

YVONNE BRENDA HENRY

Appellant

v

THE GENERAL SOCIAL CARE COUNCIL

[2006] 0778.SW

Respondent

DECISION

Before

Tribunal

Tony Askham (Chairman)

Ms Bez Chatfield

Mrs Susan Howell

Hearing Date: 12 February 2007

Appeal

Ms Henry appeals under Section 68 of the Care Standards Act 2000 against a decision of the Council to refuse an application by the Appellant to be registered under Section 58 of the Act.

Attendance

For the Appellant:-

Yvonne Brenda Henry (in person)

For the General Social Care Council:-

Eleanor Grey (Counsel)

Martin Smith (instructing Solicitor from Field Fisher Waterhouse LLP)

Andrew Skidmore (Head of Quality and Business Efficiency of the General Social Care Council)

The issues

The issues in this case are whether or not we are satisfied as a Tribunal that the Appellant has satisfied us that she is of good character and whether the General Social Care Council has satisfied us on the balance of probabilities that the Appellant had a hand in the false reference for a Mr B and misleading

her employers the London Borough of Bromley concerning her registration as a Social Worker.

Facts

1. The Appellant has been practising as a Social Worker since 2004 and working in the social care field since 1991. She has all of the relevant academic qualifications for registration by the Respondent as a Social Worker.
2. In October 2004, well before the deadline of April 2005, the Appellant applied to the Respondent for registration as a Social Worker under Section 57 of the Care Standards Act 2000. On 8 August 2006, the Respondent refused the application of the Appellant for registration on the grounds that she was not of good character.
3. The evidence before us accepted by the Respondent is that but for two specific issues to which we refer later the Appellant is a very experienced Social Worker who had displayed her ability to be versatile and had an excellent character. This position is confirmed by a series of references given on behalf of various organisations to either the registration referral team at the General Social Care Council or potential employers of the Appellant.
4. The Respondent refused to register the Appellant however for two reasons. First it was suggested by them in their Council decision that there was evidence that on or about 5 April 2005 the Appellant might have submitted a false reference for a Mr B. Secondly it was found by the Council that the Appellant, when she applied for a position at the London Borough of Bromley, did not make clear to them that her application for registration to the Respondent had not been determined. Regardless of her intention they concluded the result was to actually mislead her employer. These two issues, they said, showed that she had not satisfied the Respondent that she was of good character. In addition the Council maintained that it also evidenced a breach of their Code of Practice because the Appellant had been shown as not being honest and trustworthy.
5. On the first issue, the evidence in the papers before us showed that the issue of the disputed reference had first been raised by a Health and Social Care Agency (Beresford Blake Thomas) in a letter to the General Social Care Council of 23 May 2005. This letter confirmed a telephone conversation in connection with the matter of a candidate who had applied for a social work post who the agency believed to have falsified his work history and enlisted the assistance of another Social Worker to verify this for him with a false reference. We had in front of us the application form concerned of a Mr B. That application form named two professional referees, a Mr M Davids of the Kent County Council who was described as a Line Manager and whose address was given. The other was that of apparently the Appellant, Yvonne Henry, who was described as a Manager of a company called Tristford. Under professional references Ms Henry's private address was correctly given as was her personal mobile phone number and her direct line number at the London Borough of Sutton where at the time she was working.

6. The letter of 23 May 2005 from Beresford Blake and Thomas signed by Anna Miller, a Senior Consultant, recited the fact that the two referees had proved to be incorrect. Mr Davids, it transpired, was not employed by the Kent County Council. The Kent County Council also confirmed that they had no record of Mr B. Despite this a reference form signed by Mr Davids and evidencing the fact that he had overseen the work of Mr B was received back by the agency. It is quite clear therefore that this was a fraudulent reference.

7. So far as the second referee, the Appellant, Ms Henry was concerned the evidence submitted to the General Social Care Council by Beresford Blake and Thomas in their letter of 23 May 2005 was that Yvonne Henry was no longer at Tristford Home where according to the application form she was a Manager. Miss Miller said that she had contacted Ms Henry by telephone and that Ms Henry had indicated that she was expecting the application for the reference. As a result it was alleged the reference application form was faxed across to Ms Henry at her place of employment and it was returned the same day duly completed and apparently signed by Ms Henry.

8. The agency then contacted Tristford Home itself and spoke to the current Home Manager Lorraine Harrington who remembered Mr B but indicated that he had only been employed for a brief period of six months as compared for a lengthy period as identified in the reference received back apparently from Ms Henry. Ms Harrington had never heard of Ms Henry and she was certain she had not been an employee at Tristford when Mr B was employed there. There were material differences between Ms Harrington's reference and that of Ms Henry, not least the way in which his performance had been scored and the length of time he had been employed there. There were a number of telephone contact notes between Sandy Ewers the Case Workers at the Respondent and Miss Miller. In each of those, Miss Miller continued to maintain that she had contacted Ms Henry. In a telephone call of 7 February 2006 she said she had contacted her and requested a reference, but she did not have any record or details of the date of the call. In a further telephone call between Ms Ewers and Miss Miller of 16 February 2006 Miss Miller recalled that she had phoned the work number of Sutton and spoken to Yvonne Henry and that Yvonne's response was "he told me he would be asking for it". She went on to remember it was unusual because the reference came back so quickly. She had faxed a blank reference form to Yvonne Henry on the number provided which is a Sutton number and Yvonne Henry faxed it back the same day which was 5 April 2006. In a further letter of 10 April 2006 Miss Miller, now Mrs Humphreys, repeated what she had said in her original letter.

9. We heard the evidence of the Appellant in person on this issue. She has been consistent in her response to the allegation since it first came to her attention when the Respondent told her about it in February 2006. She admits that she received a telephone call from the agency, but said that her response was that she told them she had never heard of Mr B and had no intention therefore of giving him a reference. She accepts that the telephone that she was phoned on was her private mobile number and she accepts also that the application form of Mr B correctly recites her home address, her work number and her private mobile number. The only suggestion that she has is that somebody has stolen her identity. She maintains that she never received the application form for a reference for completion, neither did she fill in the form and neither did she sign it. Her evidence was she had absolutely no motive for doing this. She did not know Mr B and had never heard of him and neither had she ever worked at the organisation where he alleged she was the Manager. We noted from the evidence that the reference form was faxed back to the agency not from

the Local Authority fax number but from a separate fax number and we noted also that no effort had been made by the Respondent to identify from where that response had come.

10. Faced with that evidence the Respondent decided to refer the issue to the Registration Committee. On this issue the registrations' referral team in its written documentation set out that the Respondent had carried out an investigation primarily by the use of telephoning a number of potential witnesses. In its recommendation, the Council were asked to accept that "on the balance of probability it is likely that Ms Henry provided the reference."

11. The second issue relied upon by the Respondent as evidence that the Appellant was not of good character was the issue of her employment by the London Borough of Bromley. The material facts here are not in dispute. In November 2005, Ms Henry's application to the Respondent for inclusion on the register of Social Workers was still outstanding. Her position was not dissimilar to many other thousands of Social Workers at the time. Mr Skidmore's evidence explained that delays were caused by the large number of applications they had to process in a relatively short period of time. All applicants should have received a letter of intent which would enable them to safely hold themselves out as Social Workers without the possibility of committing a criminal offence. Mr Skidmore's evidence to us was that there was no reason why the Appellant had not received that letter but there was no evidence either from her or the Respondent that in fact she had.

Ms Henry had used a firm of recruitment agents to assist her in finding a full time permanent job as a Social Worker. Previously she had been working through agencies as a locum. She was represented however in this transaction by Not Four Profit Centre, a non profit making Social Worker's agency. She was represented by Karen Chamberlain who was an Operations Manager at that organisation. Unfortunately many of their organisation's records have been destroyed in a fire. However, she assisted the Appellant in putting together a CV which was submitted to the London Borough of Bromley. That CV was silent as to whether or not she, the Appellant, was registered with the GSCC. Ms Chamberlain in a written statement to the Tribunal (she did not attend to give oral evidence) dated 11 January 2007 said "The Appellant told me she was in the process of registering and I had a number for her registration application but had not yet received her certificate or letter of registration. At no time did she tell me that she had completed the process." Ms Chamberlain's evidence was that the Appellant was told to meet Emma Downie, a Human Resources Assistant in Bromley Civic Centre, to hand over all the paperwork before the commencement of the employment on 28 November. Ms Chamberlain's recollection was that she had also seen a copy of the Appellant's application form to Bromley.

12. The Appellant very honestly indicated in her evidence to us, and has consistently done so throughout this case, that she had written on the application form that she was "registered awaiting certificate". She accepted that she had been interviewed for the position but said that the issue of her registration had never been raised and she had not raised it. She said however when she had met Emma Downie on 28 November prior to commencing work she had been clear with her about the precise situation, namely that she had made her application for registration, had been chasing the Respondent for a long period of time as to what was the delay, and had no reason to doubt that she would be registered in due course. The Appellant told us that her Contract of Employment (which was not produced to us) maintained that she had to be "achieving and maintaining her registration".

13. We were shown a number of notes of her supervision with her Line Manager. On 9 December 2005 there is a clear note on her supervision records "chase Social Care Council registration". The Appellant tells us that was because she had made a full disclosure of the position to her Line Manager. The supervision record of 13 January says "Check number of days for registration".

14. The issue came to the attention of the Respondent and they relied on this as further evidence that the Appellant was not of good character and of good conduct. In the documentary evidence produced by the Council they said that Ms Henry accepted that she had told both the agency and the Local Authority that she was registered as a Social Worker and that the Appellant had said in her defence she thought she was registered. That document makes it clear that the allegation being made then against Ms Henry was that she was intending to deceive. The Respondent points to a number of telephone conversations with Bromley in which various Senior Managers within Social Services expressed their surprise and shock that the Appellant was not registered.

15. On 9 August the registration committee, **in the absence of the Appellant**, concluded that it was not satisfied of the Applicant's good character and conduct because they said "There is evidence from 5 April 2005 you may have submitted a false reference for an individual named in the papers as Mr B and it is apparent that when you applied for a position at the London Borough of Bromley you did not make clear that your application for registration had not been determined regardless of your intention the effect was to mislead your employer".

16. After the appeal to this Tribunal, this Tribunal on application of the Appellant ordered that there be carried out an independent forensic examination of the reference, the subject of the first complaint against the Appellant. That assessment was carried out by Kathryn Barr following the joint instructions by Solicitors for both the Appellant and the Respondent. Ms Barr's expert opinion was that the signature on the reference form for Mr B "was not a normal genuine signature produced by Yvonne Henry" and that in her opinion there was limited evidence that "Yvonne Henry did not sign the questioned reference". She further expressed her opinion that "there is strong evidence that Yvonne Henry did not write the questioned reference".

Submissions

On behalf of the Respondent it was submitted that in so far as the issue of the reference was concerned the evidence showed that we should properly infer that the Appellant was involved in the falsifying of the reference.

Secondly it was submitted that what the Appellant wrote on the application for her job with the LB Bromley was materially inaccurate and misled the employer.

It was submitted, if we found that the Appellant had been responsible on either of the two issues, we should conclude that the Appellant was not of good character and that her appeal should be dismissed.

The Appellant submitted that the evidence showed she had not falsified the reference. That this issue was colouring all the decisions of the Respondent, and that the issue had never been

properly investigated, and the delay in doing so had prejudiced her position. On the facts she maintained she had not misled the LB Bromley.

The Law

We have to be satisfied that on the balance of probabilities that the Appellant has been guilty of either being involved in the falsifying of the reference for Mr B or in misleading the LB Bromley. If we were so satisfied we then need to decide whether the Appellant has failed to satisfy us that she is not of good character. If she fails so to satisfy us the appeal must be dismissed.

Tribunal's conclusions with reasons

We carefully considered the written evidence submitted to the Tribunal in advance and the evidence given to us at the hearing.

Our conclusions are:

A. We have had two advantages as compared to the Respondent in this case. First we have had the opportunity of seeing the Appellant in person and of hearing her evidence and hearing her dealing with cross examination. Secondly, we have had the opportunity of seeing and reading the expert report of Kathryn Barr to which we have referred in the facts above.

B. Dealing first with the issue of the reference. It appears to us that the Council has never fully investigated this allegation. We were told on the morning of the hearing that Mr B had applied to the Council to be registered and that his application had been refused. There appears to us to have been no efforts to ascertain from Mr B what had actually occurred in connection with this Appellant. All of the investigations of the agents had been conducted on the telephone and Ms Henry's account of what had happened had never been put to the agent concerned. No written signed statements have ever been taken from the material witnesses. Those witnesses have never given evidence to the Respondent or to us. The Appellant has never been able to question the witnesses.

C It appears to us that the Council is undertaking an exceptionally important function in that it is ensuring that the members applying for registration are those of the appropriate standing to be held out as Social Workers.

D. In turn refusing registration for someone of otherwise very good standing in her profession and, who has the right qualifications and good professional experience, should only be considered by the Respondents if there is strong evidence, following a proper investigation, of some misconduct which is serious enough to justify a finding that an applicant was not of good character. **We are not satisfied that the appropriate investigations have ever fully been carried out in this case.** We accept Ms Henry's evidence that she did tell the agent Anna Miller that she had not heard of Mr B. We find in the light of the expert's evidence and the evidence that we have heard from the Appellant that she did not receive the faxed copy of the application for a reference, complete the reference form, sign it, or otherwise handle it in a way which enabled it to be returned to the agents fraudulently completed.

E. As her version of events was never put to Anna Miller, and as Anna Miller's own evidence clearly is that she had no written record of her telephone conversations, we prefer the evidence of the Appellant to the evidence of Ms Miller. In reaching our findings of fact on this issue we note that the Council itself never had the benefit of hearing Ms Miller's evidence but only what we find was an exaggerated version in the summary presented to them. We have not had the benefit of seeing her before us.

F. We are very concerned that the Respondent knew of the existence of this allegation against the Appellant in May 2005 but did not seek to resolve it until early February 2006. We are struck by the Appellant's evidence that she was allowed to continue to practice as a Social Worker in a situation where the Respondent clearly felt at the end of their enquiry she was not fit to do so.

G. Whilst clearly there was a telephone call with Yvonne Henry about the reference with Anna Miller, and whilst we accept that Anna Miller did fax a copy of the reference application to Ms Henry at the London Borough of Sutton, we note that the fax form only has one fax number on it, that being a number from which it was returned to the agency. There appears to have been no investigation as to whose number that fax number belonged to. There is no fax number suggesting a fax from the agency to the Council and no fax number from the Council to a third party, as suggested might have occurred by the Council.

H. Turning to the second allegation, whilst with hindsight it was most probably inadvisable for the Appellant to have recorded on her application form the words she actually used, it does seem to us that the Council had by the way they had failed to deal with her application, placed her in an invidious position. By the time she was applying for the post, her application had been with the Council for over thirteen months. We accept her evidence that she had repeatedly rung and emailed the Council to ascertain the progress of her application. It is accepted by the Council at no time was she ever informed by them of the allegations which had been raised and she had no reason to believe that her situation was not the same as many colleagues of hers who were still awaiting their certificate.

I. We find, as a matter of fact, and accept the Appellant's evidence that she did indeed inform the HR department of LB Bromley on the day that she commenced work and find that she also made a full disclosure of the situation to her Line Manager. It may well be that more senior Managers were shocked to find the situation was as it was but we accept that she had made a proper and full disclosure of the position to those who directly managed her and to the Authority's HR department. We do not find either there was any intention to mislead or more importantly that the Authority given the knowledge they had, were actually mislead or should have been mislead.

M. Therefore we unanimously find that the Respondent has not satisfied us that the Appellant had either been involved in the fraudulent reference for Mr B nor did she mislead the LB Bromley. We find she satisfies us that she is of good character and should be registered as a social worker.

Order

For the reasons set out above, we allow the Appellant's appeal and direct in accordance with s68(2) Care Standards Act 2000 that the decision of the Council, the subject of this appeal, shall have no effect.

Mr Tony Askham (Nominated Chairman)

Ms Bez Chatfield

Mrs Susan Howell

22nd February 2007