

First-tier Tribunal Care Standards

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

Neutral Citation Number: [2024] UKFTT 00645 (HESC)

2024-01131.ISO-W

Heard by Video Link on 23 July 2024

Before
Mr H Khan (Judge)
Ms H Reid (Specialist Member)
Mr M Cann (Specialist Member)

Between:

Social Care Wales

Applicant

-v-

Donna Lynn Hughes

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 Donna Lynn Hughes (“the Respondent”) made on 6 February 2023 for a period of 18 months to be extended or further extended by 12 months until 5 August 2025.

The Hearing

2. The hearing took place on 23 July 2024. The hearing took place by video. The documents that we were referred to are in the electronic hearing bundle (192 pages) which was prepared by the Applicant for the hearing.

Attendance

3. The Applicant was represented by Mr D Griffiths, Solicitor. Its sole witness was Ms Lisa Parry, Fitness to Practise Senior Officer (Social Care Wales).
4. The Respondent did not attend.

Preliminary Issue

5. We heard submissions from Mr Griffiths and considered whether or not we should proceed in the Respondent's absence.
6. The hearing was listed to start at 10AM but started at 10:15AM 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.
7. Mr Griffiths submitted that the Tribunal should proceed in the Respondent's absence. Mr Griffiths confirmed that the email address provided on the application form was the correct email address for the Respondent.
8. 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.
9. We were satisfied that the Respondent was aware of the hearing (notifications sent on 27 June and 18 July 2024) and that it was in the interests of justice to proceed with the hearing.
10. We also noted that the Respondent had not engaged in these proceedings and no evidence had been provided in response to the previous Tribunal order.
11. We also took into account that the Applicant had previously corresponded with the Respondent by text message. That was in relation to proceedings before the Interim Orders Panel. We noted that it was discovered during those proceedings that it appeared that the number which the Applicant had for the Respondent was not in use. However, for the purposes of the proceedings before us, all notifications had been sent to the Respondent by email.
12. We noted that although there had been no direct contact between the Applicant and the Respondent since the Respondent registered with the Applicant, the Respondent had in April 2023, logged on to her registration portal and deleted her address details.

13. The additional challenge in this case was that the interim suspension order was due to expire on 5 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 was registered with the Applicant as a Domiciliary Care Worker on 13 December 2019. The Respondent was employed by Seren Ffestiniog as a support worker.

Events leading to the Interim Suspension Order

17. On 16 September 2022, the Applicant received a referral from North Wales Police ("the Police"). The referral states that on 10 September 2022, the Police received a referral from Gwynedd Social Services following concerns that a large sum of money had been taken by the Respondent from the bank account of her grandmother; an 85-year-old vulnerable individual. It was further stated that the exact amount of money taken was unclear at that stage, but it was believed to be in the thousands between January and September 2022.
18. During a disciplinary meeting held by Seren Ffestiniog on 21 October 2022, the Respondent admitted to the theft of money from her grandmother. The Respondent told Seren Ffestiniog that she had made her grandmother aware of the missing money before the Police became involved and that the Respondent had made a private arrangement for the Respondent to repay the money to her grandmother. As a result, the Respondent was dismissed from her employment on 07 November 2022.
19. On 06 February 2023, an Interim Orders Panel met to consider an application for an Interim Order. The Panel determined that an Interim Suspension Order ("the Order") should be imposed for a period of 18 months on the grounds that such an order was (1) necessary for the protection of the public; and (2) otherwise in the public interest.
20. On 04 August 2023 and 01 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 still ongoing and the matter is currently with the CPS awaiting a charging decision.
22. The Applicant's investigation has been placed on hold to prevent any prejudice being caused to the criminal investigation.
23. The existing Interim Suspension Order will expire on 5 August 2024.
24. The Applicant now seeks a 12-month extension of the Interim Suspension Order until 5 August 2025 to allow for the conclusion of both the criminal and regulatory proceedings.

The Respondent's position on the Application

25. The Respondent has not engaged with this application and has not provided a substantive response to the application or any evidence.
26. A copy of the application was sent to the Respondent on 27 June 2024 the Respondent did not provide any response.
27. The Respondent was given a further opportunity to provide a written response and witness evidence pursuant to the order dated 27 June 2024 but has failed to do so.

The Issues to be determined.

28. The issue to be determined was whether the interim suspension order imposed on 6 February 2023 for a period of 18 months should be extended beyond 5 August 2024.

The Legal Framework

29. 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.
30. 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.

31. 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.
32. 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.
33. 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.
34. 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.
35. 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.
36. 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
37. 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')
38. Under section 148 of the Act, SCW may apply to the Tribunal for an interim order to be extended or further extended.
39. 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.

- 40. 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

- 41. 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.
- 42. Ms Parry explained that she had been in contact with the Police the day before the hearing. They had informed her that the matter was open “complex” and still ongoing. The case was with the Crown Prosecution Service awaiting a charging decision. The allegations were serious allegations. The Respondent could have access to finances of other vulnerable individuals.
- 43. The Police had asked that the Applicant contact them after 23 September 2024. Ms Parry was not sure why there had been a delay in the completion of the criminal investigation and set out that the Applicant could not complete its own investigation until the criminal investigation had been completed.
- 44. Ms Parry did not consider that an interim Conditional Registration Order would be appropriate. The Respondent had not engaged with these proceedings whatsoever. There had been no contact from the Respondent. The Respondent had removed its address from the Applicant’s portal in April 2023. Ms Parry believed that there was a risk to others if the Interim Suspension Order was not extended.

The Tribunal’s conclusion with reasons

- 45. 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.
- 46. We wish to place on record our thanks to the Mr Griffiths and Ms Parry for their assistance at the hearing.

47. 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.
48. 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.
49. 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.
50. We found the evidence of Ms Parry to be clear and credible. Ms Parry's difficulty by her own account was that she had been provided limited information regarding the ongoing police investigation. Ms Parry very fairly acknowledged that she wasn't clear as to the reasons why the police had deemed the matter "complex" and why it had taken as long as it had, nor was she clear whether or not the Police had more up to date telephone or postal contact details for the Respondent.
51. 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.
52. 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.
53. We acknowledge that these are only allegations at this stage. However, the allegations are of a serious nature, involving a vulnerable person and fall below the standard expected of a Domiciliary Care Worker. The allegations concern the theft of money from the Respondent's grandmother and there is currently an ongoing "complex" investigation conducted by North Wales Police.
54. The alleged victim is an 85-year-old vulnerable female who received care 3 times a day in her own home. The Respondent had access to the Victim's finances and also provided care to her. We acknowledge Ms Parry's evidence that the Respondent told her previous employer (Seren Ffestiniog) that she had made her grandmother aware of the missing money before the Police became involved and had made a private arrangement for the Respondent to repay the money to her grandmother.

55. However, we considered the situation as it currently was presented before us. As a Domiciliary Care Worker, the Respondent could be expected to have access to vulnerable people within their homes. Allegations of this nature involving an elderly vulnerable person can have a bearing on whether it is safe for the Respondent to have access to such vulnerable service users. We agreed that there would be a high degree of public concern if the Respondent was left free to practice while subject to these serious allegations.
56. We took into account all the circumstances of the case. We concluded that although it appears that the allegations were disputed there was a significant risk to vulnerable individuals in allowing the Respondent to practice unrestricted whilst the investigation continued.
57. 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. Furthermore, this is a case where the Respondent has simply not engaged with the Applicant. For example, the Respondent has taken steps to remove her address (in April 2023) from the Applicant's portal.
58. We considered the reasons as to why the case has not been concluded to date. There is currently an ongoing criminal investigation. The correspondence from the Police in the hearing bundle dated 15 June 2024 confirmed that "*no final decision has been made by the CPS and officers at this stage*". Ms Parry informed us at the hearing that she had received an email the day before the hearing informing the Applicant that the position in respect of the Police investigation had not changed. The matter is therefore subject to the Police investigation. It is clear from the correspondence in the hearing bundle that the Applicant has been proactively contacting the Police for regular updates.
59. 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, the information before the Tribunal with respect of any hardship was very limited due to the non-engagement of the Respondent.
60. We noted that the police have asked the Applicant to contact them again in September 2024 an update. Following any criminal investigation, the Applicant will need to complete its own investigation. We therefore concluded that interim order made on the 6 February 2023 shall be extended until 5 August 2025 and that it was both necessary and proportionate to do so.
61. 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.

62. 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

The application to extend the order dated 6 February 2023 and which is due to expire on 5 August 2024 shall be granted and the interim order shall be extended until 5 August 2025.

Judge H Khan

Lead Judge

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

Date Issued: 24 July 2024