

Care Standards

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

**NCN: [2023] UKFTT 391 (HESC)
[2023] 4857.ISO-W**

Heard by Video Link on 17 April 2023.

BEFORE

**Mr H Khan (Judge)
Ms L Jacobs (Specialist Member)
Ms M Harris (Specialist Member)**

Social Care Wales

(Applicant)

-v-

Margaret Spencer

(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 extension to an Interim Conditional Registration Order (ICRO). The ICRO was made against Ms Margaret Spencer (“the Respondent”) on 27 October 2021 for a period of 18 months until 26 April 2023 and the application is for it to be extended until 26 April 2024.

The Hearing

2. The hearing took place on 17 April 2023. This was a remote hearing. The form of remote hearing was by video. The documents that we were referred to are in the electronic hearing bundle (comprising of 371 pages).

Attendance

3. The Applicant was represented by Mr G Miles, Solicitor. It's sole witness was Mr I Parry, Fitness to Practise Senior Officer. Mr Parry dialled into the hearing by telephone due to issues with his video link and the Mr Miles confirmed that they were content to proceed on this basis.
4. The Respondent attended via the video link. Mr J Bromfield (Regional Manager Care Home Group) was the Respondent's witness

The Applicant

5. 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

6. The Respondent, Ms Margaret Ellen Spencer, registered with the Applicant on 17 April 2012 as an Adult Care Home Manager.
7. On 22 October 2018 due to failure to renew her registration, she was removed from the register. The Respondent applied to re-register on 26 May 2019 and was registered on 26 June 2019. She was employed at Nash Care Home, Rhyl ('the Home').

Events leading to the Interim Conditional Registration Order

8. On 22 July 2021, the Respondent was referred to the Applicant by Denbighshire County Council. In summary, the allegation was that the Respondent failed to deal appropriately with a suspected sexual assault by one resident on another. It is alleged that the Respondent did not inform the victim's family of the incident until the following evening or make a referral to either Care Inspectorate Wales (CIW) or the police. The Respondent allowed the victim and items of her bedding to be washed which meant that potential evidence was no longer available. Furthermore, at a safeguarding meeting on 13 July 2021 it was noted that the Respondent had failed to ensure that the victim was seen by a GP despite this being an action point arising from an earlier safeguarding meeting on 29 June 2021.
9. The concerns of the Applicant were said not to be limited to this safeguarding issue. On 21 July 2021, the Home was said by CIW to meet the "escalating concerns" threshold. Also on 10 August 2021, a further concern was reported in respect of a resident who was said to have lost significant weight during the course of nine months without appropriate medical advice having been taken. Another resident was suffering from a wound that was said to have been inadequately treated.
10. On 27 October 2021, an Interim Orders Panel (IOP) determined that an Interim Conditional Registration Order (ICRO) should be imposed for a

period of 18 months on grounds that such an order was (1) necessary for the protection of the public, and (2) otherwise in the public interest.

11. The conditions of the ICRO were as follows:

Notification

1. You must inform the following individuals and organisations that you have conditions imposed on your registration under the Social Care Wales Fitness to Practise procedures and disclose a copy of the conditions to them:
 - a. any organisation or person employing, contracting with, or using you to undertake social work or social care work;
 - b. any social care agency you are registered with or apply to be registered with (at the time of application);
 - c. any prospective social care employer (at the time of your application).
2. You must inform Social Care Wales within five working days of accepting any social care appointment (whether paid or unpaid) which requires registration with Social Care Wales and provide Social Care Wales with contact details of the new employer, the job title of the role you have accepted, and the address of your new place of work.
3. Within five working days of accepting any social care appointment, you must also provide written confirmation, signed by your manager, from your new employer that they are aware of the conditions imposed and that they are willing to support you to comply with the conditions
4. You must inform Social Care Wales of any professional investigation or professional disciplinary proceedings taken against you within two days of you receiving notice of them.
5. If your line-manager and/or the Responsible Individual for the care setting in which you are working changes you should submit a written confirmation (on headed paper) signed by your new line-manager and/or RI that states clearly they are aware of the conditions to be adhered to and that they support the compliance of the conditions.
6. You must make a daily written report to your managers in respect of any incidents which have the potential to affect the well-being of residents of the home which you manage.
7. You must meet in supervision with the Area Manager (or any new line manager) at least every four weeks to:
 - a. conduct an audit of your daily written reports;
 - b. consider any potential safeguarding incidents in the home;
 - c. discuss the actions which you have taken in respect of those incidents and confirm whether appropriate steps have been taken including, where necessary, in respect of onward referral;
 - d. discuss your progress in completion of your Performance Improvement Plan;

e. candidly discuss the condition of your health and whether it is having any impact on the standard of your work.

8. You must provide Social Care Wales with a copy of each supervision record, signed by your Area Manager, within 10 days of the completion of each supervision meeting.

Additional enquiries by Social Care Wales

9. You must consent to Social Care Wales communicating with the Area Manager or another representative of your employer to exchange, as necessary, information about the standard of your performance.

Training

10. You must undertake, at your cost or the cost of your employer, a face-to-face (either in person or via video-conference) Safeguarding Adults for Managers of Provider Services course (at least level 3) within a month of your return to work. You must provide written evidence of your attendance to Social Care Wales within 28 days of completion of the course. If the course is marked, you must also provide to Social Care Wales evidence that you have passed the course within the same period.

12. The ICRO permitted the Respondent to continue to practise as an Adult Care Home Manager subject to compliance with the conditions.

13. On 21 April 2022, the ICRO was reviewed by an IOP. It was accepted by the IOP that the Respondent had complied acceptably with the conditions, although it was also noted that the Respondent's return to work was relatively recent. The IOP considered that the risks identified when the ICRO had been imposed had reduced. Nevertheless, it was determined that the ICRO was still needed to protect the public and in the wider public interest. Condition 10 was revoked, as it was confirmed that the Respondent had undertaken the specified training. Conditions 6 and 7 were varied. Instead of imposing a daily reporting requirement, the revised condition 6 only required the Respondent to write a report in the event of an incident which had the potential to affect the wellbeing of a resident of the Home. Condition 7 was amended to provide greater flexibility as to the identity of a senior manager who could provide supervision. The wording of amended conditions 6 and 7 was as follows:

6. You must make a written report to your Regional or Area Manager in respect of any incidents which have the potential to affect the well-being of residents of the home which you manage. The report must be made within 24 hours of the incident.

7. You must meet in supervision with a senior manager who has an understanding of your practice and the service you manage at least every four weeks to:

a. conduct an audit of your daily written reports;

- b. consider any potential safeguarding incidents in the home;
- c. discuss the actions which you have taken in respect of those incidents and confirm whether appropriate steps have been taken including, where necessary, in respect of onward referral;
- d. discuss your progress in completion of your Performance Improvement Plan;
- e. candidly discuss the condition of your health and whether it is having any impact on the standard of your work.

14. On 19 October 2022, the ICRO was further reviewed by an IOP. It was determined that it should remain in place on the same grounds. The decision of the IOP stated:

'We recognised that there was evidence of continued improvement at the Home. In our view, the risks have decreased with your employer playing its part. We noted that there have been quite frequent changes in the management. We do not have the benefit of the report of the latest CIW inspection and the supervision records, although sufficient to comply with the conditions, are not so detailed as to give us confidence in respect of every aspect of risk.

Ultimately, we concluded that the continuing level of risk justifies the continuation of the conditions. In our view, the conditions are helping to reduce risk and are proportionate because they are not making your life as a manager more difficult. The conditions have ensured you receive the support you need. We found it difficult to judge your level of personal responsibility for the improvements at the Home but recognised that this was a matter to be considered at the fitness to practise hearing if one is held.'

15. Since the last review by the IOP, the Applicant has received information about further potential concerns. On 15 January 2023, the Applicant received a whistle-blowing email, which mentioned several concerns about the Home. Denbighshire County Council's safeguarding team subsequently investigated those concerns and determined that no further action would be taken by the Council.

16. On 25 January 2023, the Applicant received an email from CIW, which stated that an inspection of the Home had taken place on 23 January 2023.

17. A subsequent email from CIW dated 10 February 2023 stated that six areas of non-compliance had been identified.

18. On 30 March 2023, the Applicant received a copy of CIW's report of inspection of the Home on 23 January 2023.

19. On 4 April 2023, the Applicant received a copy of CIW's Priority Action Report arising from the inspection of the Home. The Priority Action Report identified several new areas of non-compliance requiring immediate action. In respect of each of those areas, the

report assessed the potential risk and/or impact on the health and wellbeing of residents as either major or moderate, with likely reoccurrence.

20. One of the areas of non-compliance related to conducting pre-admission assessments prior to admitting residents to the Home. The report stated that the files of three residents were examined and it was only in relation to one of them that the resident's file contained a pre-admission assessment document that recorded what the care and support needs of the resident were. In respect of the other two residents (Resident A and Resident C) the report stated that neither of them had a pre-admission assessment of their needs completed before starting their placement at the Home. The report noted that this was contrary to the Home's own admission policy and Statement of Purpose.

The Applicant's position

21. The Applicant's position is that an extension of the ICRO is now sought until 26 April 2024. The Applicant states that it has not been able to complete its investigation, including gathering relevant evidence. This is because the Applicant has only just received the Priority Action Report, and it has not yet been able to conduct any further investigation in relation to these new concerns. However, the Applicant states that the Home has previously been the subject of escalation of concerns processes relating to preadmission assessments and care planning during the Respondent's tenure as manager in 2016 and 2017.

22. The Applicant submits that the Disposals Guidance at paragraph 6.11 refers to a number of matters that are likely to create a serious risk of harm, including allegations of consistently poor practice over a period of time, usually involving several different cases. It is submitted that this is relevant to consideration of the new areas of non-compliance in the context of the previously identified concerns involving similar areas of practice.

The Respondent's position on the Application

23. The Respondent disputes that the ICRO remains necessary for the protection of the public or that it is otherwise in the public interest for it to continue beyond its current expiry date.

The Issues to be determined

24. According to the list of issues, the Tribunal should consider whether the interim conditional registration order imposed on 27 October 2021 for a period of 18 months should be extended beyond 26 April 2023.

The Legal Framework

25. 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.
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 '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.
34. 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')
35. The Applicant has also prepared practice guidance for each category of social care worker. This includes practice guidance entitled 'The social care manager'
36. Under section 148 of the Act, SCW 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.
37. 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.
38. 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

39. 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.
40. We heard from Mr Parry. He set out the events leading up to the imposition of the Interim Conditional Registration Order (as set out in

the background section above). Mr Parry made it clear that the Applicant was not relying on the safeguarding allegations which was the main reason as to why the ICRO had been imposed in the first place. The Applicant had considered that the Respondent had engaged well with the Applicant and in December 2022, it had considered disposing of the case in house without any referral to a Fitness to Practise Hearing.

41. Mr Parry explained that on 25 January 2023, he received an email from CIW which stated that an inspection of the Home had taken place on 23 January 2023.
42. On 10 February 2023, he received a further email from CIW which summarised the provisional findings of CIW arising from their inspection on 23 January. The provisional findings of CIW were that the following areas of noncompliance had been identified, namely:
 - Regulation 14 – suitability of service;
 - Regulation 15 – personal plan;
 - Regulation 35 - Fitness of staff
 - Regulation 36 – Supporting and developing of staff;
 - Regulation 57 – Health and safety;
 - Regulation 58 – Medicines;
 - Regulation 35 - Fitness of staff
43. The provisional findings of CIW were that there were two further areas for improvement, namely:
 - Regulation 73 – visits;
 - Regulation 80 – quality of care review.
44. Mr Parry explained that an extension of the ICRO was being sought to enable the Applicant to complete its own investigation and, if appropriate, refer the case for hearing before a Fitness to Practice Panel and for that hearing to be concluded.
45. The Respondent 's position was that that the original allegation for the imposition of the interim order was due to failures to deal with the safeguarding issue. That was in 2021 and since then there had not been any further issues relating to safeguarding.
46. The Respondent referred to further concerns following an inspection by the CIW but the Respondent stated that she could not identify any issues of concern. The Respondent had complied with all the conditions. There was now a new Regional Manager who would be supporting the Respondent in her role as a Registered Manager. There was also now a new Area Manager who had been appointed as well as a Deputy which enabled her to spend more time managing the Home. There was an action plan in place to deal with any issues which have arisen as a consequence of the recent inspection.

47. The Respondent submitted that due to her making the improvements and complying with the interim order, she considered that the IRCO was no longer required.
48. Mr Bromfield was the Regional Manager. He explained that he had joined the Home in February 2023. He was now undertaking monthly supervision meetings with the Appellant. He felt she was benefiting from them. He has also put in place a system for a number of audits to be done on a regular basis, which would pick up these and similar issues. He had put in place an action plan to deal with CIW recent concerns. He also had put in place a system where preadmission assessments were being undertaken and kept in a central place so they could be made available to the regulator.

The Tribunal's conclusion with reasons

49. We took into account all the evidence that was included in the hearing bundle and presented at the hearing.
50. We wish to place on record our thanks to Mr Miles, Mr Parry, the Respondent and Mr Bromfield for their assistance at the hearing.
51. The question for the Tribunal (as the primary decision maker) is whether at the date of its decision, it reasonably believes that the ICRO should be 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.
52. 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.
53. 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. Where we have referred to the allegations themselves, we have done so with the full understanding of our role not to make any findings of fact at this stage but have done so to explain our decision in the context of these proceedings.
54. We considered the case of the General Medical Council v Dr Stephen Chee Cheung Hiew [2007] EWCA Civ 369 which we were referred to by the Applicant and the principles set down in that decision.
55. We concluded that, on balance, taking in account all the circumstance, it was neither necessary nor proportionate for the ICRO made on 27 October 2021 to be further extended beyond 26 April 2023. We concluded that we were not satisfied that an ICRO was necessary for

the protection of public and otherwise in the public interest. We wish to make it clear that our decision was very finely balanced and based on the evidence before us. Our reasons for doing so are set out below

56. We found the evidence of Mr Parry to be fair, if a little lacking on the justification for the extension of the ICRO and the effectiveness of any further conditions in addressing the issues identified at the last inspection, which had occurred while those conditions were in place.
57. We found the evidence of the Respondent to be credible. The Respondent was, perhaps understandably, nervous when giving evidence but managed to convey her commitment to maintain the improvements made, and the benefit for her practice of the additional support now being given to her.
58. We found the evidence of Mr Bromfield particularly persuasive. We found that he had a good understanding of the issues affecting the home (particularly around pre-admissions) and what was needed to be done to address them. We had no reason to doubt that he was committed to the Home, and to continuing the current level of support to the Respondent
59. It was clear that the parties agreed on the vast majority of the issues. They agreed on the circumstances that led to the imposition of the ICRO in the first place. We agreed that the decision of the IOP to impose the ICRO on 27 October for the period of 18 months was justified and well reasoned. We found that the subsequent decisions of the IOP on 21 April and 19 October 2023 were appropriate having regard to the conclusion around the risks at that stage, which although had reduced since the ICRO was imposed were sufficient to justify its continuation. The IOP made it clear that when it has considered matter on 19 October that it did not have the benefit of the latest report from CIW.
60. Mr Parry very fairly accepted that when he had considered the matter in December 2022, he had found that the Respondent had engaged well with the Applicant, had completed the safeguarding course and the Home had been given a largely positive report by CIW. Furthermore, IOP had also acknowledged this when it undertook a review on 19 October 2022 where it stated that
61. "...We recognised that there was evidence of continued improvement at the Home. In our view, the risks have decreased with your employer playing its part..."
62. Mr Parry made it clear that the Applicant was considering closing the matter in house and disposing of the case. Mr Parry also made it clear that the whistleblowing allegations made in January 2023 were not being relied upon as a reason for the extension of the ICRO. For the record, those allegations were investigated by Denbighshire County

Council safeguarding team who determined that no further action would be taken. The Respondent also agreed that up until this stage the ICRO had “up to now served its purpose”.

63. The issues which were now being relied upon related to CIW’s Priority Action Report. This report was prepared in respect of the Home rather than the Respondent as an individual although the Respondent made it clear that she accepted that she was responsible for ensuring compliance with the Regulations.
64. This report identifies several new areas of non-compliance requiring immediate action. We acknowledge that the report assessed the potential risk and/or impact on the health and well-being of residents as either major or moderate, with likely occurrence. We acknowledge that the allegation was that Resident A and Resident C did not have a pre-admission assessment of the needs completed prior to starting their placement. This was not disputed by the Respondent, However, the Respondent and Mr Bromfield made it clear that this was due to the emergency nature of both admissions. The email dated 30 March 2023 from Ms Jane Davies, Community Psychiatric Nurse from the Older Persons Mental Health Team in Rhyl also makes reference to the Respondent helping take in patients in an emergency.
65. We note that it was alleged that this was in contrast to the Admission Policy of the Home, however, the admissions policy (as cited in the Priority Action Report) does recognise this as it states;

“we try to avoid unplanned and emergency admissions, but recognise that situations sometimes arise which make rapid action necessary. In these instances, we apply the procedures governing planned admissions and gather and supply all necessary information as soon as practically possible.”
66. We took into account matters such as the gravity of the allegations, 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 the ICRO is not continued.
67. We acknowledge that the allegations which was subject to the extension were different to those which led to the imposition of the ICRO. The current allegations were serious and related to missing information such as Person C’s lack of documentation regarding the history of urine infections. However, we were particularly persuaded by the evidence of both the Respondent and Mr Bromfield that these admissions were accepted as they were urgent and that the issue of preadmission assessment had been addressed. For example, Mr Bromfield made it clear that preadmission assessments were now being conducted as soon as possible and being kept in a central place so that they could be made available to the Regulator.

68. We concluded that it did not remain necessary for the protection of members of the public for the ICRO to continue beyond its current expiry date. The reasons being relied upon for its extension were different to those as to why the ICRO had been imposed in the first place. There has been improvement, there has been engagement to such an extent that the Applicant had been considering disposing of the case in December 2022 without further action. Furthermore, we noted that Mr Parry himself could not identify how the existing conditions would assist with the issue that had been raised regarding the preadmission assessment. To this extent we were invited by Mr Miles to vary the existing conditions if we were persuaded that the order should be extended.
69. We also took into account that the Respondent has been registered as an Adult Care Home Manager since 17 April 2012. We took into account that the ICRO had been imposed for almost around 18 months and we took into account the Respondent's evidence around the impact it has had on her. In short, the Respondent has done all she can up to now to engage with the Applicant. Whilst we acknowledge that an ICRO allows the Respondent to continue to work in this sector, nevertheless, we did acknowledge the Respondent's submissions about the stress that having an order in place has on an individual. The Respondent has had to live with this for around 18 months.
70. We also took into account that the Respondent is now being supervised on a monthly basis. She also has in place a more supportive structure which includes a Regional Manager, an Area Manager and a Deputy.
71. Our decision does not prevent the Applicant from completing its investigations, it just means that, in respect of the *current* circumstances as they were presented to us at the hearing, it needs to be done without an ICRO in place
72. We, therefore, conclude that taking in account all the circumstances of this case it was neither necessary nor proportionate for the ICRO made on 27 October 2021 to be extended beyond 26 April 2023.
73. 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 ICRO, we do not express any views on the merits or otherwise of any potential substantive case against the Respondent.

DECISION

74. The application to extend the Interim Conditional Registration Order made on 27 October 2021 and which is due to expire on 26 April 2023 shall be refused.

Judge H Khan

Lead Judge

First-tier Tribunal (Health Education and Social Care)

Date Issued: 25 April 2023