

Care Standards

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

[2020] 4051.ISO-W

Heard by Video Link on 28 July 2020

Before

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

Social Care Wales

Applicant

-v-

George Michaela Thomas

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 Georgia Michaela Thomas (“the Respondent”) made on 22 February 2019 for a period of 18 months to be extended or further extended by 6 months.

The Hearing

2. The hearing took place on 28 July 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 Mr Graham Miles. Its sole witness was Mr John Hanson.
4. The Respondent did not attend nor did any witnesses on her behalf. The hearing was listed to start at 10am. It did not start until around 10:10am. This was to allow the Respondent to dial in. There had been no explanation for the Respondent's absence nor was there a request for a postponement of the hearing. The Tribunal administration could not contact the Respondent by telephone as no number had been provided.

Preliminary Issue

5. We heard submissions from Mr Miles and adjourned to consider whether or not we should proceed in the Respondent's absence. Mr Miles submitted that the Tribunal should proceed in the Respondent absence. Mr Miles confirmed that the Respondent had set out in an email to him dated 3 July 2020 that she did not wish to give oral evidence herself or call any witness to give oral evidence. No written evidence has been submitted by or on behalf of the Respondent other than an email dated 4 June 2020.
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 (notification sent on Monday, 29 June 2020) and that it was in the interests of justice to proceed with the hearing.
7. Our reasons for doing so were 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. The only correspondence sent to the Tribunal was dated 4 June 2020 and other than that email, there had been no evidence submitted. The Respondent had also made it clear to the Applicant that she would not be giving evidence or submitting any evidence.
8. We took into account the submissions from Mr Miles that the Respondent had a history of non-attendance including at the Interim Orders Panel and had failed to attend the telephone case management hearing before the Tribunal on 15 June 2020 without any explanation. Furthermore, as Mr Miles, submitted, there was no guarantee that the Respondent would attend any future hearing. We concluded, therefore, that it was in the interests of justice to proceed with the hearing.

The Applicant

9. 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

10. The Respondent, Ms Georgia Michaela Thomas, was registered by the Applicant as a Residential Child Care Worker on 19 June 2017 and was employed by Horizons Educare ('Horizons') as a Senior Residential Support Worker based at Park Lodge in Swansea.

Events leading to the Interim Suspension Order

11. On 26 September 2018, Horizons referred the Respondent to the Applicant. The referral related to alleged inappropriate contact via social media and telephone between the Respondent and a young person with complex needs who was accommodated at Park Lodge. The Respondent was dismissed by Horizons.
12. The circumstances of the dismissal were also the subject of a safeguarding referral to Swansea Council Safeguarding Team and a criminal investigation.
13. On 22 February 2019, an Interim Orders Panel imposed an Interim Suspension Order for 18 months on the grounds that the order was necessary for the protection of the public and otherwise in the public interest.
14. An investigation was also undertaken by South Wales Police Child Abuse Investigation Unit in relation to criminal offences arising from the initial referral. On 3 December 2019 South Wales Police Child advised the Applicant that the Crown Prosecution Service (CPS) had considered the evidence gathered as part of the criminal investigation and decided that no further criminal action would be taken.
15. Following the decision of the CPS, the Applicant requested copies of documentation gathered as part of the police investigation, together with Safeguarding minutes arising from the multi-agency strategy meetings that were convened in relation to the safeguarding referral.
16. On the 19 August 2019, an interim orders panel conducted a six-month review of the Interim Suspension Order and determined that the order should continue.
17. On 18 February 2019, and interim order panel conducted a 12month review of the Interim Suspension Order and determined that the order should continue.
18. The Interim Suspension Order has been made on an interim basis and there have not been any findings of misconduct against the Respondent.

19. The application was now made for the Interim Order to be extended by a further period of six months until 21 February 2021.

The Respondent's position on the Application

20. The Respondent has provided limited information as part of these proceedings. This is in the form of an email to the Tribunal dated 4 June 2020 and which states;

“... ”

The attachments won't open in your phone and I don't have my laptop. Could I put my response to you in an email?

I do not agree with extended the suspension order due to nothing coming from the investigation by the Police and it being dropped on 4/12/19. It has been the worse two years of my life. However, I no longer wish to work within the social care industry...”

The Agreed Issues to be determined

21. According to Mr Miles, the parties had agreed that the Tribunal should consider whether the interim suspension order imposed on 22 February 2019 for a period of 18 months should be extended beyond 21 August 2020.

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. Mr Miles accepted that 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.
36. Mr Hanson set out the history to the matter. He explained that the Respondent registered with the Applicant as a Residential Child Care Worker on 19th June 2017 and was employed by Horizons Educare as a Senior Residential Support Worker.
37. On the 27th September 2018, the Applicant received a referral from the Registered Manager at Horizons Educare concerning the Respondent. The referral contained details of the registered person's dismissal from the company on 18 September 2018 concerning allegations of an inappropriate sexual relationship with a child and dishonesty.
38. The circumstances of this dismissal were the subject of a safeguarding referral to Swansea Council Safeguarding Team and a criminal investigation into the circumstances of this referral commenced. A Professional Strategy Meeting under the provisions of the All-Wales Child Protection Procedures 2008 was convened on 1 October 2018.
39. On 24 January 2019, the fitness to practise investigation was allocated to Mr Hanson for further investigation. On 22 February 2019 the Applicant applied for an Interim Suspension Order before an Interim Orders Panel. This application was successful, and an Interim Suspension Order for 18 months was granted.
40. On 11 July 2019, PC Sarah Dunthorne from the Child Abuse Investigation Unit at South Wales Police confirmed to the Applicant that the criminal investigation into the circumstances of this referral were still ongoing.
41. On 19 August 2019, an Interim Orders Panel conducted a six-month review of the Interim Suspension Order and determined that the order should continue.
42. On 3 December 2019, PC Sarah Dunthorne from the Child Abuse Investigation Unit at South Wales Police confirmed that the criminal investigation was complete and that the Crown Prosecution Service had determined that no further action would be taken against the Respondent in relation to this matter.

43. On 23 January 2020, Mr Hanson formally requested the disclosure of all information gathered during the criminal investigation from South Wales Police. On the same day he formally requested copies of all associated Safeguarding Minutes from Swansea Safeguarding Team. Although this material had now been received there were delays in securing it.
44. On 18 February 2020, an Interim Orders Panel conducted a twelve-month review of the Interim Suspension Order and determined that the order should continue.
45. On 20 February 2020, Mr Hanson received the evidential bundle of documentation from South Wales Police. This bundle consists of a contemporaneous record of an interview with a child, fourteen separate witness statements, a series of exhibited screenshots from mobile communication devices and two contemporaneous records of interviews with the Respondent.
46. The current position was that the material that has been gathered as a result of the criminal investigation and it will form the basis of the evidential fitness to practise submission. Mr Hanson confirmed that there are no further investigative enquiries to conduct and all that remains was to prepare an evidential file for service on the Respondent, and to arrange a Fitness to Practise hearing. He acknowledged that it was "*quite feasible*" for matters to be dealt with before the Fitness to Practice panel by the end of 2020.
47. Mr Hanson explained the Covid-19 pandemic had frustrated attempts to finalise this matter within the time constraints of the Interim Suspension Order. The current position was that pre-trial hearing reviews were now being listed and there had been measures put in place such as a utilisation of remote hearings which would help deal with these matters.
48. Mr Hanson referred to the Interim Order Panel decisions and set out that that in his opinion, the Interim Order was necessary for the protection of the public and otherwise in the public interest. He referred to level of risk posed and the Respondent's role as a Residential Child Care Worker which included her having to stay at residential premises for 3 to 4 days and having daily/hourly contact with vulnerable young persons.
49. Mr Hanson explained that the allegations were of a serious nature, involving a young person with whom the Respondent formed an inappropriate relationship. Furthermore, the Respondent had appeared to accept that she had behaved dishonestly when she was first asked whether she had exchanged messages with the young person concerned.

The Tribunal's conclusion with reasons

50. 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.

51. We wish to place on record our thanks to Mr Miles and Mr Hanson for their assistance at the hearing.
52. 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.
53. 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.
54. 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.
55. We found the evidence of Mr Hanson to be credible and persuasive. Mr Hanson's evidence was clear and frank particularly with regards to likely timescales for the matter to be heard by the Fitness to Practice panel.
56. 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.
57. 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. They involve a vulnerable young person and there is evidence to suggest that there was sustained contact between the Respondent and young person within a short period. The nature of the allegations also includes allegations of a sexual relationship with the young person as well as a failure to make timely referrals of concerning behaviour (including threats to harm himself) on the part of the young person. We acknowledge that the police are no longer pursuing criminal proceedings against the Respondent but nevertheless these are serious allegations.
58. We considered the nature of the evidence that the Applicant has obtained. The evidence is significant and includes screenshots of messages between the Respondent and young person, contemporaneous notes of

the interview with the child, as well as 14 witness statements. This is evidence the Applicant says it will rely upon in a fitness to practise hearing.

59. We also took into account the nature of the Respondent's role as a Residential Child Care Worker. This included spending 3 to 4 days at a time living in the residential premises and having daily, hourly contact with vulnerable in persons. We concluded that there was a significant risk to young person's involved in allowing the Respondent to practice unrestricted whilst the Appellant investigation continued.
60. We considered the reasons as to why the case has not been concluded to date. There was no challenge to the explanation put forward that the Applicant could not complete its investigation and process until the police investigation had been completed. The police had notified the Respondent of the outcome of its investigation on 3 December 2019 after which the Applicant had sought a disclosure of all the information gathered during the police investigation in January 2020. Furthermore, copies of all associated Safeguarding Minutes from Swansea Safeguarding Team had been requested and it was only on 20 February 2020 that the evidential bundle had been received from the police.
61. We acknowledge the delays in getting this matter to a Fitness to Practice panel given the difficulties caused by the current Covid 19 pandemic. This has led to delays in arranging fitness to practice hearings and we were told that it was only now that pre-trial hearings were being listed remotely. Although the Applicant sought an extension of 6 months to the interim Suspension Order until February 2021, Mr Hanson very fairly acknowledged that it was "*quite feasible*" for matters to be dealt with and concluded before the fitness to practice panel by the end of 2020. The material that has been gathered as a result of the criminal investigation will form the basis of the evidence to the fitness to practice submission. We acknowledge his concerns around ensuring the availability of the anticipated 6 witnesses for any such hearing, but this is a concern that would apply equally to whenever such a hearing took place.
62. 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 no longer wishes to work in the social care industry and has confirmed that at present she has alternative employment. We therefore consider that there would be limited hardship to the Respondent.
63. We therefore concluded that interim order made on the 22 February 2020 shall be extended but only until 31 December 2020. We consider that given the serious nature of the allegations and Mr Hanson's acceptance that completing the process by the end of the year was "*quite feasible*", that this was the necessary and proportionate period for an extension. In reaching our decision as to the length of any extension, we took into account that

these allegations were first made in September 2018. This will mean that this has been hanging over the Respondent for over almost two years. Furthermore, as Mr Hanson sets out in his statement, there are no further investigative enquiries to conduct and all that remained was for the evidential file to be served on the Respondent and to arrange a fitness to practice hearing.

64. 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.
65. The application to extend the order dated 22 February 2019 and which is due to expire on 21 August 2020 shall be granted and the interim order shall be extended until 31 December 2020.

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

Date Issued: 05 August 2020