



OUTER HOUSE, COURT OF SESSION

[2025] CSOH 54

P1072/24

OPINION OF LORD YOUNG

in Petition of

THOMAS SHERIDAN

Petitioner

for

Judicial Review of a decision of the respondent to permanently exclude the petitioner from  
being employed as a social worker in Glasgow

by

GLASGOW CITY COUNCIL

Respondent

**Petitioner:** Dailly, (sol adv); Drummond Miller LLP  
**Respondent:** P Reid KC, D Blair; Harper Macleod LLP

26 June 2025

**Issue**

[1] This is a judicial review in which the petitioner contends that the respondent acted unlawfully when it informed him in two letters that he would not be offered employment as a social worker by the respondent. The petitioner seeks a declarator that the respondent's decision was unlawful and reduction of that decision. The respondent in this petition is Glasgow City Council but, as will be obvious from some of the correspondence quoted in the opinion, Glasgow City Council arrange for a number of social services functions to be

carried out through the Glasgow City Health and Social Care Partnership. Nothing turns on this distinction and references to the respondent should be understood to encompass both Glasgow City Council and the Social Care Partnership.

## **Background**

[2] The petitioner is a former member of the Scottish Parliament. He has featured prominently in national and local politics over the last three decades. In December 2010, the petitioner was found guilty at the High Court of having committed perjury during a defamation action which he had brought against a national newspaper. He was sentenced to 3 years' imprisonment. Following his release from custody, the petitioner completed a law degree and the post-graduate diploma in legal practice. In 2022, he commenced a post-graduate qualification in social work and completed the academic and work placement parts of that course. A number of the petitioner's family have worked in the field of social work.

[3] Social work is a regulated profession and only appropriately qualified and registered persons can hold themselves out as social workers. The petitioner required to be registered with the Scottish Social Services Council ("SSSC"). As a consequence of his conviction for perjury, a fitness to practise hearing took place on 20-22 February 2023. After hearing evidence from a number of witnesses, the fitness to practise panel concluded:

"79. The Panel considered whether there should be a finding of current impairment in the public interest. The Panel has concluded, that taking into account all the circumstances, that it is not necessary to make such a finding. The Panel took into account that you are of a mature age, the conviction is now 12 years old, you have spent a considerable amount of your adult life in public service including eight years as an MSP, you have a distinguished academic record, you have described your learning from your time in prison, you have shown a degree of insight into the seriousness of the conviction, there is no

evidence of any other dishonest criminal behaviour and the circumstances of your conviction were unique.

83. Having confirmed there are no conditions required on the Part of the Register for Students, the application for Registration is accordingly granted.”

[4] The petitioner responded to a generic advertisement for social workers issued by the respondent in February 2024. He was invited for a formal interview which took place on 22 March 2024. He was subsequently informed on 29 July 2024 that he had been unsuccessful but that he should not be discouraged from applying again in the future. In April and May 2024, he made applications for particular posts advertised by the respondent but was not invited for interview. On 15 July 2024, he applied for a specific post within the criminal justice field of social work.

[5] On 20 August 2024, the respondent wrote to the petitioner with reference to his application for employment as a social worker in criminal justice. The letter was in the following terms:

“Thank you for your interest in joining Glasgow City HSCP and your recent application for the above vacancy. I’m sorry to confirm that after careful consideration I have decided not to progress your application further.

During a previous selection process for the role of Social Worker you disclosed and referred to your highly publicised criminal conviction and prison sentence for perjury, which I have considered in assessing your suitability for employment.

I have taken the decision that to employ you would present an unacceptable level of risk to Glasgow City HSCP and the Council. I have decided that your application to work with us as a social worker, or any future application, should not be progressed.

I understand you will be disappointed by this decision but I hope this clarifies the position of Glasgow City HSCP and the Council and wish you well in future.”

[6] The petitioner subsequently applied for a further social work job (Youth Court GLA12823) advertised by the respondent. By letter dated 11 December 2024, the

respondent advised the petitioner that his application would not be progressed further.

The letter stated *inter alia*:

“You are welcome to make future applications. Any such applications will be considered. However, the role you had applied for and other similar roles that might be advertised involve, amongst other things, the preparing of reports to use in courts and other legal or statutory forms. That was also true in respect of the Criminal Justice Social Work role for which you applied earlier this year. ....Absent a material change in circumstances, the fact of your previous conviction will likely lead to future applications not resulting in an offer of employment. Out of fairness to you, it was felt appropriate to make that clear.”

### **Submission for the petitioner**

[7] On behalf of the petitioner, it was submitted that the respondent’s decision was unlawful and fell to be reduced on three distinct grounds. In the first place, the decision to exclude the petitioner from being considered for social work jobs with the respondent was irrational. In the second place, the decision was unlawful due to procedural impropriety including the failure to give adequate reasons for the decision. In the third place, the respondent’s decision involved an unlawful fettering of its discretion.

[8] The statutory background to this petition includes the Regulation of Care (Scotland) Act 2001 (“the 2001 Act”). Section 43 of the 2001 Act constituted the SSSC to exercise various functions under the Act including overseeing the education, training, conduct and practice of social service workers. A social worker is a particular type of social service worker identified by reference to their professional qualification and entitlement to be registered as a social worker, (section 77). The title of social worker is a protected term and it is a criminal offence for a person, with intent to deceive, to take or use that title or purport to act as a social worker while not registered on the appropriate register, (section 52). A person applies to the SSSC for registration as a social worker under section 45 and the SSSC may grant the application unconditionally or with conditions, or may refuse it, (section 46).

Combined Fitness to Practise Rules 2017 have been issued which define the concepts of “fitness to practise” and “impairment” to be applied when considering an application for registration. The 2017 Rules also permit the SSSC to form Fitness to Practise Panels to consider and determine applications for registration.

[9] The respondent is empowered by the Local Government (Scotland) Act 1973, section 64, to appoint such staff as it considers necessary for the proper discharge of its statutory functions. It also has a subsidiary power under section 69 of the same Act to do such other things which assist in the discharge of any of his statutory functions.

[10] A broad theme of the petitioner’s challenge is that it is for the SSSC to determine whether an individual is an appropriate person to work in social work in Scotland.

Parliament has set up the SSSC within a detailed legal framework to assess the suitability of an individual to practise as a social worker. The respondent’s decision usurps the role of the SSSC by effectively telling the petitioner that he is not viewed as a fit and proper person to work as a social worker for the respondent.

[11] It was submitted that the letter of 20 August 2024 was an effective ban on the petitioner working in social work in Glasgow. The subsequent letter dated 11 December 2024, demonstrated a change in tone insofar as it purported to welcome further applications, but the final paragraph undermined the earlier paragraphs. The only change in circumstances which the petitioner envisages might potentially be viewed as material by the respondent would be if the original conviction was quashed. While the petitioner has attempted via the Scottish Criminal Cases Review Commission to challenge his conviction, such a process is far from easy or quick.

[12] In relation to the irrationality argument, I was referred to *Council of Civil Service Unions & Others v Minister for the Civil Service* [1985] 1 AC 374 per Lord Diplock

at p410F-411A. It was argued that the petitioner had been assessed as fit to practise as a social worker by the SSSC after a panel hearing. That panel hearing had involved a detailed consideration of the perjury conviction and its relevance to his fitness to practise. He had successfully worked on placement in social work departments operated by other local authorities. He had satisfied all of the disclosure requirements under the Protection of Vulnerable Groups (Scotland) Act 2007. He accepted and acknowledged that his conviction required to be disclosed to potential employers under the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013/50, and he had fully complied with those requirements. In these circumstances, it was irrational for the respondent to determine that the petitioner could not be considered for employment as a social worker in Glasgow. The respondent has no basis for determining that the petitioner is not fit to practise as a social worker.

[13] On the second ground of challenge, the respondent's letters do not provide adequate and intelligible reasons for its decision. These letters failed to provide adequate reasoning for why the respondent considered it appropriate to effectively bar the petitioner from employment as a social worker in Glasgow. Reference was made to *United Co-operative Ltd v National Appeal Panel for Entry to the Pharmaceutical Lists* 2007 SLT 831 at p842; *South Bucks District Council v Porter (No 2)* [2004] 1 WLR 1953 at paragraph 36; and *R v Secretary of State for the Home Department ex parte Doody* [1994] 1 AC 531 at p560, for various well known dicta on the adequacy of reasons in the field of administrative decisions. It was submitted that the letter of 20 August 2024 did not explain what was meant by the "unacceptable level of risk" which the petitioner presented to the respondent given that his registration indicated that there was no such risk.

[14] In relation to the third ground of challenge, it was contended that the respondent had unlawfully fettered its discretion in relation to the petitioner's ability to seek employment. The respondent required to recruit employees in a fair and reasonable manner designed to engage the most suitable candidate for the particular post. Reference was made to the respondent's policy statement on recruitment and selection policy. This involved exercising a statutory discretion during the appointment process. By imposing what was, in effect, a blanket ban on employing the petitioner, the respondent had fettered its discretion. Reference was made to *British Oxygen Co Ltd v Minister of Technology* [1971] AC 610, Lord Reid at p625.

[15] At the end of his submissions, the solicitor-advocate for the petitioner turned to the issue of the competency of these proceedings raised by the respondent in its answers. It was submitted that the petitioner's challenge should not be viewed as an employment law challenge. It did not relate to a dispute about a specific job. As the respondent had adopted a wide and unusual policy of blocking the petitioner from being engaged as a social worker, that policy decision, which involved an exercise of statutory powers, was amenable to judicial review. The decision in *Redcroft Care Homes Ltd Petr* [2024] CSIH 34; [2023] CSOH 95 relied upon by the respondent could be distinguished as parties in that dispute were in a contractual relationship. The remedy for the petitioner in *Redcroft Care Homes Ltd Petr* would be through an ordinary action based on contract. The petitioner was in a different position. There was no contractual relationship with the respondent. The respondent was using its statutory powers under the Local Government (Scotland) Act 1973 to adopt a policy excluding the petitioner from employment. This was a draconian policy which covered all social work roles. The exclusion was not, for example, limited to a specific role such as preparing reports within a criminal justice appointment which, it was accepted,

might raise a legitimate issue for the respondent. This was a blanket policy which usurped the role of the SSSC in deciding whether the petitioner was a fit and proper person to work in social work.

### **Submission for the respondent**

[16] The preliminary argument advanced on behalf of the respondent concerned the competency of the petition. It was submitted that a decision by a local authority whether to invite an applicant for interview or offer them a contract of employment did not fall within the scope of the court's supervisory jurisdiction. The petition for judicial review was therefore incompetent and the court should sustain the respondent's first plea-in-law and dismiss the petition.

[17] The scope of the supervisory jurisdiction had been set out by the Lord President (Hope) in *West v Secretary of State for Scotland* 1992 SC 385 at p413. *West* was a dispute about reimbursement of expenses after an employee was transferred to another place of work by his public sector employer. The supervisory jurisdiction of the Court of Session seeks to ensure that a person or body entrusted with a jurisdiction, power or authority does not exceed or abuse that jurisdiction, power or authority. Importantly, senior counsel submitted, it was expressly stated in *West* that "Contractual rights and obligations, such as those between employer and employee, are not as such amenable to judicial review." The position since *West* had been consistent. Reference was made to Lord Clark's discussion of a series of cases in which decisions made by a contracting party in relation to rights and obligations under contract were held not to be amenable to judicial review, (*Abundance Investments Ltd v Scottish Ministers* [2020] CSOH 12 at paras [43]-[48]). The Inner House in *Redcroft Care Homes Ltd Petr* 2024 CSIH 34 at paras [30]-[31] & [34] reaffirmed the line of



authority that the supervisory jurisdiction is not normally engaged where the dispute relates to a disagreement between contracting parties regarding the operation of their agreement. The petitioner's dispute with the respondent relates to the respondent's statement that they do not propose to engage him as a social worker. This is an employment situation between an employer and a potential future employee. The fact that the respondent acts under a statutory power when it informed the petitioner of its view is unimportant. As a public authority created by statute, the respondent can only ever act under a statutory power. It did not matter that this dispute arose at the stage of the respondent considering whether to enter into a contract as opposed to when a contract was already in place.

[18] Even if the petition was competent, there were a number of fundamental problems with it. As a matter of private law, employers have a broad discretion in relation to recruitment decisions. Provided that an employer abides by the statutory requirements of the Equality Act 2010 and any similar legislation, the employer has a wide discretion as to whom to interview and whom to employ. There is no legal duty to provide reasons to any unsuccessful applicant. A factor which an employer is entitled to take into account when deciding whether to employ a particular individual is reputational risk to the employer. A public sector employer such as the respondent is in precisely the same situation as a private sector employer. It can decline to interview a qualified applicant for any job if it so wishes provided it is not contravening any discrimination legislation.

[19] The petitioner's irrationality submission based on the regulatory scheme set up by the 2001 Act takes him nowhere. The regulatory scheme sets a condition precedent for any applicant who seeks employment in Scotland as a social worker. The fact that the petitioner can meet that condition precedent confers on him no right to be considered for any particular post by any potential employer. The respondent is at liberty to insist

on additional criteria for the social workers which it considers for potential employment. Examples were given of an employer which imposes a condition that it will only interview candidates with a first class university degree, or an employer which declines to interview individuals who have had adverse disciplinary findings against them but whose registration has been continued. The fact that the Rehabilitation of Offenders provisions require an individual engaged in social work to disclose a previous conviction if asked demonstrates that Parliament viewed the existence of a previous conviction as a potentially relevant factor to an employer. The role which the petitioner was applying for in the summer of 2024 was as a criminal justice social worker. Such a role would involve preparing court reports in relation to convicted persons. The respondent's concern in relation to employing an individual with a High Court conviction for perjury to prepare such reports is understandable and could never be described as an irrational concern.

[20] The respondent's letters gave him adequate reasons for the respondent's decision. The letters were brief but provided the petitioner with confirmation that the respondent viewed the existence of his previous conviction as a significant bar to his employment. The petitioner has never sought clarification from the respondent as to what the letters mean which supports the respondent's contention that he has been provided with an adequate explanation for the decision.

[21] The respondent's letters did not fetter their discretion. Properly read, these letters did not amount to a blanket ban. The second letter made clear that future applications would be considered if submitted. It made clear what was implicit in the earlier letter that if there was a material change in circumstances, then a future application by the petitioner would have improved prospects of success. The respondent's decision was one based on the petitioner's individual circumstances.

## Discussion

[22] The preliminary issue for the court is whether the petition is competent. A petition for judicial review seeks to invoke the supervisory jurisdiction of the Court of Session. The supervisory jurisdiction does not extend over all decisions made by a public body in the course of fulfilling its statutory duties. The supervisory jurisdiction is invoked where the decision of a respondent is made under a legally circumscribed jurisdiction, power or authority. The supervisory jurisdiction seeks to ensure that a respondent makes lawful decisions in accordance with the limits of its jurisdiction, power or authority. It is important to identify the source and nature of the power which a respondent is exercising in relation to any disputed decision. In this case, the petitioner's submission identified section 64 of the Local Government (Scotland) Act 1973 as the statutory basis for the disputed decision. While section 64 does limit the respondent to employing staff considered necessary for the proper discharge of the council's functions, it does not limit or define the respondent's power to engage staff in any other way.

[23] There is a clear line of authority dating from *West v Secretary of State for Scotland* and culminating in *Redcroft Care Homes Petr*, that a decision made within a contractual relationship such as a contract of employment will rarely be amenable to judicial review. In such a situation, the parties' obligations to each other are determined by the terms of their contract and are enforced in the ordinary way. If the express, and any implied, contractual terms are not adequate to govern the particular issue which has arisen between the contracting parties, it is not for the supervisory jurisdiction to step in and superimpose public law concepts into the parties' relationship.

[24] The petitioner sought to distinguish that line of authority on the basis that such cases involved parties in a contractual relationship whereas this case concerned a policy adopted by the respondent prior to any contractual relationship. I am not persuaded by this argument. I agree with the submission for the respondent that it makes no difference that, in this case, the petitioner's complaint relates to a refusal by the respondent to consider entering into a contract of employment. The context in which the respondent sent these letters to the petitioner was whether the petitioner was viewed as a suitable candidate for employment as a social worker. The relevant statutory power is the power to employ staff. This was an employment situation where parties are free to decide whether to enter into a contract or not. Although the petitioners in cases such as *West v Secretary of Scotland* and *Redcroft Care Homes v Edinburgh City Council* had existing contracts with the respective respondents, it must be noted that those contracts did not provide those petitioners with the remedies which they wished. The reason why the petitioners in those cases raised judicial review proceedings was an attempt to secure an improved position by arguing that public law concepts were applicable in the parties' relationship. The petitioner in this case is in essentially the same position. He enjoys no private law right to be considered for employment by the respondent, so he is seeking to fashion a right to be considered for social work jobs through the application of broad public law concepts. If the petitioner's argument was accepted, then it would follow that every applicant for a public sector job in Scotland could potentially challenge the job application process using the judicial review procedure.

[25] I find that the petition is incompetent for the reasons advanced by the respondent and it falls to be dismissed.

[26] I shall briefly provide my views on the merits of the petition itself. The test for demonstrating that a decision is irrational is a high one for very good reason. The vast

majority of decisions taken by public bodies whether good, bad or indifferent, should not be second guessed by judges. But there may be rare occasions where, to adopt the words of Lord Diplock, the decision of the public body is so deficient in logic that no sensible person could have reached it. In those exceptional situations, the court may step in - not to remake the decision itself - but to require the decision maker to apply its mind properly to the issue. I do not consider that the respondent's concern about employing the petitioner comes close to being viewed as irrational. His registration with the SSSC simply confirms that he meets the minimum statutory requirement for employment. It does not prevent an employer from applying its own additional criteria before interviewing or offering employment. The existence of a conviction for perjury is likely to be of some relevance to some employers considering whether to employ an individual as a social worker. If a conviction was of no possible relevance once an individual was registered with the SSSC then it would be expected that the Rehabilitation of Offenders Act 1974 would not have excluded the social work profession. This seems to me to be a situation in which different views can reasonably be held on the relevance of the petitioner's conviction and sentence. For some, the petitioner's past experiences with the criminal justice system may be seen as giving him greater insight which may of huge benefit in his work as a social worker. But the fact that the respondent does not view it as a positive factor cannot be described as irrational. The suggestion at the hearing before me that the respondent was usurping the role of the SSSC in determining who should be a social worker is, in my view, emotive but wrong. The petitioner is on the appropriate register and the respondent's decision does not affect that. He remains free to work as a social worker for any public or private employer willing to engage him. All the respondent has done is indicate to the petitioner that they are most unlikely to engage him as a social worker.

[27] In relation to the reasons given for their decision, I expressed the view during the hearing that the letters were far from clear. What was unclear to me was what the respondent meant by the phrase “you would present an unacceptable level of risk to Glasgow City HSCP and the Council”. I also struggled to square the sentence in the earlier letter that “I have decided that.....any future application should not be progressed” with the passage in the subsequent letter that “You are welcome to make future applications. Any such applications will be considered.” However, a requirement to give adequate and intelligible reasons does not impose a universal standard. What is required will depend on the context in which the decision is made including any statutory procedure which must be followed. The reasons can be brief but should convey to the other party why a decision was taken. In the present case, the respondent made a unilateral decision to write to the petitioner to explain how future applications would likely be viewed. They did not need to. Although the letters lack some clarity, they did convey to the petitioner that his previous conviction was considered by the respondent to be a significant bar to future employment with them. He was told what the respondent’s likely response would be to future applications. That seems to me to be the essential information which the petitioner needed.

[28] The petitioner’s argument in relation to the fettering of discretion is misconceived. Fettering of discretion in a public law context occurs where a decision maker exercising a discretion adopts and applies a rigid policy without being open to considering exceptions to that policy. It is difficult to view the statutory power to engage staff as conferring a specific and defined discretion upon the respondent. But even if the terms of the August 2024 letter fall to be read as advising that any future application will not be progressed, the subsequent letter in December 2024 indicates that his subsequent application for the Youth Court role was considered by the respondent and that any further applications would also be

considered. A fair reading of the correspondence is that the respondent considers it unlikely that it will offer employment to the petitioner, but it will consider any further applications which he makes. The respondent identifies that a material change in circumstances would improve the prospects of employment. The respondent has not adopted a fixed and absolute policy against considering the merits of any further job applications from the petitioner.

**Disposal**

[29] I shall sustain the first plea-in-law for the respondent and dismiss the petition as incompetent. If parties are unable to reach agreement on expenses, they should ask for the matter to be put out by order so that I can be addressed on that issue.