

First-tier Tribunal Care Standards

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

[2021] 4369.ISO-W

Heard by Video Link on 15 October 2021

BEFORE

**Mr H Khan (Tribunal Judge)
Ms D Rabbetts (Specialist Member)
Mr C Akinleye (Specialist Member)**

BETWEEN:

Social Care Wales

Applicant

-v-

Natalie Bidgood

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 suspension order made against Ms Natalie Bidgood ("the Respondent"), on 28 October 2020 for a period of 12 months until 27 October 2021, to be extended until 27 July 2022.

The Hearing

2. The hearing took place on 15 October 2021. This was a remote hearing which has not been objected to by the parties.

Attendance

3. The Applicant was represented by Ms C Rawle, Solicitor. The sole witness was Ms L Parry, Fitness to Practise Senior Officer (Social Care

Wales). Ms Katy Watkins (Fitness to Practise) Team attended as an observer.

4. The Respondent did not dial in to the video hearing

Non attendance of the Respondent

5. The Respondent's representative, Mr Andrew Woodman (Regional Organiser -Unison) had emailed the Applicant's legal representative and the Tribunal on 12 October 2021. The correspondence included the following ;

"...UNISON will not be present at the hearing and I am advised that our member NB will not be present either..."

6. The above correspondence responded to an email from the Applicant's legal representative dated 12 October 2021, in which it summarises the Respondent's position as follows;

"...Whilst I protest my innocence, I wish to take no further part in the proceedings..."

7. We heard submissions from Ms C Rawle and considered whether or not we should proceed in the Respondent's absence.

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 (notification of the hearing was sent to her representative on 23 September 2021) and that it was in the interests of justice to proceed with the hearing.

10. It was clear from the Respondent's representative's correspondence dated 12 October 2021, that the Respondent was aware of the hearing and had made a decision not to take any further part in the proceedings and not attend the hearing. This was also evidenced by the fact that the Respondent had not engaged in these proceedings although we noted that she had engaged with the Interim Orders Panel. Furthermore, no evidence has been served by the Respondent despite the Respondent being given an opportunity and being directed to do so pursuant to a Tribunal order dated 23 September 2021.

11. We concluded that given the Respondent's clear intentions about not attending the hearing, the hearing should proceed in her absence. In any event, we noted that the existing interim suspension order was due

to expire on the 27 October 2021 and this application had to be determined prior to that date.

The Applicant

12. 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

13. The Respondent registered with the Appellant as a Domiciliary Care Worker on 11 September 2019.
14. The Respondent worked as a Care Assistant for Arian Care from September 2018 until October 2019.
15. The Respondent worked as a Support Worker for Cardiff Home Care prior to her dismissal on 22 June 2020.
16. Following her dismissal, the Respondent was employed as a care home worker on an agency basis Ultra Care Health Professionals. In light of the allegations that are the subject of these proceedings, Ultra Care subsequently ceased utilising the Respondent's services.

Events leading to the Interim Suspension Order

17. On 18 September 2020, the Applicant received a referral from Newport City Council Safeguarding concerning the Respondent.
18. Pursuant to the referral, it was confirmed that the Respondent had been dismissed from her employment with Cardiff Home Care for allegedly taking prescribed medication (zapain tablets) from a Service User, for her own use, and replacing them with paracetamol.
19. The Applicant was informed in October 2020 that Gwent Police had interviewed the Respondent under caution there was not enough evidence to criminally charge the Respondent.
20. On 28 October 2020 an Interim Orders Panel of Applicant met (virtually) to consider an application for an interim order. The Respondent was attended and was represented at the hearing.
21. The Panel determined that an interim suspension order should be imposed for a period of 12 months on the grounds that such an order was (1) necessary for the protection of the public, and (2) otherwise in the public interest.

22. On 26 April 2021, an Interim Orders Panel met to review the interim suspension order. The Respondent attended the hearing. On this occasion, the Panel determined that the interim suspension order should remain in place on the same grounds that it was imposed on 28 October 2020.

The Applicant's position

23. The Applicant's position is that an extension is sought until 27 July 2022. The investigation has now concluded. All of the relevant documentation has been sent to the Respondent and the Applicant has invited representations from the Respondent before the case conference is convened. If a decision is made at case conference to refer this matter to a Fitness to Practise Panel, a pre-hearing review will be convened promptly and a final hearing listed. The rules require that the Respondent will be given 42 days' notice of that hearing.

The Respondent's position on the Application

24. The Respondent has not engaged with the proceedings before this Tribunal. However, the Respondent has through her representative made it clear that she protests her innocence.

The Issues to be determined

25. According to the list of issues, the question for the Tribunal was whether the interim suspension order imposed on 28 October 2020 for a period of 12 months should be extended beyond 27 October 2021.

The Legal Framework

26. 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.
27. 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.
28. 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.
29. 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.
30. 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.
31. 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.
32. 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.
33. The Applicant has issued guidance entitled the 'Selecting an appropriate disposal in a hearing "Disposals Guidance' (April 2021). Ms drawl confirmed that the hearing that the guidance had been updated but this was not included in our hearing bundle and we were informed that there had not been any substantive changes.
34. Section 6 of the Disposals Guidance relates to applications for Interim Orders and includes general principles to be taken into account by an Interim Orders Panel.
35. 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').
36. The Applicant has also issued practice guidance for different categories of social care workers. This is intended to support practitioners to meet the standards in the Code. The workers. This is intended to support practitioners to meet the standards in the Code. The relevant practice guidance for the Respondent is entitled, 'The Domiciliary Care worker'
37. Under section 148 of the Act, Applicant may apply to the Tribunal for an interim order to be extended or further extended. 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,
 - (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.
38. In making a determination, the Tribunal should have regard to the principles outlined by the Court of Appeal in GMC v Hiew [2007] EWCA Civ.369.
39. The onus of satisfying the Tribunal that the criteria was met falls on the Applicant and the relevant standard is the 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. We heard from Ms Parry. Ms Parry explained that the allegations were serious. The involved allegations of going into a service users home, taking prescribed medication and replacing it with paracetamol. These allegations centred around abuse of power, breach of trust and dishonesty. Ms Parry was of the view that a high degree of risk of repetition remain.
42. Ms Parry explained that the police investigation had concluded. It did so in October 2020. This was communicated to the Applicant by the Safeguarding Board. Ms Parry accepted that there had been some delays. These were due to having to obtain permission from the Responsible Individual at Cardiff Home Care, preparing the statements and then getting them signed. The latest statement had been received by the Respondent on 23 September 2021. There were also covered - related delays. These included delays in being able to contact the staff at Cardiff Home Care.
43. Ms Parry confirmed that the Applicant had now completed its investigation. There are no outstanding lines of enquiry. A decision will be made imminently as to whether this case should be referred to a Fitness to Practise Panel.
44. Ms Parry submitted that it was likely given the information and evidence available, a decision is made that this case should be determined before a Fitness to Practise Panel. The extension sought was intended to provide sufficient time to enable that process to take place and for a hearing before a Fitness to Practise Panel to be convened and concluded.
45. Ms Parry was confident that the whole process could be completed within the extension period sought. However, the Applicant would endeavour to ensure that this was completed as soon as possible.

The Tribunal's conclusion with reasons

46. We took into account all the evidence that was included in the hearing bundle and presented at the hearing.
47. We wish to place on record our thanks to Ms Rawle and Ms L Parry for their assistance at the hearing.
48. 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. This means that it has to consider the criteria as that considered for the original interim order, namely, whether it is necessary for the protection of the public, is otherwise in the public interest, or is in the interests of the registered person.
49. We reminded ourselves that the Tribunal is considering the appeal at 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. This includes any updated information from both the Applicant and the Respondent, where available.
50. Furthermore, 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.
51. We concluded that taking in account all the circumstances, it was necessary and proportionate for the interim suspension order made on 28 October 2020 to be extended until 27 July 2021.
52. We were satisfied that an interim order was necessary for the protection of public and otherwise in the public interest. Our reasons for doing so are set out below.
53. We found the evidence of Ms Parry to be careful, comprehensive and balanced.
54. The Respondent has voluntarily elected not to engage with these proceedings. The email correspondence from her representative, Mr Woodman dated 12 October 2021 makes it clear that whilst the Respondent protested her innocence, she would not attend the hearing. We took into account whatever information was provided regarding the Respondent in the hearing bundle.
55. 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.

56. We considered the case of the *General Medical Council v Dr Stephen Chee Cheung Hiew* [2007] EWCA Civ 369 which was referred to by the Applicant and the principles set down in that decision.
57. We remind ourselves that the function of the Tribunal is to ascertain whether the allegations against the Respondent, rather than their truth or falsity, justify the prolongation of the extension.
58. We took into account matters such as the gravity of the allegation, the nature of the evidence, the seriousness of the risk of harm to vulnerable users of services, the reasons why the case has not been concluded and the prejudice to the Respondent if an interim order is continued.
59. We are aware that that these are allegations at this stage. There has been a police investigation but no criminal proceedings will be brought. However, in our view, the allegations are serious and involve the swapping of medication intended for a service user which could cause significant potential harm to a Service User's health and well being. Furthermore, the allegations include abuse of power, dishonesty and breach of trust.
60. We concluded that the interim order remains necessary for the protection of members of the public in view of the risk of serious harm that would arise if the alleged conduct were to be repeated with other individuals. We concluded that the public would be shocked and troubled if the Respondent were to be allowed to continue in unrestricted practice whilst an investigation into the allegation involving the swapping of medication is ongoing.
61. We considered the reasons as to why the case has not been concluded to date. According to Miss Parry's evidence, there had been a delay in obtaining a witness statement from the Safeguarding Officer Ms N Dawkins due "*principally to the circumstances imposed by the covert-19 pandemic*". They have also been delays in obtaining statements from staff at Cardiff Home Care (although, there are still two statements outstanding). However, we noted that the investigation had been completed and a case conference had been convened and a decision would be made by the end of October 2021 as to whether or not the matter was going to proceed to a Fitness to Practise panel. If a decision is made to refer this matter to a Fitness to Practise Panel, the extension of the suspension order will allow for a pre-hearing review and for a final hearing to take place.
62. In reaching our decision, we took into account any prejudice/hardship to the Respondent of any interim suspension order continuing. Ms Parry's evidence was that there was no up-to-date information regarding the Respondent's employment status.
63. We considered whether the interim suspension order should be extended until 27 July 2022. We recognise that we should only impose an order for the minimum period we consider necessary. We

acknowledge that the investigation had been completed and a case conference had been convened and a decision would be made by the end of October 2021 as to whether or not it's going to proceed to a Fitness to Practise panel. If a decision is made to refer this matter to a Fitness to Practise Panel, the extension of the suspension order will allow for a pre-hearing review and for a final hearing to take place. The decision as to continue the interim suspension order until 27 July 2022 was a finely balanced one. We considered imposing a shorter period but having heard from Ms Parry, we concluded that, on balance the extension sought should be granted. We were particularly assured by Ms Parry's assurance that the process would be completed as soon as possible. Ms Parry anticipated that the Fitness to Practise panel process would be completed earlier.

64. 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.
65. We, therefore, taking in account all the circumstances, concluded that it was necessary and proportionate for the interim suspension order made on 28 October 2020 to be extended until 27 July 2022.
66. 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 suspension order, we do not express any views on the merits or otherwise of the case against the Respondent.

DECISION

67. The application to extend the interim suspension order dated 28 October 2020 and which is due to expire on 27 October 2021 shall be granted and the interim suspension order shall be extended until 27 July 2022.

Judge H Khan
Lead Judge

First-tier Tribunal (Health Education and Social Care)

Date Issued: 21 October 2021