

Statutory manager in protective role

The appointment of a statutory manager for IDEA Services and Timata Hou is a protective move to allow the companies to keep operating.

The Government appointed Sir John Anderson as statutory manager at the companies' request because they face a potential \$176 million liability in the 'sleepover' case. It is the first time in New Zealand that statutory management law is being used in this way – to protect the companies until the uncertainty is cleared up.

Sir John Anderson will manage both companies while court proceedings continue to resolve the argument over the payment of support workers who sleep in homes at night.

The Employment Court has ruled that support workers should be paid an hourly rate rather than the allowance they are now paid. The 'sleepover' case is due to go to the Court of Appeal before the end of the year and it may uphold the earlier decision.

The Employment Court decision leaves IDEA Services and Timata Hou liable for back pay as well as an extra \$30 million a year in wages. The two companies do not have the money to meet these costs and the Government has turned down a request to guarantee payment if the Court of Appeal backs the Employment Court.

IDEA Services and Timata Hou cannot legally continue in business when they do not have the money to cover the potential debt. So the directors of both companies have chosen the best way forward to make sure services continue until the issue is settled. The appointment of a statutory manager means that Timata Hou and IDEA Services can continue to operate legitimately.

"This is an extraordinary situation that requires a unique yet pragmatic approach," Sir John said. "It's business as usual for the staff and people supported by IDEA Services and Timata Hou. The sleepover case is going through the court process and until that is complete it is unclear what the solution will be."

"Both IDEA Services and Timata Hou have been managed honestly and competently. There has been no mismanagement. They are a victim of an Employment Court decision that will have implications for any organisation that employs sleepover staff. The size of our services means the impact for them is greater than it is for others in the sector," he said.

Sir John said that his top priority is to ensure that the nearly 6000 people with intellectual disability supported by IDEA Services and Timata Hou experience no disruption to their daily lives.

"Staff are competent and hardworking and I know that they will do whatever they can to keep things running as normal for the people they support," said Sir John.

IHC New Zealand chief executive Ralph Jones says that IHC will work with the Government and the community sector to find a solution to the massive debt the sector faces as a result of the Employment Court decision on sleepovers.

The directors of IDEA Services and Timata Hou will be appointed to an advisory committee to assist during the statutory management process. Members will be Donald Thompson (IHC National President), Shelley Payne (IHC Vice President) and Ralph Jones.

IDEA Services and Timata Hou will be under statutory management until the Court process is complete and the Government decides its course of action. It is hoped that will be for a few months, but it could be for more than a year, depending on how fast the courts deal with appeals.

If subsequent courts reverse the Employment Court decision there would be no reason for continued statutory management. Sir John would resign when the government revoked statutory management and the advisory committee would resume control as directors in the ordinary way.

Sir John Anderson KBE is well known in community and business circles. He is chairman of PGG Wrightson, Television New Zealand, the New Zealand Venture Investment Fund and the Wellington Regional Strategy Committee. He is a former Commissioner of the Hawke's Bay District Health Board and serves as a director of Commonwealth Bank of Australia and the Wellington Regional Stadium Trust.

Sir John was formerly chief executive of the ANZ National Bank until his retirement in 2005, chairman of New Zealand Cricket, New Zealand's representative director on the International Cricket Council and chairman of the New Zealand Sports Foundation. He was knighted in 1994.

Court challenge rests on meaning of 'work'

IDEA Services staff – and many other workers in similar sectors – get paid an allowance for doing a sleepover.

Staff do not get paid an hourly rate when they are asleep unless they are required to get up during the night.

Late in 2007, IDEA Services community support worker Phillip Dickson, supported by the Service and Food Workers Union, claimed he should be paid the minimum hourly rate for the sleepover period.

The issue went to the Employment Relations Authority and in order to make a decision, the Authority had to decide whether Phillip was working when doing a sleepover. The question was raised in terms of the Minimum Wage Act.

The Authority decided in favour of Phillip and said 'yes', he was working when he did a sleepover. The Employment Court backed the ruling.

IDEA Services and many other employers disagree with the decision for a number of reasons. Among these is the question of how can a person who is asleep be working?

The court says a sleepover is work because a support worker's time is restricted during sleepover hours. For example, during a sleepover staff:

- may not leave the home without permission of a supervisor and a relief worker being available and present
- must be readily available to be woken to respond to any incident in or around the home. This means they may not sleep behind a locked door
- may not consume or be affected by alcohol or other drugs
- may not have visitors without the permission of a manager and the service users in the home
- may not engage in any activity that disturbs service users during the night.

There is also the major issue that IDEA Services are not funded to pay the minimum wage for sleepovers.

If IDEA Services has to pay staff the minimum wage for sleepovers, it will cost around \$30 million a year instead of \$8.5 million for the allowance.

In addition to this, it's possible that IDEA Services would be required to pay 'back pay' for the past six years, which will cost around \$176 million, including interest.

How the 'sleepover' case unfolded

Late 2007 – IDEA Services Community Support Worker Phillip Dickson, supported by the Service and Food Workers Union, files a case with the Employment Authority saying that he should be paid the minimum hourly rate for sleepovers.

September 2008 – The Employment Authority rules in favour of Mr Dickson.

October 2008 – IDEA Services appeals the Employment Authority's decision to the Employment Court.

July 2009 – The Employment Court rules that disability support workers are working when doing 'sleepover' shifts and should be paid the minimum adult wage for that time.

December 2009 – In a second ruling, the Employment Court says employers cannot apply an "averaging" calculation over a weekly, fortnightly, monthly or seasonal pay period – and that the minimum wage must apply on sleepovers.

January 2010 – IDEA Services appeals the Employment Court decisions to the Court of Appeal.

June 2010 – The Court of Appeal agrees to hear an IHC appeal against the Employment Court's decision that 'sleepovers' are work and should be paid at the minimum rate of \$12.75 an hour as per the Minimum Wages Act.

October 2010 – the Court of Appeal hearing is scheduled for the end of October. A decision is expected by the end of the year.