

## **First-tier Tribunal Care Standards**

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

**NCN: [2020] UKFTT 500 (HESC)  
[2020] 4110.ISO-W VKINLY**

**Heard by Video Link on 10 December 2020**

#### **BEFORE**

**Mr H Khan (Judge)  
Ms C Joffe (Specialist Member)  
Ms P McLoughlin (Specialist Member)**

**Social Care Wales**

**Applicant**

**-v-**

**Lisa Hoskins**

**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 Lisa Hoskins (“the Respondent”), made on 24 July 2019 for a period of 18 months until 20 January 2020, to be extended until 01 July 2021.

##### **The Hearing**

2. The hearing took place on 10 December 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 Samantha Thomas, Fitness to Practise Lead.
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 10:20am. 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.

## **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. The Respondent had been served with the application and had been notified of the hearing but had chosen not to attend.
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").
7. We concluded that we would proceed in the Respondent's 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. Our reasons for doing so are set out below.
8. We noted that there were two email addresses for the Respondent. Ms Thomas confirmed that the email address on the application form was the email address from which the Respondent had been corresponding with Ms Thomas. The lockdown imposes a consequence of the pandemic meant that the Applicant was no longer sending letters to the Respondent. The last such correspondence from that email address and sent by the Respondent had been received by the Applicant in April 2020.
9. We were satisfied that the Respondent had received the application on 16 September 2020, had been sent a copy of the order dated 26 October 2020 (listing the matter for a hearing and setting directions) on that date and had been notified of the hearing on 2 December 2020 and confirmation of the actual video link on 8 December 2020. These were all sent to the email address that Ms Thomas confirmed was the one that the Respondent was using.
10. The order dated 26 October 2020 made it clear that the Respondent was being given a final opportunity to file and serve her response and made directions for the service of evidence. The Respondent was also reminded of her right to seek legal advice. The Respondent has not engaged in this appeal nor has served a response or any evidence pursuant to the order

dated 26 October 2020. There had been no contact prior to the hearing explaining any non-attendance or requesting a postponement.

11. The additional challenge in this case was that the interim suspension order was due to expire on 20 January 2021. In practical terms, this meant that the case had to be heard and concluded by 21 January 2020. The Respondent had chosen not to participate in these proceedings despite being given an opportunity to do so. We concluded, therefore, based on the circumstances of the case that it was in the interest of justice to proceed with the hearing.

### **The Applicant**

12. The Applicant is the regulator for the social care profession in Wales. Under section 68(1) of the Act, the Applicant's main objective in carrying out its functions is to protect, promote and maintain the safety and well-being of the public in Wales.

### **The Respondent**

13. The Respondent is a qualified Social Worker who was registered on 18 October 2016. She was previously employed by Newport City Council.

### **Events leading to the Interim Suspension Order**

14. The Respondent was allocated to work with Individual A. The Respondent came into contact with Individual B, the wife of Individual A, in her professional capacity prior to and immediately after the death of Individual A.
15. The Applicant submits despite the Respondent's assertions to the contrary, Individual B was an elderly vulnerable adult and was treated as such at the Professional Concerns Meeting held under the All Wales Procedures for the Protection of Vulnerable Adults on 14 May 2019.
16. Although the Respondent's initial contact with Individual B was in her professional capacity, the Respondent continued to have contact with Individual B between September 2018 and February 2019 allegedly as a 'close friend' of Individual B.
17. Following the death of Individual B on 10 February 2019, by her own admission, the Respondent was in possession of two bank cards belonging to Individual B, one of which she used to withdraw cash from Individual B's bank account.
18. The money that the Respondent removed from Individual B's bank account between 13 February 2019 and the beginning of April 2019 allegedly amounted to around £16,000.

19. The Respondent was arrested in April 2019 as a result of being identified by police investigation of CCTV footage of a cashpoint and vehicle registration tracking.
20. In the Respondent's own words, she disposed of the bank cards '*after she was advised by a regarded person in the community that although [she] was doing what [Individual B] asked, he felt that [the "Respondent"] could get into trouble as it is not written down*'.
21. On 14 May 2019, the Respondent was suspended by Newport City Council.
22. On 28 May 2019, Newport City Council referred the Respondent to the Applicant.
23. On 24 July 2019, an Interim Orders Panel made an interim suspension order in relation to the Respondent 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.
24. The Interim suspension order was imposed for a period of 18 months to enable the Applicant to allow Gwent Police to complete its investigation and for the Applicant in turn to complete its investigation and for the case to be heard by a Fitness to Practice Panel.
25. The Respondent was dismissed by Newport City Council following a disciplinary hearing on 7 October 2019.
26. The decision dated 24 July 2019 was appealed to the First Tier Tribunal who dismissed the appeal on 3<sup>rd</sup> December 2020 and confirmed the Applicant's decision dated 24 July 2019 and made no change to the interim suspension order made pursuant to that decision.
27. On the 23 January 2020, an Interim Orders Panel of SCW met to review the interim suspension order and determined that it should continue on the same grounds.
28. On 2 June 2020, Gwent Police confirmed that the Respondent had been charged with the following criminal offences, namely:
  - (1) Fraud by false representation involving an alleged financial gain to herself of £10, 212.90, (Contrary to sections 1 and 2 of the Fraud Act 2006.) and
  - (2) Theft of money belonging to the estate of Individual B in the amount of £6,195.70 (Contrary to section 1(1) and 7 of the Theft Act 1968).
29. On 15 September 2020, the Applicant made an application to Care Standards Tribunal for extension of interim suspension order until 1 July

2021.

30. On 26 October 2020, Gwent Police confirmed that the Respondent had entered a plea of 'Not Guilty' and her case had been listed for hearing in the Crown Court in February 2021

### **The Applicant's position**

31. The Applicant's position is that an extension of the interim suspension order is now sought until 1 July 2021, to enable the criminal proceedings to be concluded and, after which, for the Applicant to complete its investigations and Fitness to Practise proceedings.

### **The Respondent's position on the Application**

32. The Respondent has not provided any information during the course of these proceedings setting out her position in relation to this application.

### **The Issues to be determined**

33. According to the Applicant the issue before the Tribunal was whether the interim suspension order imposed on 24 July 2019 for a period of 18 months should be extended beyond 20 January 2020 to 1 July 2021.

### **The Legal Framework**

34. 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.
35. 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.
36. 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.
37. 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.
38. 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.

39. 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.
40. 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.
41. 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.
42. 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.
43. 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')
44. 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.
45. 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

46. 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.
47. We acknowledge that despite having been given opportunities to do so, the Respondent has failed to provide any evidence. We took into account the correspondence sent in by the Respondent to the Interim orders panel/Applicant including the emails dated 21 & 22 July 2019.
48. Ms Thomas set out that on 28 May 2019, the Applicant received a fitness to practise referral from Kevin Howells, Senior HR and OD Business Partner at Newport City Council. The background to the allegations was explained and a summary of which is set out above
49. Ms Thomas explained that the Applicant was seeking an extension of the interim suspension order which was due to expire on 20 January 2021. This was for an extension of around 6 months. The extension of the interim suspension order was sought until 1 July 2021, to enable the criminal proceedings to be concluded and for the Applicant to complete its investigations and the fitness to practise proceedings.
50. Ms Thomas set out that the latest update she had received from the Police (DC Thomas) confirmed that the Respondent had entered a plea of “not guilty” and the case had been listed for trial in the Crown Court in February 2021. Given that the criminal proceedings will not be concluded by the expiry of the current interim Suspension order (on 20 January 2021), an extension was sought for a further limited period.
51. Ms Thomas 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.
52. If the Respondent was acquitted, 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 is in recognition of the different standard of proof that applies in criminal proceedings, as compared with Applicant's proceedings. It also reflects

the allegations were of serious misconduct and were not confined to conduct that would also amount to a criminal offence, but also 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. 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 the Respondent would need to be given at least 42 days' notice of the hearing date.

53. Ms Thomas explained that she had limited information regarding the personal circumstances of the Respondent. The Respondent had informed her previously by email that she was working on an "Estate", but Ms Thomas was not given details about what that involved. She had written to the Respondent asking for further information but to date no response had been provided.

#### **The Tribunal's conclusion with reasons**

54. 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.
55. We wish to place on record our thanks to the Ms Rawle and Ms Thomas for their assistance at the hearing. There were some technical issues which meant that Ms Rawle could not participate by video but could participate by phone. We acknowledge that Ms Rawle made extensive efforts to resolve these issues but was unable to do so. Ms Rawle confirmed that she was content to proceed over the phone.
56. 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.
57. 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.
58. 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.
59. We concluded that taking in account all the circumstance, it was necessary and proportionate for the interim suspension order made on 24 July 2019



to be extended until 1 July 2021. We concluded that we were satisfied that an interim order was necessary for the protection of public and otherwise in the public interest. Our reasons for doing so are set out below.

60. We found the evidence of Ms Thomas to be credible and well supported by the documentary evidence. Her evidence has not been challenged by the Respondent who has been served with a copy of the hearing bundle.
61. 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.
62. 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.
63. We remind ourselves that the function of the Tribunal is to ascertain whether the allegations against the Respondent, rather than their truth or falsity, justify the prolongation of the extension.
64. We took into account such matters as the gravity of the allegation, the nature of the evidence, the seriousness of the risk of harm to patients, the reasons why the case has not been concluded and the prejudice to the practitioner if an interim order is continued.
65. We acknowledge that these are allegations and that the Respondent is intending to plead not guilty. We also acknowledge the Applicant has not been able to see all the evidence given that there are ongoing criminal proceedings, nevertheless, such evidence appears to have been the basis for the Respondent being charged with the offences.
66. In our view, the allegations are of a serious nature. They involve dishonesty, involving a vulnerable individual, breach of a position of trust and a significant amount of money (over £16,000). We were satisfied that the allegations against the Respondent justified the prolongation of the extension.
67. We concluded that it remains 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.
68. Further, an interim order in this case is otherwise in the public interest in order to preserve public confidence in social care services in view of the serious nature of the allegations against the Respondent. The public would be shocked if an interim order was not imposed in this case pending a final determination of the allegations.
69. We also took into account the nature of the Respondent's previous role as

a Social Worker and that she had been registered as a Social Worker since 2016. We concluded that there was a significant risk to vulnerable individuals in allowing the Respondent to practise unrestricted whilst the criminal proceedings/Applicant's investigation were ongoing.

70. We considered the reasons as to why the case has not been concluded to date. The matter has been sent to the Crown Court and is listed for February 2021. 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. Furthermore, we acknowledge the Applicant's submission that the conclusion of this case is dependent upon the conclusion of the proceedings in the Crown Court.
71. 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 other than she was working on an "Estate". The Respondent has been given an opportunity to participate in these proceedings and to provide such information but elected not to do so.
72. We were reassured by the submission 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.
73. 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 10 March 2021). 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.
74. We, therefore, taking in account all the circumstance, concluded that it was necessary and proportionate for the interim suspension order made on 24 July 2019 to be extended until 1 July 2021.
75. 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**

76. The application to extend the order dated 24 July 2019 and which is due to expire on 20 January 2021 shall be granted and the interim suspension

order shall be extended until 1 July 2021.

**Judge H Khan  
Lead Judge**

**First-tier Tribunal (Health Education and Social Care)**

**Date Issued: 15 December 2020**