The Care Tribunal
A Guide to the Appeals Process and Procedures

serving the community through the administration of justice

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INTRODUCTION

The Care Tribunal deals with a variety of appeals against decisions made by various regulatory bodies.

The Care Tribunal was established under the Health and Personal Social Services (Quality, Improvement and Regulation) Northern Ireland Order 2003. It deals with those appeals provided for under the legislation listed at the back of this guidance. The Tribunal's powers are limited to Northern Ireland.

It is an independent judicial body set up under statute.

The Tribunal has a judicial head – known as the "Chairman". The Chairman is responsible for the legal management of the Tribunal and provides guidance on practice and procedure. His/her responsibilities are specified in the Regulations that set out the procedures of the Tribunal. It is the Chairman's job to consider each appeal and to make any decisions or directions about the appeal before it comes to a hearing.

Each Tribunal is convened to hear a particular appeal. Its membership comprises a legally qualified member as Chairman, and two lay members who will have specialised experience.

WHO CAN APPEAL TO THE TRIBUNAL AND ON WHAT GROUNDS?

Certain individuals, or organisations, concerned with the provision of care or education whose livelihood, or organisation, may have been affected by a particular decision of the relevant regulator can lodge an appeal with the Care Tribunal. The Care Tribunal deals with appeals from:

- individuals who work, or have worked with children, against a decision made by the Department of Health (DOH) or the Disclosure and Barring Service (DBS) to include his/her name on the children's barred list;

- individuals who work, or have worked with vulnerable adults, against a decision made by the DOH or the DBS to include his/her name on the adults' barred list;

- individuals whom the Department of Education (DE) has decided to prohibit from working with children;

- individuals whom the DBS has decided to prohibit from working with children and/or vulnerable adults;

- proprietors, prospective proprietors, managers and prospective managers of an "establishment" or "agency" as set out in Health and Personal Social Services (Quality Improvement Regulations) (Northern Ireland) Order 2003 against a decision of the Regulation and Improvement Authority (RQIA) in respect of their registration; and

- Social Workers and Social Care Workers against a decision of the Northern Ireland Social Care Council (NISCC) in respect of their registration.

The Care Tribunal can also consider applications from individuals who are the subject of a disqualification order issued by a court prohibiting them from working with children. Such applications can only be made after a qualifying period has elapsed[1].

MAKING AN APPEAL

How to Appeal

If you wish to appeal you can complete the appropriate form which is available from the Tribunal office or can be downloaded from the Tribunal website. Please provide **all** the information required. If you are unsure about completing any part of the form you can contact the Secretary to the Care Tribunal to receive guidance. Send the completed form to the address at the front of this guidance.

When to Appeal

It is important that your appeal application is received within the statutory time limit.

The timescale varies depending on the particular jurisdiction under which the Care Tribunal will hear your appeal.

Help with Appealing

Please phone the number at the front of this guide if you require help with the Appeal process. The Secretary to the Care Tribunal can guide you through the Appeal process. As an impartial body advice cannot be given on how to present your case and/or what evidence you should give. You can also seek advice from Advice NI, a law centre, a solicitor, a trade union or a professional association. Some individuals may qualify for public funding. To find out if you would be eligible for public funding you should seek advice from a solicitor, Advice NI or a law centre.

If you wish to seek help, do so immediately, to ensure you do not exceed the time limit for lodging an appeal.

[1] The Care Tribunal can only consider any such applications where the order has been in place for 5 years or more, if you were under the age of 18; or 10 years or more if you were aged 18 or over when the order was made.

You can get someone else to fill in the notice of appeal form, but **you must** sign it yourself. You can, if you wish, name a representative to whom all correspondence

should be sent about your appeal. If you do this, please make sure the representative has agreed before submitting his/her details. If you later change your mind about having a representative please advise us in writing without delay.

THE HEARING

Appeals Heard Together

Where two or more appeals relate to the same person, and where he/she considers it appropriate, the Chairman may order that the appeals be heard together. However, before making such an Order, he/she will give you and the Respondent an opportunity to comment on the matter. In making any Order, the Chairman will take into account your and the Respondent's views, the costs of hearing the appeals separately and any delay in hearing them together, or separately.

Oral or Paper Hearing

You may request that your appeal be decided without an oral hearing. If no oral hearing takes place, the Care Tribunal will decide your appeal on the basis of the written evidence which you and the Respondent provide. Your decision does not preclude attendance by the Respondent to give oral evidence if they so wish.

Notice of and Venue for the Hearing

The date, time and venue of the hearing will be agreed at a preliminary hearing and is normally 2 or 3 months thereafter. Hearings may take place near the usual address, or business address of the Applicant, if appropriate, if agreed by the Chairman.

Attendance at the Hearing

You do not have to attend the hearing. As mentioned above you can choose to be represented by someone else. However, it should be noted that by choosing not to attend you may be disadvantaged – for example, you will not be able to respond to, or advise your representative if you have one, about matters that may arise at the hearing. You can be represented at the hearing by anyone you choose.

Hearing in Public

Appeal hearings are normally held in public. That means that the press is usually entitled to attend. However, neither party, nor their witnesses, may photograph or record any of the proceedings. In exceptional cases, for example, where it is necessary to safeguard a child's welfare, or to protect someone's private life, or to preserve the anonymity of a service user, or to avoid injustice in other legal proceedings, you can ask that the hearing, or part of the hearing, be in private. You can do so by writing to the Chairman or, at the hearing, by asking the Chairman.

Giving Evidence

You can give evidence at the hearing on your own behalf, and you may call any adult to give evidence on your behalf; although the Chairman has the power to restrict the number of witnesses if the evidence does not appear to be relevant, or seems likely to be repetitive.

Children and Vulnerable Adults Giving Evidence

There are restrictions on children and vulnerable adults giving evidence. They can only appear as witnesses where it is essential, and then only if an application is made in advance. Special arrangements may be made for children and vulnerable adults to give evidence. In some cases, the Care Tribunal may appoint a person with appropriate skills or experience in facilitating the giving of evidence by children and vulnerable adults. For the purposes of the giving of evidence at a Care Tribunal Hearing, a vulnerable adult is an adult who has a mental disorder or impairment or physical disorder which would affect his/her ability to give oral evidence.

COSTS ISSUES

Costs of Appealing to the Care Tribunal

The Care Tribunal makes no charge for its services. However, if you choose to be professionally represented, or to call your own expert, you will be responsible for meeting these costs.

Help with the Cost of Appealing

Trade Unions and professional associations often provide a service to assist their members. Some people have legal expenses insurance that may meet or contribute towards the cost of appealing. Public funding may be available to some individuals for instructing a solicitor.

Liability to Pay the other Party's Costs

In some circumstances, the Care Tribunal can order you to pay all or some of the expenses incurred by the Respondent. This will only happen if the Care Tribunal thinks you acted unreasonably in bringing the appeal, if you persist with your case, after being told it might mean you would have to pay costs, or if you withdraw your appeal. You may also be ordered to make a payment as a condition of varying your reasons for appealing after the appeal has started. The sum you may be asked to pay in such circumstances will be a matter for the Care Tribunal Chairman to decide, but in doing so he/she will take into consideration your financial circumstances and the costs incurred by the Respondent in responding to your case.

If the Care Tribunal thinks that the Respondent has acted unreasonably in its conduct of the appeal proceedings, it can order the Respondent to make a payment towards your expenses.

Enforcement of Costs Order

If a party is ordered to pay expenses, but does not do so, the Order can be enforced by the other party in the same way as an Order of a County Court.

RIGHT OF REVIEW

Parties have 10 working days from the issue of the decision to apply to the Chairman of the Care Tribunal to review this decision. However, an application for review will only be accepted if the Tribunal is satisfied that:

- the decision was wrongly made because of an error on the part of the Care Tribunal staff;
- a party, who was entitled to be heard at a hearing failed to appear or to be represented, and had a good and sufficient reason for failing to appear; or
- there was an obvious error in the decision.

The application must be in writing stating the grounds in full.

If your application for review is refused the next stage will be to lodge an application for Judicial Review with the High Court. Judicial review proceedings are very complicated and if this is an option you wish to consider, we strongly recommend that you seek timely legal advice.

CARE TRIBUNAL REGULATIONS

The Care Tribunal Regulations can be accessed at the following links:

The Care Tribunal Regulations (Northern Ireland) 2005 (legislation.gov.uk)
http://www.opsi.gov.uk/sr/sr2006/nisr_20060342_en.pdf
http://www.opsi.gov.uk/sr/sr2008/nisr_20080249_en_1
http://www.opsi.gov.uk/sr/sr2009/nisr_20090042_en_1

JURISDICTIONS OF THE CARE TRIBUNAL

APPEALS	LEGISLATION

Decisions of the DOH or the DBS in respect of: Inclusion on the list of those considered unsuitable to work with children. Inclusion on the list of those considered unsuitable to work with vulnerable adults. Decision to remove an individual from the new barred list/s.	The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007
Decisions of the Department of Education in respect of: The prohibition of individuals from teaching or working with children.	Education (Prohibition from Teaching or Working with Children) Regulations (Northern Ireland) 2007
Decisions of the Regulation and Improvement Authority (RQIA) in respect of: "establishments" and "agencies" as identified in the Health and Personal Social Services (Quality, Improvement and Regulation) (NI) Order 2003. Refusal to waive disqualification to work in or otherwise be involved in the running of a children's home.	The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (Section 22) The Children (Northern Ireland) Order 1995 as amended by the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (Section 78A)
Decisions of the Northern Ireland Social Care Council in respect of: The registration of social workers. The registration of social care workers.	The Health and Social Services Act (Northern Ireland) 2001 (Section 15)