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Care Standards

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

Sandra Dykstra

Appellant

v

Care Council for Wales

Respondent

[2012] 2000.SCW

DECISION

**Heard on 21 and 22 March 2013 at the Denbigh Magistrates Court, Denbigh
before:**

**Judge Meleri Tudur
Mrs Susan Last, Specialist Member
Ms Heather Reid, Specialist Member**

Attendance and representation:

Mr D Allen of BASW represented the Appellant, who attended the hearing with Ms Hurd. also of BASW.

Mr T Walker, employed barrister of Morgan Cole, represented the Respondent with Mr Grey attending on behalf of the Respondent.

APPEAL

The Appellant appeals under section 68 of the Care Standards Act 2000 against the decision of the Conduct Committee of the Care Council for Wales (the Respondent) made on the 11 October 2012 that the Appellant was guilty of misconduct and to impose an admonishment for a period of six months.

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Preliminary Applications

1. Mr Walker made a request for submission of missing documentary evidence, specifically the odd pages of the transcript of the Conduct Committee's proceedings for the 11 October 2012. Mr Allen did not oppose the application on the basis that the evidence was an important element in the case. The application was allowed.
2. Both parties made applications to submit to the tribunal a hand-drawn plan of the Child and Family Assessment Team (CAFAT) office in Wrexham at the time of the alleged misconduct. Neither was to scale and both plans were admitted to assist the Tribunal in understanding the oral evidence.

THE LAW

3. Section 56 of the Care Standards Act 2000 provides that the Respondent shall maintain a register of social workers.
4. Section 59 of the Act provides that the Respondent shall by rules determine circumstances in which, inter alia, a person may be sanctioned or removed from a part of the register.
5. The relevant rules are the Care Council for Wales (Conduct) Rules 2005.
6. Section 68 of the Care Standards Act 2000 provides that an appeal against a decision of the Respondent is to the Tribunal and on appeal, the Tribunal may confirm the decision or direct that it shall not have effect. The Tribunal shall also have power on an appeal to vary any condition, to direct that any such condition shall cease to have effect or to direct that any such condition as it thinks fit shall have effect in respect of that person.

Background

7. The Appellant qualified as a social worker in 2001 and worked for Wrexham County Borough Council in various social work positions until she joined the CAFAT in about May 2008 as a social worker.
8. In February 2009, the CAFAT had a new team manager in post, Ms G McNamara who initially worked alongside the former team manager and put in place a number of changes to work processes. In May 2009, the Appellant applied for and was appointed to the post of Assistant Team Manager. The team had a number of long standing members who had worked together under the previous manager for a considerable time, and the Appellant's appointment was not universally regarded in a positive light.
9. In July 2009, a visit by DC V Keegan, the family liaison officer from North Wales Police, brought to light that not all CID16 Domestic Violence and Child Protection Forms were being entered onto the RAIS software system by the CAFAT.

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A referral form sent by the police was found in a recycling box on the duty desk. CID16 forms are submitted to the local authority by the police where a domestic violence incident or other conduct likely to place a child at risk has been reported. The forms must be processed by a manager who identifies what further action is necessary in respect of it, if any.

10. In May and September 2010, the Appellant was interviewed by her employer as part of a broader investigation into conduct of the Duty Team Manager about the practice in respect of the forms. As a result of the investigation, she was the subject of a disciplinary hearing by her employer and subject to a written warning.

11. Following the outcome of the investigation by the employer the Care Council for Wales then charged the appellant with misconduct, and following a full six day hearing to consider charges against her Team Manager and the one charge against the Appellant in October 2012, she was found guilty of misconduct during the period from the 18 May to the 31 July 2009 and made the subject of a six month admonishment.

THE ALLEGATION

12. The Appellant was the subject of one charge, and it was that she:

“whilst registered as a social worker and employed by Wrexham County Borough Council

1(a) on a date or days between 18 May 2009 and 23 September 2010 failed to take adequate action to ensure that the information contained within CID 16 child protection/domestic violence referral forms was appropriately recorded on your employer’s computer system or otherwise in that you

(i) facilitated the destruction of such forms

(ii) failed to prevent the destruction of such forms prior to such information being appropriately recorded

(b) that having so acted you are guilty of misconduct.”

13. In its decision, the Respondent changed the timescale of the charge to end on the 31 July 2009.

The Evidence

14. The Tribunal heard oral evidence from three witnesses for the Respondent and from the Appellant.

15. Ms Andrea Griffiths, an administrative assistant in the CAFAT team during 2009, had prepared and signed a written statement of evidence that she supplemented at the hearing.

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16. Ms Griffith confirmed that she had been a recent recruit to the team in 2009 and that her responsibility was to enter the CID16 referrals on to the RAIS system. Her evidence was that when she was first appointed, Ms C Davies was the team manager, and she was required to enter all of the CID16s onto the RAIS system. The practice had been changed after Ms G McNamara became the team manager, with a new routine where every morning, the CID16s were printed and given to the Team Manager in a pile. She gave clear and unequivocal evidence that she had been directed by both Ms G McNamara and the Appellant at different times to destroy some of the CID16 forms before they were entered onto the system. Her evidence, on oath, was that the practice had initially been instigated by Ms McNamara and Ms Griffith had been called into her office and given two piles of CID16 forms, one pile to be entered into the RAIS system, the other to be placed in the "bin" which was clarified to mean the recycling box at the duty desk. She confirmed that the electronic versions of the forms were retained in a folder in the team's inbox, but that the information was not entered into the RAIS database and thus would be inaccessible to social workers on the team. Once entered onto the RAIS system, the CID16s were given a green front cover sheet and a number, and then returned to the management for a decision on the action required in respect of them.

17. To clarify the instructions given by the Appellant, she stated that the appellant had split the printed CID16 forms into two piles and had given her one to be destroyed and the other to be entered onto the system. She was unable to provide specific dates when this had been done and explained it as being after Sandra Dykstra had settled into her new post. She recalled that Sandra Dykstra would use Gill McNamara's room when covering the duty desk, and it would be in that office that the CID16s were separated and handed back. She did not believe that anyone within the team had witnessed the instruction being given. There was no log kept of the CID16s destroyed.

18. Ms Griffiths gave evidence that she believed the process to be wrong because if the information was not logged, then the social workers would not have the whole picture. She gave evidence that she had discussed the practice with at least four of the social workers and that generally they had expressed their shock at the practice.

19. Mr Grant Williams, Social Worker gave evidence about his time working on the team from 2009. He explained that he and the Appellant had worked together over many years and that their personalities clashed. He confirmed that he had not been aware of the allegation that CID16s were being destroyed, and expressed surprise that such a thing was being suggested because in his view there would be a clear paper trail of CID16s which would identify who had destroyed them.

20 He recalled the visit by DC Keegans to the office and Andrea Griffiths' failure to find the CID16 on the system. He could not recall who had suggested that the form might be in the recycling box, but it had been found there and Ms Keegans had been very unhappy about the matter. He stated that had he been aware that someone had

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been destroying or shredding CID16s, then he would have been very shocked and surprised and would have taken the matter further up the management chain.

21. He described the “Chinese whispers” which had developed in the office following DC Keegan’s discovery and the rumours that CID16s were being destroyed. He believed that the allegation was a misunderstanding and a mistake. He acknowledged that it was possible that they were being destroyed but that he was unaware of the practice. He confirmed that he had never been asked or directed by the Appellant to destroy CID 16 forms.

22. Ms Sian Byrne attended to give oral evidence although her evidence had not been available to the Conduct Committee. She confirmed that she was no longer employed by Wrexham County Borough Council and that she had been part of the team prior to the appointment of the Appellant as an Assistant Team Manager. She confirmed that she had been told directly by Ms G McNamara to destroy some of the forms and not to put them on the RAIS system. If Ms McNamara was not in the office, then the same process was followed, which consisted of printing off all the CID16s , give the whole pile of referrals to either Ms McNamara or the Appellant and they would identify which of the forms needed to be put on the system and which did not. She confirmed that she had been told “that pile for the bin” or “that pile for the shredder” and the forms were placed in an empty copier paper box, where documents placed for shredding were placed. She confirmed that she had been unhappy about the process and had raised it with Ms McNamara but had not raised the issue with any other member of the team. She could not tell whether the duty social workers were aware of the practice. She did not discuss it with any of them. In her view, the appellant was fully aware of what was going on and she was certain that there had been occasions when the Appellant had directed her to destroy CID 16 forms. Ms Byrne confirmed in her evidence that the CID16s were considered by management for a second time after they had been entered on the system in order to decide what follow up action needed to be taken.

23. The Appellant gave evidence that she had started as a social worker with the CAFAT team in 2009. She described the team as a very close one with some cliquy members. The team had been created by the merging of three locality teams and many of the team members had worked together for a very long time.

24. She started her role as Assistant Team Manager on the 26 May 2009. Immediately after her appointment, she had taken a week’s leave returning to the new post at the end of May. She described how her appointment had been met by hostility from within the team, some of whom believed she should not have been appointed and that other more experienced member of the team should have been appointed.

25. In her letter to the Tribunal dated 30 January 2013, she stated that she had not given instructions to shred CID16s, maintaining that at the start of her new job she had been directed to close down her case files. Stating that she had spent the next

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few weeks closing her cases and attending child protection conferences, chairing child in need meetings, child protection core group meetings and attending several management task and finish groups and weekly domestic abuse panels. At the time she was also supervising and supporting a final year student social worker. At the time the Team Manager was implementing a lot of changes and the Team members were resentful of those changes. The suggestion was that she was not involved in management of the Duty Team or in the management decisions during the period from May to July 2009.

26. She describe the process in relation to CID16s as she knew it: the police sent the form by email and the administration then printed the form, placed a green front sheet on it and placed it in a basket for a decision about further action to be taken by a manager. She stated that she became aware of the practice on the 31 July 2009 when DC Keegans visited the office and drew attention to the issue. She recalled the incident very well. She described how she and Grant Williams had been in a strategy meeting with DC Keegans when she had enquired about an absent CID16. The CID16 could not be found within the system, and Grant Williams had gone to the duty desk and returned stating that it had been found in the shredding box. The Appellant described herself as aghast. As far as she was concerned the form should have been in the basket for a management decision. She had not had any discussion with Gill McNamara about the CID16s. She assumed that the matter had been dealt with by senior management and that it was not necessary for her to take any action in relation to it. She described her role during the first six to eight weeks in post as minimal, focussing on closing down cases and following the social workers to meetings and case conferences. After DC Keegans and Grant Williams had left, Ms McNamara had returned and the Appellant had raised the matter with her. She could not recall Ms McNamara's response. The Appellant confirmed that she had never been directed to destroy any CID16 forms by Ms McNamara and could not understand why the administrative assistants would state that she had directed them to destroy them. She wondered whether they had the timescales mixed up. She had been unaware of the allegations made against her until September 2010 and she expressed her shock when she discovered that she was being interviewed about her own alleged misconduct and not that of Ms McNamara as she had assumed.

27. The Appellant confirmed that it was her view that to shred, destroy or fail to prevent the destruction of CID16 forms would amount to professional misconduct. She described Ms G McNamara as a risk taker as far as the removal and destruction of documents were concerned. The Appellant acknowledged that throughout the period of her employment as assistant Team Manager she bore responsibility for receiving processing and allocating referrals. She confirmed that she had made decisions about the referrals placed by the administration in the baskets when she became competent to make the decisions. She was adamant in her evidence that she had not been aware of the practice, that she had not directed anyone to destroy the forms and described how she had shadowed Ms McNamara so that she was making all of the decisions at the outset enabling the appellant to build up confidence in the decision making before making decisions herself.

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28. The evidence to the conduct committee by Ms McNamara confirmed that she had authorised the destruction of some CID16s although she sought to justify that process on the basis that they should not be regarded as true referrals. The discovery of a number of such forms in the recycling box on the duty desk is evidence that some forms were sent for destruction.

SUBMISSIONS TO THE TRIBUNAL

29. The Tribunal had before it the full bundle of documents prepared for the Respondent's Conduct Committee hearing, a full transcript of the four day hearing and the decisions, a copy of the decision in the disciplinary hearing and the decision in the conduct hearing against the Appellant's Team Manager, who was similarly removed from the Register, as well as a bundle of documents prepared in the appeal.

30. The conduct committee took into consideration the following mitigating factors: the Appellant's single charge of failing to ensure that the information contained within CID16s was appropriately recorded on her employer's computer system or facilitated the destruction of such forms and/or prevented the destruction of such forms prior to such information being appropriately recorded; that the period in question was short, that the misconduct was being considered three years after it was alleged to have happened; that the appellant is a competent social worker and is still retained by WCBC as an assistant team manager and there are no issues with her practice and she was an assistant team manager and had been in that role for a matter of weeks and was mentored by the manager in the CAFAT who had introduced the practice of shredding some CID16 forms.

31. The Appellant when asked why the administrative assistants were lying, did not confirm that to be the case and could not offer any explanation why they would lie.

CONCLUSIONS AND DECISION

32. The Appellant is a social worker who has been qualified since 2001. From the evidence presented, we built a picture of CAFAT as a team that was failing in meeting its targets and with a new manager imposing unexpected and unexplained changes at a time when an independent review of practice was under way. The evidence of a Ms Salem to the Conduct Committee was that Ms McNamara was "unpredictable and chaotic." We concluded that the work practices were in upheaval and within that high pressure situation there was a lack of clarity in communication.

33. At the initial conduct committee hearing, they heard the evidence of Mrs A Griffiths, but not that of Ms Byrne, who was present at the Tribunal hearing, had provided a written statement and gave oral evidence at the hearing. We found both Mrs A Griffiths and Ms S Byrne to be credible witnesses and could not identify any reason why they would maintain a lie to the effect that they had been given two

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separate bundles of CID16 forms by the Appellant, one for recording and the other for destruction if that were not the case.

34. On the face of it, the Appellant also appeared a credible witness and we found ourselves in a very difficult position in trying to ascertain on a balance of probability whose evidence we preferred. Analysis of the documentary evidence and oral evidence assisted however in clarifying the position and enabling a clear conclusion to be reached.

35. Our conclusions are as follows: Ms McNamara confirmed that the process of identifying certain CID16s for destruction existed within the CAFAT team during 2009 and that the process was instigated by her. DC Keegans, the Appellant and Mr G Williams all confirmed in evidence that they were unable to allocate a CID16 form during a strategy meeting towards the end of July 2009, a copy of which was later retrieved from the recycling box. That evidence has not been disputed and is corroborated by the witnesses, Mrs Griffiths and Ms Byrne. DC Keegans and Mr Williams confirmed that CID16 forms were found in the recycling box, corroborating that someone was making decisions about their destruction.

36. Within the context of a work area in upheaval and changing practices, then it is possible to envisage a situation in which members of a team are unaware of decisions being made by others. The evidence of Mr Williams that he was unaware of the decisions being made by management about CID16 forms is credible because the instructions regarding the initial separation of the forms was from the management to the administrative assistants. Ms Griffiths and Ms Byrne gave evidence that they had discussed the practice with Mr Williams, and he became aware of the practice at some point but there is no clear indication of the time when this became known other than it was certainly known to him at the end of July 2009.

37. The clarity and quality of the evidence has not been helped by the length of time taken by the senior management at Wrexham County Borough Council Social Services Department to undertake its investigation into the situation. We noted that the delay between the police officer drawing to the attention of senior management the practice of destroying the forms was met with minimal action and a delay of ten months before the investigation interviewed the Appellant. Ms McNamara's response to DC Keegans' email of the 31 July 2009 suggests that the allegation of destruction of forms did not present as a shock to her, nor was it really perceived to be a problem. The response indicated that it was the allegation that 50% of forms that were destroyed which met with opposition rather than the allegation that the practice existed at all.

38. We concluded that if decisions were being made regarding the destruction of CID16s, then it would be the team manager, and she had indicated that such decisions were made in respect of forms which she did not consider to constitute true CID16s. In her absence at meetings or other out of office demands, the decision is likely to have cascaded downwards to the assistant team manager, and we did not

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accept the Appellant's evidence that she did not become involved in management decisions until later in her term because the examples of green front sheets signed by her produced in evidence dated from the 27 May 2009, her log of decisions within 24 hours indicates decisions being made by her from the 24 June 2009, indicating that she was fully involved in management decisions from the outset following her appointment and return from annual leave. Her suggestion in evidence that the administrative assistants' evidence might be focussing on the wrong time period was curious, because the evidence was that the practice of destroying any forms ceased on the 31 July 2009 and the time period should not make any difference to their perception that instructions had been given by the Appellant. It was not alleged that either Mrs A Griffiths or Ms S Byrne had a particular axe to grind with the Appellant, and they were not among the people who were named by the appellant as being those who were opposed to or aggrieved by her appointment. No suggestion was made as to why they might wish to pursue a lie against her, particularly bearing in mind that Ms S Byrne is no longer employed within the team or the organisation. We conclude that on a balance of probability, the assistant team manager, who was being mentored by Ms McNamara and trained in the new work processes, was also aware of that process and participated in it. We therefore prefer the evidence of Mrs Griffiths and Ms Byrne to that of the Appellant.

39. It is likely that there were cultural issues created within the team by Ms McNamara's changed worked practices some of which were less than ideal practice to try to improve performance and meet targets within the organisation. The Appellant described Ms McNamara in her interview as "a risk taker" referring to destruction of emails and correspondence as well as information from Education. Although, in oral evidence, she changed the example of risk taking to removing the library and other paperwork from the office, it is likely that her initial comments at the investigation stage in 2010 is more likely to be accurate. The risk taking described suggests a management culture of less than appropriate conduct. Coming into the post of Assistant Team Manager and being trained and mentored by the Team Leader, it is possible that the Appellant did not perceive the practice of destruction as inappropriate until attention was drawn to it by an external agency. However, although she maintained in oral evidence that she considered such action to be inappropriate and to amount to misconduct, when presented with the information herself by DC Keegan at the end of July 2009, initially, on her own admission in oral evidence at the strategy meeting when the information came to light, and subsequently when the email was received from DC Keegans, the Appellant did not take any action in respect of it, did not pursue the matter with Ms McNamara and although she thought that she had mentioned it to her could not recall any response and did not pursue the matter further, assuming that Ms McNamara's line manager, to whom the email had also been addressed had had dealt with the issue.

40. We conclude, on a balance of probability, that it is more likely than not that the Appellant was aware of the practice of destroying certain CID16 forms, and took no action to prevent that destruction, as charged.

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41. The Social Care Wales (Conduct) Rules 2005 Rules provide:

“ In deciding what sanction is to be imposed, the Committee shall take into account:

- (a) the seriousness of the Registrant’s misconduct;
- (b) the protection of the public;
- (c) the public interest in maintaining confidence in social care services; and
- (d) the issue of proportionality.”

42. The submission on behalf of the Appellant was that she had maintained her position throughout the process and had insisted that she had not directed or failed to prevent the destruction of CID16 forms.

43. We have concluded that she at the very least failed to prevent the destruction of the CID16 forms and was probably aware of the practice and separated forms into two piles for the administrative assistants. The admonishment administered in this case was the lightest sanction that could be imposed and reflects the consideration of the several mitigating factors in favour of the Appellant. We concluded that the admonishment was an entirely appropriate sanction in the circumstances.

DECISION

The appeal is dismissed.

**Tribunal Judge Meleri Tudur
Tribunal Judge Care Standards**

Dated: 5 April 2013