Care Standards

The Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care) Rules 2008

BETWEEN

EUNICE MARTHA McCOLLUM

Appellant

-v-

CARE COUNCIL FOR WALES

[2014] 2345-SCW

Respondent

DECISION

Tribunal Panel

Melanie Lewis – Tribunal Judge
Brian Cairns – Specialist Member
Christa Wiggin – Specialist Member

The Appeal

1. The Appellant appeals the Respondent's decision dated 9 December 2014 to remove her from the Register. She appeals against the findings of fact, misconduct and sanction.

Representation and Witnesses

2. The Appellant presented her own case and called no witnesses.

3. The Respondent was represented by Mr Miles, Solicitor. Mr Mark Gray, Care Council for Wales, sat in. The Respondent called the following witnesses, Melanie Powell, Jane Smith, Bob Garner, Julie O'Shea, Carol Phillips and Sarah Boyce.

Background

4. The Appellant was registered by the Respondent as a social worker from 13 April 2005 and at all material times was employed by Newport City Council in the Child Protection and Family Support Team.

5. The Appellant started work at Newport as a Social Worker in the Child Protection and Family Support team in August 2011. From the beginning of 2012 her line manager was Mr Garner and a number of issues about the Appellant were raised with him. He asked for these to be put in writing. The key events occurred on 4 and 5 April 2012. The Appellant was suspended on 12 April 2012.

6. Mrs Boyce was appointed as Investigator, by Newport. The report went to the Disciplinary Committee of Newport City Council, on 7 October 2013.

7. The case was then referred to the Respondent. After investigation by the Respondent, allegations of misconduct were considered by the Respondent's Conduct Committee at a hearing held on 1-3 December 2014. The conduct committee heard oral evidence from 5 witnesses called by the Presenting Officer (Mr Miles, Solicitor) namely Jane Smith (Team Leader) Bob Garner (Team Leader) Melanie Powell (Health Visitor) Carol Phillips (Social Work Assistant) and Sarah Boyce (Team Manager and Investigating Officer). The Appellant also gave evidence. The Conduct Committee found the Appellant was guilty of misconduct based on its findings of fact in relation to charges 1 (a), 4 (a) (i) and (iii) and 5 (a) (i) to (v). The committee imposed a Removal Order.

The Charges/issues to be determined by this Tribunal

8. *Charge 1 (a) 5 April 2012 the Appellant failed to carry out promptly a reasonable instruction given by Jane Smith Team Manager that she should return to the office to collect child car seats in order to drive service user A and her children to a Refuge.*

9. *Charge 4 (a) in relation to Family D: the Appellant failed to:-*

(i) review the Public Law Outline (PLO) Agreement despite recommendations to do so made at a Child Protection Conference on 18 November 2011 and/or 4 January 2012;

(ii) *following a police referral on or about 9 December 2011 the Appellant failed to conduct a home visit promptly;*

(iii) *following a police referral on or about 23 March 2012, the Appellant failed to conduct or record a home visit.*

10. *Charge 5 (a) On or about 4 April 2012 in relation to a Core group meeting concerning Family D the Appellant :-*

(i) *chaired the meeting in a disorganised and/or inappropriate manner; failed to bring to the meeting the minutes of the last meeting and/or the Child Protection Plan;*

(ii) failed to promptly notify Child E's school of the meeting;

(iii) failed to inform Child E's school of the change of address;

(iv) failed to take any or appropriate action concerning the concerns raised about child E's poor nursery attendance; and

(v) *in regard to Child E, failed to listen or take onboard concerns raised by the professionals.*

11. We record that other charges were not found proved to the required standard. The Appellant continued to deny all charges save that there was an issue that at the Conduct Committee she had accepted that she had failed to notify Child E's school of the meeting: 5 (a) (iii) but argued before us that she had taken steps.

12. This Tribunal looks at matters afresh giving due regard to the findings of the Conduct Committee but the issues we had to determine were agreed at a Direction Hearing before Judge Tudur on 15 May 2015. They were;

a. In relation to service user 'A' and her children did the Appellant demonstrate the level of reliability required of a social worker In particular did the Appellant appreciate the level of risk that the service user and her children might be exposed to if she were not fully supported to separate from her partner?

b. In relation to family D did the Appellant appreciate that she needed to review the Public Order Outline (PLO) and was required to follow up a police referral dated 23 March 2012?

c. In relation to family D did the Appellant fail to approach the meeting on 4 April 2012 appropriately in that it was inadequately chaired, she failed to bring the relevant minutes, she failed to notify the school about the meeting and she failed to address concerns about child E's attendance?

d. If any of the above is established what is the appropriate sanction?

13. The Appellant made a claim for Unfair Dismissal which was dismissed by the Employment Tribunal on 31 July 2015. Mrs McCollum mentioned this was being appealed. Mr Miles made enquiries and clarified that an appeal out of time was allowed and will be heard on 6 October 2015. However, this goes to process and not to the substance of the allegations and concerns about the Appellant's work.

The Law

14. The Care Council for Wales was established by the Care Standards Act 2000. Under Section 54 (3) of the Act there is a the duty on the Respondent to promote in relation to Wales high standards of conduct and practice among social care workers in Wales and high standards in their

training. The Appellant was removed pursuant to Section 59 of the Act. Removal may also be for a specified period.

15. Under Section 21 62 (1) of the Act the Respondent has a duty to prepare and publish a Code of Practice. The Code of Practice for social care workers published by the respondent and enforced at the time of the conduct in question. The conduct committee was set up pursuant to the Care Council for Wales (Conduct Rules 2011) applying the 'Guidance and Indicative Sanctions for the Conduct Committee and Health Committee and the Imposition of Interim Orders by the Investigating Committee.

16. On appeal to this Tribunal pursuant to Section 68 of the Act we may confirm a decision or direct that it shall have no effect: section 68 (2)of the Act. Additionally, the Tribunal shall also have the power on an appeal against a decision to 'direct any such condition as it thinks fit shall have an effect in respect of that person'

17. The burden of proof is on the Respondent to a balance of probabilities.

Additional Documents filed further to Directions

18. Further to the order of Judge Tudur dated 15 May 2015 Newport City Council was directed to disclose a number of documents followed up by a further telephone case management hearing on 6 August 2015. These documents were not before the Conduct Committee and we carefully considered them, taking into account that the Appellant was presenting her own case and we needed to examine if they put any different light on the issues that the Conduct Committee had determined. They gave helpful background to the Appellant's career to date from her personnel file. We read the risk assessment for case management discussion in April 2012, the Appellant's supervision records and further documents relating to child service user 'A' and family 'D'.

The Evidence

19. In advance of the hearing we read 819 pages of evidence in the main bundle and an additional 266 pages in the supplementary bundle prepared to incorporate the additional documents sought by the Appellant. We only summarise such evidence as is necessary to explain our decision but we have carefully considered it all. It is a feature of this case that the evidence about each incident came from a number of sources and at points it is clearer to group the evidence from each witness on each aspect of an incident. All the witnesses had given evidence to Ms Boyce's investigation and the Conduct Committee, closer to the events in question, save for Ms O'Shea who had not given oral evidence.

20. The Appellant's application form for the position at Newport City Council gave her background education, professional qualifications and experience to the date of the incidents which led to her removal. She worked in a voluntary capacity with the Probation Service for a number of years

during which she completed an Open University BSc in Social Policy. She went on to do a diploma in Social Work and an MSc in Economic and Social Studies. She started working as a social worker in October 2002. She had a number of short term appointments, all in Wales. She explained to us that she preferred to work as an agency worker in order to suit her family commitments. Until 2006 she worked in a Children with Disabilities Team and thereafter in various Children and Families teams including Intake/Assessment and child Protection. The relevant period was the second time she had been employed by Newport County Council. She also worked for the Children and Families team between August 2008 and February 2009 as an agency worker.

21. It is a key part of the Appellant's case that that she has never previously been subject to any disciplinary proceedings. She has had to present her own cases and has found this very stressful. She has not felt listened to.

22. We first heard the evidence of Melanie Powell, Health Visitor. The only point on which she was not clear was to whether she had become aware of an incident of domestic violence on 4 or 5 April 2012 which is the date of the first charge. Service user 'A' was one of the Appellant's cases. Ms Powell's concern was that service user 'A' had been in a violent relationship for some time. A duty social worker had gone to the family home the night before with the police and although ambivalent, service user 'A' had agreed to go to a place of safety, which in the short term was the maternal grandmother's house. She said her partner had hit one of the children but no visible mark was seen. We read the notes which record that a voicemail had been left for the Appellant. Ms Powell was clear that she had notified the Appellant of her concerns but wasn't sure whether it was on 4 or 5 April, but was clear that they had had discussion on 5 April. Ms Powell set out a picture of confusion and tension revolving around the Appellant's concerns at how she would manage the situation, rather than supporting the service user.

23. What is not disputed is that the Appellant went to the home of service user 'A's' grandmother where she had gone with the children the night before. She said Mr Garner her then line manager had sent her to check the child. He denied that and said that the events of the night before were discussed with her and were placed on her 'task sheet' on her computer as it was her case.

24. They are in agreement that the Appellant left to go off to chair a core group meeting which she claims was justified by the fact there was no confirmed place in a refuge, disputed by Ms O'Shea. There was agreement that Service User 'A' was concerned that she could not go to a Refuge locally in Newport and would have to go away from her family. She also disputes that she had been told by Ms. Smith that she would have to collect the car seats for the children from the office promptly but accepted there was discussion.

25. When the Appellant returned to the house Ms Powell describes a scene of service user 'A' in tears and the Appellant getting very panicked over directions, fearing she would not get to the Refuge some 40 miles away by 6

pm which was the deadline the Refuge workers had set because they were going off on Bank Holiday leave then and worried about finding her way in Bank Holiday traffic. She was clear this is what happened and described the family who were supporting service user 'A' becoming so concerned they were looking at an Argos catalogue, which the Appellant didn't deny, in order to see if they could buy car seats.

26. Ms Powell accepted that she had not had a lot of experience at that point of admissions to Refuges but she was so concerned by what she saw and heard that she rang the office to see if another social worker could be sent. To try and calm the situation she agreed that she had suggested to the Appellant ringing the office to see if someone could bring the car seats, but she did not know that the Appellant had had a clear direction from Ms Smith to bring them herself. She was further concerned that once the Appellant put the phone down she said *'they're all totally useless there'*. This was heard by the family. She guided the Appellant back to the office to try to calm her concerns about parking and collecting the chairs. Ms Powell spoke on the phone to Bob Garner, the Appellant's team manager and conveyed her concerns to him. He spoke it is accepted to the Appellant. When Ms Powell went home she telephoned the service user because she wanted to make sure she had got to the Refuge safely which would not be her usual course of action. Service user 'A' told her the journey was 'horrendous' and the driving not particularly good.

27. Ms Smith at the relevant time was employed by Newport County Council as a team manager in the Child Protection and Family Support team. On 5 April 2012 when she was covering for Mr Garner which was usual practice, she took a phone call from the Appellant at about lunchtime. A call that should have lasted four to five minutes was a very lengthy and frustrating call. The Appellant accepted that she had had an instruction to take the mother and two children to a refuge. Ms Smith was very clear that she had told her that there was no one else to bring the car seats and that she would have to collect them herself, which the Appellant denied although in oral evidence this focussed on whether she was told to do it promptly. She described the Appellant making a number of excuses about the journey, the difficulties of finding the Refuge, all of which accorded with the evidence of Ms Powell, including that she had had no lunch. The Appellant again mentioned difficulties with parking. Ms. Smith tried to move the situation on by describing where she could park, that someone would help her fit the seats and even offered for somebody to collect some sandwiches for her lunch.

28. On that day Ms Smith was due to meet at 2 pm with Bob Garner and Carol Phillips Mr Garner had recently approached the HR Department as he was getting concerned about the number of issues that had been raised by colleagues in particular about the Appellant's organisational skills. They were receiving complaints from schools, health visitors and other members of staff and Mr Garner wanted to talk with them about possible disciplinary or capability issues.

29. Ms Smith felt that before going into the meeting she had clearly told the Duty Desk that one of them could help the Appellant when she came to fit the car seats. Staff on the duty desk denied in written evidence having been told this. About ten minutes into the meeting the call from Ms Powell came in raising the concerns about the Appellant's behaviour. The Appellant collected the seats at around 4pm accompanied by Ms Powell in view of the urgency of the situation.

30. The Tribunal queried if the Appellant was an 'essential car user' but Ms Smith explained that all social workers in that team were expected to use their car to transport service users for which they would be reimbursed. She agreed that she hadn't stated exactly when she was to collect the car seats but was clear that she would have to collect them because there was no one to take them to her. She believed that she had given clear instructions to Sian James but Ms James' evidence at the Conduct Committee was that when she got a call from the Appellant she did not know to assist her. The geography meant it would have made more sense for the Appellant to pick up the car seats on the way from her Core Group meeting back to the house.

31. Mr Bob Garner at the time of the allegations worked at Newport City Council as a Child Protection team manager. Mr Garner said that he had told the Appellant about the events of 4 April 2015 in relation to Service user 'A' before the start of work on 5 April. . She denied that, but response was that if he had read the notes which she had on the daily 'task sheet', she would have known. They recorded that at 16.46 on 4 April 2012 the duty social worker had left a voicemail on the Appellant's mobile which Mr Miles in his closing submissions accepted was the only point she might have known about the events of the service user The social worker and the police had been at the house between 17.30 and 19.20 pm and Service user 'A' alleged her partner was losing control and slapping both children. The Appellant's case was that when she went to see the family on 5 April she was looking to see if any mark had come up.

32. He said it was not uncommon for monthly supervisions to be moved as urgent referrals came in. We read the one supervision from 19 January 2012. This was not signed and the Appellant said that she had not received it, so could not be blamed if she had not actioned the points on it, in particular the need to review the Public Law outline. We record that Ms Boyce when she came to give evidence acknowledged that the Appellant should have had more regular supervision

33. His first and only supervision with the Appellant was on 19 January 2012. The supervision notes stated that the social worker was to speak to the legal duty staff in relation to the public law outline, which the Appellant said she had tried to do but the diary in which she had recorded this went missing. Mr Garner agreed that the wording on the Child Protection plan review dated 18 November 2012 was wrong. A PLO could not lapse. It was in force until it was reviewed and if appropriate terminated. The Appellant chaired a Core Group meeting on 4 January 2015, with an outcome being to *'seek legal advice to re issue the PLO'*. He agreed that the supervision which

had also picked up on the need for a PLO review were not signed and dated as they should have been. His essential point was that if, as claimed, the Appellant hadn't really understood what to do about the public law outline or had forgotten the training it was established that she had undertaken, then what she needed to do was to have asked questions. The Appellant said that as it was only early days and since the mother had begun to adhere to the plan she felt it would be necessary to see if she would sustain her efforts to provide adequate care. We noted that the Appellant had a number of coaching sessions with Ms Bubb at the end of 2011 designed in part to increase her confidence and give her support with processes and report writing.

34. The Appellant's case was that if Mr Garner had discussed the concerns with her then this would have been a proportionate way to take things forward. He stated that he had not had that opportunity because a decision had been taken that she should be suspended 'without prejudice' due to the mounting list of concerns which were exercising Mr Garner by March/beginning of April 2012. He was additionally concerned about her poor record keeping. He described it as 'sparse' and lacking detail, which in Child Protection work could be crucial factors if there were Court proceedings.

35. Ms Phillips was a social work assistant at the relevant time and gave evidence related to the core group meeting on 4 April 2012. She was the one witness who had some personal involvement with the Appellant although this seemed to be no more than that the Appellant had visited her home on one occasion. That is relevant because in her questions the Appellant went so far as to seek a possible motive, namely that Ms Phillips was looking for a secondment to undergo training to gain a Social Work qualification which she has since done. The meeting was held at the family home and included the mother, two young children and the mother's partner. There was also a nursery nurse, health visitor and a school nursery teacher present who had all given statements and supported her account. Ms Powell both in her written and her oral evidence described a chaotic meeting which lasted about two and a half hours, rather than the usual one hour. She pointed out a mark the size of a pea under the right eye of one of the children. She is a former drugs worker and noted a heavy smell of cannabis in the house which she identified as cannabis weed rather than resin. The Appellant acknowledged that she hadn't taken that up or questioned the father about it, although Ms Powell pointed out that he had agreed not to use cannabis in the house.

36. She described the Appellant getting flustered, rifling through papers, not even knowing the names of the children. The Appellant accepted she did not have the typed notes of the last meeting which usually formed the agenda only her own hand written notes, that she had forgotten the Child Protection Review notes but that for the first time she was hearing about a referral from the nursery nurses which she needed to take close notes of. In response to questions from the Tribunal she appeared to take on board that it might have helped if she had set an agenda and asked another member to take the notes, but later retreated from that position and suggested all members of the meeting were equal and should have been more assertive if she was getting it

wrong. She denied that she had not taken on board concerns. In her case recording dated 14 February 2014 the Appellant stated that the children were '*appropriately dressed as always'.* The same case note then said the health visitor had told the mother to put warmer clothes on because it was cold.

37. Ms Boyce was asked to investigate specific allegations and we clarified other concerns in an analysis of the Appellant's practice. She readily conceded that a difficult team situation had arisen because of the office move, hot desking and a change of managers, although those factors applied to others as well. She accepted that the Appellant had needed more direct supervision than she had had. We clarified that a capability study whereby her outputs could have been measured could have been an outcome of the investigation but in the event senior managers in Newport decided that the concerns were so high it was beyond capability action. She also said she kept in mind whether there were any stress, physical or mental health factors, but none had been shared with her and none identified. She identified none in the eleven hours of interviews that she undertook. We noted that there had been a referral to Occupational Health.

38. Ms. Boyce saw her role as to come with a 'fresh look'. The concern overall was that there were originally eight allegations which came from a variety of professionals – the health visitor, education and the Refuge and service users, and she ruled out collusion and orchestration by a third party. She acknowledged that there had been a delay which was distressing to the Appellant but as found by the Employment Tribunal the case required a very detailed investigation. The Appellant has maintained that she was disadvantaged by not having her diary in which she said she recorded things and would have assisted her in giving her version of events went missing. Ms Boyce said that she had caused enquiries to be made and this included making a trawl of the office herself. She knew that the Appellant hadn't agreed with the notes that she had compiled, but instead of setting out her amendments, she had instead sent in an eight page rebuttal. When re-examined, she was clear that the Appellant hadn't understood the process of PLO. She needed to speak to Legal or take other advice.

39. Ms O'Shea had given a statement but not oral evidence to the Conduct Committee. She explained that via a Helpline the Appellant would have been advised that a place was available at the Refuge. Any further calls were not to confirm the place but to take details for a referral. Whilst the Refuge of necessity dealt with unexpected situations, she had guided the Appellant to make sure Service User 'A' had the necessary equipment for her children and supplies to last over the Bank Holiday. A key document was some 'ID' so that she could be supported to claim benefits. She was concerned by the manner in which the family had been dropped at the door whilst the Appellant said she had gone in and sat in the bedroom allocated to settle them in. In the event the Appellant had to return on the following Tuesday and take the woman home to collect the ID and her double buggy which she had not brought with her as the Appellant's car was full, in part as she had her own things in it ready to travel home for the week end. Ms O'Shea was told by Service User 'A' after the return trip on the Tuesday that

she did not want the Appellant to be her social worker and that she had nearly fallen asleep at the wheel. The Appellant agreed they had stopped for coffee but this was because Service User 'A' was sharing confidences with her about a new man she had met on the internet, which she speculated had caused her to think she had said too much and want the Appellant taken off her case.

40. The Appellant was not represented and throughout the hearing we asked a number of questions to make sure her case was put and the evidence examined. Additionally she had a detailed statement prepared for the Conduct Committee dated 27 May 2014 and an updating statement in the supplementary bundle dated 26 August 2014. The Appellant chose to go into child protection work rather than continue on a looked after children's team as she wanted to gain more experience. She described her work as a vocation. We asked her if there were any points where she could identify that her practice fell below an acceptable standard. She stated that it appeared from what *'they were saying'* and then gave us a very lengthy explanation which was a feature of all of her evidence. We guided her to be more incisive and whether she could identify instances where she should have been more proactive. Her consistent case has been that if she had not been forced to have period of unplanned leave in the March 2012 then things would have been different. She did agree that the new IT system had caused her problems. She also suggested that she had had some problems with a colleague Sam Davies.

41. We felt we would better understand the Appellant's case if we asked her a number of questions around her understanding of risk, processes/procedures, issues of preparation, prioritisation and organisation and recording.

42. She did agree that she had a poor sense of direction and she had to replace her 'sat nav' after it was stolen. She had never taken anyone to a Refuge before. We asked her if with hindsight she would have done anything differently on 5 April 2012 and she said she thought she had got her priorities right.

43. We asked her to think again about the PLO outline in relation to family 'D.' Again, she thought she had got her prioritisation right. We clarified that she had had some training and if the diary had not gone missing, she would be able to show that she had rung the legal department.

44. We probed the issue of her unplanned leave in March 2014. Ms Boyce and Mr Garner had both said that practitioners needed to book their leave. She said she had been too busy thinking about her cases and not about herself. On her application form for the job she had not selected whether her leave year end would be her birthday as she had assumed or the date of her appointment in June. Ms Boyce explained that in default, because she had not made a choice the date was taken as 31 March, which is why Ms Smith had told her that she had to use her leave or lose it. Another criticism of her was that when she went on leave unexpectedly or otherwise that she needed to have made a list of work to be covered and she hadn't done this,

although she did refer to asking colleagues to cover but we established that this was not recorded in writing. She did agree that she wasn't very good at getting on top of the daily task list. She did not agree her recording was sparse.

45. The Appellant gave the Conduct Committee cause for concern by some of her answers that she didn't really understand the nature of domestic violence. She said there was no issue of violence from where she saw, other than the situation where the child was allegedly smacked the thigh. She had been going to close the case because the house was now tidy and they had had a lot of support. She had even written the closing summary for Mr Garner and thought the case was closed.

46. With regard to Family 'D' she stated that she had no PLO training, but Mr Miles took her to documents that clarified that she had had training, albeit two years ago and not in Newport. She started out by saying the circumstances of the meeting was 'difficult', then 'not ideal' but did appear to accept at the end of the third day of evidence that she could have chaired the meeting with more authority.

Conclusions and Reasons

47. In determining this appeal we have had regard to all the evidence, even if we have not specifically referred to it. We had six live witnesses and read witness statements from seven others. We have kept in mind that we are hearing this case three and a half years on from the incidents in question but that they were investigated closer to the time. We are not bound to follow the conclusions reached by the Conduct Committee of the Respondent but reminded ourselves that to depart from their findings we would need to give reasons. We have very carefully examined the updating evidence in the supplementary bundle to see if it causes us to give different weight to the evidence. This is effectively the fifth time the allegations have been examined, albeit in different contexts. The Appellant has again tried to show that her version or her understanding was correct.

48. Overall we found no major or minor inconsistencies in the accounts given by the Respondent's witnesses, all of whom we found to be straightforward and we accept giving an honest account of what they heard and saw.

49. We appreciate that a formal process of allegations which are then put as formal Charges has caused the Appellant to mount a defence. Our remit is wider and the agreed issues allow us to look more broadly at the incidents. A lot of the evidence went as to what or was not said but that is not the bigger picture. At all points we looked for but did not find on reflection on what had happened and whether there were any specific factors which affected the Appellant's performance. (not very clear on the meaning of the previous sentence.) We found none.

Charge 1/Issue One

50. This was amended from the Local Authority stage as it inserted the word 'promptly'. We accept that Ms. Jane Smith gave a very clear and direct instruction to the Appellant that she would have to return to the office to collect car seats. They were short staffed and there was no one else to take them. That is the key finding as there is evidence to support that her instruction the duty team that the Appellant would come in was understood so clearly and they told her there were no seats. We clarified that she hadn't put a time limit on that. We have kept in mind that technically the Appellant did comply with the instruction to collect the car seat herself. We have given the word 'promptly' its usual meaning which the English Oxford Dictionary defines as either 'as soon as possible or feasible or 'forthwith'. We apply the former.

51. It would be surprising if a social worker were to be dismissed because of disobeying an order or an instruction to return and collect car seats. The real issue is the manner in which she carried out the work and the effect on service user 'A'. There is clear case recording that domestic violence had allegedly taken place the night before. Service user 'A' had moved to a place of safety with a family member.

52. The first conflict we have to resolve is whether Ms Phillips was accurate in saying that the Appellant had mentioned having to go to a Refuge at the Core Group meeting the day before. Mr Miles conceded the evidence on that was equivocal. There are documents which establish a voicemail was left for to the Appellant. Mr Garner was not clear as to the precise nature of the instruction and Ms Powell was unclear if they had originally discussed the case of service user 'A' on 4 or 5 April 2012. What is clear is that by the morning of 5 April 2012 the Appellant was definitely aware of what had happened, as we accept Ms Powell had told her this was a domestic violence situation.

53. A further conflict arises as to whether the Appellant was aware of a confirmed room at the Refuge 40 miles away. We had the benefit, unlike the Conduct Committee of hearing the oral evidence of Ms O'Shea which we found straightforward and persuasive. Having heard the Appellant over three days we conclude that, particularly when under stress she does not listen. We accept as the experienced manager of a Refuge, Ms O' Shea gave clear instructions to the Appellant who made more work for herself by not hearing and having to return the next week to sort out the ID. The events of that day appear to have overwhelmed the Appellant who dropped the family off without settling them although she now wishes to remember it otherwise.

54. The Appellant has not disputed that she was critical about her colleagues, in the hearing of the family. Nor has she disputed that the family were looking at the Argos catalogue. The evidence we heard from three witnesses involved in this incident and time taken all show that that the Appellant was not understanding the urgency or sensitivities of the situation.

55. The clear picture that merges is one of fraught negotiations not calm. The Appellant did not show an ability re-prioritise her work as we note would be frequent on this team. She didn't listen to what Ms Powell was telling her and there was a clear delay in going to the Refuge.

56. Overall we conclude that she was not fully committed to going to the Refuge and we have despite probing no reason not to accept the evidence of witnesses that she appeared to be overwhelmed by the practical problems it was going to cause her in relation to traffic, distance, her own belongings being in the car rather than focussing on a vulnerable service user. It was striking that both the Health Visitor and the Refuge manager felt compelled to separately raise concerns about the Appellant. We confirmed that they had never taken such a step before. We do not judge that they did so lightly but did so due to a very high level of concern.

57. The Appellant failed to support the service user and did not see the need to act promptly both to support her to leave and to get her to a place of safety which would not be known to the partner unlike the grandmother's house. . The Appellant had spoken of the highly controlling behaviour of the partner but failed to see that in itself f could be Domestic Violence or that children witnessing it could also be.

Charge 4/Issue Two

58. With regards to Public Law Outline, the Appellant accepted that her knowledge of this process was not strong. She did not we find appreciate how the PLO process worked but she had been guided what to do. The Core Group meeting on 4 January 2012 which is her own recording, under 'Outcomes' stated that the *'social worker to ensure the department seeks legal advice to re-issue the PLO'.* Between then and April 2012 we accept that she had ample opportunity to seek that advice or clarify what to do if she was not sure. That is the base position.

Charge 4 (3)

59. The Appellant stated that she did make a home visit to this family but at the very least she did not record it. She told us that she recorded it on the ICS computer system, but then seemed to change evidence to what she had said in the earlier hearings, to say that she had put it in the diary which of course has gone missing. It needed to be on the ICS system and she failed to record it. The importance of recording accurately was particularly important in the context of this team when children who were identified as being at risk were at home and ICS notes could be evidence if it was necessary to take court proceedings.

Charge 5 (a)/Issue Three

60. (i) The evidence in relation to the Core group meeting on 4 April 2015 meeting was in our view overwhelming. It was disorganised and inappropriate

as the family and children were present and the meeting as conducted would not have allowed them to understand progress or current concerns. The meeting lasted 2 and half hours and we accept the charges made out supported by the evidence of Ms Phillips, Ms Huxley-Crellin and Ms Whiting.

61. (ii) The Appellant had previously admitted that she failed to notify Child E's school of the meeting but offered us a long explanation that she had left a message with the care taker. That is not sufficient and written notice was clearly required with a request to confirm.

62. (iii) Similarly the Appellant failed to notify the school of a change of address.

63. (iv) We clarified that the children attended both a playgroup and nursery. Ms Phillips had been told by the Appellant to ensure the children attended. The mother was very clear she would not be accompanied as it was a very short walk from her house. The Appellant did not check on this nor was she aware that what the evidence established were a lot of absences from the nursery. The fact that the children were moving to a nearer nursery does not mean she did not need to do that; particularly given what we accept was a very high level of concern about children who had been removed but then returned home.

64. (v) In what was a very long meeting Ms Phillips who had a previous speciality in drugs raised the issue of cannabis use. The nursery staff raised the issue of non attendance but the Appellant did not take either on board or appreciate their relevance and the need to at the very least ask the parents about these issues.

Decision on Misconduct

65. We find that this does amount to misconduct and we call into questions the Appellant's suitability to be a registered social worker. Misconduct is defined as '*conduct which calls into question the suitability of the registrant to remain on the Register'*.

Decisions on Sanction

66. We have had regard to the Code of Practice which we have considered. As a social worker, the Appellant needed to '*strive to and establish and maintain the trust and confidence of service users and carers'* and in particular with regard to service user A she needed to communicate in an appropriate, open, accurate and straightforward way. Applying paragraph 6.1 and paragraph 6.7 she needed to assist service user 'A' to understand and exercise her rights in relation to the refuge and she needed to 'recognise and respect the role of other workers from other agencies and work in partnership with them'

67. We have applied the indicative sanctions guidance. The mitigating factors in this case. The Appellant did co-operate with the investigation both

by Newport and by the Care Council. These events now took place three and a half years ago but there is no evidence of any good practice in the meantime. There was no evidence in the meantime of helpful reflection and learning of practice in a related discipline which shows improvement or of training undertaken which would have made a positive difference. This is not a case where she has made an early admission of the facts alleged and readily accepted her practice fell below an acceptable standard. The Appellant has a previous good history with no disciplinary record.

68. We then turn to 'aggravating features'. There is a list which is not exhaustive of which of course dishonesty and abuse of trust are at the top of the scale. This is a case that turns very clearly on lack of insight. That is defined by the indicative sanctions as '*insight can be defined as the expectation that a social care worker will be able to stand back and accept that, with hindsight, they should have behaved differently and that it is expected that he or she will take steps to prevent a recurrence'*.

69. We heard the Appellant over three days and appreciate how distressing it has been for her to have her practice questioned and to have to present her own case. The Appellant saw social work as her vocation. Save for a short period she has not had any legal advice. Our experience of the Appellant and we note of the other hearings she has appeared at is to challenge and give long answers when a simple yes or not would suffice. She defends but does not reflect. She has not expressed remorse.

70. We were impressed by the way Ms Boyce readily on a request from the Tribunal outlined the Appellant's strengths and weaknesses. She described a warm individual who wanted to be a practitioner, empower mothers and wanted to do the job and be part of a team. We noted that whenever her concern for individuals was challenged, this caused the Appellant to be tearful. As one example we accept Ms O'Shea was correct to say that she left service user 'A' at the door but for the first time the Appellant said she went in and sat with her. We concluded that is what the Appellant wanted to see herself as having done. We agree with Ms Boyce that the charges that the Conduct Committee did not find made out, in relation to giving small sums of cash to service users, using their coffeemate or asking them to buy cigarettes at a European Union rate needed addressing, but might well have been dealt with at supervision with reminders of how to avoid falling into pitfalls, keeping boundaries and keeping herself safe.

71. Having made our own assessment of the evidence we agree with Ms Boyce's analysis supported by the findings of the Respondent's Conduct Committee that the Appellant was a caring person but whose professional practise fell short with a concerning lack of understanding of the need to act where domestic violence was identified. We record that Ms Boyce emphatically denied having made a face at the Appellant during any disciplinary hearing as it was not in her nature. This did not accord with her measured presentation to us. The Appellant's evidence over three days and the transcripts of her investigative interviews in Newport and the transcripts of her attendance before the Care Council of Wales' Disciplinary Committee

gave us no confidence that she has an ability to identify issues, to put questions clearly and succinctly and to marshal an argument which puts her view forward simply and effectively, all of which are sills required of a social worker, particularly within the field of Child Protection.

72. Admonishment permits a social care worker to continue working. It may be appropriate where the behaviour is at the lower end of the spectrum and where there is a need to mark that the behaviour was unacceptable and will not happen again. It will only be applied where they are confident there is no risk to service users.

73. Again, that would require a level of insight into the failings and willingness to change the behaviour which are not present in this case. We have carefully looked at whether the risk to the public could be met by conditions. We looked at that in very considerable detail because the reasoning of the Care Conduct committed appeared to hinge upon the fact that she was no longer in work. However, having now heard the case afresh, this case is really more about how the Appellant did things and her lack of insight.

74. We guided the Appellant both at the start and conclusion of the hearing to think about conditions as a possibility and asked Mr. Miles to address it in closing. We noted issues raised in her reference for the job and her one s supervision at Newport with Ms Rees all identified her need to be supported. She had had a number of coaching session designed to help increase her confidence.

75. Any Conditions must be proportionate, protect the public and SMART so specific, measurable, achievable and realistic and time limited. In the end the Appellant said it all when she said that *'if Bob had sat with me everyday'*, she would have learnt, but that is clearly not an appropriate or proportionate response to the shortcomings of a social worker with eight years of experience.

76. We would not wish to leave this case without acknowledging the strengths that the Appellant has. These were readily acknowledged by Ms Boyce. She is not somebody unsuited to work in any social care capacity, as she did before qualifying as she has a caring nature and wished to help people. By her studies and later entry into social work she has shown herself to be capable of application and hard work. What we conclude happened in this case is that she was told things but because she was so pre-occupied and in something of a 'fluster', she simply did not hear. In closing she acknowledged how many times the Tribunal had to remind her to listen to or answer the questions. There was nothing malevolent in her acts. However, we reach the firm conclusion she does not exhibit the necessary professional levels of understanding, preparation, prioritisation or organisation required of a social. Had she shown more insight, these may not have been irremediable, but overall, we conclude that they are so clearly demonstrated throughout this case that that is not the position. Accordingly we conclude that removal is an appropriate and proportionate sanction.

ORDER:

Decision of the Care Council of Wales to remove the Appellant from the Register is confirmed.

Melanie Lewis
Tribunal Judge
Primary Health Lists/Care Standards
First-tier Tribunal (Health Education and Social Care)

Date Issued: 28 September 2015