

First-tier Tribunal Care Standards

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

**[2022] 4697.ISO-W
[2022] UKFTT 393 (HESC)**

Heard by Video Link on 31 October 2022

BEFORE

**Mr H Khan (Tribunal Judge)
Ms K Marchant (Specialist Member)
Mr C Akinleye (Specialist Member)**

BETWEEN:

Social Care Wales

Applicant

-v-

Tom Phillips

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 Jade Tom Phillips (“the Respondent”), on 18 May 2021 for a period of 18 months until 17 November 2022, to be extended until 17 November 2023.

The Hearing

2. The hearing took place on 31 October 2022. The hearing took place by video. The documents that we were referred to are in the electronic hearing bundle (156 pages) prepared by the Applicant for the hearing.

Attendance

3. The Applicant was represented by Ms Clare Rawle, Solicitor. Its sole witness was Ms Katie Watkins, Fitness to Practise Senior Officer (Social Care Wales).
4. The Respondent did not attend nor did any witnesses on his behalf.

Preliminary Issue

5. We heard submissions from Ms Rawle and considered whether or not we should proceed in the Respondent's absence. Ms Rawle submitted that the Tribunal should proceed in the Respondent's absence. The Respondent had been notified of the hearing by email. Our attention was drawn in particular to the Tribunal's email dated 27 October 2022 providing details of the hearing to the Respondent. Ms Rawle confirmed that the email address on that email was the correct one for the Respondent.
6. 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.
7. We were satisfied that the Respondent was aware of the hearing (notifications sent on 12 September 2022 and 27 October 2022) that it was in the interests of justice to proceed with the hearing.
8. The hearing was listed to start at 10AM. It did not start until around 10:15am. This was to allow additional time for the Respondent to dial into 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. 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 12 September 2022.
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 every opportunity to participate and had elected not to do so.
11. The additional challenge in this case was that the interim suspension order was due to expire on 17 November 2022 and the matter had to be heard and determined by that date. In any event, even if we had been minded to adjourn to a later date, there was no guarantee that the Respondent would engage in such proceedings. We, therefore, concluded that it was in the interest of justice to proceed with the hearing.

The Applicant

12. 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

13. The Respondent registered with the Applicant as an Adult Care Home Worker on 4 June 2020. He was employed by Mencap ("employer") as Support Worker from January 2020.

Events leading to the Interim Suspension Order

14. The events leading up to the suspension are set out in the Applicant's skeleton argument.
15. On 2 March 2021, The Respondent was referred to the Applicant by his employer. The referral form stated that the Respondent had been suspended, pending investigation of an allegation related to an incident that took place outside of work, on 19 February 2021, when the Respondent attended a party. It was reported that he had sexual intercourse with a minor. The employer advised that the matter had been reported to the police and the Respondent had been arrested on the 20 February 2021 and released on bail on 22 February 2021. The employer advised that the matter remained subject to an ongoing police investigation by Dyfed Powys Police.
16. On 18 May 2021, an Interim Orders Panel (IOP) made an Interim Suspension Order ("ISO") in relation to Respondent for a period of 18 months, expiring on 17 November 2022. The IOP concluded that an interim order should be imposed on the grounds that the order was (a) necessary for the protection of the public and (b) is otherwise in the public interest. The interim order was reviewed by an IOP on 15 November 2021 and again on 12 May 2022. On both occasions, the IOP determined that the interim order should continue on the same terms.
17. On 17 June 2022, the Applicant received information from Dyfed Powys Police that the Respondent's case was due to be heard at Swansea Crown Court on 14 October 2022.
18. On 1 July 2022, the Applicant received confirmation from Dyfed Powys Police that the Respondent had been charged with an offence of engaging in penetrative sexual activity with a girl 13 to 15 years.
19. On 21 October 2022, the Applicant received a further email from Dyfed Powys Police which stated that the Respondent will now be appearing at Swansea Crown Court on 30 January 2023.

The Applicant's position

20. The Applicant is unable to conduct any investigation until the criminal proceedings have concluded. The Applicant seeks an extension of the interim order until 17 November 2023.

21. The Applicant's position is that an extension is sought to enable the Applicant to receive the outcome from the Court in relation to the criminal proceedings and to undertake any further necessary enquiries, to ensure a robust and independent regulatory investigation is undertaken.

The Respondent's position on the Application

22. The Respondent has not engaged with the application and has not exchanged any evidence pursuant to the Directions given on 12 September 2022 and has not participated in these proceedings.
23. The report to the Interim panel makes reference to the Respondent providing an initial response to the Applicant by way of an email dated 26 March 2021. The email states the following

"I understand the investigation I am innocent of the allegations against me and plan to prove this! But understand why you have to investigate, happy to give any information needed."

The Issues to be determined

24. According to the list of issues, the Tribunal should consider whether the interim suspension order imposed on 18 March 2021 for a period of 18 months should be extended beyond 17 November 2022 to 17 November 2023.

The Legal Framework

25. The legal framework was helpfully set out in the skeleton argument prepared by the Applicant's legal representative.
26. 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.
27. 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.
28. 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.

29. 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.
30. 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.
31. 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.
32. 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.
33. The Applicant has issued guidance entitled 'Guidance on Indicative Disposals for the Fitness to Practise Panel and Interim Orders imposed by the Interim Orders Panel' ('Interim Orders Guidance') As the title indicates, the first part of this guidance relates to the imposition of sanctions by a Fitness to Practise Panel and is not relevant to this application. However, Part II of the Guidance relates to applications for interim orders and includes general principles to be taken into account by an Interim Orders Panel.
34. 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').
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 Ms Watkins. Ms Watkins explained that for present purposes, the allegation that was being relied upon was that which is subject to criminal proceedings. This is the allegation that the Respondent has committed the offence of engaging in with an offence of engaging in penetrative sexual activity with a girl 13 to 15 years.
40. Ms Watkins explained that she had contacted the police on 28 October 2022 by telephone and they had informed her that the position remained that the Respondent was due to appear at Swansea Crown Court on 30 January 2023.
41. Ms Watkins had had limited correspondence with the Respondent. He had not attended the interim suspension hearings.
42. It was believed that the Respondent was presently working in hospitality. However, the Respondent had informed Ms Watkins that he intended to return to working with vulnerable adults when he was able to do so.

The Tribunal's conclusion with reasons

43. We took into account all the evidence that was included in the hearing bundle and presented at the hearing.
44. We wish to place on record our thanks to Ms C Rawle and Ms K Watkins or their assistance at the hearing.
45. 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.
46. 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.

47. 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.
48. We concluded that taking in account all the circumstances, it was necessary and proportionate for the interim suspension order made 18 May 2021 on to be extended until 17 November 2023.
49. 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
50. We found the evidence of Ms Watkins to be credible. There had been limited engagement with the Respondent. Due to the ongoing criminal proceedings, the Applicant was unable to conduct an investigation at this stage.
51. As the Respondent has elected not to participate in these proceedings, the only information we had regarding the Respondent circumstances was provided by the Applicant orally at the hearing and that which was included in the hearing bundle. This included the Respondent's email dated 26 March 2021 and 12 November 2021 and his denial of the allegations. We took into account the information we have including his personal circumstances around working in hospitality at this stage.
52. 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.
53. 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.
54. 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.
55. 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.
56. We acknowledge that these are allegations at this stage. We also acknowledge that those allegations are vehemently denied by the

Respondent who has stated that he seeks to prove that he is not guilty of those allegations.

57. However, the allegations are serious and relate to alleged sexual activity with a minor. They involve an alleged substantial breach of professional boundaries. There has been a criminal investigation, the Respondent has been charged and is due to undergo a criminal trial in January 2023.
58. 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. In our view, there remained a risk of repetition and a real risk of significant harm to the health, safety and wellbeing of vulnerable individuals if an interim order was not in place and if the Respondent was allowed to continue to practise without restrictionApplicant
59. 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 allegation 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 against the Respondent.
60. We considered that the interim suspension order shall be extended until 17 November 2023. In reaching our decision, we noted that the Applicant is unable to complete its own investigation in relation to the allegations that were the subject of the original referral until the criminal proceedings against the Respondent have been concluded.
61. As Ms Watkins made clear in here evidence, if the Respondent is convicted, it will, according to the Applicant, be possible for him to be referred for hearing before a Fitness to Practise Panel under the fast-track procedure, without the need for further investigation by the Applicant. This is 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.
62. If, on the other hand, the Respondent is 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 in relation to that conduct. This is in recognition of the different standard of proof that applies in criminal proceedings, as compared with the Applicant's proceedings.
63. 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. Ms Watkins made it clear that the Applicant would be reviewing the interim order in accordance with section 146.

64. In reaching our decision, we took into account any prejudice/hardship to the Respondent of any interim suspension order continuing. There is limited information before us regarding the Respondent's current circumstances due to his non engagement with these proceedings. The Applicant understands that the Respondent is currently working in the hospitality sector
65. 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.
66. We, therefore, taking in account all the circumstances, concluded that it was necessary and proportionate for the interim suspension order made on 18 May 2021 to be extended until 17 November 2023
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 order, we do not express any views on the merits or otherwise of any future case against the Respondent.

DECISION

68. The application to extend the order dated 18 May 2021 and which is due to expire on 17 November 2022 shall be granted and the interim suspension order shall be extended until 17 November 2023.

Judge H Khan

Lead Judge

First-tier Tribunal (Health Education and Social Care)

Date Issued: 02 November 2022