

Number 17

Care Standards Act Regulation – Who is a “Fit Person”?

The Nursing and Midwifery Council (“NMC”) was established under the Nursing and Midwifery Order 2001. The Care Standards Act 2000 has been in force since April 2002.

As readers will be well aware, the Care Standards Act requires Managers of nursing homes to be registered. What issues are to be considered as part of this registration process and what may be the impact of an individual’s previous regulatory history with the NMC? Guidance is now available from the Court¹.

In a recent case a nurse applied for registration as Manager of a Nursing Home. He had held this role since 1995. Previous allegations had been made about his conduct but no criminal prosecution had been pursued. In 2000 the NMC had considered the allegations and found him guilty of misconduct leading to a caution on his record for five years.

When the nurse applied for registration under the Care Standards Act he filled in a Fitness Questionnaire that covered previous criminal convictions, investigations and disciplinary proceedings. He signed the form to say that he had never been the subject of any such complaint.

The National Care Standards Commission (“NCSC”) refused his application for registration on the basis:

- A. that he had made false declarations with regard to his disciplinary history.
- B. the NMC had made findings against him, and
- C. he had performed inadequately at the Fit Person interview.

The nurse appealed to the Care Standards Tribunal against this refusal to register and the Tribunal allowed that appeal. The NCSC appealed against the Tribunal decision and it was this which was considered by the court.

The court allowed the Appeal and referred the matter back to the Care Standards Tribunal. The Court held that there was a statutory definition of fitness contained in Regulation 9 of the Care Homes Regulations 2001.²

This regulation was not merely guidance. The court held that it set out mandatory requirements which must be followed. These include:

- (1) The manager must be of integrity and good character.

¹ National Care Standards Commission v Jones [2004] all ER (D) 186

² SI 2001/3965

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- (2) Having regard to the size of the home, the Statement of purpose and the number and needs of the residents:-
 - (i) The manager has the qualification, skills and experience necessary for managing the home; and
 - (ii) He is physically and mentally fit to manage the home.
- (3) Full and satisfactory information is available regarding the manager in respect of the manager's identity, qualifications, criminal record and references.

In the current case the Court was not satisfied that the Tribunal had considered the regulations properly.

It is also of note that the court felt that on the facts of the current case, although it was not impossible for the Tribunal to find that the nurse was of sufficient good character for registration, a decision to this effect would need to be explained with some considerable care.

It is also of note that the court made it plain that the time for considering whether an individual was a Fit Person was the time that the application fell to be considered, rather than at some point in the past. Therefore this allows the position to be considered in the light of recent performance (rather than just historic problems), and in appropriate cases an applicant can contend that his past poor record is now behind him.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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