

Care Standards

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

[2019] 3812.EA-W

**IN THE MATTER OF AN APPEAL
BETWEEN:**

Sharon Connolly

Appellant

v

Social Care Wales

Respondent

BEFORE

Judge Meleri Tudur (Deputy Chamber President)

Mr James Churchill (Specialist Member)

Mr Michael Flynn (Specialist Member)

DECISION

Heard on 14 January 2020 at the Caernarfon Justice Centre, Llanberis Road,
Caernarfon.

Attendance

Ms Connolly attended the hearing supported by Ms C Williams, of AbaCare Ltd and Ms J White.

Mr G Miles, Solicitor of Blake Morgan represented the Respondent.

Oral evidence was heard from Ms J Walker, Social Care Wales and Ms C Williams, AbaCare Ltd.

Appeal

1. The Appellant appeals pursuant to Section 145 of the Regulation and Inspection of Social Care (Wales) Act 2016, ('the Act') against the decision issued on the 20 August 2019, imposing an interim suspension order on her registration as a domiciliary care worker from the 16 August 2019 for a period of 18 months.

Interlocutory Matters

2. At the start of the final hearing, the Tribunal considered an application for submission of late evidence made by Mr Miles in respect of a summary of the police interview of the Appellant, received by the Respondent on the 17 November 2019. Ms Connolly did not oppose the application and confirmed that she had been provided with a copy of the summary.

3. The Tribunal considered the application and concluded that the evidence was relevant to the matters under consideration, and that it would not prejudice the Appellant if it was admitted. The document was added to the Tribunal bundle at page F94.

4. The Respondent had provided a list of issues for consideration by the Tribunal. At the start of the hearing, the Tribunal added another issue to the list, which was the length of the suspension order.

5. During the course of the hearing, there was a short adjournment when one of the Tribunal panel was unwell. After a break, the hearing resumed and was concluded without further interruption.

The Legal Framework

6. Pursuant to Section 67 of the Act, from the 11 July 2016, the Care Council for Wales was renamed Social Care Wales (the Respondent) and is the regulator for the social care profession in Wales.

7. Under section 68(1) of the Act, the Respondent's main objective in carrying out its functions is to protect, promote and maintain the safety and well-being of the public in Wales.

8. Under section 68(2) of the Act, in pursuing that objective, the Respondent is required to exercise its functions with a view to promoting and maintaining –

- (a) high standards in the provision of care and support services,
- (b) high standards of conduct and practice among social care workers,
- (c) high standards in the training of social care workers, and
- (d) public confidence in social care workers.

9. Section 80 of the Act provides that the Respondent's functions include keeping a register of social workers and social care workers of any other description specified by the Welsh Ministers in regulations and visiting social worker and social care managers.

10. Section 112(1) of the Act, requires the Respondent to prepare and publish a Code of Practice, setting standards of conduct and practice expected of social care workers.

11. Under section 112(5) of the Act, where a registered person is alleged to have failed to comply with any standard contained in the Code of Practice that failure –

- (a) is not, of itself, to be taken to constitute deficient performance as a social care worker or serious misconduct, but

(b) may be taken into account in proceedings under the Act which relate to the person's fitness to practise.

12. The Respondent has prepared and published a Code of Professional Practice for Social Care ('the Code') under section 112(1) of the Act, the relevant version of which applied with effect from 1 July 2015.

13. Part 6 of the Act contains provisions relating to consideration of an allegation that a registered person's fitness to practice is impaired.

14. 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.

15. 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.

16. 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.

17. 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.

18. Under section 145 of the Act, a registered person may appeal against the imposition of an interim order to the Tribunal. Under section 145(4), so far as relevant to an interim suspension order, the Tribunal may –
(a) revoke the interim order;...
(b).....
(c) replace the interim suspension order with an interim conditional registration order;...
(d).....
(e) vary the period for which the interim order is to have effect;
(f) remit the case to the Respondent for it to dispose of in accordance with directions of the Tribunal;
(g) make no change to the interim order.

19. Under Section 146 of the Act, regardless of whether there is an appeal under Section 145, 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.

20. Proceedings before an Interim Orders Panel are governed by Part 4 of The Social Care Wales (Proceedings before Panels) Regulations 2016 ('the Regulations').

21. Under regulation 28 of the Regulations, the general objectives of an Interim Orders Panel in carrying out its functions are –

- (a) to protect, promote and maintain the health, safety and well-being of the public;
- (b) to promote and maintain –
 - (i) public confidence in social care workers, and
 - (ii) a high standard of conduct and practise among social care workers; and
- (c) to deal fairly and justly with the case.

22. The Social Care Wales (Interim Orders) Rules 2018 ('the Rules') make provision for the convening of Interim Orders Panel hearings and for the procedure at the hearing.

23. The Respondent has issued guidance entitled 'Guidance on Indicative Disposals for the Fitness to Practice Panel and Interim Orders imposed by the Interim Orders Panel' ('Interim Orders Guidance'). Part II of the guidance relates to applications for interim orders and includes general principles to be taken into account by an Interim Orders Panel.

24. Paragraph 1.8 of the Interim Orders Guidance states that a panel should consider, on the evidence before it, the risk of harm to the public, in particular to individuals who use services and/or to the registered person, if an interim order is not imposed.

25. The Social Care Wales (Specification of Social Care Workers) (Registration) (Regulations 2016 specifies the descriptions of social care workers for whom a register must be kept. The Social Care Wales (Specification of Social Care Workers) (Registration)(Amendment) Regulations 2018 with effect from 2 April 2018, specify an additional description of social care workers in respect of which the Respondent must keep a register, namely those who are employed or engaged under a contract of services by a service provider of a domiciliary support service to provide care and support to a person.

26. From the 2 April 2018, domiciliary care workers have been able to voluntarily apply for registration with the Respondent. It is proposed by the Welsh Government that from 1 April 2020, such registration of domiciliary care workers will be mandatory.

27. The Appellant is a Domiciliary Care Worker employed by AbaCare Ltd. The Appellant was voluntarily registered by the Respondent in that category with effect from 26 June 2019.

Events leading to the Interim Suspension Order

28. On the 25 April 2019, the Appellant supported an individual on a shopping trip. At the unmanned checkout, she assisted with the payment using a £20 note and after conclusion of the transaction, the supported individual declared that the sum of £15 in notes was missing. Store staff were

summoned and checked the CCTV footage of the incident. The notes were retrieved by the Appellant from a bag in her car and returned to the supported individual.

29. On the 17 June 2019, the Appellant agreed to a voluntary interview by the police regarding the incident and she subsequently informed her manager of the incident.

30. The employer arranged a disciplinary investigation into the incident. The manager, Tracey Webster, delegated responsibility for the investigation to Ms Clare Williams, because Ms Webster is the Appellant's sister. The disciplinary documentation consisted of a document entitled "Statement", dated 19 June 2019, which recorded the Appellant's recollection of the events of the 25 April 2019. The document also recorded Claire Williams's advice to the Appellant and was signed by both the investigator, C Williams and the Appellant. On the basis of the Appellant's own evidence about the incident on the 25 April 202109, the employer concluded that no further disciplinary action against the Appellant was required.

31. The matter was reported to the Vulnerable Adults' Safeguarding Officer, who concluded, on the basis of the Appellant's version of events, that no further action was necessary.

32. On the 26 June 2019, the Appellant was registered as a domiciliary care worker by the Respondent.

33. On the 28 June 2019, the Respondent was notified of the incident by North Wales Police in a Notifiable Occupation Disclosure.

34. The supported individual did not make a complaint to the police and did not make a formal complaint to the employer. No charges were brought against the Appellant by the police.

35. The case was allocated to Ms Joanne Walker, Fitness to Practice Officer, on the 5 July 2019. On the 8 July, she sent a letter to the Appellant outlining the referral and enclosing a leaflet concerning the Respondent's investigative process.

36. On the 10 July 2019, Ms Walker requested copies of the AbaCare Ltd's disciplinary documentation and a response was received on the 11 July 2019 attaching the documents.

37. On the 18 July 2019, Ms Walker received copies of the handwritten statement from an employee of Marks and Spencer dated 5 March 2019 and on the same day, she drafted and signed a report to the Interim Orders Panel.

38. The Interim Orders Panel hearing was arranged for the 9 August 2019 and the Appellant was sent notification of the meeting and the supporting documentation on the 23 July 2019. The Appellant contacted the Respondent on the 2 August 2019 to inform them that she was unable to attend on the 9 August.

39. On the 8 August 2019, North Wales Police notified the Respondent that they had concluded their investigations into the incident and were taking no further action in relation to it.

40. On the 9 August 2019, the Respondent requested an adjournment of the Interim Orders Panel and sent a copy of the police statement to the Appellant and to the panel. The Appellant was informed on the same day that the hearing had been adjourned and relisted on the 16 August 2019.

41. In a telephone conversation with Ms Walker on the 13 August 2019, the Appellant expressed her upset at the proceedings, particularly about the possible hearing outcomes which she had not previously appreciated. She agreed to provide a response and email in time for the hearing before the Interim Orders panel. On the same day, AbaCare Ltd telephoned the Respondent and expressed their surprise that the hearing had taken place on the 9 August 2019 and they had not understood the arrangements or the possible outcomes.

42. The Interim Orders Panel hearing was held on the 16 August 2019 in the absence of the Appellant and it was concluded that an interim suspension order would be made on the Appellant's registration.

43. The Appellant was notified of the decision by letter dated 20 August 2019. The letter confirmed that on 16 August 2019, an Interim Orders Panel made an interim suspension order in relation to the Appellant on the grounds that the order –

- (a) is necessary for the protection of the public, including service users;
and
- (b) is otherwise in the public interest.

Oral evidence

44. At the hearing, the Tribunal heard evidence from Ms Joanne Walker who confirmed the contents of her statement signed on the 14 November 2019 to be true. She gave evidence that the investigation into the incident has been concluded and that a pre-hearing review meeting is to be held on the 27 January 2020, but that the date had only recently been set and the Appellant had not yet been sent formal notification of the hearing. She explained that at the pre-hearing review, directions will be given for listing the hearing and there will be an opportunity for the Appellant to admit or deny the formal charge which will be put to her. The regulations require that the Respondent provide 41 days notice of the hearing, but the Appellant can waive that requirement should she so wish. The final hearing will then be listed as soon as possible.

45. Ms Walker accepted in cross examination that the Appellant has throughout the process maintained that she did not intend to take the supported individual's money and that there was no dishonesty.

46. In response to questions from the Tribunal, Ms Walker explained that the maximum length of time that the interim suspension order could run

pursuant to the Regulations is 18 months and the panel had decided to make the order for that length of time in order to allow the investigation of the incident to be concluded. She confirmed that the Fitness to Practice panel have the power to end the suspension order sooner if they reach an earlier conclusion. She further confirmed that the suspension order will be subject to a statutory review after six months and another review six months later should it continue for that length of time.

47. Ms Connolly had provided the Tribunal with a short statement explaining that she had a great deal on her mind at the time of the incident, with her son threatening suicide. She had apologised to the supported individual at the time of the incident and explained that she had no intention of taking the money.

48. At the hearing, Ms Connolly explained to the Tribunal that she considered an 18-month suspension to be very long. She had been in the care industry for 38 years and her job is her passion: the suspension order had caused suffering to her, her family, her employer and her clients. Her employer had found her work to do in the office archiving, which meant that she was not currently financially out of pocket. In the longer term, however, she is at risk of losing her home due to financial pressure if she loses her job and finds the mental stress of her situation very difficult.

49. Ms Clare Williams, Care Co-ordinator for AbaCare Ltd gave oral evidence at the hearing. She confirmed that she works as the care co-ordinator for Flint and Denbighshire and the Flint branch manages care provision for about 1900 service users. She expressed her concern about the scarcity of information provided to the employer in the case. The first correspondence that she had seen was a letter stating that an 18-month suspension had been imposed. She would have welcomed more of an explanation because the Appellant in this case and many others in her situation will not have a support network or guidance available. The employer could also benefit from guidance and advice on how to support both the service users and their employees. Ms Williams stated that she would have welcomed the opportunity to work with the Respondent to identify whether an Interim Conditional Registration Order would have been a possible alternative to suspension. She suggested that the Appellant could have been required to attend only double handed calls, thus minimising any risk to the service users. She expressed her view that the company had sufficient demand for double handed calls to have accommodated such a condition, had it been imposed on the Appellant.

50. In cross-examination, Ms Williams confirmed that the first she had known of the incident was when she was asked to conduct the internal disciplinary investigation and she had not been aware of the Interim Orders Panel hearing on the 9 August 2019. She had not seen the CCTV footage at the time she concluded her investigation and was unaware that the information from the Appellant may be inaccurate. She stated that she did not consider that there would be any risk of financial abuse if the Appellant was involved in double handed calls, on the basis that the other worker would be able to keep an eye on her. She acknowledged that it might be difficult for

another domiciliary care worker to keep an eye on her throughout a call but believed that the risk would be minimised.

51. In response to a question from the Tribunal panel, Ms Williams described the service user involved in the incident as very upset at having lost her long-standing carer and confirmed that she had frequently asked for the Appellant to be returned to support her. The supported individual doesn't think that she is to blame for the suspension but is very upset to have lost her support worker.

52. The Respondent submitted that the available evidence establishes a prima facie case of dishonest conduct on the part of the Appellant having regard to the following factors:

(a) the actions and demeanor of the Appellant as revealed by the CCTV footage;

(b) the Appellant's failure to check her own bag when the discrepancy was raised by the individual for whom she was caring;

(c) the Appellant's actions in taking her shopping bag to her car when the discrepancy was being investigated, as referred to in paragraph 11 of the witness statement of Julie Annette Smith

(d) inaccurate and/or inconsistent explanations provided by the Appellant for her actions, including:

(i) in a signed statement to her employer dated 19 June 2019 the Appellant stated, '*The change was dispensed. I then took the bags to the car. When I came back into the shop [the individual] stated she hadn't been given the correct change. I called over the shop assistant to inform her of this*'. The CCTV footage indicates that the individual concerned drew the discrepancy to the Appellant's attention immediately and it was not until staff had been notified and a check of CCTV footage was initiated that the Appellant took her bag to the car.

(ii) in an email to Joanne Walker dated 14 August 2019, the Appellant stated, '*I genuinely thought it was a receipt*'. This explanation was not provided in the Appellant's statement to her employer or in the account of her police interview.

53. The submissions by the Respondent acknowledged that the sum involved in the case (£15) is not a significant sum of money and that the Appellant's actions may have been opportunist rather than planned. It is submitted, however, that, if proven, the Appellant's actions would represent financial abuse and exploitation of a vulnerable service user. In considering the risk of potential harm to service users, Mr Miles emphasised that it is relevant to note that a Domiciliary Care Worker may have unrestricted and unsupervised access to the home and personal property of a service user, so that the risk is not confined to financial transactions in a public place. In light of those considerations, he submitted that an interim order is necessary in order to protect the public, including service users.

54. As to whether an interim order is otherwise in the public interest, the Respondent submitted that the Tribunal should consider the potential damage to public confidence in social care workers in general and Domiciliary Care

Workers in particular if an interim order were not in place. Mr Miles referred the Tribunal to High Court decisions in other regulatory fields where a similar power to make suspension orders exists, namely the Nursing and Midwifery Council (NMC) and the General Medical Council.

55. In Christou v NMC [2016] EWHC 1947, the High Court discharged an interim order imposed on a registrant who had accepted a caution for assault and failed to report it to the NMC. On the facts of that case, the court was not satisfied that an interim order was needed to reflect public concern pending a final hearing.

56. Mr Miles submitted that the Appellant's case is clearly distinguishable from *Christou*, on the basis that there were no factors relevant to the need to protect the public and the issue was confined to one of public confidence and in *Christou*, there was no alleged abuse or exploitation of an individual service user as in the present case.

57. In NH v GMC [2016] EWHC 2348, Mrs Justice McGowan posed the following question – *'would an average member of the public be shocked or troubled to learn, if there is a conviction in this case, that the doctor had continued to practise whilst on bail awaiting trial?'* The question was answered in the affirmative in that case and the interim order remained in place.

58. It was submitted that whilst the Appellant is not on bail awaiting a criminal trial, the same question can be asked in relation to the Appellant's forthcoming hearing before a Fitness to Practise Panel. Reference was made in the Interim Orders Panel decision following the hearing held on 16 August 2019 as follows:

'A reasonable member of the public in possession of the information we have would be shocked to hear that no protective action was taken in the period before the matter can be fully considered'.

The decision further stated:

'We have actively considered whether the risk in this case could be sufficiently mitigated by the imposition of an Interim Conditional Registration Order. We have decided that is not possible. It is not practical for us to seek to impose conditions which protect against dishonesty and these would not be capable of being policed'.

59. Mr Miles made reference to the following sections of the Code of Practice for Social Care Workers 2016:

1. Under section 2 of the Code, a registered person must strive to establish and maintain the trust and confidence of individuals and carers. This includes:
 - 2.1 being honest and trustworthy;
2. Under section 5 of the Code, a registered person must act with integrity and uphold public trust and confidence. In particular, a registered person must not:
 - 5.1 directly or indirectly abuse...individuals;

- 5.2 exploit individuals...;
- 5.3 abuse the trust of individuals...or...access to...their property, home or workplace;
- 5.8 behave in a way, in work or outside of work, which would call into question their suitability to work in the social care profession.

60. It was submitted that an interim order in relation to the Appellant is necessary for the protection of members of the public (including service users) in view of the risk of serious harm that would arise if the alleged conduct should be repeated with another vulnerable individual. It was further submitted that an interim order is otherwise in the public interest in order to preserve public confidence in social care services, in view of the serious nature of the allegation against the Appellant, on the basis that, in answer to Mrs Justice McGowan's question in NH, the public would be shocked if an interim order was not imposed in this case pending a final determination of the allegations. Finally, Mr Miles submitted that taking into consideration the proportionality of imposing a suspension, the Interim Orders Panel had concluded that an interim conditional registration order would not be a practicable alternative to an interim suspension order in this case and would not adequately protect individual service users.

Tribunal's conclusions with reasons

61. The powers of the Tribunal when considering an interim suspension order is that it stands in the shoes of the regulator and the question for the Tribunal is whether at the date of its decision, it reasonably believes that the order is necessary for the protection of the public; is otherwise in the public interest or is in the interests of the registered person.

62. 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.

63. A recent case in the High Court which considered the relevant test for an interim suspension order is the case of *NH v General Medical Council* [2016] EWHC 2348 where Mrs Justice McGowan considered the test in the context of the decision of the Medical Practitioners Tribunal Service decision to impose an interim suspension order through an Interim Order Tribunal under s41A of the Medical Act 1983. The power in that section arises in the same context as the test under consideration here: an order can be made where an Interim Orders Tribunal are satisfied that it is necessary for the protection of members of the public or is otherwise in the public interest or in the interests of the registered person.

64. The circumstances under consideration were different in that the order was made on the basis that there was in the public interest to maintain confidence in the medical profession, without any suggestion that there was a direct risk of harm to the public. The judgement states at paragraph 11: "*This case raises a narrow issue. It is not submitted by the Defendant that this applicant presents any real risk to members of the public. The sole ground in support of the continued suspension from registration is that it is in the public interest to maintain confidence in the profession.*"

65. In the present case, the Appellant is not awaiting trial in any criminal proceedings, and both the police and the safeguarding officer have indicated that they will take no further action in relation to the incident.

66. There is however, consideration to be given to the risk of harm to vulnerable supported persons, to whom the Appellant would have access whilst the investigation is ongoing as well as the public perception of domiciliary care workers as a profession, if they became aware that no action had been taken given the allegations made against the Appellant of dishonesty. The test applied is therefore twofold: consideration of the risk to individual members of the public supported by the Appellant and the public interest test suggested by Mrs Justice McGowan , albeit in the context of the facts of the particular case, but we have concluded, equally relevant to the facts of the current case as well: *“The question can be stated simply – would an average member of the public be shocked or troubled to learn, if there is a conviction in this case, that the doctor had continued to practice whilst on bail awaiting trial?”*

67. 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 the oral evidence at the hearing and is not restricted to matters available to the panel on 16 August 2019.

68. The additional evidence available to the Tribunal includes witness statements obtained by the Respondent's Fitness to Practice Officer from Julie Annette Smith and Aaron Leather, both employees of the store concerned and CCTV footage of the incident. Although DVD copies of the CCTV footage had been made available to the Tribunal panel, they had been unable to view the footage because of formatting issues. The Tribunal confirmed at the start of the hearing that they did not consider it necessary to view the footage as they were not required to make any findings of fact in relation to the incident, but noted that the footage was available and formed part of the evidence available to the Respondent and was described in the two witness statements from the store's employees obtained by the Police.

69. We noted that the Appellant has voluntarily registered as a Domiciliary Care Worker, as the scheme is not yet mandatory. For completeness, we considered whether that position made any difference to the consideration of the requirements for meeting the standards and conditions imposed by the Code of Practice and regulations. We concluded that the same requirements apply to the voluntary registrants as it does to mandatory registrants. Once registered, the same principles apply to every registrant whether the registration is mandatory or voluntary and the principles should be applied in exactly the same way for both.

70. We also noted that since the mandatory registration scheme is not yet in force, the Appellant could have tried to find alternative employment on the basis that she was not required to be registered until at least April 2020. We were not provided with any evidence that she had done so, and that may be an aspect that should be considered to her credit.

71. 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 make an Interim Suspension Order. The Tribunal has assessed the strength of the evidence and the prospects of a Fitness to Practise Panel making a finding that the Appellant's actions were dishonest.

72. We have noted that the appeal concerns a single incident, which, in terms of the type of fitness to practise proceedings, is a relatively straightforward matter, and in this case, about which there is more evidence available than might normally be found in fitness to practise cases. Apart from the Appellant's own statement, there are two independent witness statements and CCTV footage from two cameras which captured the incident for posterity from different angles. The evidence highlights discrepancies in the Appellant's own evidence which we conclude merit consideration by a full Fitness to Practise panel.

73. We are satisfied that the evidence available to the Respondent is sufficient for it to conclude that it is necessary to make an order to protect individual supported persons who might be clients of the Appellant and further because, whilst the public at large may not be "shocked" at lack of interim action, if there is a finding of dishonesty, members of the public could well be "troubled" if no action was taken in the interim to prevent the Appellant from working or at least to minimize the risk. We also conclude that the length of the order was disproportionately long, given the nature of the single incident which occurred. The case law requires the Respondent to balance the impact of the suspension order on the Appellant as well as the service users and public and a straightforward case such as this would not have required 18 months to consider, and in fact, all of the relevant evidence was in the Respondent's hands before the end of October 2019.

74. The fact that an interim suspension order can be made for a maximum period of 18 months is not a reason for the Respondent to make one in every case. Conduct issues vary significantly in complexity and some may well warrant a lengthy suspension in order to facilitate a lengthy investigation. This was not such a case, and the Respondent should have given consideration to the impact an 18-month suspension might have had if the employer had been less considerate, and where the employee might have had a low number of minimum hours or a zero hours contract. A less considerate employer might have taken the view that an 18-month suspension was unsupportable in a small business and dismissed the employee, causing serious financial detriment to the individual.

75. We have therefore decided that the period of the suspension, whilst it can be terminated by the Fitness to Practise Panel when they reach their conclusion, should not have been made for the full period of 18 months from the outset, but should have taken into consideration how long the investigation was likely to take, bearing in mind that the conduct involved a single incident already investigated by the employer, the police and the safeguarding officer with no ongoing investigations to be concluded. We have concluded that when made, the order should probably have anticipated the investigation and decisions regarding an onward referral to the Fitness to

Practice Panel being made within six months of the original order. On the evidence available now, we consider that an order for 10 months from the original date will be sufficient for the Fitness to Practice panel to conclude its consideration of the case.

76. Noting that this was the first oral hearing of a new Tribunal jurisdiction, we consider that there are some points which the Tribunal identified in the current case which may be relevant for the Respondent's consideration in future. It is not the Tribunal's role to offer advice to the regulator on the conduct of cases, but we flag the issues which we considered might be relevant in other similar cases.

77. We noted that the Appellant had not brought her papers with her to the hearing of the appeal. She had some paperwork with her and she demonstrated considerable concern and anxiety about the hearing. We were reminded that many taking up the post of a domiciliary care worker may have limited academic qualifications and may struggle to manage paper processes and the language of legal proceedings. Whilst the role of the regulator is set out in the legislation and the statutory requirements for information sharing with registrants in the course of Fitness to Practise proceedings and consideration of interim orders, it may be that good practice would be enhanced by ensuring direct contact with the registrant by an officer to explain verbally what the process involves and the possible outcomes of the proceedings. Signposting to legal advisers or advice agencies could also be beneficial in supporting the registrant during the initial process.

78. We appreciate that the Respondent's duties and obligations are set out in the primary and secondary legislation, and the provision of reasons for all decisions and the provision of statutory information means that the decision letters can be quite lengthy and contain complex language and terminology. We were struck by the potential for such documents to be daunting for the domiciliary care workers to decipher and comprehend because they are unlikely to have the same support network as other, better paid professionals who may be able to access legal advice or the support of a trade union in dealing with Fitness to Practise issues and the clarity which might be offered from a face to face meeting or direct telephone contact rather than relying entirely on a paper-based process.

79. We considered the extent to which the Respondent is required to engage with the employers and noted that in the legislation, there is a requirement that employers are notified at various stages in the process and that, in this particular case, the Respondent had engaged with the employer by letter and email earlier than Ms Williams had suggested in her oral evidence. The employer had been requested for information in July 2019 and there was correspondence following the Interim Orders hearing in August 2019, as required by the legislation. The evidence of Ms Williams was that there had been no information shared with the employer regarding the investigation or the Interim Orders Panel hearing and that there was no investigation by the Respondent of the possibility of imposing a conditional registration order pending the Fitness to Practise panel which would have enabled the Appellant to continue working on two handed calls.

80. Noting that her evidence was that the Flint branch was previously an independent operator, which had recently become part of a national and England and Wales organization, it may be necessary for the Respondent to specify to employers the need to liaise with local offices where the employees work, and to share relevant information with their direct line managers. At the same time, it must be borne in mind that there are strict rules regarding the sharing of personal information and regard must be had to the General Data Protection Regulations when sharing information with employers.

81. There may be a need for the Respondent to proactively investigate and seek information from the employer about the possible use of conditional registration orders as a less draconian action where appropriate during the course of investigations. The Appellant in this case would not have been able to provide the necessary information about the level of double-handed calls serviced by the employer, and there was no evidence of any enquiry regarding the possibility of a conditional registration order within the Tribunal bundle.

82. Finally, we note that all decisions of the panels are published on the website, but we considered whether it would be helpful and appropriate to signpost employers to the published decision? Whilst not a statutory requirement, it could be considered good practice to ensure that the employer is aware of the reasons for the decisions made by the interim orders panel.

Decision

The appeal is allowed to the extent that the interim suspension order is confirmed and the length of the suspension is reduced and shall expire in 10 months from 16 August 2019.

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

Date Issued: 28 January 2020