

First-tier Tribunal Care Standards

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

[2021] 4344.ISO-W

Heard by Video Link on 28 September 2021

BEFORE

**Mr H Khan (Tribunal Judge)
Dr E Stuart-Cole (Specialist Member)
Mr R Graham (Specialist Member)**

BETWEEN:

Social Care Wales

Applicant

-v-

Thomas Adams

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 Thomas Adams (“the Respondent”), on 21 April 2020 for a period of 18 months until 20 October 2021, to be extended until 13 October 2022.

The Hearing

2. The hearing took place on 28 September 2021. This was a remote hearing which has not been objected to by the parties.

Attendance

3. The Applicant was represented by Ms C Rawle, Solicitor. The sole witness was Mr Mark Brown, Fitness to Practise Senior Officer (Social Care Wales). Ms Gemma Casey, Solicitor, dialled in as an observer.

4. The Respondent did not dial in to the video hearing.

Non attendance of the Respondent

5. We heard submissions from Ms C Rawle and considered whether or not we should proceed in the Respondent's absence.
6. Ms Rawle submitted that the Tribunal should proceed in the Respondent's absence. Ms Rawle's submissions included that the Respondent had been notified of the hearing by email at an email address that the Respondent himself had provided as part of the registration process. Ms Rawle explained that the Respondent had elected not to engage with any of the Interim Orders Panels or the Tribunal and the current interim suspension order was due to expire on 20 October 2021.
7. There was some confusion as to when the existing interim suspension order expired, the application referred to it expiring on 13 October 2021 but the decision of the Interim Orders Panel dated 21 April 2020 determined that it was to expire on 20 October 2021. We adjourned the matter in order for Ms Rawle to clarify the position. Following a short adjournment, Ms Rawle confirmed that the Interim Suspension Order expired on the 20 October 2021 but that the Applicant would be seeking an extension to 13 October 2022.
8. 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.
9. We were satisfied that the Respondent was aware of the hearing (notifications sent on 25 August 2021, 21 & 26 September 2021) and that it was in the interests of justice to proceed with the hearing. The notifications were sent to the email address listed on the application form. Mr Brown confirmed that this email address was provided by the Respondent as part of his registration process.
10. The hearing was listed to start at 10:00am. However, it did not start until around 10:15am. This was to allow the Respondent a further opportunity to dial into the hearing. There has been no explanation for the Respondent's absence nor was there a request for a postponement of the hearing.
11. The Respondent had not engaged throughout these proceedings. No evidence has been served by the Respondent despite the Respondent being given an opportunity and being directed to do so pursuant to a Tribunal order dated 25 August 2021.

12. The additional challenge in this case was that the interim suspension order was due to expire on 20 October 2021 and the application needed to be determined prior to that date. In any event, even if we had been minded to adjourn the hearing, the Respondent's lack of engagement both with the Interim Orders Panel and proceedings before this Tribunal led us to conclude that we were not confident that he would have attended on the next occasion. We concluded, therefore, having considered the circumstances of the case that it was in the interests of justice to proceed with the 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 was registered by the Applicant as a Residential Childcare Worker on 16 August 2017. He was employed by Crystal Care Solutions Limited ("Crystal Care") until his dismissal on 25 February 2020.

Events leading to the Interim Suspension Order

15. On 20 February 2020, the Applicant received a referral via email from Crystal Care stating that Mr Adams was being investigated by Merseyside Police for Child Abduction and that Flintshire Safeguarding would be holding a Part 4 strategy meeting.
16. Mr Adams was suspended by Crystal Care on 21 February and dismissed on 25 February 2020.
17. On 6 April 2020, Merseyside Police sent a letter to the Applicant under the Common Law Police Disclosure Procedure. This letter stated;

'Information: Alleged that Adams has been in contact with 15 year old child who was in his care up until 2018. They have had contact via social media and started a relationship. Adams has taken the child from her care placement to his home address where he has engaged in sexual activity with her. Police attended the address and arrested Adams. Female was located at the address. The investigation is ongoing and Adams is currently on bail.'

18. On 21 April 2020, an Interim Orders Panel met (by virtual means) to consider an application for an interim order. The Respondent did not attend the hearing and was not represented. The Panel determined that an interim suspension order should be imposed 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.

19. On 15 October 2020 and 14 April 2021, the Interim Orders Panel met to review the interim suspension order. The Respondent did not attend and was not represented at either hearing. On each occasion the Panel determined that the interim suspension order should remain in place on the same grounds.
20. Merseyside Police confirmed to the Applicant on 27 September 2021 that their criminal investigation is still on ongoing.

The Applicant's position

21. The Applicant's position is that an extension is sought until 13 October 2022 to enable the police investigation to be completed, for the Applicant to complete its investigations and, if appropriate, a hearing before the Fitness to Practise Panel to be concluded. The Applicant cannot conduct its own investigation until the police investigation and any criminal proceedings arising from that investigation have been concluded.

The Respondent's position on the Application

22. The Respondent has not engaged with the proceedings before this Tribunal. The Respondent did not exchange any evidence pursuant to the Order dated 25 August 2021 which directed him to do so.

The Issues to be determined

23. According to the list of issues, the question for the Tribunal was whether the interim suspension order imposed on 21 April 2020 for a period of 18 months should be extended beyond 20 October 2021.

The Legal Framework

24. 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.
25. 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.
26. 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.
27. 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.
 28. 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.
 29. 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.
 30. 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.
 31. 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.
 32. 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.
 33. 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').
 34. The Applicant has also issued practice guidance for different categories of social care workers. This is intended to support practitioners to meet the standards in the Code. The relevant practice guidance for the Respondent is entitled, 'The Residential Child Care Worker'
 35. 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.
36. 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.
37. 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

38. 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.
39. We heard from Mr Brown. Mr Brown explained that the allegations are of an extremely serious nature, there was a clear and obvious risk of significant harm to the health, safety and wellbeing of vulnerable children if the Respondent were to be allowed to continue in unrestricted practice.
40. Mr Brown submitted that an extension is needed to enable the Applicant to complete its investigation and for a hearing before a Fitness to Practise Panel to be concluded. At present, the Applicant is unable to progress an investigation because the criminal investigation has not been concluded.
41. Mr Brown had sought updates from Merseyside Police on 19 May 2020, 7 July 2020, 5 August 2020, 21 October 2020, 13 January 2021, 2 March 2021, 6 April 2021, 8 June 2021, 6 July 2021, 23 August 2021 and most recently on 27 September 2021. On each occasion Mr Brown had been informed by the Police that the investigation was still ongoing.
42. Mr Brown explained that if the criminal investigation is completed and the Respondent is charged, an extension to the Interim suspension order is needed to enable the criminal proceedings to be concluded. If the Respondent is charged and convicted at trial in the Crown Court, it will 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, he explained, 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 will be treated as conclusive proof of the commission of the offence concerned.

43. Mr Brown explained that if on the other hand, a decision is made not to charge the Respondent or he is charged, but subsequently 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 the Applicant's proceedings.
44. Mr Brown set out that this also reflects the fact that allegations of serious misconduct are not confined to conduct that would also amount to a criminal offence in the case of significant failures to meet relevant standards of professional practice.
45. Mr Brown acknowledged that there was limited information about the Respondent but this was due to the non- engagement of the respondent both with proceedings before the Interim Orders Panel and the proceedings before this Tribunal.

The Tribunal's conclusion with reasons

46. We took into account all the evidence that was included in the hearing bundle and presented at the hearing.
47. We wish to place on record our thanks to Ms Rawle and Mr M Brown for their assistance at the hearing.
48. 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.
49. 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.
50. 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.
51. We noted that the application form referred to the current interim suspension order expiring on 13 October 2021 and that an extension

was sought until 13 October 2021. However, the decision of the Interim Orders Panel dated 21 April 2020 stated that the current interim suspension order expired on the 20 October 2021. Ms Rawle confirmed that the existing interim suspension order did expire on 20 October 2021 but that the extension was being sought until 13 October 2022.

52. We concluded that taking in account all the circumstances, it was necessary and proportionate for the interim suspension order made on 21 April 2020 to be extended until 13 October 2022.
53. 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
54. We found the evidence of Mr Brown to be very persuasive. We acknowledge that Mr Brown had taken a very proactive approach to this case, for example, by contacting the police on a regular basis (19 May 2020, 7 July 2020, 5 August 2020, 21 October 2020, 13 January 2021, 2 March 2021, 6 April 2021, 8 June 2021, 6 July 2021 and 23 August 2021) to seek updates in order to progress the matter. The last such update was obtained the day before the hearing.
55. As the Respondent has failed to engage with these proceedings, there was limited information regarding the Respondent's present circumstances.
56. 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.
57. 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.
58. 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.
59. 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.
60. We acknowledge that these are allegations at this stage and that there is an ongoing police investigation. However, the allegations are of an extremely serious nature involving a 15 year old child for whom the

Respondent was previously an allocated carer. They include allegations of an inappropriate sexual relationship between the young person and the Respondent, involve an allegation of child abduction, whereby the young person was found at the home address of the Respondent and, if proven, the allegation could constitute a criminal offence.

61. We concluded that the interim order remains necessary for the protection of members of the public 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, the exceptionally serious nature of the allegation meant that there was a clear and obvious risk of significant harm to the health, safety and wellbeing of vulnerable children. We concluded that the public would be shocked and troubled if the Respondent were to be allowed to continue in unrestricted practice whilst an investigation into the allegation is ongoing.
62. We considered the reasons as to why the case has not been concluded to date. There is an ongoing criminal investigation. The Applicant's investigation cannot be completed until the outcome of the criminal investigation is known. This is irrespective of whether or not the Respondent is charged or not. If the criminal investigation is completed and the Respondent is charged, an extension to the Interim suspension order is required in order to enable the criminal proceedings to be concluded. Furthermore, even if the Respondent is acquitted or if a decision is made not to charge the Respondent, the Applicant will need 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 the Applicant's proceedings. It also reflects the fact that allegations of serious misconduct are not confined to conduct that would also amount to a criminal offence in the case of significant failures to meet relevant standards of professional practice.
63. In reaching our decision, we took into account any prejudice/hardship to the Respondent of any interim suspension order continuing. There was very limited information before us regarding the Respondent's current circumstances due to his non engagement, nevertheless, whatever limited information there was before us, we took it into account in reaching our decision.
64. We considered whether the interim suspension order should be extended until 13 October 2022. We recognise that we should only impose an order for the minimum period we consider necessary. We accept that there is an ongoing police investigation which needs to be concluded, after which there maybe be a criminal prosecution which will also have to run its course. The Applicant will need to complete its enquiries and bring the matter to a Fitness to Practise hearing, if one is to be held. We consider that an extension of 12 months is

appropriate in this case at this stage.

65. 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.
66. We, therefore, taking in account all the circumstances, concluded that it was necessary and proportionate for the interim suspension order made on 21 April 2020 to be extended until 13 October 2022.
67. 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 suspension order, we do not express any views on the merits or otherwise of the case against the Respondent.

DECISION

68. The application to extend the interim suspension order dated 21 April 2020 and which is due to expire on 20 October 2021 shall be granted and the interim suspension order shall be extended until 13 October 2022.

Judge H Khan

Lead Judge

First-tier Tribunal (Health Education and Social Care)

Date Issued: 29 September 2021