

First-tier Tribunal Care Standards

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

[2023] 4890.ISO-W

Neutral Citation Number: [2023] UKFTT 460 (HESC)

Hearing held via CVP on 26 May 2023

BEFORE
Tribunal Judge Ian Robertson
Specialist Member Denise Rabbett
Specialist Member Lorna Jacobs

BETWEEN:

Social Care Wales

Applicant

-v-

Sarah O'Brien

Respondent

DECISION

REPRESENTATION

Social Care Wales was represented by Mr Jermel Anderson (Counsel)
The Respondent was not represented and did not appear

1. This has been a remote hearing which was not objected to by the parties. The form of remote hearing was remote via Video. A face to face hearing was not held as it was not practical and nobody requested it. All issues could be determined in a remote hearing. Due to the nature of the hearing (see below) we considered that this was fair and reasonable in the circumstances. There were no disconnections through the hearing.

THE HEARING.

2. This is an Application brought by Social Care Wales (SCW) to extend an interim suspension Order originally made on 10 December 2021 for 18 months until 8 June 2024

BACKGROUND

3. The Respondent, Ms Sarah O'Brien, was registered by SCW as a Domiciliary Care Worker on 09 March 2022 and was employed by Achieve Together as a Key Support Worker.
4. Social Care Wales received a referral from Jamylee Colyer, Regional Manager at Achieve Together on 05 May 2021. This referral

concerned an allegation regarding the Respondent where she was alleged to have engaged in the theft of funds belonging to a service user. A police investigation was launched shortly after this.

5. The investigation showed prima facie evidence that the Respondent had systematically removed money from a clients account without authority and without replacing it. As indicated an Interim Orders Panel made an interim Suspension order in relation to the respondent on the grounds that it was necessary
 - (a) for the protection of the public, including service users; and
 - (b) was otherwise in the public interest.

6. The police have been investigating and we were told that South Wales Police have sent the file to the CPS for a charging decision within the past week. The Respondent has not engaged with SCW and the last contact they had with her was on 21 July 2021. Notice of this application has been served upon her but she has chosen not to attend.

7. This application is governed by Social Care Wales Act 2016 S144 of which deals with interim suspension orders;
 - (1) A panel may in interim order proceedings make an interim order in relation to a registered person.
 - (2) An interim orders panel may make an interim order whether or not the matter has been referred to a fitness to practise panel.
 - (3) Where a matter has been referred to a fitness to practise panel, any interim order must be made before the matter is disposed of by the fitness to practise panel in accordance with any of sections 135 to 138.
 - (4) The two types of interim order are—
 - (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.
 - (5) A 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.
 - (6) An interim order—
 - (a) takes effect immediately, and
 - (b) may not have effect for a period of more than 18 months (unless it is extended; see section 148 (extension of interim order by the tribunal)).
 - (7) Where an interim order is made in respect of a registered person, SCW must give notice to the person of—
 - (a) the decision,
 - (b) the reasons for the decision, and
 - (c) the right of appeal under section 145 against the decision.

8. 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.
9. An extension of 12 months is sought in this instance.
10. We were helpfully taken to guidance given by the higher courts regarding GMC appeals which apply similar wording to this;
11. The guidance in *Hiew* was helpfully summarised in **GMC v George [2008] EWHC 1337** in the manner set out below. Relevant parts of this summary have been referred to in numerous applications for extensions of interim orders involving health practitioners. The statutory provisions for the imposition and extension of interim orders by SCW are almost identical to those that apply to the GMC. Accordingly, in reading the following summary of the relevant principles, it is appropriate to substitute 'SCW' for 'GMC' and 'the Tribunal' for 'the court'.

(1) The court has the power and the duty to consider whether any extension of time beyond the initial period set by the GMC is appropriate. Under the scheme, this exercise in decision making is to be performed by the court as primary decision maker.

(2) The court has the power to determine that there should be no extension or that there should be the extension sought by the GMC or some lesser extension. In an appropriate case, the judge also has the power...to terminate the suspension...

(0) The criteria to be applied are the same as for the original interim order...namely the protection of the public, the public interest and the practitioner's own interests. The court can take 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.

(1) The onus of satisfying the court that the criteria are met falls on the GMC. The relevant standard is the civil standard.

(2) The judge must reach his decision as to whether to grant an extension on the basis of the evidence on the application which will have to be examined with care.

(3) The power to grant an extension and the power to make the orders... represent the limit of the court's express powers in relation to interim measures. Parliament has not given the court power to determine in the first instance whether an interim

suspension order or conditional order should be made. It has clearly taken the view that the GMC is better placed than the courts to decide such matters.

(4) It is not the function of the judge ...to make findings of primary fact, nor is there any threshold test to be satisfied before the court can exercise its power of extension.

(5) The evidence on the application will include evidence as to the opinion of the GMC and the Interim Orders Panel...as to the need for an interim order. Appropriate weight will be given to that. All that is required is that the court should give that opinion such weight as, in all the circumstances of the case, it thinks fit.

Finally, the function of the court is to ascertain whether the allegations against the medical practitioner, rather than their truth or falsity, justify the prolongation of the extension

12. We are completely satisfied that there is need for a further extension to enable the CPS to make a charging decision. The allegations are serious and have evidential merit. Accordingly it is appropriate in all the circumstances to extend the suspension for a further 12 months. The statutory review mechanism is sufficient to protect the interests of the Respondent.

DECISION

To extend the Interim Suspension Order for a period of 12 months until 8 June 2024.

Judge Ian Robertson

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

Date Issued: 01 June 2023