

**IN THE FIRST-TIER TRIBUNAL
(HEALTH, EDUCATION AND
SOCIAL CARE CHAMBER)**

Appeal No. [2008] 1255.SW

CHRISTINE JONES

Appellant

-v-

GENERAL SOCIAL CARE COUNCIL

Respondent

**Before: Tribunal Judge Rowland
Mrs Denise Rabbetts
Mr John Hutchinson**

The Appellant was represented by Mr Robin Griffiths, a friend.

The Respondent was represented by Miss Katherine Bovey, solicitor, of Field, Fisher Waterhouse LLP.

DECISION

1. We allow this appeal and direct that the decision of the Respondent dated 30 November 2007 to refuse the Appellant's application to be included in the Respondent's register of social workers shall not have effect.

REASONS

2. The Appellant obtained a Diploma in Social Work in 1994. She was then aged 35 and had a short period as a full-time parent before she obtained work as a field social worker for a large local authority where she remained for a year and a half. In August 1996, she began employment with NCH Action for Children as a keyworker at a family centre. Four years later, she became deputy project manager at another family centre run by NCH Action for Children, where her duties included supervising staff, undertaking complex assessments of families and providing reports.

3. In that role, she came into contact with a young child, S. S was aged 4½ in February 2003, when her parents, who plainly had their difficulties, asked that she be voluntarily accommodated by the relevant local authority. She was placed with foster parents, Mr and Mrs W, in February 2003. In June 2003, the local authority commenced care proceedings and it appears that they formed the view at an early stage that adoption would be the appropriate outcome. The Appellant was asked to make a parenting assessment and prepare a report.

4. It was on 14 October 2003, towards the end of this process and indeed possibly on the penultimate occasion she was due to see the family, that she observed contact between S and her parents and recorded that the contact

officer “informed me that [S] had disclosed to him that male carer [i.e. Mr W] had ‘hit her really hard and hurt her’ also, been playing games”. She also recorded that the contact officer, who was working for the local authority, was “to report this” to the local authority social worker, which she told us was what she had advised him to do. On the following morning she recorded that she had telephoned the social worker who had not yet heard from the contact worker, that she had reported to the social worker the “above concerns” and that the social worker was to speak to his manager. She added: “strategy meeting to be arranged – possibility of [S] being moved today.”

5. What the Appellant did not do, but what she should have done, was to inform her line manager in writing of the allegation that had been made and to complete a child protection form and send copies to both the local authority, with an accompanying letter, and NCH’s regional office.

6. On 20 January 2004, she completed a “significant interview/report sheet” in relation to a conversation with the local authority social worker, first recording that the contact worker had raised concerns “that S had a bruise to her back, and was pleading not to go back to foster carers” and that on 19 January 2004, she had discussed this in supervision and had been advised to speak to the family’s social worker. We set the details contained in the report sheet out in full. It was on two pages.

“Contacted [the social worker] on 20-1-04. He informed me that there were escalating concerns re: [Mr and Mrs W’s] care of [S], and their attitude towards her.

Re – [S] begging not to go back, as she had spilt juice on her clothes and said that ‘[Mrs W] will hit me’ – bruising to [S’s] lower back – CP investigation instigated, but non-conclusive. [Another person] and [the social worker] have both witnessed foster carers being verbally aggressive towards [S], calling her names, etc. [The social worker] had visited foster carer and witnessed [S] as being afraid of them – [Mr W] calling [S] ‘evil’.”

It continued on the second page –

“Action to be taken – meeting to be held at 11 am today. [The social worker] will be advocating that [S] is moved to another placement as soon as possible. However, his manager does not agree with this, and neither does the foster care agency. [The team manager] thinks that [S] should be left in her present placement until the final hearing (to be scheduled for April/May).

[The social worker] said that if he cannot get agreement to have [S] moved, he will action procedures to support this – (ie – CP procedures.)

Discussed implications for younger child (aged 1 yr) of remaining in [Mr and Mrs W’s] care. [The social worker] said that he has spoken to his manager and child’s SW - [named] - re this, but they do not agree that other child is at any risk, because he is younger. [The social worker] said that he will continue to advocate for both children.

[The social worker] to ring me following meeting to give update.”

No further record was made.

7. S had been approved for adoption on 3 October 2003, even before the Appellant had completed her assessment. Her assessment, which we have not seen, apparently did not support S being rehabilitated with her parents and a care plan produced by the social worker on 28 November in the light of the Appellant’s assessment and other evidence ruled out rehabilitation. On 23 January 2004, the local authority issued a freeing application. On 29 January 2004, there was a final directions hearing.

8. The case came before the court for a contested hearing of the care proceedings on 23 February 2004. The judge brought the hearing to a close on 25 February 2004 in circumstances that are explained in a reserved interim judgment given following a hearing on 30 March 2004, when she concluded that “this case has to go back to the beginning” with the case not being concluded until a final hearing in July 2004.

9. The Appellant, who did not have a great deal of experience of court proceedings, had attended to give evidence after lunch on the first day of the hearing but was not reached until the third day. For much of the time while she was waiting, the social worker had been giving evidence and it is evident from her judgment that the judge was not impressed by the local authority’s case. First, the local authority appeared not to have given any thought to the question whether there should continue to be contact between S and her parents. Secondly, the problems with the placement emerged, with the possibility that S would need to be moved urgently and the further possibility that a therapeutic bridging placement would be required. The judge was concerned that none of the problems with the placement had been mentioned to the court, the guardian or even the local authority’s lawyers, the social worker having said that his first concerns had arisen in December 2003.

10. When eventually called, the Appellant gave evidence about her assessment and was then cross-examined as to when she knew of the difficulties with the placement. She produced the notes to which we have referred above and a note from 9 October 2003 in which it is recorded: “[The contact worker] informed [the Appellant] that [the social worker] is in process of moving [S] to another placement (prospective adopters). [The Appellant] querying whether parents know about this? [The contact worker] does not know.” That was followed by a crossed-out reference: “Found out later that [the social worker] ...”

11. The Appellant was asked to read out the report sheet dated 20 January 2004. The judge says in her judgment –

“8. The note continued over the page and she was asked to read out the full entry. It was clear from my position on the Bench firstly that she was becoming increasingly upset at being asked to do this and secondly she was reading out only parts of the relevant note. When I

gave her a break to recover and had the page photocopied it was abundantly clear to me that the material she had chosen to leave out was fundamental and disturbing and if true not only indicated that this child was actually at risk in her placement but that the Social Worker knew about it, wanted [S] moving to another placement as soon as possible but, and I quote, ‘ However his manager does not agree with this and neither does the foster care agency’

The judge set out the rest of the entry and continued –

“[The Appellant] was asked why she had chosen to edit in particular that last section that I had referred to. After a very considerable pause and a number of answers which consisted of ‘I don’t know’, she came to rest with this: ‘I am afraid to get the Social Worker into trouble’.

“9. By now I was seriously concerned about the following aspects of this case –

- (i) As [the Appellant] was obviously prepared to cover up for the Social Worker how independent and reliable was her NCH assessment?
- (ii) The parents could never perceive the NCH assessment objectively in these circumstances.
- (iii) Just how bad was the situation for this child with Mr and Mrs W? and for how long had it been that bad? and if it had been so bad why had the local authority not said anything? and why was the child still in the placement? and why had there been this kind of disagreement? and what steps had the local authority taken to consider any risks?
- (iv) Had the local authority considered the damage that [S] could well have suffered in the placement. Could one simply move her without remedial work into an adoptive placement now? Had the local authority really thought through issues of attachment and contact even in that adoptive placement? And what if anything had they said to any prospective adopters about contact? And where did [S’s younger brother] fit into all this?”

12. The parents gave evidence, which heightened the judge’s concerns. They said that they had never liked Mr and Mrs W, that S had complained about ill treatment from about August or September 2003, that the mother had told the social worker and that they had never been told about any local authority investigations.

13. The proceedings were adjourned with directions, an interim care plan was produced the next day and S was removed from the care of Mr and Mrs W on the day after that.

14. The Appellant informed her line manager of what had happened and then, on her own initiative, returned to the court and apologised to the judge who accepted the apology and said that matters relating to her conduct in

court would be taken no further by her. By the time the case returned to court, the Appellant and the social worker had both been suspended by their respective employers, the team leader had been moved to another post and the contact worker had been dismissed.

15. Further problems with the case emerged at the new hearing. In particular, although the local authority was ostensibly following a “twin track” approach, it appeared to the judge that the local authority had closed its mind to the possibility of rehabilitation and was considering only adoption. The social worker then responsible for the case (whom I shall call “the first social worker” to distinguish her from the social worker to whom I have already referred and who took the case over in September 2003) had recorded as early as 11 July 2003 that adoption was the “favoured” view. In the course of dealing with this issue, the judge said –

“[The Appellant] has stated on oath to me (which [the first social worker] denies and I am not going to rule one way or the other – the mere fact that the conflict exists and the NCH worker has said what she has said is serious enough) words to the effect ‘[The first social worker] had told her she would not really need to see the family very much/could do a shorter form of assessment because in her view [S] won’t be going back home ... its more or less a done deal ... I felt I was being asked to deliver a result ... I felt under pressure ... I said I would do my assessment as I thought fit.’ Incidentally this is not a conversation recorded in her notes nor did she take it up with her manager and as a witness her credibility has to be seriously questionable as demonstrated by her behaviour in the early part of the hearing – which I have already referred to.”

16. It also emerged that a nursery worker who had worked with S had contacted the first social worker and indicated a desire to adopt S and the judge concluded that the first social worker “actively, secretly and wrongly promoted” the nursery worker’s application with the result that, even though the application was treated like any other by the adoption team, “the process now looks unfair, subjective and has a strong element of ‘behind closed doors’ dealings about it”.

17. In relation to the foster placement with Mr and Mrs W, the judge said –

“I can do no more than highlight the issues of fact between [the Appellant, the contact worker and the social worker] as to the information they had about [S] being at risk in the October of 2003; as to their efforts to pass this along to the Social Worker ... and the fact they got little feed back from him as to the outcome. ... the Social Worker denies that anybody at NCH ever contacted him. How often however was he visiting this child in placement? Not very often it would appear.”

She went on to agree with the guardian “that perhaps of greater significance are the acts/omissions of the local authority in January 2004 after the parents

themselves went along to the Social Worker and told him in specific terms that they suspected [S] of having been injured in the care of the Ws” After reviewing the various errors, she said –

“I have the impression and I trust it is not an unfair one, that the local authority regarded the outcome of these care proceedings as a foregone conclusion and I would hate to think, based on a statement of ..., that their real agenda (and I leave [the social worker] out of this) was somehow to maintain that placement, encourage the Ws to hold on and to move [S] swiftly after the Court had given them a Care Order and indeed perhaps a Freeing Order into the care of [the nursery worker].”

18. Finally, the judge made various comments about other matters, including criticisms of record-keeping and, of more direct relevance to this case, of the Appellant’s relative inaction –

“NCH accept that [the Appellant] should have done more to pursue her child protection concerns and her concern that the local authority may have been seeking to move the child to a prospective adoptive placement prior to the conclusion of her assessment and in particular that she failed to raise either of her concerns at the Review meeting held on November 11th 2003 which [the social worker] attended and that she should have done.”

19. The Appellant, who had been suspended from her employment on 27 February 2004, was dismissed for gross misconduct (withholding evidence in court and failing to adhere to the NCH child protection policy) following a disciplinary hearing on 4 August 2004, which decision was upheld on appeal on 6 October 2004. The failure to adhere to NCH child protection policy by informing her line manager and sending the appropriate forms to the regional office and the local authority had come to light because of what had happened in court. The disciplinary hearing noted that the issue should have been picked up earlier through a check of the file.

20. At the time of her dismissal the Appellant was being assessed for a Post-Qualification Award in Child Care in 2005. After some consideration of her case, the award was made by the Respondent on 8 July 2005. Meanwhile, she had worked for four months as a support worker at a women’s aid refuge and then, in April 2005, had obtained work as a family support worker with a primary care trust. She still works there. Her work there is, of course, at a lower level than before but, since the coming into effect of section 58 of the Care Standards Act 2000 Act in 2004, she now needs to be registered as a social worker if she is again to be employed with the sort of responsibilities she had before her dismissal.

21. The Appellant applied for registration as a social worker on 28 August 2006. She disclosed on her application form that she had been dismissed from employment for misconduct in 2004 and that led to her case being investigated in some detail and then referred to the Registration Committee

who, having adjourned so that the Appellant could make oral submissions, refused her application on the ground that she was not of good character (see section 58(1)(a) of the 2000 Act).

22. At the hearing before the Registration Committee, the Respondent's presenting officer alleged that the Appellant had been dismissed because she had "lied to a judge and withheld evidence during a court case", had "placed a child at risk" and had "not adhered to NCH Child Protection procedures". However, it was not in fact suggested that the Appellant had told a lie rather than omitting evidence in the way that the judge recounted and it was also accepted that the second and third allegations were linked, the second in effect being the consequence of the third. The Committee's reasons for finding the Appellant not to have shown that she was of the required character for registration as a social worker were –

"The Committee was concerned that the Applicant failed to demonstrate insight into the why she had acted in the way she did in court in February 2004. She appeared to have no discernible memory of these important and pivotal matters. As a result of her actions and omissions the Applicant's then employment was terminated. Even in evidence today she appeared to have no idea why she omitted vital information to the Judge in court. In the Committee's view, this omission reflected a reckless disregard for the due process of law, which process is designed to ensure that all the facts are elicited so that a proper and accurate decision can be made about the welfare of vulnerable service users. This is very disturbing.

Equally worrying to the Committee is the Applicant's inability to explain the procedures expected of her at the time she was alerted to Child S's predicament. Albeit through another worker, she received vital information about the welfare of Child S which should have invoked some insight by now in 2007 of how she, as a deputy manager in 2003/4, should have been more proactive, so as to alert other persons at a much earlier time.

The Applicant's delay resulted in a vulnerable child service user being placed at risk of physical harm from abusing adults."

The Appellant now appeals against the Committee's decision.

23. There is no very substantial dispute about the facts. The Appellant accepts that she was guilty of misconduct both in court and in not having complied with NCH child protection procedures and she also accepts that in respect of the latter failing she placed a child at risk of harm. The question for us is whether the misconduct was such as to make it inappropriate for her to be registered as a social worker.

24. Although the Committee said that it had "at all times exercised the principle of proportionality", it did not explain how it had done so. Registration was not required at the time these events took place and it seems to us that

the way we should approach the case is to consider whether, if the Appellant had been registered at the time of her misconduct, that misconduct would have justified her being removed from the register. If it would have justified only a suspension, the period of suspension would have passed by now. We put this to Miss Bovey and asked her whether the misconduct would have justified removal. Her response was that she was not in a position to say that the Appellant would definitely have been removed from the register.

25. It is necessary for us to consider with some care exactly how serious each of the two allegations of misconduct is. The incident in court has always been taken first, because it was the first to come to light and perhaps because it has been regarded hitherto as the more serious of the allegations.

26. The second page of the report sheet that the Appellant failed to read out to the court in full was not direct evidence relating to S but was concerned with the dispute within the local authority as to what should be done about S. We do not find it as difficult as the Committee apparently did to accept that the Appellant cannot remember exactly what happened in court and, in particular, why she was asked to read the note. Like the Committee, we do not have a transcript of the proceedings in court but it does seem to us, for reasons we will explain, that the Appellant may well not have realised why failing to read the note would be regarded by the judge as such a serious matter.

27. As to lack of insight, it is true that the Appellant said, at the top of page 21 of the transcript of proceedings before the Committee –

“Given the situation, I was probably, for whatever reason, scared, I was panicking. I cannot really give a reason 100 per cent. I do not think that I was trying to protect the social worker. It was a very silly thing to say.”

However, the Committee did not follow that up, although they started to do so. Their legal advisor endeavoured to clarify exactly what it was that had not been read out but the Committee then moved on to a different issue. Before us, the Appellant was clear enough about her reason. She was, she said, thinking about herself and about her relationship with the social services department. She recognised that she had been wrong.

28. It seems to us that there will have been two points that, at least subconsciously, will have been in her mind. The obvious one, to which she referred in her evidence to us, was that the note pointed a finger at the team manager as the person who was refusing to take action to protect S. However, the other one is that the note revealed that the front-line social worker had been talking to her about internal disagreements within his department in a way of which his superiors might have disapproved and possibly with a greater degree of frankness than he might have displayed in court. It may be that that was what was most worrying her when she was giving evidence and that would explain her saying that she had acted to protect the social worker rather than to protect the line manager when, so far as the judge was concerned, the note tended to exonerate the social worker.

Her initial answers about not knowing why she had omitted passages from the note seem to us merely have been an admission that she had no good reason for her action rather than a real indication of any lack of insight as to what she had done or why it was wrong.

29. In any event, it was precisely the Appellant's preparedness to protect her relationship with the social workers that concerned the judge. Given that the judge already suspected that the social workers were acting in an underhand manner as regards S's parents and that there had been the suggestion that the Appellant had been put under pressure to assist them when writing her report, the Appellant's desire to protect her relationship with the social workers as manifested in her not reading out the whole of the contents of the report sheet inevitably poured some doubt on the independence of her report and, as importantly, was liable to undermine the parents' confidence in the independence of the report. The implications of her failure to read the note were therefore far greater than she is likely to have realised when she decided, in the heat of the moment, not to read the whole of the document. Normally, the internal machinations within a social services department are only of peripheral relevance to care proceedings in court: here they happened to be of considerable significance.

30. What is important is that it is no part of the Respondent's case that the Appellant did in fact succumb to any pressure from the local authority so as to produce a report for the court that was not wholly independent. We note that the Appellant appears to have been open with the court about the pressure and the judge did not suggest in her judgment that there was any obvious lack of thoroughness in the Appellant's report. The focus has been merely on the Appellant failing to do precisely what the judge had asked her to do. That is serious, but we think it is putting matters a bit high to describe it as showing a reckless disregard for the due process of law.

31. At least as serious in our view is the failure to comply with NCH child protection procedures. However, again, it is necessary to look at the Appellant's failing in its context.

32. The Respondent has taken the same approach to the facts as the Appellant's employers, which is to accept that the Appellant did speak to the social worker on 15 October 2003 and inform him of what she had been told by the contact worker, despite the social worker's denial of any contact from NCH. It does seem more likely that she spoke to the social worker. If she did not speak to the social worker, she must deliberately have falsified her notes before she knew the judge wished to see them and that has not been suggested.

33. The position, then, is that, by 15 October 2003, she had spoken to both the contact worker and the social worker and could reasonably have expected them to speak to each other. She only had second-hand knowledge of what S had said to the contact worker and was not herself expecting to have continuing contact with S. It was plainly the responsibility of the social worker to investigate what had happened and not the Appellant's responsibility.

However, the NCH policy rightly required her to notify the local authority and her line manager and the NCH regional office of her concern. Notifying the local authority in writing was the most important point because it would ensure that the local authority had a written document that would be less likely to be ignored or overlooked than a telephone conversation. Notifying her superiors would enable them to check that appropriate action was being taken.

34. The Appellant accepts that she did not notify anyone in writing. She does, however, say that she mentioned to the project manager, who was her line manager, on 14 October 2003 the fact that the allegation had been made and she says that the project manager told her to give the contact worker time to inform the social worker which, if said, was perfectly sensible and is what the Appellant did. In the disciplinary proceedings, her manager had submitted a statement to the effect that she had been working part-time and had not been at work on that day because she did not generally work on Tuesdays. However, there was evidence of her having attended a meeting on another Tuesday and independent or documentary evidence on the issue has never been produced. It has not been part of the Respondent's case that the conversation did not take place and we decide this case on the basis that it did. It does not matter whether it took place on the Tuesday or the Wednesday and it is quite possible that the project manager forgot about it as it was not followed by any written notification. If the conversation did not take place, we would have been far more concerned about the Appellant having lied to the disciplinary committee, to the Registration Committee and to us than we would have been about the lack of the conversation itself, which was hardly an adequate substitute for written notification.

35. The Appellant's failure to complete the standard form placed S at risk because, despite what the Appellant reasonably expected, the contact worker and the social worker apparently did not make contact with each other and the allegation went uninvestigated. The existence of a written record of the allegation would have made that less likely. The Appellant also made it clear to us, unprompted, that she considered that she should in any event have asked the social worker what had happened in consequence of the allegation, as a way of making sure that some action had been taken and indeed she said that she considered she should have asked to be present at the strategy meeting because she had been a key worker and was aware of the issues. In fact, as the judge pointed out, she had an obvious opportunity for raising the allegation on 11 November 2003 at, or following, a meeting concerning S attended by both the social worker and the project manager. The only plausible explanation for her not doing so is that she had forgotten about what the contact worker had said to her. Perhaps that is understandable given how busy she was, but if she had spent time filling out the appropriate forms and sending them to the social worker, she might well have been less likely to forget.

36. Whether ultimately the Appellant's failing made any difference we are not sure, given the local authority's attitude to the case and the fact that when they were eventually forced to establish an enquiry in January 2004, they made the serious mistake of questioning S in the presence of Mr and Mrs W

and ended up taking no action. However, that does little to mitigate the seriousness of the Appellant's inaction. The fact is that the local authority might have been led into removing S from the care of Mr and Mrs W sooner had the Appellant prompted them into carrying out a proper investigation of the allegation made on 14 October 2003.

37. As the deputy manager of the project and a qualified social worker, the Appellant should have been well aware of the need to comply with the child protection procedures. There does seem also to have been a wider issue about the Appellant's record keeping and the extent to which she shared concerns with her superiors. The judge commented on the failure of the Appellant to make any note of the pressure being put on her by the local authority to produce a short form report or to discuss that with her superiors. However, it is right to record that there had been some changes in the project managers and the project manager in place in October was working part-time because she had recently returned from maternity leave. This must have had some consequences for communications between the Appellant and the project manager and also on the degree of pressure under which the Appellant was working as deputy manager. It also emerged from the disciplinary enquiry that the Appellant's files had not been reviewed by the project manager as they should have been.

38. In any event, we accept that the Appellant was guilty of serious misconduct in respect of both her behaviour in court and her earlier failure to carry out child protection procedures. However, it does not follow that a refusal to register the Appellant as a social worker is the appropriate action to take. She has worked as a qualified social worker and now has a further qualification and, as we have already said, we consider that it would be disproportionate to refuse to register her and allow her to practise her chosen profession unless her misconduct can be considered so serious that her removal from the register would be justified were she already registered. It is important that proper standards are maintained and that social workers should be people of good character who are competent, but sanctions must be proportionate. The imposition of disproportionate sanctions would weaken the profession by affecting morale and recruitment. It must also be remembered that it may not only be the individual social worker who suffers a loss if she or he is not allowed to practise. If the person concerned has talents, those are lost to the profession and to those children or vulnerable adults who might have benefited from them.

39. We questioned the Appellant at some length and listened to her answers carefully. We have formed a different view of her from that formed by the Committee. She clearly understands what she should have done and we do not consider that she lacks insight into the implications of what she did. There is evidence that both the project manager and her current line manager thought highly of her professional abilities and, of course, she has received her post-qualification award despite the Respondent knowing of her misconduct. She now appreciates the need to keep better records than she did and understands the purpose of such records and she also appreciates the need to share concerns with her superiors. We were also impressed with

her commitment to the welfare of children as shown by her continuing to work in the field.

40. We are not satisfied that in this instance the Appellant's failure to do what the judge had directed is conduct that merits her being refused registration as a social worker. Nor are we satisfied that her failure to follow the proper child protection procedures merits her being refused registration. These were both serious incidents of misconduct; but the Appellant lost her employment as a result of them and has not practised as a social worker for well over four years. We do not consider that further action is required to maintain the standards of the profession. Refusal to register her would be draconian. As far as placing S at risk is concerned, her guilt is less than that attaching to the local authority social workers upon whom rested the primary responsibility for the care of S, or the social worker with responsibility for Victoria Climbié whose appeal was allowed in *LA v. General Social Care Council* [2007] 985.SW. Had the Appellant already been registered, we consider that removal from the register would have been an excessive sanction. As she was not registered, it is unnecessary for us to express a view as to what other sanction might have been appropriate.

41. Accordingly, we allow this appeal.

EXPLANATION FOR DELAY

42. We ought to explain the very considerable delay between our hearing on 19 September 2008 and the issuing of this decision.

43. It is potentially a contempt of court for information relating to care proceedings to be disclosed to third parties, save in specified circumstances or with the leave of the court (see section 12 of the Administration of Justice Act 1960 and rule 10.20A of the Family Proceedings Rules 1991 (S.I. 1991/1247), inserted by rule 6 of the Family Proceedings (Amendment No. 4) Rules 2005 (S.I. 2005/1976)). When the judge reserved her judgment on 30 March 2004, she gave directions for the future conduct of the care proceedings and made an order giving leave for various people to be sent the judgment or to obtain transcripts of the proceedings. In particular, she gave "leave to NCH to obtain transcripts of evidence and/or agreed notes in these proceedings ... to use in any/any further disciplinary/investigatory proceedings they may wish to undertake."

44. It appears that the reserved interim judgment was sent to the Respondent during the course of its investigation of the Appellant's application for registration. On 7 August 2007, the clerk to the Respondent's Registration Committee wrote to the court asking for the notes made by the Appellant in October 2003 and on 20 January 2004, to which reference had been made in the judgment. The Court referred the letter to the judge who replied –

"The documents to which they refer are confidential and the court cannot disclose such information without a hearing taking place to

decide whether this course of action is appropriate. If the General Social Care Council wishes to pursue this matter they should issue a formal application on notice to all parties allowing the proper notice. They must state within their application what information they want, why they want it and for what purpose.”

In fact, the Respondent was able to avoid that process by obtaining the documents from NCH. That was perfectly proper. The documents belonged to NCH and their right – and, perhaps, duty – to supply them to the Respondent was not affected merely because the documents had been used in the care proceedings.

45. However, it appears that no-one considered whether the Respondent ought to have been given a copy of the reserved interim judgment. It had been released to NCH for the purposes of its investigation and disciplinary process and it is very doubtful that that extended to supplying it to the Respondent, even though the Respondent, in exercising its statutory functions, had a legitimate interest in the records of NCH’s investigation and disciplinary proceedings. At the hearing we raised that issue. It so happened that the hearing before us took place in a court building and the judge was sitting in the next court. Accordingly, we suggested to Miss Bovey that she make an application to the judge to regularise the position. As the judgment was the court’s own document and the Respondent needed it so that it and the Tribunal could carry out statutory functions, we anticipated that permission to use the judgment would be readily given, subject to a condition of preserving the anonymity of those involved in the care proceedings. However, the judge took the view that the parties to the care proceedings should be given an opportunity to object. We find it difficult to see upon what ground any of the parties could properly have objected or even upon what ground any of the parties would have wished to object. In any event, there were, we understand, difficulties in obtaining the views of the parties and it was not until 17 February 2008 that the judge gave leave for the judgment to be disclosed to the Respondent and the Tribunal for the purpose of these proceedings.

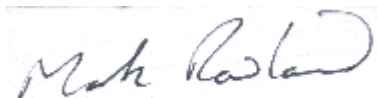
46. Meanwhile, since we had all read the judgment already and no members of the public were present, the hearing had taken place on the original date and we had prepared a draft decision but had taken the view that we should not issue our decision until we had been authorised to make use of the judgment. We were informed of the judge’s order in a letter from the Respondent that set out the terms of the order and we understood that a copy of the judge’s order would be sent to us. It seemed appropriate to await the formal order, although we had no reason to doubt the information given to us. However, after much further communication between the Tribunal’s office and the Respondent and between the Respondent and the Court, it now appears that the Court did not reduce the order to writing and a formal document will not be forthcoming. In those circumstances, we rely upon the Respondent’s letter as evidence of the judge’s order and regret not having done so three months ago.

47. If the procedure adopted by the judge really was required under the law as it stands, it seems to us that there may need to be an amendment to rule 10.20A of the Family Proceedings Rules 1991 so that disclosure may be made to statutory bodies regulating professionals who have appeared as witnesses in family proceedings and to tribunals hearing appeals from such bodies, without it being necessary to consult the parties to the family proceedings. The registration of a social worker should not be subject to the sort of delay there has been in this case. Having said that, we accept that part of the problem in this case may have arisen from the fact that it had not been necessary for the Appellant to be registered at the time the care proceedings were taking place. If she had been registered then, leave for the General Social Care Council to obtain the necessary transcripts and documents for the purposes of proceedings before its Conduct Committee might have been given at the same time as leave was given to NCH to obtain that material for the purposes of its disciplinary proceedings.

48. We direct that a copy of this decision be provided to His Honour Judge Sycamore and His Honour Judge Pearl, respectively the Chamber President of the Health, Education and Social Care Chamber of the First-tier Tribunal and the Principal Tribunal Judge responsible for care standards cases within that Chamber, so that they may consider whether action is needed in the light of our comments above.

49. We also direct that a copy of this decision be sent by the Tribunal's office to the judge who heard the care proceedings, for her information. It should be accompanied by a request that the Tribunal be permitted to arrange for the publication of the Tribunal decision (including on the internet) for the guidance of users of the Tribunal. Such publication is usual for care standards decisions but, to the extent that reference is made to the judge's judgment, publication of this decision would involve publication of her judgment in breach of the terms of her order. Unless and until the Court gives its consent to this decision being more widely disseminated, this decision must therefore not be published in any form either by the parties or by the Tribunal. If it is published on the internet, it is to be published in an anonymised form, using the Appellant's initials rather than her full name in the title.

Signed on this 26th day of May 2009



Tribunal Judge Rowland
Mrs Denise Rabbetts
Mr John Hutchinson