

First-tier Tribunal Care Standards

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

Neutral Citation Number: [2024] UKFTT 00644 (HESC)

2024-01126.ISO-W

BEFORE

Judge Meleri Tudur, Deputy Chamber President
Mrs Libhin Bromley, Specialist Member
Dr David Cochran, Specialist Member

BETWEEN:

Social Care Wales

Applicant

V

Mr Daniel Joseph Griffiths

Respondent

DECISION

Heard on 23 July 2024 by video platform.

Attendance

Mrs C Rawle, solicitor of Blake Morgan represented the Applicant. Mr S Parish observed the hearing.

The Respondent did not attend.

Oral evidence was heard from Ms B Moore, Fitness to Practise officer Social Care Wales.

Application

1. The Applicant applied pursuant to Section 148 of the Regulation and Inspection of Social Care (Wales) Act 2016, ('the Act') for the extension of an interim suspension order imposed on the Respondent, suspending his registration as a domiciliary care worker and which is due to expire on the 13 August 2024.

Interlocutory Matters

2. At the start of the hearing, the Applicant made submissions regarding the appropriateness of proceeding with the hearing in the absence of the Respondent. Mrs Rawle submitted that the Tribunal should proceed in

the absence of the Respondent because this was not a final hearing but a hearing to consider an extension of the interim order; the legislation imposes a burden on the registered person to engage with their regulators and they should not be able to frustrate the fitness to practise process by failing to engage. He has not produced medical evidence to indicate that he is unfit to attend and has not requested an adjournment of the hearing. He had been provided with an opportunity to participate in the proceedings, had emailed the Applicant on the 16 July 2024 stating that he did not wish to engage and the Tribunal has a discretion to proceed in the absence of a party.

3. Ms Moore confirmed that the email address utilised to correspond with the Respondent was the address that he had provided to the Respondent and that was the address linked to his registration details.
4. The Tribunal reminded itself that pursuant to rule 27 of the Tribunal Procedure Rules 2008, if a party fails to attend a hearing, the Tribunal may proceed with the hearing if the Tribunal is satisfied that the party has been notified of the hearing and considers that it is in the interest of justice to proceed with the hearing.
5. The email correspondence from the Respondent during July 2024 to the Applicant confirmed that he was aware of both the application and the hearing and was not intending to engage with the proceedings. Further there was nothing to indicate that an adjournment of the proceedings would secure his attendance on a future date.
6. We concluded that the interests of justice required consideration to be given to the application as a matter of urgency given that in less than a month the current interim order will expire and that any delay in considering the application could increase the risk of danger to the public from the expiry of the interim order without an extension if that was considered appropriate.
7. We therefore proceeded to deal with the application with the hearing room open so that the Respondent could join the hearing at any time should he wish to do so.
8. The Tribunal also raised with the Applicant the issue of the imposition of a direction to protect the Respondent's privacy in the context of the publication or disclosure of documents in the case. The Tribunal has power under rule 14 to prohibit by order the disclosure or publication of documents in the proceedings or may give a direction to prohibit the disclosure of a document if the Tribunal is satisfied that such disclosure would be likely to cause that person or some other persons serious harm and the Tribunal is satisfied having regard to the interests of justice that it is proportionate to give such a direction.
9. The Tribunal having heard representations from Mrs Rawle concluded that given the personal health issues discussed in the Tribunal bundle, the discussion of which in the public arena could cause harm to the Respondent, it would be proportionate to issue a direction to provide

judicial discretion to consider any application for disclosure of documents having taken the parties' views into consideration.

The Legal Framework

10. Pursuant to Section 67 of the Act, from the 11 July 2016, the Care Council for Wales was renamed Social Care Wales (the Respondent) and is the regulator for the social care profession in Wales.
11. 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.
12. 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 practise among social care workers,
 - (c) high standards in the training of social care workers, and
 - (d) public confidence in social care workers.
13. Under Section 80 of the Act, the Respondent's functions include keeping a register of social workers and social care workers of any other description specified by the Welsh Ministers in regulations and visiting social worker and social care managers.
14. Under section 112(1) of the Act, the Respondent is required to prepare and publish a Code of Practise, setting standards of conduct and practise expected of social care workers. The Respondent has prepared and published a Code of Professional Practise for Social Care ('the Code') under section 112(1) of the Act, the relevant version of which applied with effect from 1 July 2015.
15. Part 6 of the Act contains provisions relating to consideration of an allegation that a registered person's fitness to practise is impaired.
16. 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.
17. 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.
18. 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.

19. 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.
20. 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.
21. Under section 148, the applicant may apply to the Tribunal for an interim order to be extended or further extended.
22. Section 148 provides that the Tribunal may revoke the interim order; in the case of a conditional registration order, revoke or vary any condition; extend or further extend the order for up to 12 months or make no change to the order or the period the order is to have effect.
23. Proceedings before an Interim Orders Panel are governed by Part 4 of The Social Care Wales (Proceedings before Panels) Regulations 2016 ('the Regulations').
24. Under regulation 28 of the Regulations, the general objectives of an Interim Orders Panel in carrying out its functions are –
 - (a) to protect, promote and maintain the health, safety and well-being of the public;
 - (b) to promote and maintain –
 - (i) public confidence in social care workers, and
 - (ii) a high standard of conduct and practise among social care workers; and
 - (c) to deal fairly and justly with the case.
25. The Respondent 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'). 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.

Events leading to the Interim Suspension Order

26. The Respondent was registered with the Applicant as a Domiciliary Care Worker on the 27 February 2020. He was employed by Cartrefi Cumru Co-operative as a support worker from 30 January 2006.
27. On the 7 September 2021, the Respondent was referred to the Applicant by his employer for an alleged incident on the 14 August 2021 when, during the course of his work, the Respondent attended the home of a User of Care and Support whilst under the influence of a substance that rendered unsafe to be in work. The User of Care and Support had felt unsafe because of the conduct of the Respondent towards him.

28. The Respondent was suspended from work on the 17 August 2021 and resigned from the 19 November 2021. A disciplinary hearing on the 1 December 2021 concluded that had he not already resigned he would have been dismissed for gross misconduct.
29. The Applicant was informed that the Respondent was suffering from health issues which rendered him unable to work, a situation which continued throughout his suspension and into the new year.
30. In November 2022, the Applicant received a GP report which confirmed that the Respondent was suffering ill health and receiving medical treatment including medication and counselling and the risk assessment was increased from medium to high. The Applicant then made an application for an interim suspension order.
31. The Interim Suspension order was made on the 14 February 2023 for a period of 18 months and is due to expire on the 13 August 2024. The Interim Suspension Order has been reviewed twice, on the 10 August 2023 and again on the 5 February 2024. On both occasions the Interim Orders Panel concluded that the order should continue because of the risk to the public.
32. The Respondent has been notified of the decisions that the Interim Suspension Order has been made 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.

Oral evidence

33. At the hearing, the Tribunal heard evidence from Ms Beverley Moore, Fitness to Practise Officer for the Applicant, who confirmed the contents of her two witness statements signed on the 4 and 18 July 2024 respectively, to be true. She gave evidence that the investigation into the incident has been concluded and that a pre-hearing review meeting had been held on the 9 July 2024 and the final hearing of the Fitness to Practise proceedings would be held on the 23 – 25 September 2024. In light of the date set for the final hearing, she confirmed that an extension of the Interim Suspension Order for a period of three months would be sufficient to enable the proceedings to be concluded.
34. Ms Moore gave evidence about the reasons for the delay in concluding the proceedings, acknowledging that it had taken an exceptionally long time to bring the investigation and Fitness to Practise process to a conclusion. There had been difficulties in communicating with the Respondent, whose engagement with the regulator had been sporadic as well as staff changes within the organisation and a delay in obtaining the necessary medical evidence.

35. We noted the evidence contained in the Respondent's email about his previous good service and long term employment in the care sector without any previous complaints about him.

Tribunal's conclusions with reasons

36. The Tribunal had a hearing bundle which ran to 241 electronic pages together with the Respondent's most recent email correspondence dated 16 July 2024.

37. The Tribunal is considering the application on the date of the hearing and makes its decision on the basis of all of the evidence available to it, including the oral evidence heard at the hearing and is not restricted to matters available to the Interim Orders Panel.

38. The legislation does not identify criteria to be applied by the Interim Orders Panel or the Tribunal in determining whether the interim order should be extended, however in the Court of Appeal in the case of the General Medical Council v Dr Hiew [2007] EWCA Civ 369 provided guidance on the principles to be applied in the consideration of an application of this kind, which the Tribunal have adopted and applied in this case.

39. The criteria to be applied are the same as those for making an interim order and the relevant factors in considering whether to grant an extension include:

- the gravity of the allegation,
- the seriousness of risk of harm to patients,
- the reasons why the case has not been concluded and
- the prejudice to the practitioner if the Interim Suspension Order is continued.

40. We have considered the submissions made by on behalf of the Applicant, the witness statements and oral evidence of Ms Beverley Moore, the Fitness to Practise Officer and accept that Hiew criteria are met.

41. The allegations are that the Respondent attended a User of Service's home whilst intoxicated, behaved inappropriately towards the service user so that the service user felt unsafe. Such an allegation is very serious.

42. The allegation is that the Respondent has ongoing health issues which may be related to substance abuse and consequently the likelihood of the impairment being repeated before the final determination of the case is high. The Respondent denies the allegation but also denies that there are health issues to be addressed. He has not had medication for his anxiety and depression since November 2023 but had an alcohol related hospitalisation in January 2024. The risk of ongoing and further impairment is also high.

43. We have noted the evidence contained in the Respondent's medical report from his GP dated 4 June 2024 where Dr Zahari stated that the Respondent has not received medical treatment since November 2023 other than an alcohol related hospital admittance in January 2024. The GP confirmed that the patient is suffering from a condition which is likely to limit the range of social care work they can undertake and is suffering from a condition which makes them unfit for social care work.
44. We have noted the Respondent's previous good character and employment history, and he asserts that he had 17 years of prior unblemished work record prior to this incident. He is not engaging however with the Applicant or his GP to address the issues which have arisen, which increases the risk of further incidents.
45. The impact of the Interim Suspension Order on the Respondent is significant – he resigned from his previous position in 2021 and has been unable to work since then. Allegations of substance misuse however create a serious risk of harm and the allegation describes behaviour which caused the service user fear and the conduct poses a real risk to vulnerable members of the public. The ongoing failure to engage with support to resolve his issues and the lack of insight into the current situation place the balance of convenience on extending the Interim Suspension Order.

Proportionality

46. It is submitted that an interim order in relation to the Appellant is necessary for the protection of members of the public (including service users) in view of the risk of serious harm that would arise if the alleged conduct should be repeated with another vulnerable individual.
47. Further, an interim 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 allegation against the Appellant. It is submitted that the public would be shocked if an interim order was not imposed in this case pending a final determination of the allegations.
48. As to proportionality, an interim conditional registration order would not be a practicable alternative to an interim suspension order in this case and would not adequately protect individual service users.
49. We were very concerned about the delay in concluding what is a single incident, relatively straightforward case through the Fitness to Practise processes but having heard the oral evidence of Ms Moore, we are satisfied that there are valid reasons why the case has not yet been concluded and that it will be concluded soon, with the substantive hearing currently listed for 24 – 26 September 2024. It is therefore in the interests of the public and in the interests of justice for the ISO to be extended.
50. We have given careful consideration to the length of the extension and noting that the Applicant is confident that the proceedings will be

concluded before the end of September, accept the submissions to vary the application from six to three months.

51. We are also satisfied that there should be a direction to ensure protection of the Respondent's privacy and an order made to engage a judicial discretion in the disclosure and publication of documents produced in the proceedings because the disclosure of personal information could cause harm to the Respondent.

IT IS ORDERED that:

1. The Interim Suspension Order made on the 14 February 2023 should be extended to 4pm on 12 November 2024.
2. Any application for disclosure of documents shall require 7 days' notice to the parties before the application is considered by the Tribunal.
3. The Respondent has permission, on giving 3 days written notice to the Applicant, to apply to the Tribunal to vary or discharge this order.

**Judge Meleri Tudur
Deputy Chamber President
SEND/Care Standards/ Primary Health Lists
First-tier Tribunal Health Education and Social Care Chamber**

Date Issued: 24 July 2024