received a telephone call from a member of the public informing them of allegations that YZ had roughly handled a child and that a child had been forced to stand facing a wall, had been told to sit under the table for an hour, and had been force fed by pouring juice into his mouth. It was alleged that XZ had bullied the same child and had allowed YZ to do so. Following the suspension, two further complaints had been made about the care offered by the Appellants to children in their care. The Appellants denied all of the allegations in written submissions before the Tribunal. The Tribunal was satisfied that the belief of risk of harm in this case was and continues to be reasonable. It was also necessary to allow the Child Protection agencies to complete their investigations into the allegations. The Tribunal commented that it would be helpful if OFSTED could inform childminders in these situations of the Protocol governing Child Protection procedures at the time of their suspension, so that they have an opportunity at least to understand the process.

#### **Appeals dismissed**

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**CL v OFSTED  
[2008] 1226.EY-SUS  
[Mr Wadling, Mrs Derrick, Mr Griffiths]**

Mrs CL has been a childminder since 1986. In December 2007, police officers obtained a warrant to search her premises under section 4 of the Protection of Children Act 1978. The purpose of the search of the home was to ascertain whether there were indecent images of young children and related material and to seize such computers and disks that may be storing material. Several computers were removed, and as the date of the hearing, their examination remained incomplete. It would seem that Mrs CL's elder son was responsible for the presence of indecent material. He is also awaiting trial on matter under the Sexual Offences Act 2003 of exposing himself to young people.

By letter dated 3<sup>rd</sup> January 2008, Mrs CL was suspended for six weeks, to allow time for the circumstances giving rise to the Chief Inspector's belief to be investigated; and to allow time for steps to be taken to reduce or eliminate the risk of harm. As soon as Mrs CL (and her husband) became aware of the allegations against her son, they took the necessary steps to safeguard the minded children. In particular, they instructed the son to leave the house and took steps to ensure that he was unable to return. The Tribunal stated that it had not heard or seen any evidence to support the claim that with the removal of the son, a risk remained. It decided that the possibility of a risk was so small that it did not represent a "reasonable cause to believe that a child might be at risk"

**Appeal allowed.**

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**RC v OFSTED**  
**[2008] 1272.EY-SUS**  
**[Mr Wadling, Mrs Derrick, Mr Winn]**

The Respondent suspended the registration of the Appellant from acting as a child minder because it had received information that the Appellant had been observed using inappropriate behaviour management techniques with minded children, including inappropriate use of physical force.

She was suspended on 14<sup>th</sup> March 2008. The following day, the Appellant wrote to OFSTED asking that the suspension be lifted. OFSTED refused to lift the suspension. She appealed to the Tribunal.

The Tribunal heard evidence that a child had been left alone to play with a toy for one and half hours and she cried continuously and the Appellant made no effort to comfort her. The second allegation was that the Appellant told off a boy of two years of age for accidentally spilling his drink and made him sit facing the wall for fifteen minutes. The third incident was of a similar kind.

It would appear that the Appellant did not give oral evidence, although three letters in her support were taken into account.

The Tribunal considered that there is reasonable cause to believe that the continued provision of child minding may expose a child being minded by her to the risk of harm. On the evidence, the Tribunal concluded that it was satisfied that until the investigation was completed, the suspension should continue.

**Appeal dismissed.**

## **Strike Out applications: Regulation 4A**

**BP v Secretary of State**  
**[2007] 1127.PC**  
**[2007] 1128.PVA**  
**[Ms Roberts]**

The Applicant pleaded guilty to two counts of making indecent images or pseudo images of children contrary to section 1(1)(a) of the Protection of Children Act 1998. He was fined £3000 and ordered to pay £100 costs, and placed on the sex offenders register. He was a scout leader and the matter came to the attention of the local scout association, who made a referral to the Secretary of State. He was placed on the PoCA and the PoVA lists, and he appealed.

The Secretary of State sought to strike out the appeal. He argued that there was no reasonable prospect of success. The nominated Chair refused to strike out the case. She was unable to accept that the fact of a conviction such as the one in this case will inevitably lead to a finding of unsuitability, and that the decision was a foregone conclusion, even though the Applicant may have an uphill struggle. She followed the approach taken in *Peach* [2007] 1055.PVA; namely “...it is only when the evidence is heard that the position becomes clear one way or another.”

**Application to strike out refused.**

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**David Sladdin v Secretary of State**  
**[2007] 1180.PC**  
**[2007] 1181.PVA**  
**[Ms Singleton]**

On 24<sup>th</sup> October 2006, the Appellant pleaded guilty to two offences contrary to section 11 of the Sexual Offences Act 2003, namely engaging in sexual activity in a place where he could be observed by children. He was sentenced to a community service order of three years. He was referred to the Secretary of State by the Scout Association, and placed on both the PoCA and PoVA lists. He appealed. The Respondent applied for his appeal to be struck out on the grounds that it was misconceived and had no reasonable prospect of success. For the purposes of the strike out application, the Respondent was happy to assume that the Appellant had not touched either of the boys involved in the offences. The nominated Chair concluded that the offences for which the Appellant stands convicted are serious and were committed in the recent past. She said that whether or not the Appellant has a previously unblemished record is irrelevant, given the nature of the offences. She decided that no Tribunal, properly directed, could conclude anything other than that the Appellant is unsuitable to work with children and vulnerable adults. The appeals were accordingly struck out.

**Application to strike out granted.**

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**MG v Secretary of State**  
**[2007] 1170.PT**  
**[Mr Hunter]**

The Respondent in this case applied under Regulation 4A (1) (d) for an order that the Appellant's appeal be struck out as having no reasonable prospect of success. The application was determined on the papers. Prior to June 2003, the Appellant was a volunteer canoe instructor. In 2003, he was cautioned by Cumbria police for an indecent assault on a female under 16, contrary to section 14 of the Sexual Offences Act 1956 and placed on the Sex Offenders Register for five years. The Respondent made a Direction under section 142 ("List 99") on the grounds of "unsuitability to work with children." The Appellant appealed to the Tribunal against this Direction. The Respondent submitted that the Tribunal, on hearing the appeal, would have no option but to accept that sufficient grounds existed for the Respondent to make a direction under section 142. The Respondent submitted further that, in a "list 99" appeal, the only information that the Tribunal could consider would be that which was before the Respondent at the time he made the decision. This information included representations that the Appellant was said to have made to the Secretary of State that he did not acknowledge that his behaviour had been inappropriate or that he was not entirely to blame.

The nominated Chairman accepted that for the purposes of this application, the Appellant's caution should be treated as a conviction. That being the case, the Appellant cannot go behind the facts on which his caution was based. However, the nominated Chairman said: "However, information provided by the Respondent concerning the circumstances which led the Appellant accepting a caution are not...at the most serious end of the cases in relation to "list 99" that come before this Tribunal." The Chairman did not accept that the appeal has no reasonable prospect of success, and the application to strike out the appeal was accordingly dismissed.

**Application to strike out refused.**

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**Dean James Wheeler v Secretary of State**  
**[2008] 1229.PT**  
**[His Honour Judge Pearl, President]**

The Appellant appealed on an Appeal Form received on 21<sup>st</sup> January 2008 the decision of the Secretary of State dated 9<sup>th</sup> June 2006 to bar him on the grounds of unsuitability to work with children, from employment to which section 142 Education Act 2002 relates. The Respondent applied under Regulation 4A(1)(i) for the Appellant's appeal to be struck out on the grounds that it was not made within the three month deadline, and that there was no ground for extending the time limits.

At the oral hearing of the application to strike out, the Appellant made clear that he was aware that he needed to appeal within the three month period, and that he did not appeal at that time because "the Secretary of State stated that he wanted me to go

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away from teaching and do some work with a professional to get some therapy/counselling.” He said that he had now done that and that he had been away from teaching for some two years, and that he was half way through his therapy course.

The President granted the strike out. He said: “The Legislation and the Regulations made under it represent a balance between the importance of safeguarding the protection of children and the need to ensure that the rights of individuals to work in their chosen profession (in this case teaching) are given recognition. In this case, if [the Appellant] felt aggrieved by the Direction he could have appealed to the Tribunal within the three month period. He chose not to do so, and he must therefore await the ten year period to enable the Tribunal to test whether, on a review, he should continue to be subject to the Direction. The ten years is Parliament’s approach to the appropriate balance, and this Tribunal has no discretion to vary it.”

**Application to strike out granted.**

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**Linda Geraghty v Commission for Social Care Inspection**  
**[2008] 1227.EA**  
**[His Honour Judge Pearl, President]**

The President said that the Strike Out application in this case inevitably must succeed. He said: “It is the Appellant’s appeal; and the Appeal must be lodged within the 28 day period. There is no discretion on the Tribunal to extend this period...An Appellant must accept that he or she has a responsibility to ensure that appeal documents are lodged in time. In this case, she had been told of the time limits for appealing, and she had been given the address, the FAX number and the telephone number of the Tribunal. She chose not to engage with the Tribunal at this time.”

**Application to strike out granted.**

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**Sean Charles Adelphie (Trevine Court)**  
**-v-**  
**Commission for Social Care Inspection**  
**[2007] 1125.EA**  
**[His Honour Judge Pearl, President]**

The background to the strike out application in this case can be set out by the recitation of the following facts. By letter dated 21<sup>st</sup> August 2007, the Respondent gave notice to the Appellant of its decision to adopt the proposal to cancel his registration in respect of Trevine Court. On 21<sup>st</sup> September 2007, the Appellant appealed against this decision, within the time limits as permitted by section 21(2) CSA 2000. However, prior to the Appellant lodging the appeal documents in respect of the decision dated 21<sup>st</sup> August 2000, the Respondent had applied under section 20(1)(a)(i) CSA 2000 to a Justice of the Peace for cancellation of registration. This was obtained on 13<sup>th</sup> September 2000. Notice was served on the Appellant (and his mother) of the right of appeal available to them, but no formal Notice of Appeal was

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received within the 28 day time limit with respect to the section 20 decision. The Deputy President (Mr Oliver) in a note dated 1<sup>st</sup> November 2000, stated that he was bound to follow *Ofsted v CST* [2007][ EWHC 341 (Admin) and could not extend the 28 day time limit.

The Respondent submitted that as no appeal had been lodged in time against the Order made by the Justice of the Peace, the appeal with respect to the Notice of Cancellation should be struck out. The Appellant's Counsel submitted that it was the intention of the Appellant to appeal both the Notice of Cancellation and the Justice of the Peace Order. This argument was rejected. The Appeal Form was prepared by Solicitors and the covering letter made absolutely clear that the Appeal related to the Notice of Cancellation only.

The Respondent's primary submission in seeking to have the appeal struck out is that it is consistent with the judgement of Davis J in *The Welsh Ministers v CST and H* [2008] EWHC 49 (Admin). He said the question that should be asked is: would there be any real purpose in allowing the appeal to go to a full hearing on the merits? The Respondent urged the Tribunal to strike out the appeal because the cancellation of the Appellant's registration is now legally final by reason of there having been no appeal against the section 20 decision, and thus the outcome of the present appeal must be a formal dismissal. And in any event, even if the appeal were to be allowed, any order made by the Tribunal would itself be meaningless because the registration would remain cancelled by virtue of the section 20 Order. The Appellant submitted that the chance to persuade the Tribunal that the grounds for the Notice of Decision to Cancel were not justified would be crucial to the Appellant's future employment.

The President said that it was important to reassert the manner in which the Tribunal has considered strike out applications over the last six years. He said that it is a discretionary power that has been exercised by the Tribunal with considerable caution. He said that it must not be used simply for the convenience of the Respondent who is seeking to persuade the Tribunal to limit the use of public funds. "The Tribunal has a duty to be fair, and must do its utmost to ensure that Appellants are given every opportunity of having their cases heard before an independent Tribunal." Nevertheless, the President concluded that there would be no practical advantage in this case, and the case was fundamentally different to the application for registration cases.

**Application to strike out granted.**

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**Vivien Smith v General Social Care Council**  
**[2005] 606.SW**  
**[His Honour Judge Pearl, President]**

This was an application to strike out the Appellant's appeal against the decision of the Respondent dated 7<sup>th</sup> November 2005 to refuse her application for registration on the Register of social workers. The decision of the Respondent was made on the grounds that she does not hold one of the qualifications as set out in Schedule 1 of the 2005 Rules. Ms Smith was awarded a Postgraduate Diploma in Social Study from the University of Edinburgh on 26<sup>th</sup> October 1968.

The Appeal proceedings were stayed to await the decision of the High Court in *The Queen on the application of Janet Sivills v GSCC* [2007] EWHC 2576 (Admin). Jackson J said in that case: “Properly construed, the 2005 Rules contain a comprehensive list of university qualifications and training courses in the UK which satisfy the training requirements identified in section 58(2)(a)(iii) of the 2000 Act. Any UK applicant who has obtained one of those university qualifications or completed one of those training courses satisfies the training requirements of the Act. Any UK applicant who has not obtained one of those qualifications or completed one of those training courses does not satisfy the training requirements of the Act.”

Notwithstanding any sympathy that the President may have felt for the Appellant in this case who had given a lifetime to working in the social care and social welfare field, he was bound to apply the interpretation of the law as set down by Jackson J. Accordingly the appeal has no reasonable prospect of success.

**Application to strike out granted.**

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### **Costs**

**Thomas Francis Academy (Pauline Ferrera) v Secretary of State  
(Costs)  
[2007] 939.IS  
[His Honour Judge Pearl, Mr Braybrook, Ms Wade]**

This case is reported in summary form in the Digest, Series Two at page 79. As set out in the judgement, on the morning of the day that the appeal was due to start, the Appellant applied, through Counsel, to (i) strike out the Respondent’s grounds for opposing the appeal, and/or (ii) to adjourn the hearing, as their representatives were not properly prepared. The Respondent had received no advance warning of either of these applications and had attended with their two witnesses. Both applications were dismissed. The Tribunal adjourned the case until day three of the five day hearing, allowing one further clear day for the Appellant’s representatives to prepare for the hearing. It was submitted by the Respondent that it was unreasonable on the part of the Appellant to raise for the first time on the morning of the final hearing, a legal argument to strike out the Response, which had been first served on the Appellant over eight months earlier. The issue could have been raised at any of the many Directions hearings. The Tribunal agreed with the Respondent that the conduct of the Appellant on the first day of the hearing was unreasonable, and therefore it ordered that the Appellant pay to the Respondent costs in the sum of £1802.99, being the costs incurred unnecessarily on day one of the hearing.

**Costs to the Respondent in the sum of £1802.99**

**Rajendra Kumar Seesurun v Secretary of State**  
**[2007] 1152.PVA**  
**[2007] 1153.PC**  
**[Mr Robertson]**

In this case, the Applicant sought leave to appeal against the decision of the Secretary of State to place his name provisionally on the two lists. At the oral hearing of this leave application, the Applicant withdrew his application. The Secretary of State applied for costs in the sum of £1943.81 to cover the period from a telephone hearing where the Secretary of State had set out his grounds for opposing the leave application, up until and including the hearing. The Secretary of State's case for costs was that his case was set out unequivocally at the telephone hearing, and therefore the failure to withdraw prior to the oral hearing was unreasonable.

Mr Robertson referred to the case of *AR v OFSTED* [2006] 769.EA which sets out the basis of costs orders and summarises the guidance which has to be applied in these cases. In particular, the presumption in favour of no costs is a high one and the burden is on the receiving party to satisfy the Tribunal to that standard that the paying party has acted unreasonably in bringing or conducting proceedings. This provision applies in a withdrawal as much as in a situation where there has been a full merits appeal. The nominated Chairman said he did not propose to allow good money to follow bad in an exercise to interpret the telephone conversations which had not been recorded. He made no order as to costs.

**No order as to costs.**

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**RS v Secretary of State**  
**[2008] 1278.PVA**  
**[Mr Robertson]**

This was an appeal brought by RS against a listing upon both PoVA and PoCA. The appeals were lodged on 28<sup>th</sup> March 2008. The Secretary of State was notified of the appeals on 3<sup>rd</sup> April 2008, and on the 28<sup>th</sup> April 2008, the Secretary of State notified the Tribunal that he withdrew his opposition to the appeals. The Appeals were accordingly allowed by Order dated 29<sup>th</sup> April 2008. The Applicant sought an Order for Costs.

The nominated Chairman directed that be No Order for Costs. He said that the Secretary of State had acted expeditiously in considering the appeal and that he withdrew his opposition at the earliest opportunity.

**No Order as to Costs.**

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**Girish Chandra v Commission for Social Care Inspection**  
**[2007] 1057.EA**  
**[Mr Wadling]**

The background to this costs application is set out in Digest, Series Two page 17. The Applicant lost an appeal before the Tribunal to cancel registration. He subsequently applied to be registered as the manager of the care home. His application was turned down and he appealed. The Respondent applied to strike out the appeal and this application was successful.

The basis for the application for costs was that the new application was submitted only a few days after the Tribunal's decision on his earlier appeal. The nominated Chairman found that the paying party had acted unreasonably in bringing this appeal and should pay the receiving party's costs of £2,612.76.

**Costs to the Respondent in the sum of £2612.76.**