

**A Digest of Cases Heard  
by the**

**CARE STANDARDS  
TRIBUNAL**

**SERIES TWO**

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 **September 2006** 

## **Introduction**

Series 1 comprises cases decided by the Care Standards Tribunal during 2002-2005. Issue 6 was updated in January 2006 and includes a summary of all of the cases decided by the Tribunal up until that date. As that issue comprised 81 pages, it has been decided to commence a second series of cases containing those decisions promulgated subsequent to January 2006. All cases are published in full on the Care Standards Tribunal website ([www.carestandardtribunal.gov.uk](http://www.carestandardtribunal.gov.uk)) and the British and Irish Legal Information Website ([www.bailii.org/ew/cases/EWCST](http://www.bailii.org/ew/cases/EWCST)). As new cases are published, the cases are added to the categorised and the alphabetical index, both indexes of course being available on the CST website.

As at 3<sup>rd</sup> January 2006, the number of cases filed with the Secretariat stood at 615. At the date of this Introduction, the number of cases had risen to 783.

**His Honour Judge David Pearl  
President, Care Standards Tribunal  
September 2006**

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## **A. SCHEDULE 1 CASES.**

### ***Care Standards Act 2000 s. 21***

#### **Cancellations: Manager of a Care Home**

**Gary Partington v CSCI [2005] 492.EA  
[Mr Bennett, Ms Graham, Mr Hutchinson]**

CSCI alleged breaches of Reg 9(2)(B), Reg 13(1)(B)(2), Reg 14(1)(A) to (D), Reg 14(2)(A) to (B), Reg 15(1) and 15(2)(B).

The major reason to cancel registration related to the drug records kept by the Home, particularly from drugs returned. The Commission submitted that the Appellant had dishonestly manufactured certain handwritten sheets. The Tribunal agreed with this submission. It said: "...we do not find his explanation credible...Whilst we have no doubt service users care needs were met as evidenced by many references and the relatively positive inspections, in this aspect we consider Mr Partington failed and the ...records cannot be accepted as accurate registers of the events described." The Tribunal concluded that Regulation 9(2) had been breached. It said: "Mr Partington's failure to maintain adequate drug records and [his] attempt to hide the true position or mislead the Commission is such that it raises severe questions about his integrity and reliability. We find it no longer possible to have confidence in the records he is required to maintain and the information he is required to provide. This is a basic requirement of the Manager of a Care Home and a fundamental part of his responsibility to service users."

There were allegations also that certain service users had been given invasive treatment without records of consent, and that some service users were admitted out of category. Although not strictly necessary for the decision, the Tribunal did state that the allegations about lack of consent and admission out category were not substantiated.

**Appeal dismissed**

## **B. SCHEDULE 2 CASES.**

*Children Act 1989 Part XA (inserted by Care Standards Act 2000 s 79(1)).*

### **Registration**

CP v OFSTED [2005] 543.EY  
[Mrs Singleton, Mr Allman, Mr Greenacre]

The Appellant submitted an application for registration as a childminder accompanied by the requisite health declaration in which the Appellant drew attention to her history of depression. The Respondent issued a Notice of Decision to refuse registration following an Objections Panel hearing. At the Tribunal hearing, the Tribunal stated that the burden of proof lay with the Appellant to satisfy the Tribunal that she is suitable to be registered as a childminder on a balance of probabilities. The Appellant has suffered from depression and the consultant psychiatrist reported that if the depression recurs and there is no supervision it may affect the care of children. The consultant told the Tribunal that three of the most famous studies based on research over a period of 15 to 30 years suggest that recurrence rates are between 80% and 100%. He stated that the longer she remained symptom free, the more likely it is that the depression will not recur. He recommended, should she work with children, that she should be supervised for a period of time. The Tribunal found this medical evidence persuasive. Supervision was not feasible, and on assessing the risk, the Tribunal decided that she had failed to show that she is suitable to be registered at the present time.

### **Appeal dismissed**

### **Cancellations**

Oluremi Ajibewa v OFSTED [2005] 539.EY; Women Intercessors (U) Ltd v OFSTED [2005] 645.EY  
[Mr Rowland, Mrs Howell, Dr Lorimer]

There were two appeals before the Tribunal, because OFSTED appeared to have issued certificates of registration for providing child care to both appellants. OFSTED had issued a notice of intention to cancel Mrs Ajibewa's registration on the grounds that she had ceased to be qualified for registration for providing day care: (a) she had failed to ensure that every person other than herself looking after children was suitable to look after children under the age of eight, (b) she herself was not suitable to look after children under the age of eight, and (c) she was not complying with the Day Care and Child Minding (National Standards) (England) Regulations 2003. Her objections were dismissed at an Objections Hearing, and the registration in her name was cancelled. Registration in the name of the Company was also cancelled, one additional ground being that it no longer had use of the premises. As Mrs Ajibewa did

not seek registration in her own name, the Tribunal dismissed the first appeal and dealt with all the issues raised in it in the context of the second appeal.

The Tribunal dealt with a number of important matters, albeit *obiter*, one of them being the legality of a third period of suspension that had been imposed in this case. The Tribunal stated that the purported extension of the third period of suspension was unlawful. The Tribunal said that there is no general power to suspend a suspension indefinitely, and that a third period of suspension could not in this case fall within the specific provisions as provided for in the Regulations. The Tribunal also said that if OFSTED feel that there are steps that should be carried out to reduce or eliminate a risk to children sufficient to justify suspension, then it should ask for those steps to be carried out, even if that implies “advice”. The Tribunal said: “In practical terms, we consider that the legislation properly applied would work perfectly well if OFSTED were rather more proactive than it has hitherto been prepared to be. Managing a risk while enforcement proceedings are being taken is a proper role for a regulator.”

A second issue considered by the Tribunal related to the lack of premises. The Tribunal agreed with the Respondent that the appeal could not be allowed in the absence of premises. It stated that it was satisfied that a person must have, or expect to have, access to premises in respect of which he or she is registered or applying to be registered. The Tribunal took the opportunity to consider the jurisprudence of the Registered Homes Tribunal, and the cases that had gone on appeal from that Tribunal, of the effect of a registered person ceasing to have use of the premises in respect of which he or she was, or hoped to be, registered. The Tribunal noted that the new legislation allows for resignation of registration. This was not possible under the old legislation. It noted also that the new legislation is no more specific than the old legislation about the effect of a person having no premises, if an application for registration is not abandoned or if registration is not resigned. It said: “If a provider appeals to a Tribunal against a cancellation decision given after he or she has ceased to have access to premises, it seems to us that the Tribunal must, in principle, have the same option as the registration authority had of either cancelling registration on the sole ground that the premises are no longer available or on other grounds. Allowing an appeal would not be an option unless the Tribunal were persuaded that the provider had retained, or could be expected to regain, the premises in question.”

In this case, both parties wished to Tribunal to consider other issues, and the Tribunal thought there to be sound practical reasons for that.

It considered the grounds for OFSTED opposing the appeal in some detail. It looked at the numbers and quality of the staff, and the records kept in respect of members of staff, and the related issue about the arrangements for collecting children from schools. It looked also at the daily register, accident records, medication records, and emergency procedures. The Tribunal concluded that the Appellant had produced recently created documents for the hearing and it said that these documents were not contemporaneous records. The Tribunal did not accept all of OFSTED’s allegations, but it did accept a considerable number of them. It found there to have been significant breaches of the National Standards.

## **Appeals dismissed.**

## **C. SCHEDULE 4 CASES**

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

**JS v Secretary of State [2005] 487 PC  
[Mr Hunter, Ms Gilhespie, Ms Tynan]**

The Appellant was an athletics coach, licensed by UK Athletics. Informal complaints against the Appellant were received in 2002 from a number of young women, including some that he had coached. In October/November 2002, UKA decided to bring a charge of misconduct. The disciplinary panel stated “he has abused his position as a coach to engage in repeated sexual encounters with a 16 year old athlete and a 17 year old athlete under his charge whilst in each instance being involved in a long term relationship with another athlete under his charge and simultaneously sleeping with a third young girl.” Also, that he has been prepared “to video himself having sex with an athlete under his charge without her knowledge, to use it to affect her conduct, and to keep a copy after supposedly handing the video tape over to her.” The panel imposed the sanction of removing his accredited coaching status and preventing his reapplying for such status for ten years. An appeal panel reduced the period of disqualification to seven years. At the appeal panel, he accepted that his behaviour was not appropriate for the athlete/coach relationship. On June 21<sup>st</sup> 2004, a referral was made by UKA to the Secretary of State, following which he was listed under the PoCA and the PoVA schemes.

On appeal, the Tribunal drew adverse inferences for his failure to attend the adjourned hearing, particularly when it came to disputed facts and the evidence regarding his suitability to work with children and young adults. The Tribunal decided that the Appellant was guilty of misconduct, and that this conduct did in fact harm a child. The Tribunal had concerns regarding the Appellant’s understanding of his misconduct and the affect that this has had on the young athletes in his charge. He appeared to have shown no remorse. It concluded “the Appellant’s misconduct was of a serious nature, it was not an isolated incident, and he had sought to manipulate children in his care for his own advantage. He has shown no understanding of his action or any real insight into an appropriate coach/athlete relationship and as such we consider that he remains unsuitable to work with children.”

It decided also that he was not suitable to work with vulnerable adults, and dismissed his appeal from being listed on the PoVA list.

**Appeals dismissed.**

WC v Secretary of State [2005] 518.PC  
[Mr Oliver, Mrs Williams, Mr Jobbins]

The Appellant in this case had been employed by the Fire and Civil Defence Authority as a fire-fighter and latterly as a Community Fire Safety Officer, a role that brought him into contact with members of the Young Fire-fighters' Association. One of the Young Fire-fighters was a young girl who was 14 at the time of the incident in question. The Appellant allowed himself to become closely involved with this girl. He was dismissed, and was referred to the Secretary of State by the Authority. He was placed on the PoCA list. On appeal (held on the papers) the Tribunal stated that it agreed that the Appellant held a child care position within the meaning of s 12 of the Act and that it was appropriate for the Authority to refer him to the Secretary of State pursuant to s 2 of that Act. The Tribunal said: "Whilst there is no evidence of direct harm to a child, we are satisfied that taking AH home and keeping her at home overnight without telling anyone where she was or what she was doing in light of their respective positions in the Young Fire-fighters' Association was a gross breach of trust and actions which placed a young person at risk of harm."

### **Appeal dismissed**

*Applications for leave to appeal under s 4(1)(b) after a refusal to remove a name from the List under s 1(3).*

PD v Secretary of State [2006] 651 PC; [2006] 652 PVA  
[Judge Pearl]

The Appellant sought leave to appeal the Secretary of State's decision taken on November 5<sup>th</sup> 2005 not to remove his name from the PoCA and PoVA lists on the basis that she had failed to consider relevant documentary evidence that she ought to have considered in reaching her decision.

Counsel for the Respondent submitted that when considering leave applications under s 4(1)(b), the President should go beyond adopting a "filter" mechanism as would apply in leave applications, for example, in the Court of Appeal. He submitted that given that the basis for an application under s 1(3) is that the individual should not have been included in the list and given that this is not a question that will be addressed once leave has been given (when s 4(3) is relevant) the President should enter into consideration of ss 2(6)-(7) at the leave stage. Otherwise, it was submitted, an appeal against refusal under s 1(3) would be identical to an appeal against the original listing, and an Appellant could circumvent the time limits by making a request under s 1(3) at any time. Counsel for the Appellant submitted that the application was made on the grounds that, if allowed to proceed to a full hearing, the appeal would have "good prospects of success."

The President agreed with Counsel for the Respondent. "I have decided that...the proper approach to take is not 'good prospects of success' but rather whether the relevant provision of s 2 has been made out". He said: "On the basis of the

evidence submitted to the Tribunal that was before the Secretary of State, was she correct in forming the opinion that that organisation reasonably considered the individual to be guilty of misconduct...which harmed a child or placed a child at risk of harm; and that the individual is unsuitable to work with children?"

Having looked at the documentation, the President concluded that there could be no argument but that the Secretary of State was right in concluding that the referring organisation reasonably considered the Appellant to be guilty of misconduct which harmed a child or placed a child at risk of harm, and that she properly reached her decision on unsuitability on the basis of the evidence before her.

### **Refusal of leave to appeal; application dismissed under Schedule 4 para 6**

*Appeals brought under Education (Prohibition from Teaching or Working with Children) Regulations 2003 Reg 12 from Direction given by the Secretary of State under s 142 Education Act 2002 (list 99).*

### **Education list (Conduct: Powers of the Tribunal)**

*Alison Jane Homewood v Secretary of State [2005] 551.PT  
[Mrs Tudur, Ms Adolphe, Mrs Last]*

On 24<sup>th</sup> July 2003, the Appellant was convicted upon indictment of cruelty to a person under 16 years contrary to s 1(1) of the Children and Young Persons Act 1933. On 10<sup>th</sup> June 2005, the Respondent made a Direction that she be prohibited from working with children in schools or FE establishments for a period of 10 years from the making of the Direction. The only ground of appeal was that the Direction had been made 23 months after the conviction, and that in effect that made the ban 12 years instead of 10 years. The Respondent submitted that the Tribunal had no power to order the Secretary of State to backdate the Direction. The Tribunal agreed. It stated that the Tribunal can only vary the content of the Direction and not its basic structure. It said: "...we have concluded that the Appellant is asking the Tribunal to do that which it cannot, namely to change the date on which the decision which is the subject of the appeal was made and consequently the appeal is outside the jurisdiction of the Tribunal."

**Appeal struck out.**

### *Education list (Conduct)*

FH v Secretary of State [2005] 552.PT  
[Mr Reddish, Dr Ariyanayagam, Mr Griffiths]

This was a paper appeal, and the Tribunal heard no oral evidence or submissions but considered all of the witness statements and papers submitted by the parties save for the documents exhibited by the Appellant to her statement and submissions which came into being after 10<sup>th</sup> June 2005 and which therefore were not available to the Secretary of State when she made her decision.

The Appellant, Miss FH, was employed as Head of English and Media Studies at F School. During the summer term 2003, G was a pupil in the Appellant's Year 11 English class. He was 16 years of age, and due to complete his GCSE exams at the end of that school term and to start A levels at F School in September 2003. On 10<sup>th</sup> July 2003, the Appellant sent an email to G which concluded with the words: "Gagging 4 it!!!! So give in and give it to me. Love you. Love you. Love you." There were similar emails between the two of them of a similar content. During August 2003, the Appellant and G exchanged emails in which they referred, in explicit terms, to their sexual relationship. The Appellant was suspended from her duties on 3<sup>rd</sup> September 2003. G returned to F School at the end of the Summer vacation 2003. The Appellant resigned from her position at the School in May 2004. She was listed pursuant to s 142 on 10<sup>th</sup> June 2005. The letter states: "The Secretary of State has considered the nature and content of the emails exchanged between yourself and the pupil only a short period of time after he had left the school and concludes these suggest there may have been some element of inappropriateness in the relationship prior to the pupil leaving school. She also notes that you were in contact with the pupil between his return to the school in September 2003 and your resignation in May 2004 despite the direction of the school and the wishes of the pupil's parents...She considers your conduct on this occasion not only fell far below the high standards expected of members of the teaching profession but also constituted an abuse of the position of trust you held as a teacher..."

On appeal, the Tribunal considered the law in some detail. It noted that in appeals under the Education Regulations, the Tribunal is confined to conducting a review of the decision, and it is not empowered to re-hear the case or to determine the primary facts. "It 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 the circumstances known to the Secretary of State." It proceeded on the basis that the burden of proof was on the Secretary of State to show that the decision was appropriate, although the Tribunal did query whether this was the correct construction of the relevant provisions. The Tribunal stated that when considering whether a direction is or is not appropriate, it should not proceed on the basis that the restriction was imposed as a penalty for past misconduct, but should decide whether the restriction is an appropriate measure to ensure, so far as possible, that children will be properly protected and that reasonable parents and other interested parties will not have their confidence in the education system diminished in the future.

Applying these principles, the Tribunal determined that the Secretary of State had ample evidence upon which to base her conclusion that the Appellant had engaged in behaviour that involved a breach of trust, a breach of the standards of propriety expected of her profession and an abuse of her professional position. The Tribunal said: “the email sent by the Appellant on 10<sup>th</sup> July contained an unequivocal invitation to G to put aside his inhibitions and to have sexual intercourse with her. Whether such intercourse had already taken place before that date or did not take place until later was scarcely relevant. That communication to a young man who was clearly still part of the school community at the time it was made, was itself manifestly improper and plainly constituted misconduct by a teacher.” The Tribunal was satisfied that the direction to the effect that she be excluded completely from employment as a teacher was appropriate and proportionate.

### **Appeal dismissed**

## **D. SCHEDULE 5 CASES**

### ***Appeals under s 86(3) of the Care Standards Act 2000 from decisions taken by the Secretary of State to place a person on the PoVA list.***

**Nelson Del Mundo v Secretary of State [2005] 557 PVA; [2005] 558 PC  
[Miss Clarke, Mr Flynn, Mrs Wiggin]**

The Appellant, from the Philippines, worked as a Senior Carer. In the early hours of May 22<sup>nd</sup> 2004, the Appellant was involved in an incident relating to the movement of R, a man of 20 stone, who had fallen and who was unable to move himself back into his wheelchair. The Appellant initially denied that R had fallen but subsequently admitted that R had fallen and that he and another carer had manoeuvred R by holding his underpants, which he now accepted was not an appropriate way to move R. Subsequently, the Appellant accepted a Caution for assaulting R. He was then dismissed and Westminster Health Care informed the Respondent of what had taken place. He was subsequently placed on both the PoVA and PoCA lists. On appeal, the Appellant's Counsel submitted that the Appellant was not claiming that his behaviour had been right and that he had accepted that the way he had handled R was wrong. It was submitted on his behalf however that a lack of effective training and his naivety in following others had led the Appellant to make an inappropriate decision about what to do in the circumstances in which R was found when he had slipped out of his wheelchair. It was submitted that the Appellant should have had at least six hours of manual handling training. The Tribunal found as a fact that the Appellant should have been aware of the serious risk of harm in attempting to move a man the size of R by his underpants, and that his actions constituted misconduct. It found also that the Appellant had placed R at risk of harm. The Tribunal was concerned by the inability of the Appellant to recognize the high risk he took in this manoeuvre and his willingness to deny on more than one occasion that R had fallen. The Tribunal did not feel confident that faced with a different set of circumstances which might threaten his employment status that he would not seek to protect his own personal position rather than protect the vulnerable adult.

**Both appeals dismissed**

**Mrs P v Secretary of State [2005] 562 PVA; [2005] 563 PC  
[Mr Robertson, Mr Cairns, Mrs Wiggin]**

The Secretary of State withdrew her opposition to the secondary listing, the PoCA appeal and that appeal was allowed.

Mrs P worked as a carer for the elderly. The Respondent alleged that she is guilty of financially exploiting her position with one person in particular, a Miss R, and is accordingly unsuitable to work with vulnerable adults. Miss R told a reviewing officer that she had been exploited by Mrs P, that she had been made to pay for Mrs P and her family to go on holiday twice, had had a carpet and armchairs bought for her at excess price, had handed money over to a Christmas club that was unaccounted for, and had done unnecessary gardening which she had had to pay for. The Tribunal directed that Miss R should not give evidence. The Tribunal accepted that the primary case of the Respondent was based upon admissions, and that in considering the allegations the Tribunal would apply less weight to them where there is no corroboration as the evidence of Miss R had not been tested.

The Tribunal found that in all the financial transactions that took place there was no element of dishonesty or financial exploitation. It found that Mrs P clearly overstepped the bounds of good practice, and acted unwisely and possibly even recklessly. She allowed herself to become too close to Miss R. The Tribunal said however that the blame for this: “falls squarely on the shoulders of the agency because of their lack of training, supervision or even basic management.”

The Tribunal found Mrs P to be guilty of misconduct, placing Miss R at risk of harm. It did not find her unsuitable. It said: “Having conceded that there is no element of dishonesty involved in this case, it appears to us that the Secretary of State has a difficult task in showing unsuitability. It may be that an individual is so incompetent or negligent in circumstances such as this that renders them unsuitable. Equally if they are intransigent, refuse to accept their shortcomings and are not prepared to be supervised they may also be unsuitable”. This was not the case here.

The Tribunal made an important observation about the value of oral hearings. “The papers produce a damning picture. It was only through seeing and hearing the witnesses that a different picture emerged.”

## **Appeals allowed**

**Jane Brown v Secretary of State [2005] 580 PVA; [2005] 581 PC  
[Mrs Rivers, Ms Funnell, Mrs Gladwin]**

The Appellant in this case was included on both the PoVA and PoCA lists following a referral by her employers who had dismissed her from her job as a Senior Care Assistant for sleeping during night shifts. The appeal was determined on the written evidence alone. The Tribunal was concerned that the Appellant had played little part in the proceedings. The Tribunal found as a fact on the basis of the documentation that the Appellant was undertaking a “course of erroneous and incorrect behaviour” by sleeping on waking night duty. It found however that the

“risk as there was could not have been a serious one and that insofar as there was a risk the employers must share responsibility for it.” It did not find her unsuitable to work with vulnerable adults or children.

### **Appeals allowed**

**Rumen Kalchev v Secretary of State [2005] 589 PVA; [2005] 590 PC  
[Mr Robertson, Mr Allman, Mr Cairns]**

The Appellant is Bulgarian who worked as a Care Assistant. On 3<sup>rd</sup> August 2004, a roll of undeveloped photographs was taken to a shop with a photographic mini lab for developing. A number of the images when developed caused shock at the shop and the shop manager showed the images to the manager of a particular Care Home, having deduced that the photographs related to residents of a care home. After investigation, the Appellant admitted taking the photographs and he was cautioned by the Police under s 127 of the Mental Health Act 1983. The Tribunal stated that the Caution involved acceptance of the misconduct and that this misconduct involved actual or likely harm. The Tribunal said that in taking the photographs, the Appellant had made a huge error of judgment. The pictures were objectively obscene. The Tribunal found the Appellant to be dismissive and disingenuous; that he attempted to justify the unjustifiable at every turn. It followed that there must be a danger of repetition, and that he was unsuitable to work with vulnerable people.

### **Appeals dismissed**

**Kathleen Jackson v Secretary of State [2005] 623 PVA; [2005] 624 PC  
[Miss Roberts, Mrs Lowcock, Mr Radley]**

The Appellant is a Senior Carer. There were allegations that she had force fed residents, put residents to bed early, and allowed members of staff on her shift to leave work early. The Appellant denied doing any of the things that she had been accused of. The Tribunal, on the basis of the evidence that it heard, accepted that the force feeding had happened in much the way the Respondent’s witnesses had described, and that she had allowed staff to leave work early. As to suitability, the Tribunal said: “We have considerable sympathy with the Appellant because she is a woman who has spent most of her working life in the care sector; she has gone to the trouble to get qualifications and she has achieved senior care status. However, the very fact that she has had this training and was a senior carer and went on to behave the way she did raises questions about her suitability to work with vulnerable adults.”

### **Appeals dismissed**

## **E. SCHEDULE 6 CASES**

### ***Appeals under s 68 Care Standards Act from decisions taken by the General Social Care Council***

#### **Appeals against refusal of Registration**

JS v GSCC [2005] 553.SW  
[Mr Reddish, Ms Halstead, Ms Joffe]

The Appellant submitted her application for inclusion on the register of social workers declaring that she held a Probation Certificate of satisfactory completion of courses recognised by the Advisory Council for probation and aftercare, awarded by the Home Office on 21<sup>st</sup> March 1974. Her qualification was not listed in Schedule 1 of the GSCC (Registration) Rules 2005. The Registration Committee of the Respondent refused her application for registration stating that the Committee had no power to revise the Schedule and no discretion to allow her application on the basis of the quality and duration of her experience.

The Respondent's Solicitors applied for an order that the appeal be struck out as being outside the jurisdiction of the Tribunal or otherwise misconceived following the decision of the Tribunal in **Blanchard** [2005] 436.SW. The President rejected the strike out application holding that the points raised by the Appellant on the interpretation of the 2005 Rules compared to the 2003 Rules were arguable, that it would not be appropriate to use the strike out provisions in this context, and that a decision on the interpretation of the relevant paragraphs of the Rules should be made by a full Tribunal after hearing full legal argument.

The Tribunal was unable to accept the "ingenious argument" presented on behalf of the Appellant to the effect that the 2005 Rules give the Council a discretion to accept qualifications that are not listed in Schedule 1 to the Rules but are materially similar to one or more of the qualifications that are listed in the Schedule. Accordingly, the Tribunal decided that the Appellant does not at present hold a recognised qualification which would enable her name to be included on the statutory register of social workers and neither the Respondent Council nor the Tribunal had any discretion to direct her name be included notwithstanding that lack of qualification. The substantive position remains the same under the 2005 Rules as it was under the 2003 Rules. The only difference is that the Council will now accept different and/or less specific forms of evidence of successful completion of such a course or requirement for training.

**Appeal dismissed**

**MM v General Social Care Council [2006] 649.SW**  
**[Mr Reddish, Ms Halstead, Ms Joffe]**

This was an appeal from the Registration Committee of the GSCC who had decided to refuse his application for registration on the basis that he had not satisfied the Committee that he met the criterion set out in s 58 of the 2000 Act with regard to his good character and conduct. The Notice of Decision was sent on 9<sup>th</sup> December 2005. An undated Appeal Application form was received by the Tribunal on 26<sup>th</sup> January 2006. The time limit for the initiation of an appeal by the Appellant expired on 9<sup>th</sup> January 2006, and the Appellant was aware of this. The Tribunal stated that the nominated Chairman has no discretion to extend the time limit for the initiation of the appeal.

**Appeal struck out**

*[NOTE: The time limit for initiating an appeal against a decision of the Council to refuse his application for registration as a social worker under s 58 of that Act is now three months after the applicant has received notice of the decision to refuse his application for registration, instead of 28 days: Protection of Children and Vulnerable Adults and Care Standards Tribunal (Amendment) Regulations 2006 SI 2006/1930 coming into force on 1<sup>st</sup> October 2006.]*

**Charmagne Ricketts v General Social Care Council [2006] 626.SW**  
**[Judge Swift, Dr Low, Dr White]**

The Appellant submitted an application for registration as a social worker on three occasions without including full details of her criminal convictions despite the clear and stated need for full and frank disclosure. In consequence, the Registration Committee determined that they were not satisfied that the Appellant had demonstrated good character. On appeal, the Tribunal stated that an applicant for registration cannot pass the onus of complying with the registration requirements and providing the information that is requested on to any third party including the endorsers of her Application. The Tribunal said that the purpose of the legislation is to introduce control and regulation of social workers in the interests of those who require and use their services together with the interests of the community as a whole. The need for a full and frank disclosure is fundamental to the process of registration. Any doubts must be resolved against registration, and it is upon the applicant to demonstrate that she is a person of good character. The Tribunal concluded: “We are satisfied that the Appellant’s conduct in relation to her Application was reprehensible and relevant to the question whether she discharged the obligation to demonstrate that she was a person of good character. It was open to the Registration Committee to find that material non disclosure occurring in this way on a matter of such significance resulted in a failure to discharge the onus of demonstrating good character and with that conclusion we agree.”

**Appeal dismissed**

**AI v General Social Care Council [2006] 683.SW  
[Miss Lewis, Mrs Howell, Mr Coleman]**

The Appellant submitted an application for registration as a social worker, incorrectly describing an offence of driving a motor vehicle with excess alcohol on 21<sup>st</sup> March 2002 as a caution. In fact the date of conviction was 21<sup>st</sup> March 2002, the offence having been committed on 8<sup>th</sup> January 2001. He was fined £150 with costs of £55 and disqualified for driving for twelve months. His explanation was that his cousin had stolen his driving licence and he had thrown him out of the house, and he had only discovered this when he himself was stopped by the police in 2003. In addition, whilst he had declared a conviction for assault in 1991, it was not clear whether the conviction was for indecent assault, and that by his explanation he appeared to deny responsibility for it. The Registration Committee refused his application and he appealed on the ground that the refusal was unfair, biased or discriminatory. The Tribunal did not find his evidence in relation to the driving conviction satisfactory. The fact of the convictions alone was not such as to have prohibited registration; the crux of the case is failure to disclose and to give a transparent and full account. The Tribunal stated that the Appellant had failed to appreciate that it was up to him to establish his good character by presenting evidence to support what he told the Tribunal in explanation and by giving a full, frank and consistent account of his history.

**Appeal dismissed**

## **F. SCHEDULE 7 CASES**

### ***Care Standards Act 2000 s 79H; Child Minding and Day Care (suspension of Registration) (England) Regulations 2003.***

**MP v OFSTED [2005] 618 EY-SUS  
[Mr Bennett, Ms Graham, Mr Allman]**

Both the Appellant and the Respondent in this case accepted that the police were investigating allegations involving injury to a child. There has been multi-agency involvement, initially led by social services and now led by the police. OFSTED will initiate its own investigation but in accordance with the inter-agency protocol, it cannot be undertaken until such time as police indicated it to be appropriate. The Tribunal accepted that a parallel investigation by OFSTED might prejudice police investigations. The Tribunal said that it was neither possible nor appropriate at this stage for the Tribunal to reach any conclusion about the underlying allegation. The Tribunal said that following its conclusion about the gravity of the allegation, the continued appropriateness of the enquiry and the prospect of additional allegations being made, it concluded that there is reasonable cause to believe that continued provision of child minding by MP may expose a child to risk of harm. It accepted that the suspension was properly and lawfully made to allow time for circumstances giving rise to allegations to be investigated and its continuation is appropriate.

#### **Appeal dismissed**

**RT v OFSTED [2005] 614.EYSUS; [2006] 640 EYSUS  
[Judge Pearl, Mr Churchill, Mrs Elliot]**

The Area Manager of OFSTED stated in evidence that she first became aware of the case involving Mrs RT on 10<sup>th</sup> November 2005 following a complainant's contact on 2<sup>nd</sup> November 2005 to OFSTED. This information would seem to have been given by a parent of an ex-minded child to the effect that Mrs RT was being investigated by the Police. OFSTED had had no knowledge of this investigation, so enquiries were made by OFSTED to the Police. The Area Manager stated in evidence that as a result of this on-going police investigation, the failure of Mrs RT to notify OFSTED of this significant event and of the fact that she had been interviewed under caution, and the fact that there was a history of previous complaints, she decided to call a case conference, held over the telephone on 15<sup>th</sup> November 2005. The Minute of the conference states that the decision was taken to invite Mrs RT to accept a voluntary suspension, and that if she refused to agree to a voluntary suspension, then OFSTED would suspend Mrs RT on a statutory basis. Mrs RT decided to agree to a voluntary suspension on that afternoon. There was a monitoring visit on 1<sup>st</sup> December 2005, when Mrs RT told the inspector that she had continued to provide care for children but not on a child-minding basis and that she was not receiving any payment "as the parents were her good friends and she was doing it out of the goodness of her heart to help." There was then an emergency case conference on 2<sup>nd</sup> December 2005 and it

was decided to proceed to a statutory suspension because the police investigation was on-going, and Mrs RT had failed to notify OFSTED that she was continuing to care for children. The statutory suspension was served that afternoon. The period was extended by notice dated 13<sup>th</sup> January 2006 for a further six week period.

At the appeal hearing, Mrs RT said in evidence that she had not told OFSTED that she had been interviewed by the police because she assumed that OFSTED already knew about it. She said in evidence that any recent complaint was motivated by malice, and perhaps because she had obtained a County Court judgement against the complainant for non-payment of fees. She explained that after she accepted the voluntary suspension, she understood that the parents had telephoned OFSTED to ask whether they could leave their children with Mrs RT without payment, and that they were assured that they could do so. She said also that she telephoned OFSTED on 21<sup>st</sup> November 2005 and was assured that she would not get into trouble by looking after children over 8 or children under 8 without pay. The Tribunal formed the view that Mrs RT on 21<sup>st</sup> November 2005 and one of the parents, Ms B, on 1<sup>st</sup> December 2005, were left with the impression after telephoning OFSTED that continuing to care for under 8's without pay was not a breach in law of either a voluntary suspension or a statutory suspension, but that the implications of continuing to care for children on an unpaid basis was a matter for the childminder and the parent to consider.

The Tribunal decided that the purpose of the suspension in this case, namely to allow time for the Chief Inspector's belief to be investigated, is clearly satisfied. That fact however is not sufficient to enable OFSTED to impose, or on appeal, the Tribunal to confirm, a period of suspension. Regulation 3(1) must be complied with. The Tribunal did not accept that Regulation 3(1) had been complied with in this case. There was no suggestion that the investigation involved child protection issues. All the evidence pointed to the contrary. The Tribunal said: "Neither the police nor the CPS are any further forward in their enquiries on 25<sup>th</sup> January 2006 than they would appear to have been in October 2005. We are unable to see how there can be any child protection issues arising out of an enquiry conducted in such a dilatory manner." Allegations of which the Tribunal was totally unaware were totally inconsistent with the experience of 4 parents from whom the Tribunal heard evidence. As to the failure of Mrs RT to inform OFSTED of the police interview, the Tribunal said that although it may have been sensible for Mrs RT to have informed OFSTED about the interview, the failure to so inform OFSTED in this case falls a long way short of providing a reasonable cause to believe that continued provision of childminding exposes or may expose one or more children to the risk of harm. As to the fact that she failed to inform OFSTED that she was looking after children without reward, the Tribunal took the view that she was not in breach of her acceptance of a voluntary suspension.

The Tribunal took the opportunity of identifying a number of issues of general concern. First, whilst it accepted that OFSTED does not provide advice or guidance to parents or indeed to child minders, the Tribunal was concerned that clear messages were not provided in this case. The standard letter setting out the basis for voluntary suspension was ambiguous, and the Tribunal said that thought needed to be given to that letter to ensure that there is no room for ambiguity. The Tribunal was not impressed by the involvement of the NCMA and their legal advisers. The Tribunal said: "...Mrs RT was left to fend for herself in the two days of hearings. A way must be found to ensure that Appellants have the benefit of legal representation, and one

would hope that the NCMA will address this issue.” The Tribunal said also that a letter be written by OFSTED to the child minder to explain the Protocol involving all the agencies and how the matter is to be investigated by the various agencies. It said: “Honesty and transparency are always the more effective responses to genuine concerns; whether these concerns be from child minders or from parents.” It said that the Tribunal and the Appellant should be given details from the Police and/or Social Services about the timetable for the investigation. Finally, the Tribunal said that it was troubled by the use made of voluntary suspension.

## **Appeal allowed**

**AJ v OFSTED [2006] 693. EYSUS  
[Miss Clarke, Mr Griffiths, Mr Wilson]**

The appeal in this case was dealt with on the basis of the papers. It would seem that the police attended the Appellant’s house as a result of a telephone call made by the Appellant’s daughter, RJ, who alleged that she had been assaulted by the Appellant the previous evening. The Appellant was arrested and released on bail. OFSTED were notified of the Appellant’s arrest by a social worker. The Appellant agreed to a voluntary suspension up until 17<sup>th</sup> January 2006, but did not agree to any further period of voluntary suspension. A statutory suspension was then imposed on March 13<sup>th</sup> 2006, OFSTED refused to lift this suspension and the Appellant appealed. The Police informed OFSTED that RJ had made a statement stating that she was unwilling to proceed with the allegation that the Appellant had assaulted her and was not willing to attend Court or be a witness. The CPS had decided that no further action be taken against the Appellant.

The Respondent did not consider the matter as closed when the police decided not to continue with their investigation, as the initial allegation that the Appellant had assaulted RJ was sufficiently serious to raise on-going concerns about the Appellant’s suitability that the Respondent wished to investigate further. The Tribunal said that whilst the Appellant’s frustration at the considerable length of time that had now passed since the original incident in December 2005 was understandable, the Appellant’s continued refusal to even discuss matters with the Respondent was a contributory part of the ongoing delay. The Respondent submitted that it needed to discuss the allegation that had been made and to make an assessment of any potential risk to the children being minded by the Respondent. The Tribunal accepted that this request by the Respondent was reasonable and correct. It said: “There may have been discrepancies and procedural inaccuracies (indeed it referred to the muddled approach to the decision making) by the Respondent following the initial voluntary suspension but these do not negate or extinguish the legitimate concern of the Respondent to investigate the allegations that had been made and their reasonable request to try and conduct an interview with the Appellant to discuss the matter.” The Tribunal decided also that the time lapse between the December incident and the issuing of the statutory notice of suspension was not in the circumstances unreasonable.

## **Appeal dismissed**

## **G. COSTS**

The cases that have considered costs during the period under review are:

Dr M Bhatnagar, Dr R Bhatnagar and Dr Randhawa v Commission for Social Care Inspection [2002] 360 EA; 361 EA; 362 EA  
[Judge Pearl, Mrs Lowcock, Dr Cochran]

Mr A Bannister and Mrs R Bannister v Commission for Social care Inspection [2004] 414 EA-JP; 415 EA-JP; [2005] 507 EA; 510 EA  
[Mrs Tudur, Ms Adolphe, Mrs Last]

L v Secretary of State (Costs) [2005] 547 PVA; 548 PC  
[Mr Robertson]

SSC c Secretary of State (Costs Decision) [2006] 638 PC; 639 PVA  
[Judge Swift]

MS v Secretary of State [2006] 659 PVA; 660 PC  
[Judge Swift]

Martin Joseph McKeon v Secretary of State [2006] 671 PC  
[Judge Pearl]

**Bhatnagar** arose out the successful appeals brought by the three Appellants on behalf of Park Manor Nursing Home from decisions taken by the statutory Regulators to close the home. The Applicants sought an Order for Costs in the initial sum of £452,873.83p. After Directions, the Applicants submitted a Final submission seeking costs to the total amount of £211,749.34p. The Tribunal stated that the costs jurisdiction of the CST is heavily circumscribed, in that it may be awarded only when the Tribunal reaches a view that the paying party has behaved unreasonably in bringing or in the conduct of the proceedings. The Tribunal said that it is always, with the benefit of hindsight, easy to decide that a decision taken in the course of proceedings was the wrong decision. But a wrong decision does not make it an unreasonable decision. Rather the Tribunal should concentrate on what the position was at the time that the party made a particular decision which it is alleged is now unreasonable, examine that decision and form a view on whether the paying party, at that time, was conducting the proceedings in an unreasonable manner or not.

The Tribunal said that it was entitled to look at the whole history of the matter in forming a view on whether the decision taken by the Respondent in the Summer of 2004 to continue to oppose the fourth appeal was unreasonable. CSCI submitted that the decision to continue its opposition to the appeal was made in “the public interest”, that it was appropriate for the issues to proceed to a full hearing in front of the Tribunal, and that it acted in good faith as part of its regulatory function. Such functions, so it was argued, should outweigh any “litigation risk.”

The Tribunal fully accepted that these are factors that must be taken into account by the Respondent, but that there is an additional factor; namely the responsibility the Respondent has to providers and users to ensure that its powers are not used unjustifiably. The Tribunal said that the responsibility to act “fairly” and “reasonably” does not end once the decision to cancel has been made, but extends to any ensuing appellate process. The Tribunal decided that the Respondent should have withdrawn its opposition to appeal number 4, as it had in appeal number 3. Failure so to do was “unreasonable” and the Appellants were therefore entitled to costs that flow from that decision.

The Tribunal then went on to consider how the costs should be assessed. It asked for the Applicants to submit a revised Schedule. The parties were encouraged to see whether an agreement on costs could be reached without the necessity of further costs being incurred. If agreement could not be reached, the Tribunal was told that the Respondent would prefer the Tribunal to assess the costs itself rather than for the costs to be assessed by a District Judge in the County Court (or quite likely, to be referred by him or her to a Costs Master in the High Court). The Tribunal agreed with this approach as the more appropriate approach for the Tribunal to adopt, but that in order to engage in this exercise, the Tribunal must have in its possession the material that a District Judge or Costs Master would require.

In the event, the parties agreed costs in the sum of £84,000; and this agreement was incorporated in the Costs Order dated 1<sup>st</sup> September 2006.

**Bannister** was a costs application by the Respondent in the sum of £61,995.25p following a very late withdrawal; namely the last working day before a scheduled fifteen day hearing. The application for costs was made on the basis that the Appellants had conducted the appeals unreasonably in not withdrawing their appeals at an earlier stage. It was submitted that it would have been reasonable for the Appellants to have reviewed the merits of their case to decide whether or not to continue with their appeals within two weeks of receipt of the Respondent’s evidence.

Mr and Mrs Bannister were adamant that they had never intended to withdraw the proceedings, believing that they had a good defence to the cancellation proposal. They said that the issue of withdrawal wasn’t suggested to them by their legal advisers until the last minute, when their Solicitor informed them that the insurance company might withdraw its financial backing from the case.

The Tribunal arrived at the view that it was reasonable for the appeal to have been withdrawn on the final working day prior to the commencement of the hearing, after Counsel had shortened the odds on their successfully pursuing the appeal. Accordingly, there was no Order for Costs.

All the other cases deal with applications for Costs brought by successful Appellants in PoVA or PoCA appeals after the Respondent had decided to withdraw his opposition to the appeals. In all of the cases, there was No Order for Costs, applying the principles set down in the cases that are set out at pp 72-76 of the Digest of Cases (First series).

## **G. PROCEDURAL MATTERS**

### ***Strike out appeals: applications made otherwise than in accordance with the provision in these regulations for initiating that appeal: Reg 4A(1)(a)***

David Delanty v Secretary of State [2006] 681 PVA; [2006] 682 PC.  
[Mr Hunter]

On the 30<sup>th</sup> November 2005, the Appellant was informed that his name had been confirmed on the PoVA and the PoCA lists. It was agreed between the parties that the deadline for the receipt of the appeal was 1<sup>st</sup> March 2006. In fact, on 7<sup>th</sup> February 2006, the Appellant wrote to the Department of Health stating “I wish to appeal against your decision...” This was forwarded to the Tribunal as an email attachment, and on 9<sup>th</sup> February 2006, the Tribunal wrote to the Appellant enclosing the appropriate appeal forms and with a letter stating: “...in order for your appeal to be considered, you must submit your completed form within 3 months of the date of the letter informing you of your inclusion on the list.” The appeal form was received by the Tribunal on 29<sup>th</sup> March 2006.

The Respondent sought to strike out the appeal on the grounds that it was out of time. The Respondent submitted that the letter dated 7<sup>th</sup> February 2006 was not a valid appeal.

The Chairman rejected that application. He said that Schedule 5 para 1(2) simply states that the application “must be received by the secretary...” and it does not invalidate an application simply because it was forwarded by a third party. There were only two items missing, namely his date of birth and his telephone number. The Chairman said that in the circumstances of this case the Appellant should have been requested to supply the items in default.

Although the Chairman was inclined to the view that the letter of 7<sup>th</sup> February 2006 was a valid appeal, he went on to say that if he were wrong on that then he would exercise his discretion under Reg 35 to extend the time limits so as to bring the appeal lodged on 29<sup>th</sup> March 2006 within time. He said : “...it might with hindsight have been sensible if the Tribunal secretariat had made it clear in their letter of the 9<sup>th</sup> February that further information was required from the Appellant to complete his appeal; ie his date of birth and telephone number and/or that his appeal was not going to be registered until this information was provided...I am satisfied that he was genuinely confused by the Tribunal’s letter of the 9<sup>th</sup> February, as to when all the necessary information to constitute a valid appeal had to be submitted. In those circumstances it would have been unreasonable to have expected him to have complied with the time limit for lodging the appeals. He considered it unfair in the circumstances of this case not to extend the time limits.

### **Application to strike out dismissed**

David Arthur v OFSTED [2006] 685.EY  
[Mr Oliver]

In this application to strike out, the Respondent submitted that the Notice of Decision to cancel the Appellant's registration was delivered on the morning of 11<sup>th</sup> March 2006 and therefore the latest date by which the Tribunal could receive an appeal was 8<sup>th</sup> April 2006. The Appeal Form was received on, and is date stamped, 10<sup>th</sup> April 2006. The Respondent applied to strike out the appeal, and drew attention to the fact that the power to extend time limits in Regulation 35 expressly excludes the power to extend the time limit in relation to applications to appeal decisions to cancel registration.

The Chairman refused to strike out the appeal. He said: "The Appeal form should have been with the Tribunal by Saturday 8<sup>th</sup> April 2006. Had it been it could not and would not have been considered or processed until Monday 10<sup>th</sup> April 2006...The earliest date therefore that the appeal could have been registered was on Monday 10<sup>th</sup> April 2006 even if it had been received on 8<sup>th</sup> April 2006".

**Application to strike out under Regulation 4A(1)(a)(i) dismissed.**

**He dismissed also the application to strike out under Regulation 4(1)(b).**

**Leave has been given for the matter to be heard in the High Court in October 2006.**

### **Third Party Directions**

Re AG [Third Party Directions] [2005] 603 PC; [2005] 604 PVA  
[Judge Pearl]

In this case, the Social Services Department of a County Council objected to third party directions for disclosure of a Report commissioned by the County Council based primarily on public interest immunity. The Local Authority submitted that the Tribunal was enjoined to balance the competing interests of the Secretary of State who wishes to obtain evidence relevant to the listing of an Appellant against the public interest in maintaining the confidentiality of the witnesses in an investigation. The President rejected this submission. He said that the approach that should be adopted by the CST in these matters should follow as closely as possible the approach taken by the courts. "If the principles are applied to proceedings before the CST it is absolutely clear when balancing competing interests that disclosure will be directed, except in the most compelling of cases. It would be a breach of an Appellant's rights to a fair trial if he were to be denied access to Reports similar to the Report commissioned by the Local Authority in this case. It would also undermine the efforts of the Secretary of State in the preparation of his case, and create particular obstacles in the path of the Tribunal in reaching a fair decision on the merits of the case".

The President stated that safeguards can be put in place. The Report can be disclosed in a redacted form, as was ordered in this case. But the balance between the public interest in protecting confidentiality of the kind sought by the Local Authority in this

case and the public interest in the fair administration of justice in proceedings before the Tribunal, will result in Disclosure unless the 3<sup>rd</sup> party can show compelling evidence of 'real damage' or 'substantial harm' to a recognised protected interest

**Application by Local Authority to set aside Order for Disclosure dismissed**