

First-tier Tribunal Care Standards

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

[2021] 4262.ISO-W VKINLY

Heard by Video Link on 27 May 2021

BEFORE

**Mr H Khan (Tribunal Judge)
Ms H Reid (Specialist Member)
Ms J Everitt (Specialist Member)**

BETWEEN:

Social Care Wales

Applicant

-v-

Neeru Sharma

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 Neeru Sharma (“the Respondent”), on 6 December 2019 for a period of 18 months until 5 June 2021, to be extended until 4 December 2021.

The Hearing

2. The hearing took place on 27 May 2021. 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 (210 pages) provided for the hearing.

Attendance

3. The Applicant was represented by Ms C Rawle, Solicitor. Its sole witness was Ms S Simcock, Fitness to Practise Senior Officer (Social Care Wales).
4. Mr C Evans (Counsel) represented the Respondent. The Respondent attended the hearing. Mr Robert Chudleigh, Solicitor, attended as an observer.

Preliminary Issue

5. We were asked to admit late evidence consisting of an email dated 26 May 2021 from Mr Michael Portlock from Caerphilly Council. This was a short email in response to an email from Ms Simcock. The application was opposed by the Respondent on the basis that it was not relevant, and it was not in the interest of fairness to admit it. The reasons included that the author of the email was not attending the hearing and it was not clear what was meant by “substantiated outcome” nor what information had been used to reach that assessment.
6. In considering any late evidence, the Tribunal applied rule 15 and took into account the overriding objective as set out in rule 2 of the Tribunal Procedure (First Tier Tribunal) (Health Education and Social Care Chamber) Rules 2008. We acknowledge that the email had been produced late. However, it was a short email and the Respondent was given an opportunity to consider it and discuss it with her Counsel at the hearing. We considered it appropriate to admit the late evidence as it was relevant to the issues in dispute and to invite the parties’ representations on what weight we should attach to it.

The Applicant

7. 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

8. The Respondent registered with the Applicant as an Adult Care Home Manager on 22 February 2017. At the time of the alleged events in question, the Respondent was employed by Ashville Residential Home Ltd as a Registered Manager at Ashville Residential Home, Brithdir, Caerphilly (“the Home”).

Events leading to the Interim Suspension Order

9. On 11 November 2019, the Applicant received a referral from the People Commissioning Team Manager at Newport County Council (“LA”) advising that the Respondent had been arrested following a

police raid in relation to human trafficking offences and that there was an ongoing criminal investigation by the Police.

10. On 22 November 2019, the Police provided the Applicant with a case summary, which set out: the background to the arrests of the Respondent and another suspect; the wider investigation; the allegations and current status of the criminal investigation, with timescales. The Applicant was advised that in October 2019, the Respondent, as the Registered Manager of the Home, was questioned about concerns relating to staff recruitment and rotas and was subsequently included in the investigation as a suspect and arrested on 8 November 2019 in respect of human trafficking offences.
11. On 6 December 2019, an Interim Suspension Order was made by the Interim Orders Panel (IOP) for a period of 18 months.
12. On 21 May 2020, the Applicant was informed by Police that their investigation remained active and a decision had yet to be made concerning its progress.
13. On 5 June 2020, the IOP reviewed the Interim Suspension Order and determined that it should remain in place without amendment. There was no objection to the Interim Suspension Order continuing.
14. On 13 October 2020, the Applicant was advised by the Police that its investigation was ongoing and likely to continue for a further few months
15. On 3 December 2020, the IOP further reviewed the Interim Suspension Order and determined that it should remain in place without amendment. The Respondent did not object to the proposals that the interim suspension order remains due to the ongoing police investigation.
16. On 13 January 2021, the Applicant received an email from the Respondent providing an update and enclosing a copy of a letter purporting to be from Gwent Police advising of the discontinuance of the police investigation against her. The Applicant attempted to contact Police by telephone, leaving several voicemail messages.
17. On 12 February 2021, the Applicant made enquiries of Newport City Council and Caerphilly County Borough Council and was advised that:
 - (a) the criminal investigation by Police concerning these matters was concluded but there were wider concerns relating to care practices and performance, arising from failures in management duties around recruitment of staff which would need to be considered and information duly shared with the Applicant; and

(b) a final Professional Concerns Strategy Meeting was due to be held, the outcome and details of which are currently awaited by the Applicant

18. On 16 February 2021, the Applicant sent an email to the disclosures department at Police requesting confirmation of the status/ outcome of Police investigation, together with copies of the evidence, prosecution summary and reasons for decisions made.
19. On 9 April 2021, an application was made to the Tribunal for an extension of the Interim Suspension Order.
20. On 15 April 2021, the Applicant was advised by Police that there is to be no further police action against the Respondent.

The Applicant's position

21. The Applicant's position is that an extension of the interim suspension order is now sought until 4 December 2021. The Applicant states that it has not been able to complete its investigation, including gathering relevant evidence.

The Respondent's position on the Application

22. The Respondent disputes that an Interim Suspension Order remains necessary for the protection of the public or that it is otherwise in the public interest for it to continue beyond its current expiry date.
23. It was submitted in the alternative that any extension should only be made for such period as is necessary.
24. The Respondent was also unclear as to why a further 6 months was the appropriate length.

The Issues to be determined

25. According to the agreed list of issues, the Tribunal should consider whether the interim suspension order imposed on 6 December 2019 for a period of 18 months should be extended beyond 5 June 2021.

The Legal Framework

26. 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.
27. 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.

28. 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.
29. 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.
30. 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.
31. 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.
32. 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.
33. 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.
34. The Applicant has issued guidance entitled the Selecting an appropriate disposal in a hearing "Disposals Guidance' (April 2021). Section 6 of the Disposals Guidance relates to applications for Interim Orders and includes general principles to be taken into account by an Interim Orders Panel.
35. 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')

36. Under section 148 of the Act, SCW may apply to the Tribunal for an interim order to be extended or further extended. On an application, the Tribunal may -
 - (a) revoke the interim order,
 - (b) in the case of a conditional registration order, revoke or vary any condition,
 - (c) extend, or further extend, the order for up to 12 months,
 - (d) make no change to the order or to the period for which the order is to have effect.
37. In making a determination, the Tribunal should have regard to the principles outlined by the Court of Appeal in *GMC v Hiew* [2007] EWCA Civ.369.
38. The onus of satisfying the Tribunal that the criteria was met falls on the Applicant and the relevant standard is the civil standard, namely on a balance of probabilities.

Evidence

39. We took into account all the evidence that was presented in the bundle and at the hearing. We have summarised the evidence insofar as it relates to the relevant issues before the Tribunal. We wish to make it clear that what is set out below is not a reflection of everything that was said or presented at the hearing.
40. We heard from Ms Simcock. Ms Simcock was the officer dealing with this matter. She had been dealing with it since the original referral arrived in November 2019.
41. Ms Simcock explained that the allegations against the Respondent were serious and concern issues which are of a public protection nature. They included allegations of human trafficking, modern slavery as well as concerns around the recruitment of staff including a lack of transparency around the way it was undertaken.
42. Ms Simcock explained that there had been a lengthy police investigation. As the allegations concerned care homes across two local authority areas, it was agreed that Caerphilly Council would take the lead in relation to the safeguarding issues.
43. Ms Simcock acknowledged that the police investigation in relation to the Respondent had come to an end. However, it was not clear whether this was the whole investigation or whether it was simply in relation to the Respondent. She had been having difficulties obtaining information from the police despite making telephone calls and sending emails.

44. Until recently the police had not responded to her requests for confirmation as to the status of the investigation and for disclosure. The complete lack of response to requests for information was escalated to her line manager. Following these difficulties, a meeting was set up between the respective organisations as a consequence of which, an email was received on 15 April 2021 from DC Jenny Hughes at Newport Public Protection Unit confirming that there is to be no further police action against Ms Sharma *“due to there being no supporting evidence after a large scale operation.”*
45. The Applicant was now waiting for the disclosure information so that it could have sight of the witness statements and evidence in relation to the Respondent. This information would be evaluated and a decision made as to how to proceed. However, the Applicant was dependent upon other agencies such as the police and Caerphilly Council providing the information within a reasonable period.
46. Ms Simcock stated that progress had been made in recent weeks. The police disclosure team was assessing the Applicant’s request. As there are a large number of documents, the police disclosure team had to go through each document prior to disclosing it to the Applicant.
47. Ms Simcock explained that the decision to extend the interim suspension order was not taken lightly. However, this matter was of a complex nature involving serious allegations and a lengthy police investigation. This matter would be treated as a “priority” moving forward.
48. Ms Simcock confirmed that once the evidence had been received and evaluated, a decision would be made as to whether or not to progress this to a Fitness to Practice panel. This exercise could not be undertaken until the police investigation was complete. This was usual practice for regulators. There were a number of factors which would affect when that would take place including providing the relevant notice to the Respondent.
49. The Respondent accepted under cross examination that the allegations were “serious allegations” and she understood these were “serious concerns”. She accepted that the role of the Registered Manager was to maintain accurate staff records, check staff were legally entitled to work in the UK and identify any gaps in their employment.
50. The Respondent explained that she had cooperated with the police. She had no knowledge of recent developments with Caerphilly Council referred to in the email dated 26 May 2021. She had not attended any safeguarding meetings and had no knowledge about it.
51. The Respondent had been unable to find a job since the interim suspension order was imposed and had to leave the area as

individuals were asking questions.

52. She was pregnant and due to give birth in the second week of August. She had an unblemished record prior to the recent events. There had been no issues raised about her.

The Tribunal's conclusion with reasons

53. We took into account all the evidence that was included in the hearing bundle and presented at the hearing.
54. We wish to place on record our thanks to Ms C Rawle and Mr A Evans for their assistance at the hearing as well as to Ms Simcock and to the Respondent.
55. 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 is necessary for the protection of the public, is otherwise in the public interest, or is in the interests of the registered person.
56. We reminded ourselves that the Tribunal is considering the appeal at the date of the hearing and makes its decision on the basis of all of the evidence available to it, including any oral evidence at the hearing and is not restricted to matters available to the Interim Orders Panel.
57. Furthermore, the Tribunal's role in the appeal is not to make any findings of fact but to consider whether there is sufficiently strong evidence to support the decision to extend the Interim Suspension Order.
58. We concluded that taking in account all the circumstances, it was necessary and proportionate for the interim suspension order made on 6 December 2019 to be extended until 4 December 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
59. We found the evidence of Ms Simcock to be honest and credible. We acknowledge from her oral evidence that she had done all she could to progress the case. We had no reason to doubt her evidence around the difficulties that she had experienced in obtaining the information from the police despite her regular phone calls and emails. Furthermore, we acknowledge her evidence that the police investigation was a large investigation and that, along with the pandemic and changes in investigating officers, meant that the information was not provided as quickly as it should have been by the Police. Whilst there was also some suggestion about Caerphilly Council having access to information before the Applicant, however,

we accepted Ms Simcock's evidence that this may have been due to multi-agency working due to the safeguarding issues which had been raised.

60. We acknowledge the Respondent's evidence. The Respondent fairly accepted that these were "*serious allegations*" and understood the Regulators "*serious concerns*". We also acknowledge the stated impact that this has had on the Respondent which has included her not working since the interim order was imposed.
61. We attached limited weight to the email dated 26 May 2021 from Mr Michael Portlock which we admitted as late evidence. There was a lack of information and detail in the email, such as the information which was considered by Caerphilly Council in determining that the allegations resulted in a "*substantiated outcome*". It was not clear what this meant and the evidence could not be tested at the hearing.
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. We considered the case of the *General Medical Council v Dr Stephen Chee Cheung Hiew [2007] EWCA Civ 369* which was referred to by the Applicant and the Respondent's Counsel and the principles set down in that decision.
64. 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.
65. We acknowledge that these are allegations at this stage and that the criminal investigation concerning the Respondent has now concluded with no further action being taken against the Respondent by the Police on the basis that there was no supporting evidence.
66. We took into account matters such as the gravity of the allegation, the nature of the evidence, the seriousness of the risk of harm to vulnerable users of services, the reasons why the case has not been concluded and the prejudice to the Respondent if an interim order is continued.
67. The allegations against the Respondent are of a serious nature. The Respondent herself accepts that these are "*serious allegations*". The allegations include modern day slavery, human trafficking and failures in management duties around staff recruitment. They relate to concerns around staffing including staffing rota's, staffing records and the absence of due diligence in staff recruitment. They also relate to the Respondent's work with vulnerable users of services within the

social care sector and involve serious concerns regarding her role and integrity.

68. The allegations also relate to the ability of the Respondent to practice in a safe manner and ensure the protection of the vulnerable individuals and colleagues she works with. Furthermore, if proven, the allegations are of a sufficiently serious nature to call into question the Respondent's suitability to work in the social care sector and to remain on the register without conditions
69. We concluded that the interim order remains necessary for the protection of members of the public (including vulnerable service users and staff) in view of the risk of serious harm that would arise if the alleged conduct were to be repeated with other individuals. In our view there is a clear and obvious risk of significant harm posed to the health, safety and well-being of vulnerable service users and staff if the Respondent was allowed to continue to practise without restriction
70. 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.
71. We also took into account that the Respondent has been registered as an Adult Care Home manager since 2017. However, we concluded that there was a significant risk to vulnerable individuals in allowing the Respondent to practise unrestricted whilst the Applicant's investigation was ongoing.
72. We considered the reasons as to why the case has not been concluded to date. We acknowledge that the Applicant's investigations now need to be undertaken and could not take place whilst there was an ongoing large Police investigation. As the Police's criminal investigation concerning the Respondent has now concluded, it is now appropriate for the Applicant to conduct its own investigation into the matters that are the subject of the Referral and specifically, it is necessary for Applicant to gather and evaluate the relevant evidence to determine whether there should still be a referral concerning the Respondent to a Fitness to Practise Panel.
73. This is in recognition of the different standard of proof that applies in criminal proceedings, as compared with the Applicant's proceedings. The Applicant was unable to carry out its own investigations straightaway as it may have compromised the criminal investigation. It also reflects the fact that allegations of serious misconduct are not confined to conduct which would also amount to a criminal offence in the case of significant failures to meet relevant standards of professional practice.

74. We considered that the interim suspension order shall be extended until 4 December 2021. The Respondent raised concerns, that in the event that the Tribunal decided to extend the order, whether this would provide a sufficient period for the Applicants process to be completed. In reaching our decision, we noted that after completion of its investigation, the Applicant will be required to provide the Respondent with copies of the evidence gathered and invite her to respond with written representations within 28 days and then consider any such representations 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 the Respondent would need to be given at least 42 days' notice of the hearing date.
75. In our view, extending the order until 4 December for the Applicant to complete its investigation may be, as the Respondent submitted, challenging but it is based upon the Applicant's own estimation of how long it will take. We acknowledge that this depends upon the release of information by other bodies such as the Police/Caerphilly Council, but we would expect the Applicant to make every effort to obtain the information required in order to progress matters now that the police investigation has come to an end in respect of the Respondent. We were reassured by Ms Simcock's evidence that the Applicant would ensure that the matter is dealt with as quickly as possible and would be treated as a "priority".
76. 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. In addition, under section 146(8) an Interim Orders Panel may review an interim order at any time if new evidence becomes available.
77. We took into account that the Respondent had an unblemished record prior to these allegations. We also acknowledged the positive references (from Ms J Talco, Mr R Vliac, Ms H Rogers and Ms S Thomas) provided by the Respondent. It is not clear how much each of those individuals was aware of the nature and extent of the allegations but, nonetheless, these are positive references.
78. 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 has thwarted her attempts to gain employment in the industry. She has not had any employment since the Interim Suspension Order was imposed in December 2019. The Respondent is pregnant and due to give birth in August and will be seeking work thereafter.

79. However, in our view, having taken into account all the circumstances of the case, on balance, we concluded that it was necessary and proportionate to extend the interim suspension order in this case.
80. We, therefore, taking in account all the circumstances, concluded that it was necessary and proportionate for the interim suspension order made on 6 December 2019 to be extended until 4 December 2021.
81. 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

82. The application to extend the order dated 6 December 2019 and which is due to expire on 5 June 2021 shall be granted and the interim suspension order shall be extended until 4 December 2021.

**Judge H Khan
Lead Judge**

First-tier Tribunal (Health Education and Social Care)

Date Issued: 01 June 2021