

Care Standards

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

[2020] 4069.ISO-W VKINLY

Heard by Video Link on 8 September 2020

Before

**Mr H Khan (Judge)
Mr M Flynn (Specialist Member)
Dr W Stafford (Specialist Member)**

Social Care Wales

(Applicant)

-v-

Tracy Ann Kolade

(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 Tracy Ann Kolade (“the Respondent”) made on 13 March 2020 for a period of 18 months to be extended until 12 May 2021.

The Hearing

2. The hearing took place on 8 September 2020. This was a remote hearing which has not been objected to by the parties. The form of remote hearing was by video. A face to face hearing was not held because it was not practicable and no-one requested the same and we considered that all issues could be determined in a remote hearing. The documents that we were referred to are in the electronic hearing bundle provided for the hearing.

Attendance

3. The Applicant was represented by Ms Claire Rawle, Solicitor. Its sole witness was Ms Sophie Bennett, Fitness to Practise Lead.
4. The Respondent did not attend nor did any witnesses on her behalf. The hearing was listed to start at 10:30am. It did not start until around 10:45am. This was to allow the Respondent to dial in as well as resolve any technical difficulties. There had been no explanation for the Respondent's absence nor was there a request for a postponement of the hearing.

Preliminary Issue

5. We heard submissions from Ms Rawle and considered whether or not we should proceed in the Respondent's absence. Ms Rawle submitted that the Tribunal should proceed in the Respondent's absence. Ms Rawle set out that the Respondent had limited engagement in the proceedings. The Respondent had last informed the Applicant before a review hearing on 11 September 2019 that she would not engage. Furthermore, the current interim suspension order expires on 12 September 2020 and these proceedings had to be heard and determined by then.
6. 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 her absence. We were satisfied that the Respondent was aware of the hearing and that it was in the interests of justice to proceed with the hearing.
7. Our reasons for proceeding included the fact that the Respondent had not engaged fully in these proceedings. There had been no contact prior to the hearing explaining any non-attendance or requesting a postponement. Furthermore, the Respondent had not submitted any evidence nor engaged in these proceedings. The additional challenge in this case was that the interim suspension order was due to expire on 12 September 2020 and therefore the timescales for hearing and determining the case were extremely tight. The case had to be heard and concluded by 12 September 2020. We concluded, therefore, that it was in the interest of justice to proceed with the hearing.

The Applicant

8. 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

9. The Respondent was registered as a Domiciliary Care Manager on 8 January 2014 and was employed by Hafod Care Association Limited.

Events leading to the Interim Suspension Order

10. On 19 December 2018 the Respondent was referred to the Applicant by her employer in relation to the alleged financial abuse of a resident by the Respondent. The referral also stated that the Respondent had resigned from her post on 3 December 2018.
11. On the 12 February 2019, Andrea Williams, Adult Protection Officer from the safeguarding team at Rhondda Cynon Taff County Borough Council confirmed that the allegation against the Respondent was one of financial abuse against a resident and that the resident was being supported to make a complaint to the police. Ms Williams also stated that the police would be interviewing the Respondent on 18 February 2019 and that a file would then be submitted to the Crown Prosecution Service (CPS).
12. On 26 February 2019, a further email was received from Andrea Williams stating that the police officer in charge of the case had reported that the Respondent had been interviewed and had denied the alleged offence. The email also stated that a file was being prepared by the police officer in the case for consideration by the CPS.
13. A decision was made by the Applicant to apply for an interim suspension order. The application for an interim suspension order was considered by an Interim Orders Panel on 13 March 2019. The panel determined that an interim order should be imposed for a period of 18 months on the grounds that such an order was:
 - (a) necessary to protect the public, and
 - (b) otherwise in the public interest.
14. On 11 September 2019, an Interim Orders Panel met to review the interim order. At that time, it was noted that a decision was still awaited from the CPS. The Respondent chose not to attend or be represented at that hearing. The panel determined that the interim suspension order should continue without amendment.
15. On 20 January 2020 an email was received by the Applicant from Andrea Williams. This stated that a charging decision had been made and that the Respondent had been charged with 'fraud by false representation'. It was further stated that the matter was due to be heard at Merthyr Tydfil Crown Court on 27 January 2020, although that date was said to be subject to change.
16. On 6 March 2020, an Interim Orders Panel met to review the interim order. The Respondent did not attend and was not represented at the

hearing. The panel determined that the interim suspension order should continue without amendment.

17. On 4 June 2020, the Applicant made an application to the Tribunal for the interim suspension order to be extended until 12 May 2021.
18. On 6 August 2020, the Applicant was informed that the criminal proceedings against the Respondent were ongoing and that the case had been committed to the Crown Court but that a hearing date had not been set.

The Applicant's position

19. The Applicant's position now is that an extension of the interim suspension order is now sought until 12 May 2021, to enable criminal proceedings to be concluded and for the Applicant to complete its investigations and fitness to practise proceedings.

The Respondent's position on the Application

20. The Respondent has not provided any information during the course of these proceedings setting out her position. The Panel considered the information provided by the Applicant which included the Respondent's letter of resignation. The panel were also made aware by the Applicant that the Respondent would be entering a not guilty plea to the criminal charges.

The Issues to be determined

21. According to the Applicant the issue before the Tribunal was whether the interim suspension order imposed on 13 March 2019 for a period of 18 months should be extended beyond 12 September 2020 to 12 May 2021.

The Legal Framework

22. 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.
23. 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.
24. 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.
25. 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.
26. 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.
27. 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.
28. 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.
29. 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.
30. 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.
31. 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')
32. Under section 148 of the Act, SCW may apply to the Tribunal for an interim order to be extended or further extended.
33. 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.

34. 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

35. 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. We acknowledge that despite been given opportunities to do so, the Respondent has failed to provide any evidence.

36. Ms Bennett explained that the Applicant was seeking an extension of the interim suspension order which was due to expire on 12 September 2020 to ensure that it remains in place pending a final hearing before a Fitness to Practise Panel. The application has been made for an extension until 12 May 2021, which is an extension of eight months. The extension of the interim suspension order was sought until 12 May 2021, to enable to criminal proceedings to be concluded and for the Applicant to complete its investigations and the fitness to practise proceedings.

37. Ms Bennett set out the background to the matter. The latest update she had received was from Andrea Williams on 6 August 2020. This stated that the case had been committed to Crown Court but no date had been set for the final hearing.

38. Ms Bennett explained that if the Respondent's criminal trial were to take place in September or October 2020 and result in a conviction, an extension of this length would not be needed in order to conclude a hearing before a Fitness to Practise Panel.

39. Ms Bennett explained that if the Respondent was convicted at the trial in the Crown Court it would be possible for the Respondent to be referred for hearing before a Fitness to Practise Panel under the fast track procedure without the need for further investigation. This was because a person's fitness to practise may be regarded as impaired on the basis of a conviction for a criminal offence. A certificate of conviction from the Crown Court would be treated as conclusive proof of the commission of the offence concerned although the Applicant would still need to comply with notice periods before the case could be listed for hearing. A pre-hearing review meeting would need to be held to fix a date for the hearing and then

the Respondent would need to be given at least 42 days' notice of the hearing date.

40. However, in the event of an acquittal, a longer extension is needed. In those circumstances, it will be necessary for the Applicant to gather and evaluate the relevant evidence to determine whether there should still be a referral to a Fitness to Practise Panel. This was in recognition of the different standard of proof that applies in criminal proceedings, as compared with SCWs proceedings. It also reflected the fact that allegations of serious misconduct are not confined to conduct that would also amount to a criminal offence in the case of significant failures to meet relevant standards of professional practice. To determine this, the Applicant would need to obtain a transcript of the Crown Court trial, all evidence from the police and await the conclusion of the safeguarding investigation.
41. The Applicant may then need to obtain their own witness statements from relevant witnesses. After completion of its investigation, the Applicant will be required to provide the Respondent with copies of evidence gathered and invite her to respond with written representations within 2 days and then consider any representations submitted before determining whether to refer the case to a Fitness to Practise Panel for a hearing. If a decision is made to refer the case to a Fitness to Practise Panel for a hearing a pre-hearing review meeting would need to be held to fix a date for the hearing and then would need to be given at least 42 days' notice of the hearing date.
42. Ms Bennett stated that the Applicant had limited information about the Respondent's position due to her limited engagement. The indication that the Applicant had was that the Respondent was going to enter a plea of not guilty.
43. Ms Bennett explained that in line with any other case involving Fitness to Practise, each person was contacted every 2 months and provided with an update as to their case. The Respondent in this case had been sent these emails and had replied to one of them. However, Ms Bennett was not aware of the Respondent's current circumstances including whether or not she was employed and if so in which industry.

The Tribunal's conclusion with reasons

44. 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.
45. We wish to place on record our thanks to the Ms Rawle and Ms Bennett for their assistance at the hearing.
46. 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's necessary for the protection of the public, is otherwise in the public interest, or is in the interests of the registered person.

47. 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.
48. 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.
49. We found the evidence of Ms Bennett to be clear and well reasoned. Ms Bennett accepted that there was limited information about the Respondent's current circumstances as well as limited details of the allegations themselves.
50. 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* which we were referred to by the Applicant and the principles set down in that decision.
51. We considered the nature of the evidence that the Applicant has obtained. We acknowledge that the Applicant has been given an indication that the Respondent will enter a plea of not guilty in the criminal proceedings. We also acknowledge that there was limited information about the allegations themselves, but, looking at the matter overall, 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. The allegations against the Respondent were of a serious nature involving dishonesty, breach of a position of trust as well as having the potential to cause financial loss and/or emotional harm to vulnerable individuals
52. We took into account the nature of the Respondent's previous role as a Domiciliary Care Manager. We concluded that there was a significant risk to vulnerable individuals involved in allowing the Respondent to practise unrestricted whilst the criminal proceedings/Applicant's investigation were ongoing.
53. We considered the reasons as to why the case has not been concluded to date. The matter has been sent to the Crown Court but due to the Covid 19 pandemic, it has not been possible to conclude it as yet and it is not clear, at this stage, as to when the matter will be relisted. We accept that the Applicant is unable to complete its own investigation (including gaining access to relevant documents and interviewing witnesses) until the Respondent's trial in the Crown Court has concluded.

54. We were particularly reassured by Ms Bennett's oral evidence that the Applicant would ensure that the matter is dealt with as quickly as possible once a criminal trial (irrespective of the outcome) has been concluded.
55. We also took into account the nature of the Respondent's role and that she had at the very least been working as a Domiciliary Care Manager from 2014 until her resignation in December 2018.
56. In reaching our decision, we took into account any prejudice/hardship to the Respondent of any interim suspension order continuing. We acknowledge that the imposition and subsequent extension of an interim order could potentially cause hardship to the Respondent as well as the duration of the interim order to date. However, there was limited specific information before the Tribunal about any prejudice/hardship to the Respondent. The Respondent was given an opportunity to participate in these proceedings and to provide such information but elected not to do so.
57. 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 (i.e. before 8 December 2020). In addition, under section 146(8) an Interim Orders Panel may review an interim order at any time if new evidence becomes available. Such new evidence might include an acquittal in the Crown Court.
58. We, therefore, taking in account all the circumstance, concluded that it was necessary and proportionate for the interim suspension order made on 13 March 2019 to be extended until 12 May 2021.
59. 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 do not express any views on the merits or otherwise of the case against the Respondent.

DECISION

60. The application to extend the order dated 13 March 2019 and which is due to expire on 12 September 2020 shall be granted and the interim suspension order shall be extended until 12 May 2021.

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

Date Issued: 09 September 2020