

IN THE CARE TRIBUNAL

Between Maria Conner (Appellant)

And

Northern Ireland Social Care Council (Respondent)

Before Diane Drennan (Legal Chairman)

Panel Members: Harry Murray and Sally O’Kane

Hearing held on the papers at the Tribunal Hearing Centre, Bedford House, Belfast on the 26th and 31st March 2014.

Appeal

1. Maria Conner (“the appellant”) appeals under section 15 of the Health and Personal Social Services Act (Northern Ireland) 2001, against the decision of the Interim Suspension Order Committee of the Northern Ireland Social Care Council (‘the Council’), dated 22nd November 2013, to impose an interim suspension order (ISO) for six months upon her.

Preliminary hearing

2. At a preliminary hearing (held by telephone conference) on 17th February 2014, where the appellant was represented by Ms Lynsey Millar of Messrs Hay Cassels, solicitors, of Almada Chambers, 95, Almada Street, Hamilton ML3 0EY and the respondent by Mr Alistair Wilson of Tughans Solicitors of Marlborough House, 30, Victoria Street, Belfast BT1 3GG, directions were made by the Tribunal Chairman dealing with the exchange of documents, the preparation of a Tribunal bundle and the fixing of a ‘paper’ hearing date. Written submissions were made by both parties as to whether the hearing should be convened in Scotland. After due consideration, the Chairman ruled that the case was to be heard in Northern Ireland, the Care Tribunal having no jurisdiction to convene the case in Scotland and a direction was given to that effect.

Preliminary issue

3. On the afternoon before the first day of the hearing, (25th March 2014) the appellant’s representatives, Hay Cassels, solicitors, lodged detailed submissions on behalf of the appellant. The Tribunal Panel having received and considered a

full explanation and apology from the appellant's representatives as to the lateness of the submissions and the respondent's representative making no objection, the Panel agreed to consider the submissions and the respondent's replies thereto.

The Law

4. Section 3(1) of the Health & Personal Services Act (Northern Ireland) 2001 ('the 2001 Act') requires the respondent to maintain a register of social workers and social care workers.
5. Section 6(1)(c) of the 2001 Act allows the respondent by rules to determine circumstances in which "*a person's registration in a part of the register may be suspended for a specified period*". By section 6(2) "*The rules shall make provision as to the procedure to be followed, and the rules of evidence to be observed, in proceedings brought for the purposes of the rules, whether before the Council or any committee of the Council*".
6. The relevant rules are the NISCC (Conduct) Rules 2013 ('the Rules'). Under rule 4(1)(a) of the Rules, a Preliminary Proceedings Committee is established by the Council. Under Rule 5(1) "*It shall be the duty of the Preliminary Proceedings Committee to consider any complaint(s) against a Registrant referred to it and decide*
 - (a) *whether the complaint(s) should be referred to the Conduct Committee, under the Conduct Procedure or the Health Procedure;*
 - (b) *whether it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the Registrant concerned, for the Committee to make an Interim Suspension Order;*
 - (c) *whether no further action should be taken in respect of the complaint*".

Where the decision is made to impose an ISO, Rule 5(5) provides that the initial duration of such order shall not exceed six months.

7. Schedule 1 of the Rules provides for the procedure of the Preliminary Proceedings Committee. Paragraph 3(2) provides that "*At the initial consideration of a Registrant's case, the Committee shall first consider whether any complaint referred to it calls into question the suitability of the Registrant to remain on the Register*". Paragraph 3(5) states that where ... "*a complaint calls into question the suitability of the Registrant to remain on the Register, the Committee shall adjourn its consideration of the matter to a second meeting*". Under paragraph 6(1), at such a second hearing, ... "*the Committee may:*
 - (a) *refer the case to the conduct Committee;*

- (b) *impose an Interim Suspension order on the Registrant's registration, if satisfied that such action is necessary for the protection of members of the public or is otherwise in the public interest or is in the interests of the Registrant;*
 - (c) *direct that further investigations should be undertaken and adjourn the matter;*
 - (d) *take no further action and adjourn the case”.*
8. Section 9 of the 2001 Act provides for the preparation by the Council of Codes of Practice laying down standards of conduct and practice expected of social care workers and a requirement for the code to be taken into account by the Council in making a decision and also in any proceedings on an appeal against such a decision. Such a code of practice was issued by the Council in September 2002.
 9. Section 15(2) of the 2001 Act provides for an appeal against a decision of the Council in respect of registration to lie to the Care Tribunal. By section 15(3) of the 2001 Act: *“On an appeal against a decision, the Care Tribunal may confirm the decision or direct that it shall not have effect”.*
 10. The English case of **ND v GSCC [2010] UKFTT 293 (HESC)**, where the legislation and Council Rules are analogous with those in Northern Ireland, concerned an appeal against the decision of the Preliminary Proceedings Committee of the General Social Care Council, to impose a further Interim Suspension Order on the Applicant for a period of six months. In that decision, at paragraphs 7-9, the Tribunal Judge set out the law as to what a Committee should consider and what constitute the powers of the Tribunal on appeal. The relevant parts of the decision are reproduced below:
 11. *“When the original application is considered by the committee, the committee should bear in mind the effects of any sanction on the Registrant and whether it is proportionate. The need for public protection and the maintenance of the public's confidence in social care provision must be balanced against the consequences of an ISO upon the Registrant. The Committee must take into consideration the seriousness of the allegations and any evidence relating to the likelihood of any further incidents of harm, particularly to service users.*
 12. *The powers of the Tribunal on appeal against an ISO are the same as the PPC in that it considers the gravity of the allegations and the nature of the evidence, the risk of harm to members of the public, the wider public interest and the prejudice to the Applicant....It can consider any additional information received by either party after the PPC. It does not make findings of fact.*

13. *...the Tribunal does not have power to hear a case de novo and apply to the Applicant whatever sanction it considers appropriate. Our power in this case is limited to simply confirming or setting aside the decision”*

Background

14. Maria Conner ('the appellant') was born on the 11th July 1966 and was registered as a social care worker on part 2 of the register on 24th January 2013.
15. The appellant took up a post as senior care worker with C Housing on 5th August 2012. Her employment was terminated during her probationary period on 8th April 2013. The appellant had a history of working in social care, both in Northern Ireland and Scotland, dating back to 2005.

The Allegations

16. It was alleged by the appellant's employers, C Housing, that the appellant, during the period 20th December 2012 to 8th March 2013, committed 19 errors in the administration of medication.
17. C Housing forwarded an employer referral form dated 18th April 2013 to the Council. The form stated: *“Reason for referral is that the care worker failed to carry out the administration of medication in a manner not to put service users at risk”*. It further stated *“Ms Conner made a total of 19 medication errors from 20th December 2012 to 8th March 2013. Ms Conner had received training and retraining on administration of medication”*.
18. An investigation meeting was arranged by C Housing and held on the 19th March 2013. During this meeting, the 19 allegations in relation to errors in the administration of medication were put to the appellant and findings were made as to the alleged errors.
19. These included :
 - i. Failure to record the administration of medications
 - ii. Failure to give clear instructions to a blind resident regarding how a tablet was to be taken
 - iii. Failure to record a change in medication after a resident's discharge from hospital
 - iv. Administration of medicine belonging to one resident to another resident
 - v. Incorrect recording of medication
 - vi. Incorrect instructions re medication
 - vii. Medications administered at the wrong time
 - viii. Recording of medicine on the wrong date

- ix. Giving incorrect instructions about the dosage to be given to a resident
 - x. Administering a double dose of medication.
20. On 8th April 2013, a probationary hearing was held where the 19 allegations in relation to errors in the administration of medication were again put to the appellant by representatives of C Housing.
21. On the 9th April 2013, C.M., Director of Housing at C Housing, wrote to the appellant confirming the outcome of the probationary hearing. The Appellant was informed that *“The administration of medication is an important requirement in the job of Senior Carer. It is imperative that this function is carried out accurately and is compliant with the procedure and the training provided”*. CM also referred to the appellant receiving instruction and training on several occasions to support and assist her in carrying out the administration of medication.

Proceedings before the Preliminary Proceedings Committee (PPC) and the Interim Suspension Committee (ISO Committee).

22. Following receipt of the Employer Referral form by the Council on the 22nd April 2013, the matter was referred to the PPC for initial consideration in accordance with Rule 12(2)(a) & (b) of the Rules (Procedure upon receipt of information about a Registrant).
23. The PPC met on the 14th October 2013 for initial consideration of the complaint and having decided that the complaint called into question the suitability of the registrant (“the appellant”) to remain on the register, adjourned its consideration of the matter to a second meeting scheduled for 22nd November 2013.
24. The Interim Suspension Order Committee (“the ISO Committee”) met on the 22nd November 2013. The appellant was neither present nor represented at the hearing and no submissions were received from her. Issues regarding the service of hearing papers were dealt with at the outset of the hearing, with the ISO Committee deciding that service had been effected in accordance with the Rules.
25. The ISO Committee, having considered advice given by the Legal Adviser and, in the absence of any communication from the appellant, determined that it was appropriate to proceed with the hearing in her absence.
26. Having heard submissions from the Presenter for the Respondent Council, CD, the ISO Committee examined the information contained in the case papers in relation to the 19 medication errors, allegedly committed by the appellant during the course of her probationary period of work with C Housing from 20th

December 2012 to 8th March 2013. A summary of these alleged errors is contained in paragraph 19 above.

27. In outlining the Council's position, CD stated that the Committee were "*not empowered to make findings of fact today*" (**transcript: page 8: lines 27 & 28**). He also submitted that: "*the public interest requires that service users and members of the public are protected from unsafe behaviour and to ensure public safety and confidence in the profession is maintained. In this case there are clear competency issues in relation to the Registrant's administration of medication and the committee would be entitled to take the view that an Interim Suspension Order is necessary to protect Service users*" (**transcript: page 8: lines 31 & 32; page 9 : lines 1-7**).
28. CD directed the Committee to consider issues of fairness and proportionality, pointing out that "*There are... many roles within the Social Care field that do not involve any medication administration whatsoever*" (**transcript: page 9: lines 12-14**). He submitted on behalf of the Council that an ISO may in fact not be proportionate and confirmed that the Council were not applying for an ISO.
29. The ISO Committee were advised by the legal advisor of the draconian effect of an Interim Order, were reminded about proportionality and that they did not have the power to impose Interim Conditions of Practice.
30. The ISO Committee considered details of the alleged medical errors set out in the papers before it and delivered its written decision on the 22nd November 2013. Having referred to an attempt to determine the registrant's position in relation to the allegations, the ISO Committee stated: "*It is not the function of the Committee to make findings of primary fact about the events that have led to the consideration of an interim order or to consider the merits of the case. The Committee is required to ascertain whether there is at the present time cogent prima facie evidence in relation to any concerns identified, having regard to any material put before it by the Registrant, so as to require the imposition of an interim order. The criteria to be applied by the Committee when considering whether or not to make an interim order are: the protection of the public, the public interest and the Registrant's own interests*". (**page 3: paragraph 2: decision**).
31. The Committee reminded itself that "*it should only make an order if it is satisfied that it is necessary and proportionate to do so as it is a serious matter to restrict a practitioner's ability to practice based on allegations that have yet to be tested before a Conduct Committee*".(**page 3: paragraph 3: decision**).
32. The Committee viewed the alleged failings as very serious and stated that it was not impressed with the level of insight shown by the Registrant. It found that: "*in*

the absence of genuine insight there was a real risk of repetition of those failings” (page 3: paragraph 4: decision).

33. Although the Committee accepted that the giving out of medication is not required in all roles as a social care worker, it stated that it often was. The Committee considered that there was a real risk to service users if an interim order was not made.
34. The Committee considered the principle of proportionality and the effect that an ISO would have on the Registrant and was aware that an order could have a significant impact upon her. It concluded that an order was necessary to protect the public and was also in the public interest, bearing in mind its public duty to uphold proper professional standards and public confidence in the profession.
35. The Committee referred to the uncertainty over the length of time that may be required for the Council to finalise its investigations and therefore imposed an ISO for the maximum period available to it, a period of 6 months.

Grounds for Appeal and submissions on behalf of the appellant

36. The appellant in her appeal application sets out 5 grounds of appeal from the ISO Committee’s decision, which are summarised as follows:
 - i. That the Committee attached undue weight in balancing the interests of the public and the interests of the Registrant.
 - ii. Insufficient weight was placed on the Council’s view that an interim suspension order was unnecessary
 - iii. The Committee appear to make findings of fact in the 4th paragraph of page 3 of the decision, which it was not entitled to do
 - iv. Further efforts ought to have been made to ascertain the position regarding the Registrant’s present employment
 - v. The imposition of a 6 month period of suspension was unreasonable.
37. Supplemental submissions were delivered on behalf of the appellant in the circumstances set out in paragraph 3 above. Having stated that the appellant did not accept the minutes of the investigation meeting and probationary hearing (noted at paragraphs 18 - 21 above) as true records of the proceedings, the main issues contained in the submissions were set out and are summarised as follows:
 - i. The ISO Committee were influenced in their decision making by the assertion that the appellant had admitted all issues
 - ii. The Council did not seek an ISO

- iii. Health issues and other mitigatory circumstances were not accorded weight
- iv. No account was taken of the appellant's history of working in social care in Northern Ireland and Scotland back to 2005
- v. It was reasonable to assume that the appellant would be able to work in social care work without administering medication
- vi. No investigation regarding a grievance was carried out
- vii. Issues as to other workers should have been considered.

38. At paragraph 4 of the supplemental submissions, (referring to the allegations) it was stated by the appellant's representatives: "*it would appear the Appellant accepts 8 instances and a further 3 which she accepts but with mitigatory explanations*".

Submissions and response on behalf of the respondent

39. The respondent's responses to both the original grounds of appeal and the supplemental submissions are summarised below:

- i. That the Committee placed undue weight on the public interest when balancing the interests of the public with the Registrant's interests – the respondent refuted this assertion, pointing out that the Committee had reminded itself of the need for proportionality and specifically the need to balance any perceived risk to the public against the consequences of a suspension for the Registrant.
- ii. That the Committee placed insufficient weight on the Council's view that an interim suspension order was unnecessary – the respondent, while admitting that the Council was not seeking an ISO, argued that the Presenter had stated that the imposition of an ISO might be necessary and that the Council's position, as expressed at the hearing, was one of neutrality, rather than opposition.
- iii. That the Committee made findings of fact, which it was not entitled to do – the respondent, while agreeing that the Committee was not entitled to make findings of fact, argued that no such findings were made.
- iv. That the Committee ought to have made further efforts to ascertain the position regarding the registrant's present employment – the respondent referred to the registrant's right to make oral or written submissions and her failure to avail of this opportunity.
- v. The six month duration of the suspension was imposed without any full investigation as to the necessity of such a period – the respondent referred to the 19 alleged errors and to the fact that each would have to be pursued separately, arguing that 6 months was therefore necessary.

40. Regarding the supplemental submissions, the respondent disputed the assertion that the Committee were influenced in their decision by a belief that the appellant had admitted all issues, arguing that the Committee gave appropriate consideration to this point.
41. In relation to working in social care work without administering medication, the respondent referred to the Committee specifically addressing this issue in their determination and giving appropriate consideration to it.
42. In relation to the appellant's assertion that other people had made mistakes, the respondent submitted that this issue was irrelevant and mistakes made by others had no bearing on the question of whether an ISO was necessary.

Conclusions

43. The Tribunal Panel has carefully considered all the documentation placed before it and the written submissions made by the parties, even if we have not specifically referred to all of them.
44. It is important to clarify at the outset that this is not a case dealing with employment issues, nor is it an appeal from a decision of the Conduct Committee. This is an appeal against the decision of the ISO Committee where the Tribunal, like the Committee, must consider the gravity of the allegations made against the appellant and the nature of the evidence, the risk of harm to members of the public, the wider public interest and the prejudice to the appellant (see paragraph 12 above). It, like the Committee, cannot make findings of fact, although it can look at additional information received after the Committee hearing. Our powers, under section 15(3) of the 2001 Act, are limited to confirming or setting aside the decision of the ISO Committee.
45. The Tribunal Panel has thoroughly examined the written evidence which we had before us in relation to the 19 allegations regarding medication errors, including the submissions, supplementary submissions and replies thereto. We consider that these allegations, involving as they do, the administration of medication to vulnerable adults, are extremely serious.
46. Although the Tribunal accepts that the appellant has a dispute as to how many of the allegations are admitted, we must again emphasise that we are not here to make findings of fact. However, we note that the appellant, through her representatives, seems to accept "*8 instances and a further 3 which she accepts but with mitigatory explanations*" (**paragraph 4: supplemental submissions**). The appellant's representatives further state (**paragraph 6: supplemental submissions**) "*that there would be prima facie evidence in relation to errors*

having been made by the Appellant, taking into account the admissions that have been made by her”.

47. Given the very serious nature of the allegations regarding the administration of medication and having examined all the evidence, the Tribunal Panel has decided that the ISO Committee, when arriving at its decision, correctly considered the protection of the public, the public interest and the effects of an ISO on the appellant.
48. We find that the ISO Committee had a statutory duty under Rule 5(1) to consider any complaint against a registrant and decide on one of 3 options, one of which was the imposition of an ISO if this was “*necessary for the protection of members of the public or is otherwise in the public interest, or is in the interest of the Registrant involved...*”. The Presenter’s mode of putting the case for the Council was therefore irrelevant to the Committee’s decision to impose an ISO in this case.
49. The Tribunal Panel do not consider that the ISO Committee made findings of fact in relation to the allegations. We find, in relation to the comments made in the 4th paragraph of page 3 of the decision, that these are attempts by the ISO Committee, looking at the written documentation before it and having no submissions or appearance by the appellant, to ascertain her position as to the allegations and are not findings of fact.
50. The Tribunal finds that the principle of proportionality was considered by the ISO Committee and the effects of the imposition of an ISO on the appellant were also considered.
51. The Tribunal Judge, in the English case of **Diane Onyango v HCPC [2012] UKFTT 703 (HESC)**, stated at paragraph 19 that: “*An ISO is a serious measure: the less serious the allegation the less likely an Interim Order will be required to protect the public or will such order be in the public interest. We have concluded that the allegations are serious ...We find that the public would expect service users to be protected in the interim*”. This Tribunal Panel finds similarly that, in the face of such serious allegations regarding the administration of medication, the public would expect vulnerable service users to be protected.
52. The Tribunal consider that public trust and confidence in the social care profession must be ensured and upheld. The Panel has concluded that, given the issues set out and conclusions made in paragraphs 43 - 51 above, the imposition of an ISO by the ISO Committee was a proportionate and legitimate response by the Committee.

53. Given that the imposition of an ISO is a serious measure, the issue of delay and its effects upon the appellant should always be considered. Despite the number of allegations made, the Tribunal Panel would nonetheless direct the Respondent to ensure that the investigations in this case are completed as soon as possible, so as to provide a final decision for the appellant.
54. The decision of the ISO Committee is confirmed and the appeal is dismissed. This is the unanimous decision of us all.

Decision

55. The decision of the 22nd November 2013 is confirmed and the appeal is dismissed.

Diane Drennan
Chairman Care Tribunal

Date Decision recorded in Register and Issued to Parties: 30 April 2014