

First-tier Tribunal Care Standards

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

**2024-01122.ISO-W
NCN: [2024] UKFTT 00710 (HESC)**

Heard by Video Link on 30 July 2024

BEFORE:

Mr H Khan (Judge)

Dr D Cochran (Specialist Member)

Ms L Owen (Specialist Member)

Social Care Wales

Applicant

-v-

Michelle Marie Drane

Respondent

Decision

The Appeal

1. Social Care Wales (“the Applicant”) applies under section 148 of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”), to the Tribunal, for an interim order made against Ms Michelle Marie Drane (“the Respondent”) made on 28 February 2023 for a period of 18 months to be extended or further extended by 12 months until 27 August 2025.

The Hearing

2. The hearing took place on 30 July 2024. The hearing took place by video. The documents that we were referred to are in the electronic hearing bundle (173 pages) which was prepared by the Applicant for the

hearing.

Attendance

3. The Applicant was represented by Mr J Anderson, Counsel. Its sole witness was Mr Ieuan Parry, Fitness to Practise Senior Officer (Social Care Wales).
4. The Respondent did not attend.
5. Ms Victoria Psarelis dialled in as an observer. She informed the clerk prior to the hearing that she knew the Respondent but was not representing her. Ms Psarelis dialled into the hearing but dialled out when it began.

Preliminary Issue

6. We heard submissions from Mr Anderson and considered whether we should proceed in the Respondent's absence.
7. The hearing was listed to start at 10 AM but started at 10:20AM to allow the Respondent or her legal representatives time to dial into the hearing. There had been no explanation for the Respondent's non-attendance nor had there been any application for a postponement/adjournment.
8. Mr Anderson submitted that the Tribunal should proceed in the Respondent's absence. Mr Anderson confirmed that the email address provided on the application form was the correct email address for the Respondent. Furthermore, Mr Anderson confirmed that the hearing bundle and skeleton argument had been sent to the Respondent both by email and by post. Mr Anderson made reference to such deliveries being tracked.
9. We considered Rule 27 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (as amended) ("the 2008 Rules"). We concluded that we would proceed in the Respondent's absence. Our reasons for doing so are set out below.
10. We were satisfied that the Respondent was aware of the hearing (notifications sent on 13 June, 3 July and 25 July 2024) and that it was in the interests of justice to proceed with the hearing.
11. We noted that the Respondent had not engaged in these proceedings and no evidence had been provided in response to the order dated 13 June 2024.
12. We observed that the Respondent had not participated or engaged with the Interim Orders Panel at any stage.

13. The additional challenge in this case was that the interim suspension order was due to expire on 27 August 2024 and the matter had to be heard and determined by that date.
14. In any event, even if we had been minded to adjourn to a later date, we were not reassured that this would secure the Respondent's attendance at any future hearing.

The Applicant

15. The Applicant is the regulator for the social care profession in Wales. Under section 68(1) of the Act, the Applicant's main objective in carrying out its functions is to protect, promote and maintain the safety and well-being of the public in Wales.

The Respondent

16. The Respondent registered with the Applicant on 1 March 2021, she was subsequently registered as a Domiciliary Care Worker on 20 April 2021. She was employed as a Rota Manager at IOS Health and Social Care on 2 February 2015.

Events leading to the Interim Suspension Order

17. A referral was sent by Cardiff City Council's Adult Safeguarding Officer, Sue Northcott, on 9 December 2022 to the Applicant. The referral stated that the Respondent was being investigated by both Cardiff Council Safeguarding and South Wales Police due to allegations that she had financially abused a user of care and support by using their bank card for personal use during her time working at IOS Health and Social Care. It also arose at this stage that the Respondent had more recently gained employment as an Area Planner at First Grade Care.
18. On 20 January 2023 the Respondent was arrested for fraud by false representation. The police investigation is still ongoing and the Respondent has been placed under bail conditions to not contact any witnesses directly or indirectly and to not attend any IOS Health and Social Care Homes. The safeguarding investigation also continued and the Respondent was dismissed from her role at First Grade Care for gross misconduct on 31 January 2023 as it had arisen that the Respondent had a 2018 conviction which had previously not been disclosed.
19. The matter came before an Interim Orders Panel ("IOP") of SCW on 28 February 2023. The panel determined that the imposition of an Interim Suspension order ("the Order") for a period of 18 months (to conclude on 27 August 2024) was both necessary and proportionate on the grounds that the order was necessary for the protection of the public; and otherwise in the public interest.

20. On 21 August 2023 and 19 February 2024, an Interim Orders Panel met to review the Order. On each occasion, the Panel determined that the Order should continue on the same basis.
21. The criminal investigation is ongoing. Once the criminal investigation has been completed, then the Applicant can then conduct its own investigation.
22. The existing Interim Suspension Order will expire on 27 August 2024
23. The Applicant now seeks a 12-month extension of the Interim Suspension Order until 27 August 2025 to allow for the conclusion of both the criminal and regulatory proceedings.

The Respondent's position on the Application

24. The Respondent has not engaged with this application and has not provided a substantive response to the application or any evidence.
25. A copy of the application was sent to the Respondent on 13 May 2024 but the Respondent did not provide any response.
26. The Respondent was given a further opportunity to provide a written response and witness evidence pursuant to the order dated 13 June 2024 but has failed to do so.

The Issues to be determined.

27. The issue to be determined was whether the interim suspension order imposed on 28 February 2023 for a period of 18 months should be extended beyond 27 August 2024.

The Legal Framework

28. The Applicant is the regulator for the social care profession in Wales. Under section 68(1) of the Regulation and Inspection of Social Care (Wales) Act 2016 ("the Act"). Its main objective in carrying out its functions is to protect, promote and maintain the safety and well-being of the public in Wales.
29. Under section 68(2) of the Act, in pursuing that objective, the Applicant is required to exercise its functions with a view to promoting and maintaining –
 - (a) high standards in the provision of care and support services,
 - (b) high standards of conduct and practice among social care workers,
 - (c) high standards in the training of social care workers, and
 - (d) public confidence in social care workers.

30. Sections 143 to 149 of the Act deal with the imposition of an interim order by an Interim Orders Panel in relation to a registered person.
31. Under section 144(5) of the Act, an Interim Orders Panel may make an interim order only if it is satisfied that the order –
 - (a) is necessary for the protection of the public,
 - (b) is otherwise in the public interest, or
 - (c) is in the interests of the registered person.
32. Under section 144(4) there are two types of interim order, namely:
 - (a) an interim suspension order, which is an order suspending the registered person's registration;
 - (b) an interim conditional registration order, which is an order imposing conditions on the registered person's registration.
33. Under section 144(5), when an interim order is imposed it takes effect immediately and will have effect for the period specified by the Interim Orders Panel, which may not be more than 18 months.
34. Under Section 146 of the Act, an interim order must be reviewed by an Interim Orders Panel within six months of the date on which the interim order was imposed. If, following a review under section 146, an interim order remains in place, it must be further reviewed within six months of the date of the review.
35. The Applicant has issued guidance entitled 'Guidance on Indicative Disposals for the Fitness to Practise Panel and Interim Orders imposed by the Interim Orders Panel' (the Guidance') As the title indicates, the first part of this guidance relates to the imposition of sanctions by a Fitness to Practise Panel and is not relevant to this application. However, Section 6 of the Guidance relates to applications for interim orders and includes general principles to be taken into account by an Interim Orders Panel. The Applicant has also published practice guidance for different categories of social care workers, including, 'The Domiciliary Care Worker
36. Under section 112(1) of the Act, the Applicant is required to prepare and publish a code of practice setting standards of conduct and practice expected of social care workers. The Applicant has prepared and published a Code of Professional Practice for Social Care ('the Code'). The Applicant has also created practice guidance pertaining to the registration status of Domiciliary Care Worker
37. Under section 148 of the Act, SCW may apply to the Tribunal for an interim order to be extended or further extended.

38. On an application, the Tribunal may -
- (a) revoke the interim order,
 - (b) in the case of a conditional registration order, revoke or vary any condition, the interim suspension order with an interim conditional registration order,
 - (c) extend, or further extend, the order for up to 12 months,
 - (d) make no change to the order or to the period for which the order is to have effect.
39. The onus of satisfying the Tribunal that the criteria was met falls on the Applicant and that the relevant standard is a civil standard, namely on a balance of probabilities.

Evidence

40. We took into account all the evidence that was presented in the bundle and at the hearing. We have summarised the evidence insofar as it relates to the relevant issues before the Tribunal. We wish to make it clear that what is set out below is not a reflection of everything that was said or presented at the hearing.
41. Mr Parry had been in contact with the police. The last correspondence dated 10 July 2024 stated that there was still an ongoing police investigation. Mr Parry explained that there was a backlog of cases that the police were dealing with and there were staff shortages. The police had asked the Applicant to contact them again in 8 weeks' time.
42. Following criminal proceedings, the Applicant would conduct its own investigation and this would include investigating why the Respondent did not declare her conviction for fraud in 2018 as part of the registration process.
43. Mr Parry considered that an interim suspension order was both necessary and proportionate. The allegations were serious allegations involving dishonesty. There were also suggestions this may be part of pattern of behaviour.

The Tribunal's conclusion with reasons

44. We took into account all the evidence that was included in the hearing bundle and presented at the hearing. This includes the evidence relating to the Interim Orders Panel. We have summarised the evidence insofar as it relates to the issues we determined.
45. We wish to place on record our thanks to Mr Anderson and Mr Parry for their assistance at the hearing.
46. The question for the Tribunal (as the primary decision maker) is whether at the date of its decision, it reasonably believes that the Interim order should

be extended or further extended. This means that it has to consider the criteria as that considered for the original interim order, namely, whether it's necessary for the protection of the public, is otherwise in the public interest, or is in the interests of the registered person.

47. We reminded ourselves that the Tribunal's role in the appeal is not to make any findings of fact but to consider whether there is sufficiently strong evidence to support the decision to extend the Interim Suspension Order.
48. The Tribunal is considering the appeal on the date of the hearing and makes its decision on the basis of all of the evidence available to it, including any oral evidence at the hearing and is not restricted to matters available to the Interim Orders Panel.
49. We found the evidence of Mr Parry to be credible and reliable. His evidence was limited as the police investigation was still ongoing.
50. The power to make an interim suspension order is not uncommon for regulated professions and there is case law arising from other regulatory schemes which has considered the threshold and the relevant considerations in deciding whether such an order is appropriate. We also considered the case of the *General Medical Council v Dr Stephen Chee Cheung Hiew [2007] EWCA Civ 369*,
51. We concluded that we were satisfied that an interim order was necessary for the protection of public and in our view otherwise in the public interest.
52. We acknowledge that these are only allegations at this stage. However, the allegations are of a serious nature. It is alleged that the Respondent used a service user's bank card for her own personal use. The allegations involve dishonesty and are also suggestive of a pattern of behaviour. There is presently an ongoing police investigation.
53. It is also alleged that the Respondent failed to disclose her 2018 fraud conviction to the Applicant on her application for registration. There is, therefore, a real risk of significant harm to vulnerable individuals' health, safety and well-being if no interim order was in place. There is also a risk of repetition. The current allegation is said to be similar to the fraud conviction in 2018.
54. In our judgement we consider that the allegations are too serious for an Interim Conditional Registration Order. There are no practical conditions that could be attached to the Respondent's registration that would mitigate the risks in this case.
55. We considered the reasons as to why the case has not been concluded to date. There is currently an ongoing criminal investigation. The Applicant cannot carry out its own investigation until that is concluded. The Applicant has been informed that there is a backlog of cases that the police are dealing with.

56. In reaching our decision, we took into account any prejudice/hardship to the Respondent of any interim order continuing. We acknowledge that the imposition and subsequent extension of an interim order could potentially cause hardship to the Respondent and the duration of the order to date. However, as the Respondent has not engaged with these or previous proceedings there was very limited information before us.
57. Following any criminal investigation, the Applicant will need to complete its own investigation. In particular, Mr Parry made it clear that the Applicant will also be investigating why it is that the Respondent did not declare her 2018 conviction registration. We therefore concluded that given the circumstances of the case the interim order made on the 28 February 2023 shall be extended until 27 August 2025 and that It was both necessary and proportionate to do so.
58. We reminded ourselves that if the Tribunal were to grant an extension of the interim suspension order in this case, the Applicant will be required by section 146(4)(b) of the Act to convene an Interim Orders Panel to conduct a review of the interim order within three months of the Tribunal's decision. In addition, under section 146(8) an Interim Orders Panel may review an interim order at any time if new evidence becomes available. Mr Parry made it clear that any interim suspension order is kept under review.
59. For the avoidance of any doubt, we wish to make it clear that whilst we have considered whether there should be an extension of the interim order, we are not expressing any views on the merits of case against the Respondent.

DECISION

60. The application to extend the order dated 28 February 2023 and which is due to expire on 27 August 2024 shall be granted and the interim order shall be extended until 27 August 2025.

Judge H Khan

Lead Judge

**First-tier Tribunal (Health, Education and Social
Care)**

Date Issued: 01 August 2024