

## **Care Standards**

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

**2024. 01073.ISO-W VKINLY  
[2024] UKFTT 00327 (HESC)**

**Heard by Video Link on 18 April 2024.**

**Before**

**Mr H Khan (Judge)  
Ms L Owen (Specialist Member)  
Ms M Tynan (Specialist Member)**

**Social Care Wales (Applicant)**

**-v-**

**Mariola Ponomarov  
(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 Mariola Ponomarov (“the Respondent”) made on 31 October 2022 for a period of 18 months to be extended or further extended by 6 months until 31 October 2024.

## **The Hearing**

2. The hearing took place on 18 April 2024. The hearing took place by video. The documents that we were referred to are in the electronic hearing bundle (364 pages) prepared by the Applicant for the hearing. We were also provided with supplementary correspondence bundle comprising of 12 pages just before the final hearing. This consisted of correspondence between the Appellant and the Respondent.

## **Attendance**

3. The Applicant was represented by Mr Delme Griffiths, legal representative. Its sole witness was Clare Lane, 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. We took into account the correspondence from the Respondent sent to the Applicant on 10 April 2024. The correspondence was brief and is reproduced as it was sent below”.

“I do not agree to extend the current Interim Suspension Order as it has been 18 months and I would like this to come to the end . I won't be attending the hearing because of the stress of it . My health is more important. I have stateted before that I'm not wish to return in any role in care ect. I have been working for more them a year in hospitalit.” *(sic)*

6. Mr Griffiths submitted that the Tribunal should proceed in the Respondent’s absence.
7. 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.

8. We were satisfied that the Respondent was aware of the hearing (notifications sent on 13 March 2024, 5 April 2024 and 17 April 2024) and that it was in the interests of justice to proceed with the hearing. The correspondence from the Respondent dated 10 April 2024 made reference to not attending the hearing.
9. We also noted that the Respondent had not engaged in these proceedings and no evidence had been provided in response to the previous Tribunal orders.
10. In our judgement, whilst we were mindful of the impact of these proceedings on the Respondent's health, professional and personal life. The Respondent had been given an opportunity to attend the hearing and provide information. We acknowledge that the Respondent opposes the application. However, no medical information had been provided in support of the application and the Respondent did not indicate whether or not she would at any point before the expiry of the current interim suspension order attend any hearing.
11. The additional challenge in this case was that the interim suspension order was due to expire on 30 April 2024 and the matter had to be heard and determined by that date.
12. 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.
13. We admitted the evidence contained in the supplementary bundle. We considered such evidence to be relevant. We were made aware that a copy of the supplementary bundle had not been sent to the Respondent but that the Respondent was aware of all the documents within the bundle due to it being correspondence between the parties. We acknowledged the potential issues that this may cause. However, we considered, on balance, any prejudice to be limited given that the correspondence was nothing that the Respondent had not seen before and the correspondence set out in brief the Respondent opposition to this order. In short, it provided an explanation for the Respondent's non-attendance and her position on the current application.

### **The Applicant**

14. 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**

15. On The Respondent registered with SCW as a Domiciliary Care Worker on 15 October 2019.

## **Events leading to the Interim Suspension Order**

16. The Appellant was previously employed by Marie Curie Cancer Care (“Marie Curie”), a charity, as a healthcare assistant.
17. On 15 July 2022, a referral was received by Applicant from Marie Curie in respect of allegations concerning the sale of raffle tickets and products, in relation to a personal business, to families and patients of Marie Curie.
18. On 31 October 2022, an Interim Orders Panel (IOP) met to consider an application for an interim order against the Respondent. The Respondent did not attend the hearing and was not represented.
19. The IOP determined that an interim suspension 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 (“the ISO”).
20. On 28 April 2023, an IOP met to review the ISO. The Respondent did not attend and was not represented, whereby the review proceeded on a streamlined basis. The IOP determined that the interim suspension order should remain in place on the same grounds.
21. On 27 October 2023, an IOP once again met to review the ISO. The Respondent did not attend and was not represented, the review again being conducted on a streamlined basis. The IOP determined that the interim suspension order should remain in place on the same grounds.
22. The Applicants submits that throughout this period, the Applicant’s investigation has progressed and has now concluded. The Respondent will be given a final opportunity to comment upon the evidence before a decision is made regarding whether or not to refer her to a Fitness to Practise Panel.
23. The existing ISO will expire on 30 April 2024.
24. The Applicant now seeks a 6-month extension of the ISO until 31 October 2024 to allow for the conclusion of any fitness to practise proceeding.

## **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 as previously directed. The only correspondence that the Tribunal had from the Respondent was a copy of the email sent to the Applicant on 10 April 2024. This set out that the Respondent did not agree to the extension of the Interim Suspension Order.

**The Issues to be determined.**

26. The issue to be determined was whether the interim suspension order imposed on 31 October 2022 for a period of 18 months should be extended beyond 30 April 2024.

**The Legal Framework**

27. The legal framework was helpfully set out in the skeleton argument prepared by the Applicant's legal representatives. This was not in dispute and we have therefore broadly adopted the legal framework as set out in the skeleton argument.
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' ('Interim Orders Guidance') The first part of this guidance relates to the imposition of sanctions by a Fitness to Practise Panel and is not relevant to this appeal. However, Part II of the Guidance relates to applications for interim orders and includes general principles to be taken into account by an Interim Orders Panel.
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')
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. Ms Lane had provided a witness statement. Ms Lane set out that there had been some delays in progressing the matter due to workloads and difficulties in getting a statement.
42. Ms Lane set out the history of the matter. The Respondent worked with individuals who were vulnerable. Ms Lane was concerned that the Respondent was seeking to make a profit at a time of distress for patients and their families. The Respondent was running various businesses.
43. Ms Lane was concerned that there was a high risk of repetition. There had been a previous similar allegation made in 2021 involving a vulnerable patient.
44. Ms Lane confirmed that there wasn't much information known about the Respondent. The Respondent was now working in the hospitality sector. She was said to be a private person.

#### **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 Lane 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 Lane to be frank and candid. Ms Lane accepted that there had been some delay in dealing with the matter due to the volumes of work and difficulties in getting the witness statement. We

found Ms Lane's evidence particularly persuasive around the need for the interim suspension order to continue.

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. We acknowledge that these are only allegations at this stage. However, the allegations are serious and if found proved, would call into question the Respondent's suitability to work in the social care profession. We acknowledge that the Respondent's role involves her working with vulnerable individuals using care and support services, who may lack capacity and are more susceptible to financial exploitation. We acknowledge the submissions made on behalf of the Applicant that service users are at risk of feeling compelled to purchase products being sold by someone in such a position of trust.
53. We also considered the possibility of the alleged behaviour not being repeated. There is some reference to a previous safeguarding referral been made in 2021 relating to similar alleged conduct involving the sale of a non-alcoholic fruit juice to the wife of a patient who was also vulnerable suffering with dementia. We could not be satisfied therefore that such alleged conduct would not be repeated before the final determination of the Respondent's case.
54. We also took into account the nature of the Respondent's role working with vulnerable individuals including end-of-life patients. The Respondent has worked in the Community Resource Team which involved working within the community, in the homes of end-of-life patients, delivering clinical care and palliative support to cancer sufferers. We considered that allowing the Respondent to continue to practice without any protection in place whilst the allegations are being investigated would undermine the public's trust and confidence in the social care profession.
55. We took into account all the circumstances of the case. We concluded that there was a significant risk to vulnerable individuals in allowing the Respondent to practice unrestricted whilst the investigation continued.
56. We considered the reasons as to why the case has not been concluded to date. We acknowledge the frank admission by Ms Lane that this is due to volumes of work and getting witness statements. Cases such as this should be dealt with within a reasonable period of time. However, we did not hear any evidence which would suggest that there had been an unreasonable delay as to why the matter had not been concluded. The present position is that the investigation has been completed and the



matter will now proceed to a Fitness to Practise hearing. We were reassured by Ms Lane's evidence that this will be done relatively quickly.

57. 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 Respondent has stated that she does not want to return to the care sector. We therefore consider that there would be limited hardship to the Respondent. We took into account the impact on the Respondent of such proceedings. We acknowledge that the Respondent seeks finality in the proceedings and we note that now that the investigation is complete, the matter is proceeding to resolution.
58. We were informed that an extension of the Interim Suspension Order is sought to enable the Applicant to send evidence the evidence to the Respondent, who will be awarded 28 days to formulate a final response, prior to an internal case conference meeting and reaching a decision on whether or not this case should be heard by a Fitness to Practise Panel. In the event a referral is made for a Fitness to Practise Panel, a Pre-Hearing Review will be held within 3-4 weeks of the referral to a Fitness to Practise Panel, with the final hearing likely to be heard following a minimum notice period of 7 week.
59. We therefore concluded that interim order made on the 31 October 2022 shall be extended until 31 October 2024 and that it was both necessary and proportionate to do so.
60. 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.
61. The application to extend the order dated 31 October 2022 and which is due to expire on 30 April 2024 shall be granted and the interim order shall be extended until 31 October 2024.

**Judge H Khan**

**Lead Judge**

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

**Date Issued: 23 April 2024**

