

DECISION

Application no.: 0017
Application by: Caroline Jane Ovens
Respondent: Secretary of State for Health
Hearing dates: 15 and 16 October 2001

Application

Caroline Jane Ovens (the applicant) appealed under section 4(1)(a) of the Protection of Children Act 1999 against the decision of the Secretary of State for Health to include her in the list kept under section 1 of the Act.

Preliminary

A preliminary hearing took place on 18 September before the Acting President to consider whether directions given on 3 April and 2 May 2001, which excluded the evidence of Mrs Dorothy Ostler, should be set aside. A restricted reporting order was also sought in respect of the applicant and any child referred to at the hearing.

As a result of the preliminary hearing, the directions were set aside insofar as they excluded Mrs Ostler's witness statement and oral evidence. A restricted reporting order prohibiting publication of any matter likely to lead to the identification of the applicant or any child was agreed for the duration of the hearing.

Facts

1. Between December 1987 and April 1994 the applicant was employed by NCH Action for Children at a residential school in Lancashire. While she was there she was employed in a residential unit some way away from the main school site. She was appointed Deputy Group Leader of that unit. The unit housed up to 8 children with emotional and behavioural difficulties and other complex problems. Although the majority of pupils at the school were only in residence during school terms, the children in this unit were resident for 52 weeks a year, many of them being the subject of Child Protection Orders.
2. For a period in 1990 the applicant became Acting Group Leader while the Group Leader was on maternity leave. In September 1993 the Group Leader left and the applicant again became Acting Group Leader while steps were taken to appoint a new Group Leader. The applicant herself applied for the job but learnt sometime in December that she had been unsuccessful. The new Group Leader took up his post in February 1994.
3. At the time the applicant became Acting Group Leader in 1993, the Head of Social Care who was responsible for her supervision was off sick for a long period. Her supervision was then shared by two other people who, according to the applicant's evidence, did not

regularly visit the unit and often gave conflicting advice. The applicant was working up to 52 hours a week with 2 or 3 nights a week sleeping in the unit. She was responsible for the entire management of the unit and was also working on care shifts with the other members of staff. Although all the children had difficulties, there was a particularly difficult 16 year old girl ("X") whose behaviour was unpredictable and who had become increasingly violent towards other children and staff. The applicant had asked for her to be removed from the unit and it was agreed that if another serious incident took place this would be done. However, despite further incidents she had not been removed.

4. According to Mike Ormrod, who is now practice manager at the school but who was a residential social worker at the unit for approximately 5 months from January 1994, at that time residential staff were given no training in how to address the needs of the children. Children did not have individual behaviour plans and staff were continually having to manage crises without supervision or support. The atmosphere was not conducive to discussing concerns as many staff were on temporary contracts and feared losing their jobs. Having worked in a number of units in the school it was his view that, in general, the way that children were treated in the applicant's unit was not different from in other parts of the school, although he felt that it was inappropriate.

5. Shortly after the new Group Leader took up his post in February 1994 a complaint was made to him by a recently-appointed member of staff who alleged that on two occasions the applicant had used threatening and abusive behaviour, once towards X and once towards another child in the unit. An investigating officer was appointed on 22 February. She interviewed a number of members of staff and the two children and concluded that there had been six incidents involving the applicant which, if proved, would constitute gross misconduct under NCH Action for Children Code of Conduct and Procedures.

6. A disciplinary hearing took place at the school on 19 April 1994. As a result, four of the allegations were found to be established on the balance of probability. These were that the applicant had hit X on the head with a file containing papers during a holiday in Wales in 1991; that in January 1994 she had banged the heads of two boys together causing them considerable distress and discomfort; that in February 1994 she had hit a child on his side causing him distress; and that in February 1994 she had used threatening and abusive behaviour towards X. As a result of these findings, on 25 April 1994 the applicant was dismissed for gross misconduct. On 12 September 1994 she was notified of her inclusion in the Consultancy Service Index.

7. Following her dismissal, the applicant worked for a year with learning disabled adults as a voluntary day centre officer for Bury Social Services. She also took a part-time counselling course. In September 1995 she started a full-time Advanced Diploma in Therapeutic Counselling at Manchester City College. As part of the course she was required to undergo regular personal therapy and group therapy. The applicant said that this had enabled her to learn a great deal about herself, where her skills lay and the extent of her limitations. She recognised that in the residential unit she had breached personal boundaries and, with hindsight, had overreacted. She felt that this was partly the result of trying to prove

to herself that she could do the job, despite the fact that she recognised that she was not really suited to managing other people. There was also a great deal of tension and anxiety caused by X's continued presence in the house and the applicant had felt that it was her job to protect the other children and staff.

8. Between November 1996 and January 1998 the applicant was employed as a counsellor at Manchester Royal Infirmary where she dealt with a wide variety of emotional problems. She also worked part-time as a counsellor in a GP practice. In January 1998 she obtained a post working for the Dorset NHS Trust as a counsellor for children, adolescents and families based in a GP practice. She said that at the time of her interview she had made no secret of the reason for her dismissal by NCH Action for Children. Dr Anne Hayden, who was on the interview panel, said she had some recollection that there had been mention of violence towards children but she could not recall whether it related to one or more incidents and whether the Consultancy Service Index had been mentioned. Although there had been some discussion by the panel following the interview, there had been no hesitation in appointing the applicant who had clearly been the best candidate for the job. They had been looking for someone with integrity and a deep understanding of children and families who had a mature outlook and plenty of experience.

9. Within the practice the applicant received referrals from GPs, school teachers, health visitors and Social Services. She also worked in schools doing individual counselling and group work and providing support for teachers. She was formally supervised once a fortnight for about 1 ½ hours by Mrs Dorothy Ostler, the senior family therapist at the local Child Guidance clinic. She also chose to have additional supervision from a psychotherapist.

10. On 2 October 2000 the applicant was notified of her inclusion in the list established under section 1 of the Protection of Children Act 1999. As a result she stopped working with children and was suspended by Dorset NHS Trust until March 2001 when she started working with adults in the Occupational Therapy department of a local mental hospital. In June she left to go on maternity leave.

11. Dr Hayden, who at the time of the appointment had been working at the GP clinic where the applicant was based, said that she had been extremely pleased with the applicant's work and had received very positive feedback from everyone. She had met her at regular intervals to provide support. According to Dr Hayden the applicant had built up a very busy practice but had coped well with the pressure. After Dr Hayden left, the role of "line manager" was taken over by Dr Jonathan Segal. He told the Tribunal that he had seen the applicant on most days but had not sat in on any counselling sessions. The feedback which he had received from schools and teachers was that she was doing an outstanding job. She was said to be open and accessible to the children and they trusted her. She also had a very good working relationship with everyone in the surgery.

12. Mrs Jean Wadge has been employed for 10 years as the adult counsellor for the two surgeries for which the applicant worked. She explained that they had met soon after the applicant's arrival and had worked closely together to meet the needs of families. They had

run school stop days together, working with children in the classroom. Mrs Wadge said that the children were often over-excited and the applicant always dealt with them firmly and pleasantly. On one occasion a child had lain on the floor and refused to cooperate. The applicant had talked him round and got him to agree to a compromise. Although she had seen the applicant looking worried or stressed, there had never been an occasion on which she had not been able to cope.

13. Mrs Ostler, who was responsible for supervising the applicant's work from February 1998, said that the supervision covered all issues relevant to the applicant's work with children and families, including discussion of her own responses and feelings towards her clients. With Mrs Ostler's encouragement the applicant had now completed a foundation course on systemic family therapy. She stated that in her experience she had always been very willing to consider new ideas and perspectives and to put them into practice when appropriate. Mrs Ostler has observed the applicant's work in practice and said that she had always shown great sensitivity to the children and enabled their voice to be heard. Mrs Ostler had no concerns about the applicant's integrity or suitability for the work she had undertaken and had found her to be a person of high ethical standards both personally and professionally.

14. On behalf of the Secretary of State, it was argued that evidence of misconduct which harmed a child, or placed a child at risk of harm, was established by the disciplinary hearing in April 1994 which led to the applicant's dismissal by NCH Action for Children for gross misconduct. It was contended that none of the evidence heard by the Tribunal threw any doubt on those findings. The Secretary of State also remained of the view that the applicant continued to be unsuitable to work with children. The applicant had accepted that in 1994 she had over-stepped the boundaries but had argued that she was under a high level of stress at the time. However, the first incident had taken place in 1991, long before she had become Acting Group Leader. Her manner at the residential unit had been described by witnesses as overbearing and threatening. Her work as a counsellor was in a completely different context where the pressures were different. Although the applicant had said that she would not now seek residential work, if she were to do so there was no evidence that she would no longer present a risk to children in those circumstances. The point of remaining on the Protection of Children Act list was to take that decision out of her hands.

15. It was argued on the applicant's behalf that she had always contested the incident in 1991. She did, however, now concede that during the period when she was Acting Group Leader she had been guilty of misconduct which had harmed a child or placed a child at risk of harm and that her behaviour had been inappropriate and she should have responded differently. She did not wish to justify or excuse her conduct but wished the circumstances surrounding the incidents to be taken into consideration as mitigating factors. They included the significant shortcomings in management and supervision in the school at the time, the pressure she was under, the discontent amongst the staff and the extremely difficult children, especially X whose behaviour was putting herself, other children and the staff at risk. In determining the applicant's suitability to work with children now, account needed to be taken of the fact that the applicant had taken stock of the situation and had taken positive steps to find a position and career which she enjoyed and was good at. As part of her counselling

course she had undergone personal therapy which had made her aware of her strengths and weaknesses. She now knew her own boundaries and would never put herself into the situation she found herself in at the beginning of 1994. It was pointed out that the four witnesses who were able to talk about her work since 1998 had given her glowing testimonials. In each case they had reported very positive feedback from children, parents and teachers. No concern had been expressed at any point about her suitability to work with children.

Conclusions and reasons

Having carefully considered the papers submitted to the Tribunal in advance and the evidence and arguments presented at the hearing, we decided to allow the appeal and to direct the removal of the applicant's name from the list.

The reasons are as follows:

- a. In respect of the alleged incident which took place on the holiday in Wales in 1991, which the applicant denies, we have found insufficient evidence on which to reach a conclusion. Although we have read the transcript of the disciplinary hearing, the adjudicator gives no reasons for his decision and neither the applicant nor Mrs Godlington was able to recall the incident in any detail. It was, however, conceded on behalf of the applicant that the incidents which took place in 1994, and which led to her dismissal and inclusion on the Consultancy Service Index, amounted to misconduct which harmed a child or placed a child at risk of harm. In view of this admission, we are satisfied that this fact has been established and we have not found it necessary to review in detail the evidence relating to each of the three incidents.
- b. It was acknowledged by the applicant that the circumstances prevailing at the time of the incidents did not excuse her behaviour. Nevertheless, we consider that the lack of effective management and supervision, and the prevailing ethos in the school at the time were contributory factors. The applicant had been persuaded to become Acting Group Leader despite the fact that she did not feel that she was up to the job and was not a good manager of people. She had then tried to prove to herself that she could do it but she acknowledged that this had led to her overreacting to situations. It was clearly the right decision not to appoint her as the permanent Group Leader, nevertheless it would be reasonable to conclude that that also affected her attitude to the job. In our view she was placed in an extremely stressful situation without the necessary support and this contributed to the way she reacted to children in her care.
- c. After her dismissal, the applicant underwent regular personal therapy as part of her advanced course in Therapeutic Counselling. We accept that as a result of this, and her subsequent work as a counsellor, she has gained an insight into her own strengths and weaknesses and is now aware of her limitations. She said that she now recognises why she was not able to cope with the pressure she was placed under in the residential unit and has described how she has coped with pressure in her work as a counsellor. Her professionalism in the context of her work with children has been highly praised by her colleagues, and we

heard that she is liked and trusted by children, parents and teachers alike. Dr Segal, her line manager, and Mrs Ostler, her supervisor, have received no complaints over the two years the applicant has worked with them and neither has expressed any doubt about her suitability to work with children. On the contrary, she has been described as doing an outstanding job and being a person of high ethical standards.

d. We have considered the Secretary of State's contention that were the applicant to seek work in a residential setting there is no evidence that she would no longer present a risk to children. However, no evidence was presented to support this or to persuade us that the self-knowledge which the applicant has gained over the past seven years and her success in addressing the needs of children through counselling are limited to a specific context.

e. In the light of all the evidence we are not satisfied that the applicant is unsuitable to work with children.

f. Having considered submissions by both sides we conclude that the restricted reporting order should remain in force in respect of those children involved in the incidents which were the subject of the disciplinary hearing on 24 April 1994. We find no grounds for the continuation of the order in respect of the applicant and therefore the order made at the preliminary hearing is revoked.

Order

Caroline Jane Ovens's name is to be removed from the list kept by the Secretary of State under section 1 of the Protection of Children Act 1999.

Dated: 23 October 2001

Signed:

Charlotte Beatson