

## **First-tier Tribunal Care Standards**

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

**NCN: [2021] UKFTT 103 (HESC)  
[2020] 4146.REM-W VKinly**

**Heard on 16 March & 16 April 2021**

#### **BEFORE**

**Mr H Khan (Judge)  
Ms H Reid (Specialist Member)  
Mr M Cann (Specialist Member)**

#### **BETWEEN:**

**Jamie Neil Saunders**

**Appellant**

**-v-**

**Social Care Wales**

**Respondent**

#### **DECISION**

##### **The Appeal**

1. Mr Jamie Neil Saunders (“the Appellant”) appeals under section 158 of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”), against the decision of the Fitness to Practise Panel following a hearing on 7 October 2020 (as set out in the Notice of Decision dated 9 October 2020) which following a finding of impairment, made a removal order under section 138 (9) of the Act.

##### **Video Hearing**

2. This was a remote hearing which has not been objected to by the parties. The form of remote hearing was by video. A face-to-face hearing was not held because it was not practicable, and no-one requested the same and we considered that all issues could be determined in a remote hearing. The documents that we were referred to are in the electronic hearing bundle (244 Pages). There were also two CCTV videos which could be viewed by the time of hearing on 16 April 2021.

##### **The Hearing**

3. The appeal was originally listed for consideration on the papers, pursuant to rule 23 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008 ('2008 Rules'). Both parties must consent, which they had, but the Tribunal must also consider that it is able to decide the matter without a hearing.
4. At the hearing on 16 March 2021, although both parties had consented to the matter being considered on the paper, the Tribunal did not consider that it was able to decide the matter. The CCTV footage referred to in the hearing bundle and in the submissions had not been provided in a format which the Tribunal could view.
5. The CCTV footage related to the incident that was the subject of the allegations. It was referred to extensively in the parties' evidence. The Tribunal considered that given that the CCTV footage sits at the heart of this case, it was not in the interest of justice to proceed. Furthermore, it was not clear whether the Appellant had been provided with a copy of the same CCTV footage. The Tribunal, therefore, adjourned the hearing so that the CCTV footage could be provided to the Tribunal in a format that can be viewed by the Tribunal panel and for a copy to be provided to the Appellant.
6. The Tribunal had also considered that it may benefit from hearing from witnesses including the Appellant in relation to this matter. The Tribunal therefore listed the matter for an oral hearing to give both sides an opportunity to attend the hearing and present their evidence including any witness evidence. However, the order made it clear that in the event that any party did not attend the next hearing, the hearing may proceed in their absence.

### **Attendance**

7. The Appellant did not dial into the video hearing on 16 April 2021. The Appellant had written to the Tribunal on 23 March 2021 stating that he had received the CCTV footage and received the adjournment notice. However, he would not be able to attend due to work commitments and not had enough notice to take leave for the day. The tribunal administration (by an email dated 29 March 2021) had informed him that if he sought to apply for a postponement of the hearing, he should do so. However, no application has been made for a postponement of the hearing.
8. The Respondent was represented by Mr Miles. It's witnesses were Mr Anthony Parry (Registered Manager) and Mr Ben Worley (Therapeutic Child Carer). Mr J Price attended as an observer.
9. Although the hearing was listed to start at 10 AM, it started at 10:10am in order to allow the Appellant an opportunity to dial in. Mr Miles submitted that the Tribunal should proceed with the hearing. He confirmed that Mr Price, (Fitness to Practise Officer) had spoken to the

Appellant on 24 March 2021. The Appellant had informed him that he would not be attending. He would require two months' notice to take time off work. However, he did not want to delay the matter and wanted the matter heard.

10. We considered Rule 27 of the 2008 Rules. We concluded that we would proceed as we were satisfied that the Appellant had been notified of the hearing and considered that it was in the interests of justice to proceed with the hearing.

11. We were satisfied that the Appellant was notified of the hearing as he confirmed that in the email dated 23 March 2021. There had been no request for a postponement of the hearing. Furthermore, we were particularly persuaded after hearing of the details of the discussion that the Appellant had had with Mr Price, where he had confirmed that he did not wish to delay matters and wanted the appeal heard. In any event, there was no guarantee that, even if we adjourned today, he would attend any future hearing.

### **Restricted reporting order**

12. The Tribunal makes a restricted reporting order under Rule 14(1) (a) and (b) of the 2008 Rules, prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify the young persons in this case so as to protect their private lives.

### **The Appellant**

13. The Appellant registered with the Respondent as Residential Child Care Worker on 12 May 2011. On the 12 June 2015 he was removed from the Register for non-payment of fees. He re-registered on 12 September 2018.

14. He was employed by Amberleigh Care as a Shift Leader at Golfa Hall ('the Home'). The precise date that he started at the Home is not known. It is understood by the Respondent that the Appellant started there in around February or March 2017.

### **The Respondent**

15. The Respondent is the regulator for the social care profession in Wales.

16. Under section 80 of the Act, the Respondent's functions include keeping a register of social workers and other social care workers. Under section 68(1) of the Act, the Respondent'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 Charges**

17. That on the 23 September 2018 whilst registered as a Residential Child Care Worker and employed by Amberleigh Care Ltd. The Appellant acted in an inappropriate and aggressive manner towards Young Person A by:

- (a) pulling him from a window sill;
- (b) pinning him on the floor;
- (c) pulling him back to the floor when he attempted to escape.

18. That the Appellant acted in an inappropriate and aggressive manner towards Young Person B by:

- (a) pushing him;
- (b) holding him against a wall by his neck

### **The agreed list of issues**

19. According to the hearing bundle, the parties agreed that the following issues should be determined by the Tribunal:

1. Whether the factual particulars in charges 1(a),(b) and/or (c) and 2(a) and/or (b) have been proved, on the balance of probabilities.
2. Whether the conduct the Appellant towards Young Person A in charges 1(a),(b) and/or (c) was justified in order to prevent Young Person A from harming himself and/or in the Appellant's self-defence.
3. Whether the conduct of the Appellant towards Young Person A was inappropriate. and/or aggressive.
4. Whether the factual particulars in charges 2(a) and/or (b) have been proved, on the balance of probabilities.
5. Whether the conduct the Appellant towards Young Person B in charges 2(a) and/or (b) was justified in the Appellant's self-defence.
6. Whether the conduct of the Appellant towards Young Person B was inappropriate and/or aggressive.
7. Whether the conduct of the Appellant towards Young Person A and/or Young Person B amounted to Serious Misconduct.
8. Whether the sanction of a Removal Order is appropriate and proportionate.

### **Events leading up to the decision**

20. On the 12 October 2018, the Respondent received a referral about the Appellant from Mr Anthony Parry, Registered Manager of the Home. The referral indicated that the Respondent had been suspended and was being investigated by the police.

21. The referral alleged that, on 23 September 2018 the Appellant had assaulted two young people in his care (“incident”), Mr Parry stated that the Appellant had been suspended and Dyfed Powys police were investigating. Mr Parry also referred to relevant CCTV footage.
22. The Respondent made an application for an Interim Suspension Order. On 23 November 2018, an Order was made by an Interim Orders Panel of the Respondent for a period of 18 months. The Order was reviewed every six months, pending an outcome of the fitness to practise investigation.
23. On 13 January 2020, Dyfed Powys police informed Respondent that they were taking no further action.
24. The Appellant, save for a telephone call on 23 October 2018, did not engage with the Respondent’s investigation until 2 July 2020, when he sent an email to the Fitness to Practise Officer. In email exchanges with the Fitness to Practise Officer between 2 and 7 July 2020, the Appellant referred to his police statement and his employer's investigation report as being of relevance.
25. The Appellant also made it clear that he did not wish to engage with the Respondent or to be contacted again. This included sending an email to the Hearings team on 7 September 2020 instructing Social Care Wales to stop communicating with him.
26. On 7 October 2020, a Fitness to Practise Panel (‘the Panel’) considered the case against the Appellant on a “streamlined” basis without the attendance of the Appellant or any live witness. The Panel considered that the case met the criteria for the “streamlining” process, as it was considered to be relatively straightforward; the evidence was clear and robust, and the Appellant had stated that he did not wish to attend a hearing.
27. The Panel found the Appellant had acted in an inappropriate and aggressive manner towards two young people in his care. The Panel made an immediate Removal Order.

### **The Appellant’s case**

28. Although the Appellant did not attend the hearing, there was a statement from him dated 25 January 2021 in the hearing bundle.
29. The Appellants case included that he acted in self-defence to stop young person B from assaulting him again. He considered that this

was an appropriate reaction based on previous serious assaults he had experienced by the same young person.

30. He acted to stop the young person A from causing himself harm, attempting suicide, or causing himself suicide by accident.
31. The Appellant's has expressed the view that not all relevant evidence was considered by the Panel. Specific reference has been made to evidence from the police and from the Home.
32. He relied on the fact that the Crown Prosecution and the Police did not prosecute him as they believed he acted in self defence, not to cause harm to anyone.
33. He was studying to be a Therapeutic Counsellor and hoped to work in private practice. He was concerned about the impact of any findings on his ability to work with children, young people and groups. He did not consider himself to be a danger to anyone or any group of people.

### **The Respondent's Case**

34. The Respondent submits that (a) the factual allegations had been proved, (b) the Appellant was guilty of Serious Misconduct and (c) a Removal Order should be made.

### **Legal Framework**

35. There was no dispute as to the applicable law as set out in the written submissions prepared by its legal representatives. We have adopted the legal framework as set out in the Respondent's submissions.
36. The Respondent is the regulator for the social care profession in Wales. Under section 68(1) of the Act the Respondent's main objective in carrying out its functions is to protect, promote and maintain the safety and well-being of the public in Wales.
37. Under section 68(2) of the Act, in pursuing that objective, the Respondent 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.
38. Under section 112(1) of the Act, the Respondent's is required to prepare and publish a code of practice setting standards of conduct and practice expected of social care workers. The Respondent has prepared and published a Code of Professional Practice for Social Care ('the Code').

39. In addition to the Code, the Respondent has issued Practice Guidance for Residential Child Care Workers. This builds on the Code and describes what is expected of registered persons in this category of registration.
40. The provisions of the Act dealing with the disposal of fitness to practise cases are contained within Chapter 3; Sections 134 to 142 of the Act.
41. The Respondent has issued guidance entitled 'Guidance on Indicative Disposals for the Fitness to Practise Panel and Interim Orders imposed by the Interim Orders Panel'. The first part of this guidance relates to the imposition of sanctions by a Fitness to Practise Panel and the general principles to be taken into account.
42. Under section 158(5), the Tribunal may –
- (a) confirm the decision,
  - (b) substitute for the decision appealed against another decision that the Fitness to Practise Panel could have made, or remit the case to the Respondent to dispose of in accordance with directions of the Tribunal
43. The Tribunal makes its decision on the basis of all the evidence available to it at the date of the hearing and is not restricted to matters available to the Fitness to Practise Panel when the decision was taken.
44. The onus of satisfying the Tribunal that the criteria was met falls on the Respondent and that the relevant standard is a civil standard, namely on a balance of probabilities.

## **Evidence**

45. We took into account all the evidence that was presented in the bundle. This includes the Appellant's and Respondent's evidence.
46. Mr Parry confirmed that on Sunday 23rd September 2018, he was called into work by the Appellant, due to the behaviour of two young people. When he arrived, Young Person, B, asked to speak to him. He explained that the Appellant had been overly rough with him.
47. The second Young Person, A, didn't say anything at first and was refusing to talk to him. When he did talk, he stated that the Appellant had strangled him. He wasn't sure whether to believe their version of events as both young people "*aren't always the most honest*". They said that the incident had occurred on the upstairs landing.
48. He decided to look at the CCTV footage. He watched the footage twice, carefully, as he was trying to see what caused the initial hold and start of the incident.

49. He explained that he was the physical intervention lead instructor for the Company, and whilst not all holds are always textbook, what the Appellant did, seemed to be nothing like any hold that he taught. It was dangerous, and with Young Person A doing very little in the way of provocation. He described the Appellant's actions as "*unacceptable*" and "*dangerous*".

50. Mr Parry confirmed that the Appellant had completed 'Physical Intervention' training on the 12th July 2018. The "Team Teach" training is a 12-hour course completed over 2 days. The training comprises the physical holds training, but most of the course is based on what an individual can do to try and avoid physical intervention. Team Teach is well known, well thought of training, where the emphasis is on reducing risk and reducing restraint and restriction

51. He thought that the Appellant, in relation to the Young Person A, should have sat down on the floor in the corridor opposite Young Person A and spoken to him calmly. He should have gone further down the corridor. He should not have pulled him. He did not think Young Person A was a threat. In relation to Young Person B he should have calmed him down. Young Person B had walked past him. He should have told him to stay away.

52. Mr Parry acknowledged that the Appellant was not an aggressive character. He believed that sometimes, the Appellant "lacked a presence". He was aware that the Appellant had worked in Child Care for 8/9 years. However, the incident that he had viewed on the CCTV was unacceptable. The young persons were vulnerable.

53. Mr Worley confirmed that he had worked with the Appellant for around 4 months. There had been no previous concerns. He, along with the Appellant had taken young persons from the Home on a holiday to Norfolk. It had been a positive experience and he had no concerns.

54. On the day of the incident, he had followed Young Person B up to the landing. He saw that the Appellant had engaged in a physical restraint on the floor with Young Person A. He brought Young Person A downstairs and taken him to the kitchen where he had spat out blood. He believed that the Appellant had been "*awfully awfully rough*" in the incident.

### **The Tribunal's conclusion with reasons**

55. We took into account all the evidence that was included in the hearing bundle and presented at the hearing. This includes the Appellant's and Respondent's evidence. It includes statements from Mr Ben Worley, Mr Anthony Parry and the statement of the Appellant. We also viewed the CCTV footage and took into account the police interview.

56. We wish to place on record our thanks to Mr Miles for his assistance at the hearing.



57. We would also like to thank the witnesses, Mr Parry and Mr Worley for their attendance at the hearing.

58. We reminded ourselves that the Tribunal considers the circumstances as at the date of its decision and the onus is on the Respondent to satisfy the tribunal that the relevant standard, namely the balance of probabilities was met.

59. We concluded that we would confirm the decision of the Fitness to Practise Panel. Our reasons for doing so are set out below.

60. We found the evidence of Mr Parry and Mr Worley credible and persuasive. Both recognised, with the exception of the incident on 23 September, that the Appellant's work with young people was positive and he was generally well liked. Furthermore, Mr Parry himself acknowledged that had it not been for the CCTV footage, he might not have believed the young people and did not anticipate taking any action against the Appellant.

61. We acknowledged that it was clear from the evidence of both witnesses that, save for the incident in question, there were no overall questions about the suitability of the Appellant. Mr Parry made it clear that the Appellant was not an aggressive character and did not generally "*jump into*" restraints. Mr Worley who had worked with him for four months had no other complaints or concerns. Furthermore, we were not made aware of any previous regulatory findings against the Appellant.

62. We also acknowledge that the Police investigated the matter and were taking no further action. We reminded ourselves that we were applying a different standard to any criminal proceedings. The relevant standard in these proceedings is the civil standard, namely on a balance of probabilities.

63. However, the question that we were asked to deal with related to the incident on 23 September 2018. We concluded that, whilst we recognise that we were not fully aware of all the circumstances leading up to the incident on 23 September 2018, the CCTV footage was clear and compelling.

64. We found that the Appellant had acted in an inappropriate and aggressive manner towards Young Person A by pulling him from a window sill, pinning him on the floor and pulling him back onto the floor when he attempted to escape. We also found that the Appellant acted in an inappropriate and aggressive manner towards Young Person B by pushing him and holding him against a wall by his neck

65. We acknowledge that whilst the CCTV footage does not have any audio, the footage clearly shows the incidents in question. The footage is concerning and shows the Appellant aggressively pulling back Young Person A's head or hair at a point when Young Person A bit or attempted

to bite the Appellant's hand. There was no indication that Young Person A was in any danger which might justify the sudden aggressive actions of the Appellant.

66. We considered the Appellant's position that he was justified in acting as he did to prevent Young Person A to prevent him from harming himself. We acknowledge that it is not clear from the CCTV footage the events which led up to the incident, nor, can we see what is happening behind the curtain. However, from the footage itself, we agreed with Mr Parry's assessment that there did not appear to be any threat of self-harm by Young Person A which would necessitate the action that was taken. We were persuaded by Mr Parry's assessment that pulling Young Person A from the window sill in such circumstances may have been more likely to cause injury.

67. We also acknowledged that the Appellant had been assaulted by Young Person B in April 2018. We acknowledged that the Appellant may have perceived that he was acting in self-defence, however, we concluded that, having viewed the footage, even if the Appellant had genuinely believed that he had to protect himself from being assaulted by Young Person B, he was only entitled to use a degree of force that was reasonable for the threat against him. In our view, the degree of force used by the Appellant towards Young Person B was excessive having regard to the distance that he pushed Young Person B along the corridor. We considered the Appellant's actions were excessive and disproportionate. Further, the Appellant did not appear to take any action to de-escalate the situation, and the incident involving Young Person B only appeared to come to an end when Young Person B left the corridor.

68. The Appellant was experienced and had completed a two-day course on physical restraint training. This was delivered by Mr Parry in the months before the incidents (July 2018). It was clear that the techniques used by the Appellant in both incidents, according to his fellow staff members including the trainer (Mr Parry) were "*not restraint techniques that the Appellant was taught*" and that they were in fact "*dangerous*" and "*unacceptable*" (Mr Parry). In Mr Worley's view the Appellant's conduct as "*awfully awfully rough.*"

69. Furthermore, we found that the conduct towards Young Persons A & B amounted to Serious Misconduct and this was so serious as to amount to an impairment of his fitness to practise.

70. We found that it amounted to a breach of the fundamental standards of social care practice and it amounted to a failure to meet the expected standards set out within the Code of Professional Practice for Social Care (Sections 2,3 and 5) and the Practice Guidance for Residential Child Care Workers.

71. Both these Young Persons were particularly vulnerable individuals who had experienced violence during the course of their upbringing. The

behaviour involved a violent incident. We found that this contravened the requirement to strive to establish and maintain the trust and confidence of individuals and carers (section 2), promote the well-being, voice and control of individuals and carers while supporting them to stay safe (section 3) and act with integrity and uphold public trust and confidence in the social care profession (Section 5). In our view, members of the public would be concerned about the use of violence by a care worker within a Children's Home.

72. Mr Parry made it clear that although the Home does not have young persons whose main need is emotional and behavioural difficulties, there were incidents such as this which had occurred. We also acknowledged that although Residential Child Care Workers such as the Appellant might sometimes face provocation they were expected to be able to resist such provocation when it arises

73. The Appellant was experienced. We acknowledge that the incident took place over two years ago. However, whilst we acknowledge the Appellant's explanation regarding the incident, there is no persuasive evidence presented before us as to what action the Appellant has taken to address the likelihood of repetition.

74. We concluded that having carefully considered the circumstances of this case, that the sanction of a Removal Order was appropriate and proportionate. This has been a careful balancing exercise and we were mindful of the length of time that the Appellant had been working without incident. We reached this conclusion after considering the available sanctions starting with the least restrictive.

75. We took into account the seriousness of the incident which had several aggravating features including the use of violence towards vulnerable young persons, the risk posed to and/or impact on the young persons and the lack of evidence of any insight or remorse. We acknowledge that it relates to a single event, nevertheless, the seriousness of the incident and unacceptable nature of the level of aggression demonstrated leads us to conclude that the most appropriate course of action is removal.

76. We did not consider, due to the seriousness nature of the incident, that it was appropriate to take no action or to impose a warning. Furthermore, in our view, a Conditional Registration Order was not considered to be appropriate given that it would be difficult to prevent a repetition of the loss of temper. In addition, this option is not practical as the Appellant has indicated that he is currently not in regulated work and does not plan to do so in the future.

77. We did not consider a Suspension order would be appropriate. We recognise we could make a suspension order subject to a review prior to the expiry of the order. However, the Appellant has not demonstrated any insight into or remorse for his actions and so the risk of repetition after the expiry of a suspension order remains. He has also indicated he is not

seeking to continue to work in this area. Accordingly, we do not consider that a suspension order would serve any useful purpose

78. Having considered all the circumstances, we considered that a Removal Order was necessary and proportionate to protect the public and the wider public interest.

79. We therefore concluded that we would dismiss the appeal and confirm the decision of the Fitness to Practise Panel made following a hearing on 7 October 2020 (as set out in the Notice of Decision dated 9 October 2020).

### **The Decision**

80. The decision of the Fitness to Practise Panel, made following a hearing on 7 October 2020 (as set out in the Notice of Decision dated 9 October 2020), is confirmed.

**Judge H Khan  
Lead Judge  
First-tier Tribunal (Health Education and Social Care)**

**Date Issued: 26 April 2021**