

Care Standards

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

[2019] 3806.SCW

Heard on the papers on 20 November 2019

BEFORE
Mr H Khan (Judge)
Ms H Reid (Specialist Member)
Ms P McLoughlin (Specialist Member)

BETWEEN:

Lisa Hoskins

Appellant

-v-

Social Care Wales

Respondent

DECISION

The Appeal

1. Ms Lisa Hoskins (“the Appellant”) appeals, pursuant to Section 145 of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”), to the Tribunal against the decision of Social Care Wales (“the Respondent”) imposing an interim suspension order dated 24 July 2019 (“the Decision”).

Paper Determination

2. The appeal was listed for consideration on the papers, pursuant to rule 23 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008 (‘2008 Rules’). Both parties must consent, which they have in this case, but the Tribunal must also consider that it is able to decide the matter without a hearing. In this case we have sufficient evidence regarding the case. In the circumstances we consider that we can properly make a decision on the papers without an oral hearing.

Restricted reporting order

3. The Tribunal makes a restricted reporting order under Rule 14(1)(a) and (b) of the 2008 Rules, prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify the service users in this case.

The Appellant

4. The Appellant is a qualified Social Worker who was previously employed by Newport City Council.

The Respondent

5. The Respondent is the regulator for the social care profession in Wales.

Events leading up to the decision imposing an interim suspension

6. The Appellant was allocated to work with Individual A. The Appellant came into contact with Individual B, the wife of Individual A, in her professional capacity prior to and immediately after the death of Individual A.
7. The Respondent submits despite the Appellant's assertions to the contrary, Individual B was an elderly vulnerable adult and was treated as such at the Professional Concerns Meeting held under the All Wales Procedures for the Protection of Vulnerable Adults on 14 May 2019.
8. Although the Appellant's initial contact with Individual B was in her professional capacity, the Appellant continued to have contact with Individual B between September 2018 and February 2019 allegedly as a 'close friend' of Individual B.
9. Following the death of Individual B on 10 February 2019, by her own admission, the Appellant was in possession of two bank cards belonging to Individual B, one of which she used to withdraw cash from Individual B's bank account.
10. The money that the Appellant removed from Individual B's bank account between 13 February 2019 and the beginning of April 2019 allegedly amounted to approximately £8,000.
11. The Appellant was arrested in April 2019 as a result of being identified by police investigation of CCTV footage of a cashpoint and vehicle registration tracking.
12. In the Appellant's own words, she disposed of the bank cards *'after she was advised by a regarded person in the community that although [she]*

was doing what [Individual B] asked, he felt that [the Appellant] could get into trouble as it is not written down'.

13. On 24 July 2019, an Interim Orders Panel made an interim suspension order in relation to the Appellant on the grounds that the order –
 - (a) is necessary for the protection of the public, including service users; and
 - (b) is otherwise in the public interest.
14. The Appellant was dismissed by Newport City Council following a disciplinary hearing on 7 October 2019.

The Respondent's Case

15. The Respondent has prepared and published a Code of Professional Practice for Social Care ('the Code') under section 112(1) of the Act, the relevant version of which applied with effect from 1 July 2015.
16. The Respondent has also prepared and published, 'The Social Worker: Practice guidance for social workers registered with Social Care Wales' ('Practice Guidance'). The Practice Guidance builds on the Code of Professional Practice for Social Care by describing what is expected of social workers and providing a practical tool to assist social workers in their practice.
17. According to the Respondent, under section 5 of the Code, the Appellant was required to act with integrity and uphold public trust and confidence in the social care profession. In particular, the Appellant was required by paragraph 5.4 not to form inappropriate personal relationships with individuals, their families or carers. In forming and continuing a personal relationship with Individual B, the Appellant was in breach of this requirement.
18. Section 10 of the Practice Guidance acknowledges that the relationship between a social worker and a person using the service will often involve an imbalance of power. Section 10 states that, in recognition of this power imbalance, a Social Worker must not use their professional position to establish or pursue an improper relationship with a person using the service or someone close to them. The Appellant should have been aware of the imbalance of power between herself and Individual B in view of the information that she possessed about Individual B and/or her estate as a result of acting for Individual A and/or because Individual B was a vulnerable adult.
19. According to the Respondent's submission, the Appellant's conduct can be characterised as one involving concealment of her actions given that she did not inform her employer or any other appropriate authority until her arrest:
 - (a) of her ongoing contact with Individual B;
 - (b) that she was in possession of Individual B's bank cards;

- (c) that one of the bank cards was used by her to withdraw money after the death of Individual B;
- (d) that she had subsequently destroyed the bank cards.

20. The Respondent submits that the interim suspension should continue for the following reasons;

- the allegations against the Appellant are very serious;
- there is a likelihood of the alleged impairment being repeated before the final determination of the case;
- there is an ongoing police investigation in relation to the Appellant and a file is being prepared by the police for consideration by the Crown Prosecution Service.
- as to the effect on public confidence in the social care profession, the public would be shocked if a registered person who acted the same way as the Appellant was permitted to continue to practise pending a final hearing;
- any hardship to the Appellant that might otherwise be caused by the effect of an interim order is diminished by the fact that the Appellant has been dismissed from her employment;

The Appellant's case

21. The Appellant states that Individual B had given the Appellant her bank cards and told her to withdraw £250 per week and to give the money to homeless people in Newport.

22. The Appellant asserts that she told the police when interviewed that she had purchased items for herself and states that the police removed a pillow and headphones from her home, which she states she had purchased with the card.

23. The Appellant asserts that Individual B made a deathbed gift (*donatio mortis causa*) of her bank cards and the contents of her bank account. The Respondent does not dispute that, in principle, it is legally possible for an individual to make a valid gift of money or property to take effect on their death.

24. The Appellant in her written submissions states;

“I am writing to apologise for the mistake I have made with B. I realise that my way of handling matters, was not correct and unprofessional. I made decisions with B, that were clouded by my emotions.

I am an honest person and is very dedicated, to helping people. Due to an error in my judgement I really don't want to loose the career, that I have built up over the past 15 years, working both with children/young people and Adults”.

Legal Framework

25. There was no dispute as to the applicable law as set out in the Respondent's submissions prepared by its legal representatives, Blake Morgan Solicitors LLP. We have adopted the legal framework as set out in the Respondent's submissions.
26. The Respondent is the regulator for the social care profession in Wales. Under section 80 of the Regulation and Inspection of Social Care (Wales) Act 2016 ("the Act") SCW's functions include keeping a register of social workers and other social care workers.
27. Under section 68(1) of the Act, the Respondent's main objective in carrying out its functions is to protect, promote and maintain the safety and well-being of the public in Wales.
28. Under section 68(2) of the Act, in pursuing that objective, the Respondent 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.
29. Sections 143 to 149 of the Act contain provisions relating to the imposition of an interim order by an Interim Orders Panel in relation to a registered person.
30. 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.
31. 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.
32. 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 for more than 18 months.
33. The powers of the Tribunal on appeal are set out in s145 of the Act.

145 Appeals against interim orders

- (1) Where a panel has made an interim order under [section 144](#) in respect of a registered person, that person may appeal against the order to the tribunal.
- (2) An appeal must be made before the end of the period of 28 days beginning with the day on which notice of the decision is given under [section 144\(7\)](#).
- (3) But the tribunal may allow an appeal to be made to it after the end of the period mentioned in subsection (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay in applying for permission to appeal out of time).
- (4) On an appeal, the tribunal may—
 - (a) revoke the interim order,
 - (b) in the case of an interim conditional registration order, revoke or vary any condition,
 - (c) replace an interim suspension order with an interim conditional registration order,
 - (d) replace an interim conditional registration order with an interim suspension order,
 - (e) vary the period for which the interim order is to have effect,
 - (f) remit the case to SCW for it to dispose of in accordance with the directions of the tribunal, or
 - (g) make no change to the interim order.

34. Under Section 146 of the Act, regardless of whether there is an appeal under Section 145, 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 Tribunal makes its decision on the basis of all the evidence available to it at the date of the hearing and is not restricted to matters available to the Respondent when the decision was taken.

Evidence

36. We took into account all the evidence that was presented in the hearing bundle and in the submissions. This included the witness statement and documents of the Appellant and the witness statements and exhibits of Ms Samantha Thomas on behalf the Respondent.

The Tribunal's conclusions with reasons

37. We concluded that an interim suspension order in relation to the Appellant was necessary for the protection of the public (including service users). The allegations against the Appellant were of the most serious nature involving dishonesty, significant financial sums and also involving a vulnerable service user.

38. We recognise that at present these are allegations and that there is an ongoing police investigation being conducted by Gwent Police and that the investigation by the Police is not complete. However, we concluded that, based on the nature of the allegations, there was a risk of serious harm that would arise if the alleged conduct was repeated with another vulnerable individual. The Appellant's own updated case summary states that she is waiting to see if the matter will be taken further by the Crown Prosecution Service. In our view, an interim suspension order will allow Gwent Police to complete its investigations and for the Respondent in turn to complete its investigation and determine whether the case should be referred for a hearing before a Fitness to Practice Panel.
39. We also concluded that, having carefully considered the circumstances of this case, an interim suspension order is otherwise in the public interest in order to preserve public confidence in social care services in view of the serious nature of the allegations against the Appellant.
40. In reaching our decision, we also took into account a range of factors including the Appellants circumstances, how long she had been working as a social worker, the impact on her livelihood, her apology as set out in her submissions and the disputed nature of the allegations. However, in our view, the seriousness and nature of the allegations led us to conclude that at this point, the action taken is both proportionate and necessary.
41. We did not consider, based on the circumstances of the case that it was appropriate to utilise any of the other options available to us as set out in s145(4)(d) of the Act other than to confirm the interim suspension order and make no change to the interim suspension order made pursuant to the decision dated 24 July 2019. For example, in our view, we considered that an interim conditional registration order would not be a practicable alternative to an interim suspension order in this case and would not protect the public. Notwithstanding the seriousness of the allegations, the Appellant is not currently employed and there is no employer able to provide assurance that they would monitor compliance with any interim condition that might be imposed. Accordingly, the imposition of an Interim Suspension Order is both necessary and proportionate.
42. We reminded ourselves that under section 146 of the Act, an Interim Orders Panel is required to review an interim order within 6 months of the date that the order was made. A panel may also review an interim suspension order at any time if new evidence becomes available which is relevant to the case pursuant to section 146 of the Act. This may, for example, include any progress made in the police investigation.
43. We therefore confirm the Respondent's decision dated 24 July 2019, conclude that an interim suspension order in relation to the Appellant

was both necessary and proportionate for the protection of the public and make no change to the interim order.

Decision

44. The Respondent's decision dated 24 July 2019 is confirmed and we make no change to the interim suspension order made pursuant to that decision.

Judge H Khan
Lead Judge Primary Health Lists/Care Standards
First-tier Tribunal (Health Education and Social Care)

Date Issued: 03 December 2019