

First-tier Tribunal Care Standards

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

**NCN: [2023] UKFTT 110 (HESC)
[2022] 4775.ISO-W**

Heard by Video Link on 7 February 2023

BEFORE

**Mr H Khan (Tribunal Judge)
Ms E Walsh-Heggie (Specialist Member)
Ms D Rabbetts (Specialist Member)**

BETWEEN:

Social Care Wales

Applicant

-v-

Richard James Lewis

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 Mr Richard James Lewis (“the Respondent”), on 8 September 2021 for a period of 18 months until 7 March 2023, to be extended until 7 September 2023.

The Hearing

2. The hearing took place on 7 February 2023. The hearing took place by video. The documents that we were referred to are in the electronic hearing bundle (239 pages) prepared by the Applicant for the hearing.

Attendance

3. The Applicant was represented by Mr Jermel Anderson, Counsel. It’s sole witness was Mr Ieuan Parry, Fitness to Practise Senior Officer (Social Care Wales).

4. The Respondent did not attend.

Preliminary Issue

5. We heard submissions from Mr Anderson and considered whether or not we should proceed in the Respondent's absence.
6. Mr Anderson submitted that the Tribunal should proceed in the Respondent's absence.
7. We considered rule 27 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (as amended) ("the 2008 Rules"). We concluded that we would proceed in the Respondent's absence. Our reasons for doing so are set out below.
8. We were satisfied that the Respondent was aware of the hearing (notifications sent on 5 December 2022, 19 December 2022, 26 January 2023 and 3 February 2023) and that it was in the interests of justice to proceed with the hearing. There has been no prior explanation for the Respondent's absence nor was there a request for a postponement of the hearing.
9. We noted that although the Respondent had engaged in these proceedings by submitting a response, no evidence had been provided.
10. In our judgement, whilst we were mindful of the impact of these proceedings on the Respondent's professional and personal life, in our judgement, the Respondent had been given an opportunity to attend the hearing.
11. The additional challenge in this case was that the interim suspension order was due to expire on 7 March 2023 (although the application stated it was to expire on 8 March) and the matter had to be heard and determined by that date.
12. In any event, even if we had been minded to adjourn to a later date, we were not reassured that this would secure the Respondent's attendance at any future hearing.

The Applicant

13. 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

14. The Respondent registered with the Respondent as a Residential Child Care Worker on 13 November 2018. He was employed at Options Kinsale School (part of the Options Group) as a Night Care Practitioner.

Events leading to the Interim Suspension Order

15. The events leading up to the suspension are set out in the case summary.
16. On 11 April 2021, a referral was made to the Applicant by Options Kinsale, which stated that the Respondent had been suspended after concerns were raised regarding his conduct on a shift on 1 April 2021.
17. The Applicant was also informed that a Safeguarding referral had been made. The Safeguarding minutes refer to Young Person A being restrained by staff members three times between 9pm and 10.10pm on 31 March 2021. Young Person A was 13 years old and was described as someone who functioned developmentally around the age of 5. It is alleged that the Respondent grabbed Young Person A to stop him from hitting the Respondent and held Young Person A's arms up high and started to 'dangle drag' him to his bedroom.
18. The other staff members present are said to have been concerned about the physical intervention technique used by the Respondent as they thought it was inappropriate and not a typical technique that should be used.
19. On 8 September 2021, an Interim Orders Panel imposed an interim suspension order for a period of 18 months on the grounds that such an order was (1) necessary for the protection of the public, and (2) otherwise in the public interest.
20. The interim suspension order was reviewed by an Interim Orders Panel on 3 March 2022 and 30 August 2022. On both occasions, it was determined that the interim suspension order should remain in place on the same grounds.

The Applicant's position

21. The Applicant's position is that the Applicant has now obtained witness statements from various witnesses and seeks a six-month extension in order to enable the Applicant to list the final Fitness To Practice hearing.

The Respondent's position on the Application

22. The Respondent has filed a response to these proceedings. The Respondent states the following (we have set out the whole response);

"I am apposing this appeal because this has gone on for too long, I no longer work in social care and would prefer this all to be over.

I stand by my statements that I acted to the best of my ability while being attacked by a young person while other staff stood by and did not assist."

The Issues to be determined

23. According to the list of issues, the Tribunal should consider whether the interim suspension order made on 8 September 2021 for a period of 18 months until 7 March 2023 should be extended until 7 September 2023.

The Legal Framework

24. 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.
25. 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.
26. 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.
27. 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.
28. 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.
29. 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.

30. 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.
31. Under section 148 of the Act, Applicant 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.
32. 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.
33. 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

34. 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.
35. We heard from Mr Parry. Mr Parry set out the nature of the allegations. He described the allegations as serious involving a vulnerable person. Mr Parry described the difficulties that he had experienced in getting witness statement from three witnesses. This has been the reason for the delay in getting the matter heard before a Fitness to Practice hearing. There were three witnesses, two of whom had left the Options Group. The difficulties that had been experienced had been getting hold of the witnesses, interviewing them and getting their witness statements signed. However, Mr Parry confirmed that all witnesses had now signed a witness statement. The last of these witness statement from Ms Hughes was received in January 2023. The next step was for the matter to be listed for a Fitness to Practice hearing. He had spoken to colleagues and had been informed that it was likely the matter could be listed at the end of April/May.

The Tribunal's conclusion with reasons

36. We took into account all the evidence that was included in the hearing bundle and presented at the hearing.
37. We wish to place on record our thanks to Mr Anderson and Mr Parry for their assistance at the hearing.
38. 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.
39. 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. This means that we took into account the up-to-date information provided by Mr Parry regarding the state of the investigation leading the up-to-date position in relation to the witness evidence.
40. 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.
41. We concluded that taking in account all the circumstances, it was necessary and proportionate for the interim suspension order made on 8 September 2021 on to be extended until 7 July 2023. This is shorter than the period sought by the Applicant.
42. 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
43. We found the evidence of Mr Parry to be consistent and clear. We had no reason to doubt Mr Parry's evidence in relation to the difficulties that he had experienced in getting hold of the witnesses and their evidence. Mr Parry also very fairly reflected as to whether the date proposed for the extension of the interim suspension order (7 September 2023) was still appropriate. He acknowledged that at the time that the application was made, he did not have all the evidence from the witnesses which he now had.
44. As the Respondent has elected not to participate in these proceedings other than file a response, we took into account his circumstances as set out in the hearing bundle. We took into account his personal circumstances as set out in the hearing bundle that he "*is working but*

not in a role in social care or the role that requires registration" Furthermore, we took into account the emails including those dated 29 April 2021, 7 May 2021 and 9 June 2021 sent by the Respondent to the Applicant. This sets out the Respondent's position in relation to the incident leading up to the suspension.

45. 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.
46. 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 principles set down in that decision.
47. 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.
48. 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.
49. We acknowledge that these are allegations at this stage. We acknowledge the Respondent's case that he was being attacked by the young person and did not receive any support. However, the allegations in the matter are of a serious nature. The allegations indicate that an inappropriate method of restraint may have been used on a vulnerable service user with a learning disability. The use of the restraint method is said to have been considered inappropriate by several of the Respondent's own colleagues.
50. We concluded that if the behaviour were to be repeated, then that is a serious prospect of risk to service users. We noted that the Respondent was working environment with highly vulnerable service users and is alleged to have used inappropriate force in this context. We also concluded that it is apparent that there is a present risk of this continuing.
51. We took into account the Applicant's reasons for why the case was not concluded. We had no reason to doubt the evidence of Mr Parry around the serious delays in obtaining the evidence required. The final witness statement was obtained on 13 January 2023, and we were particularly assured by the submissions that the Applicant should therefore be able to conclude this matter shortly despite the significant delays it has faced.

52. We concluded that the interim order remains necessary for the protection of members of the public (including vulnerable service users) in view of the risk of serious harm that would arise if the alleged conduct were to be repeated with other individuals.
53. Although, we concluded that an interim suspension order should be extended, we concluded that it should only be extended until 7 July 2023. We took into account Mr Parry's evidence that it was likely that the Fitness to Practice hearing would take place at the end of April/beginning of May 2023. Although we acknowledge Mr Parry's evidence that matters could go part heard, get adjourned or there could be witness availability issues, nevertheless, we took into account how long this matter has been going on for and even taking into account the Applicant's own time estimates, we have allowed some leeway for any slippage of the timetable.
54. Mr Parry himself acknowledged that if the Tribunal were not minded to extend the interim suspension order until 7 September 2023, his alternative position was for it to be extended until 7 July 2023. We concluded that extending it to 7 July 2023, would allow sufficient time for the Fitness to Practice hearing to be concluded. In our view, this date would also allow for any slippage in the timetable due to any issues such as adjournments and witness availability.
55. 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.
56. In reaching our decision, we took into account any prejudice/hardship to the Respondent of any interim suspension order continuing. Whilst we have taken into account the Respondent's position that he no longer seeks to work within the social care sector, we acknowledge that any restriction on the registrant's ability to practice will cause some level of prejudice. 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.
57. We, therefore, taking in account all the circumstances, concluded that it was both necessary and proportionate for the interim suspension order made on 8 September 2021 to be extended until 7 July 2023.
58. 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 substantive case against the respondent.

DECISION

59. The application to extend the order dated 8 September 2021 and which is due to expire on 7 March 2023 shall be granted and the interim suspension order shall be extended until 7 July 2023.

**Judge H Khan
Lead Judge**

First-tier Tribunal (Health Education and Social Care)

Date Issued: 09 February 2023