

# First-tier Tribunal Care Standards

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

2024-01183.ISO-W

Neutral Citation Number: [2024] UKFTT 00742 (HESC)

Heard by Video Link on 15 August 2024

Before  
Mr H Khan (Judge)  
Dr E Yeates (Specialist Member)  
Ms D Rabbetts (Specialist Member)

**BETWEEN:**

**Social Care Wales**

**Applicant**

-v-

**Richard James McDonagh**

**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 order made against Mr Richard James McDonagh ("the Respondent") made on 22 February 2023 for a period of 18 months to be extended or further extended by 6 months until 21 February 2025.

## **The Hearing**

2. The hearing took place on 15 August 2024. The hearing took place by video. The documents that we were referred to are in the electronic hearing bundle (284 pages) which was prepared by the Applicant for the hearing.

## **Attendance**

3. The Applicant was represented by Ms C Rawle. Its sole witness was Ms C Lane, Senior Fitness to Practise Officer (Social Care Wales).
4. The Respondent did not attend.

### **Preliminary Issue**

5. We heard submissions from Ms Rawle and considered whether we should proceed in the Respondent's absence.
6. The hearing was listed to start at 10am but started at 10:20am to allow the Respondent or his legal representatives time to dial into the hearing. There had been no explanation for the Respondent's non-attendance nor had there been any application for a postponement/adjournment.
7. Ms Rawle submitted that the Tribunal should proceed in the Respondent's absence. The Respondent had not engaged with any of the proceedings. Ms Lane confirmed that the email address provided on the application form was the correct email address for the Respondent.
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 23 July, 5 & 13 August 2024) and that it was in the interests of justice to proceed with the hearing.
10. We noted that the Respondent had not engaged in these proceedings and no evidence had been provided in response to the order dated 23 July 2024. The Respondent had also not participated or engaged with the Interim Orders Panel at any stage.
11. We noted that the Respondent was under an obligation to cooperate with the Regulator. The Respondent had elected not to engage in these proceedings or to cooperate with the Regulator.
12. The additional challenge in this case was that the interim suspension order was due to expire on 21 August 2024 and the matter had to be heard and determined by that date.
13. In any event, even if we had been minded to adjourn to a later date, there was no reason to suggest that the Respondent would attend. The history of non-cooperation would suggest that there was a likelihood that the Respondent would not attend any future hearing.

14. We concluded that having considered all the circumstances of the case, it was appropriate to proceed.

### **The Applicant**

15. 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**

16. The Respondent was registered by the Applicant as a Residential as a Child Care Worker on 19 April 2022.
17. He was previously registered in 2017 before being removed on 11 September 2018 when he failed to renew his registration.

### **Events leading to the Interim Suspension Order**

18. On 9 May 2022, the Respondent was referred to the Applicant by North Wales Police. The referral states that, on 28 April 2022, it was reported to the Applicant that, on two separate occasions on 1 and 8 April 2022, the Respondent threw liquid on a vulnerable 17-year-old male with learning difficulties who is non-verbal. The young person was under the care of the Respondent at the time.
19. The Applicant made an application to an Interim Order Panel (IOP) for an interim order. On 22 February 2023, an IOP met to consider Applicant's application. The IOP determined that an Interim Suspension Order should be imposed for a period of 18 months on grounds that such an order was (1) necessary for the protection of the public, and (2) otherwise in the public interest (the Order).
20. On 21 August 2023 and 19 February 2024, the Order was reviewed by an IOP and it was determined that it should remain in place.
21. The existing Interim Suspension Order will expire on 21 August 2024.
22. The Applicant now seeks a 6-month extension of the Interim Suspension Order until 21 February 2025. The purpose of the extension is to enable the Applicant, which has completed its investigation, to take the matter to a Fitness to Practice Hearing.

### **The Respondent's position on the Application**

23. The application was lodged on 22 July 2024. The application states the following;

“...Please accept our sincerest apologies for the short notice of this application. The application was originally submitted on the 20 June 2024, however we received correspondence from you indicating that you could not open the attached evidence. Unfortunately, due to an error our end, where it believed this information had already been sent to you, this information is only today been sent forward to you. Again our sincerest apologies for this...”

24. Due to the timing of the application, the response timescales had to be reduced from the usual timescales in order to deal with the application before the interim suspension order expired. The order dated 23 July 2024 made provision for the Respondent to object to the revised timescales but no objection has ever been received from the Respondent.
25. The Respondent has not engaged with this application and has not provided a substantive response to the application or any evidence.
26. The Respondent's position as set out in the notes from the disciplinary proceedings at his previous employer, is that he denies the allegations.

#### **The Issues to be determined.**

27. The issue to be determined was whether the interim suspension order imposed on 22 February 2023 for a period of 18 months should be extended beyond 21 August 2024.

#### **The Legal Framework**

28. 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.
29. 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.
30. 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.
31. 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.

32. 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.

33. 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.

34. 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.

35. 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' (the 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, Section 6 of the Guidance relates to applications for interim orders and includes general principles to be taken into account by an Interim Orders Panel.

36. 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). The Applicant has also prepared practice guidance for each category of social care worker. This includes practice guidance entitled 'The residential child care worker'.

37. Under section 148 of the Act, SCW may apply to the Tribunal for an interim order to be extended or further extended.

38. 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, the interim suspension order with an interim conditional registration order,
- (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.

39. The onus of satisfying the Tribunal that the criteria was met falls on the Applicant and that the relevant standard is a civil standard, namely on a balance of probabilities.

### **Evidence**

40. 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.
41. Ms Lane had provided a witness statement. Ms Lane confirmed that the Police had closed their investigation as the young person and his parents did not want any further action.
42. Ms Lane acknowledged that there had been some delays in the matter being dealt with. These delays included delays in getting the statements from those who witnessed the incidents, witnesses missing interviews and having to chase up signed witness statements. Furthermore, one of the challenges included dealing with the Outcomes First Group, the Respondent's employer at the time of the alleged incidents, making a decision to close all care and educational establishments in Wales.
43. Ms Lane also accepted that there may have been some delays on the part of the Applicant. This was due to the pressures of work and the increase in caseload.
44. Ms Lane explained that an extension of the order was sought in order to enable the Applicant to secure any additional signatures on a witness statement, disclose case evidence to the Respondent and, if appropriate, refer the case for hearing before a Fitness to Practise Panel and for that hearing to be concluded.
45. Ms Lane considered that an interim suspension order was both necessary and proportionate. Ms Lane acknowledge that the Respondent was "very skilled" had a good reputation for dealing with the young person in question. She described him as a "young person whisperer". However, the allegations were serious and given the Respondent's reputation, she found it difficult to understand his alleged actions. Ms Lane stated that it was also very hard for her to see that the Respondent did not know of the young person's fear of water.

### **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. This includes the evidence relating

to the Interim Orders Panel. We have summarised the evidence insofar as it relates to the issues we determined.

47. We wish to place on record our thanks to Ms Rawle and Ms C Lane 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 or further extended. This means that it has to consider the criteria as that considered for the original interim order, namely, whether it's 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'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.
50. The Tribunal is considering the appeal on 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.
51. We found the evidence of Ms Lane to be fair, reliable and credible. Ms Lane, very fairly, accepted that there had been delays in dealing with the matter. These delays included internal and external delays. For example, there were delays in getting witness statement from the Respondent's previous employer. Ms Lane also very fairly acknowledged the delays on behalf of the Applicant but explained that these were due to the pressures of work and demanding priorities. On the whole, we found her evidence to be very fair and balanced. For example, she gave the Respondent credit by describing him as being "very skilled" and setting out that his previous colleagues considered him as a "young person whisperer".
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. We also considered the case of the *General Medical Council v Dr Stephen Chee Cheung Hiew* [2007] EWCA Civ 369,
53. We concluded that we were satisfied that an interim order was necessary for the protection of public and in our view otherwise in the public interest.
54. We acknowledge that these are only allegations at this stage and that the Respondent denies all the allegations as set out in the disciplinary papers in the hearing bundle. We acknowledge that the Respondent had a reputation of being "very skilled" and being able to deal with this young person. We have also taken into account that the young person in his family did not want any further action to be taken and the end of the police investigation.

55. However, in our judgement, the allegations are very serious and relate to the Respondent's behaviour towards a vulnerable user of care and support which it is alleged caused distress which went against directions set out in the user's care plan. The allegations also involve the use of one thing that the young person feared above else, water. The allegations also relate to incidents on two separate occasions.
56. Furthermore, it is alleged that as a direct consequence of the Respondent's actions, the young person responded by kicking out, breaking items and attempting to bite electric wires. These actions had the potential to cause severe physical, emotional and psychological injury to the young person and others. The nature of the allegations present a direct risk to other vulnerable users of care and support.
57. In our judgement we consider that the allegations are too serious for an Interim Conditional Registration Order. There are no practical conditions that could be attached to the Respondent's registration that would mitigate the risks in this case given the lack of information about the Respondent's current whereabouts or employment status.
58. We considered the reasons as to why the case has not been concluded to date. These reasons relate to both external and internal factors from the Applicant perspective. Ms Lane's own evidence acknowledged that some of the delays were due to resource issues with the Applicant. We placed great reliance upon the assurances given to us by Ms Lane that this matter would now proceed and be dealt with as soon as possible. We acknowledge Ms Lane's evidence that this could now involve taking steps to proceed to a Fitness to Practice hearing. We had no reason to doubt her evidence that any such hearing could take place and be completed before the end of this year. We would hope and expect that any such process would be completed by the end of the extension period.
59. In reaching our decision, we took into account any prejudice/hardship to the Respondent of any interim order continuing. We acknowledge that the imposition and subsequent extension of an interim order could potentially cause hardship to the Respondent and the duration of the order to date. However, the Respondent has not engaged with the Applicant or the Tribunal. Whatever limited information there was in the hearing bundle about the Respondent we took that into account.
60. We therefore concluded that having considered all the circumstances of the case, the interim order made on the 22 February 2023 shall be extended until 21 February 2025 and that it was both necessary and proportionate to do so.
61. 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.

62. 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 are not expressing any views on the merits of case against the Respondent.

## **DECISION**

The application to extend the order dated 22 February 2023 and which is due to expire on 21 August 2024 shall be granted and the interim order shall be extended until 21 February 2025.

**Judge H Khan**

**Lead Judge**

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

**Date Issued: 19 August 2024**