

First-tier Tribunal Care Standards

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

NCN: [2023] UKFTT 366 (HESC)
[2023] 4856.ISO-W

Heard by Video Link on 11 April 2023

BEFORE:

Ms Melanie Lewis (Tribunal Judge)
Ms Marilyn Adolphe (Specialist Member)
Ms Michele Tynan (Specialist Member)

BETWEEN:

Social Care Wales

Applicant

-v-

Dawn Price

Respondent

[2023] 4856.ISO-W

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 Dawn Price ("the Respondent") on 21 October 2021 for a period of 18 months until 20 April 2023, to be extended for 6 months until 20 October 2023.

The Hearing

2. The hearing took place on 11 April 2023. This was a remote video hearing which has not been objected to by the parties. The documents that we were referred to are in the electronic hearing bundle (308 pages) provided for the hearing. In accordance with its usual practise, the Tribunal had fully read the papers in advance. We used the oral hearing to amplify issues, in particular why the case had still not been concluded and a realistic timetable for disposing of it.

Attendance

3. The Applicant was represented by Mr. Miles, Solicitor. Blake Morgan LLP instructed by Social Care Wales (SCW). Its sole witness was Ms Clare Lane the Senior Holding Officer (SCW), who we clarified had taken over the case since September 2022.

4. The Respondent did not attend nor was she represented. She has had no active engagement in this case since attending the Interim SCW Orders Panel on 21 October 2021. She was legally represented on that occasion. An Interim Suspension was imposed for 18 months, and it is the extension of that that this tribunal must now consider. The SCW Interim Suspension Panel (ISP) have no power to extend the suspension beyond 18 months. That is why they had to make the application to the Care Standards Tribunal (CST). She had not filed any Response or attended at the telephone case management hearing before Judge Khan on 16 March 2023 (G10 Bundle), so continued with her non engagement.

Preliminary Issue

5. The panel were due to meet at 9 am to test connections and in accordance with its usual practise, discuss the issues in the absence of the parties. At 8.20 am the CST administrator forwarded two emails sent over the Easter weekend by Ms Price, so outside normal business hours and only picked up before 9 am on the first day back, as the administrator works flexibly. The first email was sent from her phone by Ms. Price on Saturday 8 April 2023 at 23.21 pm simply saying "What is this about?" with no signature. The second was sent on Sunday 9 April 2023 at 8.20 pm asking for an adjournment as her father had passed away. No further detail was given.

6. The administrator asked for instruction on how to respond and the panel agreed that the Judge should draft a brief response explaining how the proceedings came before the CST Tribunal and that the application for an adjournment would be considered at the hearing. That was sent out at about 9.30 am and it was confirmed to the panel at 9.40 am that it had been sent to Ms. Price. No other communication was received. In all the circumstances, particularly Ms. Price's lack of engagement we started at 10 am.

7. Mr Miles objected to an adjournment. Whilst he had no reason to dispute that Ms. Price's father had died, there was no detail given of when this had happened or why this prevented her lack of any engagement in these proceedings or attending the hearing. It could not explain her complete lack of engagement both with SCW since the ISO Order panel on 21 October 2021, with no engagement with the review hearings on 19 April 2022 and 17 October 2022. The last contact she had with SCW was a telephone call on 25 February 2022. She was not disputing that she had received notice of this current application which had been sent to her by both SCW and CST Tribunal.

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. In making that decision we had firmly in mind the duties set out in rule 2, the 'overriding objectives' which is to enable the Tribunal to act fairly and justly, so that the parties can participate fully in the proceedings and to avoid delay so far as is compatible with proper consideration of the issues. Our reasons for doing so are set out below.

9. We were satisfied that the Respondent was aware of the hearing (notifications sent on 13 February 2023 and the Order of Judge Khan setting this hearing date on 16 March 2023. The Notice of Hearing giving the video link was sent on 6 April 2023, but she was aware of the hearing date well before then. There has been no explanation for the Respondent's absence nor was there a request for a postponement of the hearing. No evidence or update on her position had been provided. At the ISO hearing in October 2021, it appeared that she did not wish to return to work in the social care field and had taken work in a factory.

10. We concluded Ms Price had been given an opportunity to attend the hearing and put in any evidence that she wished to do so. Ms Price has had reasonable time to ask any questions she had about the proceedings or otherwise of both SCW or the CST tribunal administration. She is under a duty to co-operate with the Tribunal to conclude the proceedings in a timely manner and her late emails sent out of normal business hours were a very late and minimal engagement. It was only chance that they had been seen and forwarded to the panel, as the high volume of work usually means a delay of some days in being able to action emails.

11. The additional challenge in this case was that the interim suspension order was due to expire on 21 April 2023 and the matter had to be heard and determined by that date.

12. The Tribunal indicated at the start of the hearing that it was concerned that this case had taken so long to conclude when it concerned one allegation and when Ms Price had not denied dragging a child by the foot down a corridor. We had in mind that whilst she might not wish to work in social care again, this matter was hanging over Ms Price. A suspension should always be for the shortest period necessary. We wanted to be sure it could be concluded within the next 6 months and what steps would have to happen before deciding if the case would be put before a full Fitness to Practise Panel to decide if Ms Price should be removed from the Social Care Register. We also clarified that an option might be for Ms Price to ask to be removed voluntarily from the Register. That could only happen on an agreed set of facts.

13. Having taken that focussed approach and having carefully read the full bundle in advance, the hearing concluded at 10.46 am. Whilst they were deliberating the panel were sent an email from the CST administrator at 10.48 am that she had just taken a telephone call from Ms Price and that she was going to join the hearing. We considered whether we should attempt to re-open the hearing and try to re-call the solicitor and witness. We concluded that Ms Price had for the reasons stated had a full opportunity to attend. We had in mind she was a litigant in person but the paperwork is clear as to what these proceedings were about. Her lack of engagement was stark. The Tribunal had taken a fully proactive approach and put the questions that she might reasonably have put. As we set out further below, this is not a final hearing and the issues for us are limited. Whilst she may have wanted to give her version of events, we are not here to decide the facts of what happened.

The Applicant

14. 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

15. The Respondent registered with SCW as a Registered Child Care Worker on 8 November 2021. She was most recently employed by Orbis Education and Care as a Support Worker at Ty Coryton Children's Home.

Events leading to the Interim Suspension Order

16. The events leading up to the suspension are set out in the case summary and witness statements.

17. On 4 May 2021, a referral was made to the Applicant by her employer which stated that the Respondent had been suspended pending investigation of an allegation in the children's home when it was said she had dragged a child by the leg down a corridor. The matter was also to be referred to the Police. However, it was confirmed on 21 October 2021 that no criminal charges were to be brought.

18. By email dated 2 September 2021 SCW was notified that the Appellant had been dismissed. An appeal followed and by email dated 5 October 2021 SCW were notified that the decision was to be overturned and that Ms. Price would be reinstated with a final written warning.

19. A decision was also made to refer the matter to the Disclosure and Barring Service who confirmed on 23 August 2022, that she had not been added to the barred list.

20. Suffice to record the child concerned had very complex needs, including severe learning difficulties, a diagnosis of Attention Hyperactivity Dis-Order and a chromosomal anomaly with a disruptive childhood. He was to be staffed at a 2 to 1 level but the papers suggest that the staffing level was significantly below this at the time of the incident. It is alleged that the Respondent grabbed the child to get them out of his room, which they were refusing to leave.

21. Ms Price taking him by foot into the corridor was caught on CCTV camera. Other staff members present were concerned about the physical intervention technique used by her as they thought it was inappropriate. An issue in the case is that the Respondent asked the partner of one worker if they were likely to say what she had done and was told they would.

22. On 21 October 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. This was upheld on two reviews.

The Applicant's position

23. The Applicant's position is that the Applicant has now obtained witness statements from six witnesses and seeks a six-month extension to enable the Applicant to consider removal from the Register. If that is the decision, it will then be listed before a Fitness To Practice panel and proceed to a final hearing.

24. In her oral evidence, Ms Lane further explained that there had been delay in getting an agreed final statement and appendices from Dan Collis who was the Manager and Ms Price's supervisor at the material time. It was only about when she came into post that SCW were made aware by Orbis that he was suspended, explaining why calls to his work number were not answered. His engagement was helpful but erratic. It could be hard to get hold of him. Documents that were relevant were not forthcoming or were then found not to be available. The draft statement and appendices have now been sent on 3 April 2023.

25. The next step would be a Pre Hearing Review and if a decision to remove Ms Price from the Register was made, charges would be drafted. This would be reviewed in July 2023 and she was confident that if the matter proceeded to a full Fitness to Practise Panel and this could happen by September 2023.

The Respondent's position on the Application

26. The Respondent has not filed a response to these proceedings.

The Legal Framework

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

The Tribunal's conclusion with reasons

35. We took into account all the evidence that was included in the hearing bundle and presented at the hearing. We must not simply 'rubber stamp' the application and as we have set out, took active steps to probe the evidence and in particular the reasons for delay.

36. 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 must consider the criteria as that were 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. 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. We had to consider whether there is sufficiently strong evidence to support the decision to extend the Interim Suspension Order.

37. The Tribunal's role in the appeal is not to make any findings of fact. However, 'what happened' in this case concerns one incident, which is not denied. The issues around the handling of the child have been accepted by Ms Price as inappropriate. However, there is also concerns about asking if other staff were likely to raise what they saw or keep quiet, in the context of a Children's Home about which we read, there were wider concerns. We had to consider whether there is sufficiently strong evidence to support the decision to extend the Interim Suspension Order.

38. Mr Miles in his closing remarks sensibly in our view, acknowledged that this case had dragged on. However, we were reassured that since she took over the case in September 2022, Ms Lane has pushed to bring it to a conclusion. We had no reason to doubt her evidence in relation to the difficulties that she had experienced in getting hold of Mr. Collis. His evidence will be key as he was the Manager and Ms Price's direct line manager on the day the incident occurred and was on duty on that day.

He took the initial statements which may be very relevant as there are some discrepancies in what Ms Price said to SCW and to the Police.

39. We took into account Ms. Lane's evidence that a review would take place in the next few weeks and a decision made if the case would proceed to an FTP Panel which should take place by September 2023 at the latest. That timetable appears realistic. 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.

40. The relevant Regulations will allow Ms Price time to respond should she wish to do so. We express a hope that she now understands that in the context of formal proceedings she needs to do something, even if only to say that she wishes to not take any active part.

41. The Respondent has elected not to participate in these proceedings other than a very late intervention, which did not suggest a serious engagement. We carefully considered her circumstances as set out in the hearing bundle. She appears to be working outside social care with no stated wish to return to the sector. We have as stated kept firmly in mind that she is likely to be concerned to have this matter hanging over her and want closure. However, this is not a final hearing and she will have other opportunities to make her case.

42. If she does wish to re-engage, she will have a full opportunity to do so and to challenge any decision to remove her from the Register. She has the option of exploring a Voluntary Removal from the Register with SCW, but that will only happen if she can agree a factual basis to do so. SCW will as Mr Miles pointed out, consider that she could apply to be re-instated without any time limit. If removed from the Register by the FTP Panel, she cannot apply again to be reinstated for 5 years.

43. 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.

44. We took into account matters such as the gravity of the allegation which is serious and that an inappropriate method of restraint was used on a vulnerable service user, their very complex needs and the reasons why they were not living with their family but in an environment for children with high dependency needs. The correct ways to care and support them were set out in their detailed Care Plan. The evidence is strong. The reasons why the case has not been concluded to date caused us some concern, but we are satisfied that SCW are now pressing to bring the case to a resolution.

45. The use of the restraint method is said to have been considered inappropriate by the Respondent's own colleagues. We concluded that if the behaviour were to be repeated, then that is a serious prospect of risk to service users. We also concluded that it is apparent that there is a present risk of this continuing.

46. 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.

47. In reaching our decision, we considered any prejudice/hardship to the Respondent of any interim suspension order continuing. Whilst we have taken into account the Respondent's position as of October 2021 that 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. 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.

48. We, therefore, taking in account all the circumstances, concluded that it was both necessary and proportionate for the interim suspension order made on 22 October 2022 to be extended until 20 October 2023.

49. 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

The application to extend the order dated 21 October 2021 and which is due to expire on 21 April 2023 shall be extended for 6 months until 20 October 2023.

Tribunal Judge Melanie Lewis

First-tier Tribunal (Health, Education and Social Care)

Date Issued: 13 April 2023