



Neutral Citation Number: [2023] EWHC 1041 (Admin)

Case No: CO/1436/2023

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**SITTING IN LEEDS**

Wednesday 3<sup>rd</sup> May 2023

**Before:**

**MR JUSTICE FORDHAM**

**Between:**

**SOCIAL WORK ENGLAND**

**Claimant**

**- and -**

**MOHAMED SANNOH**

**Defendant**

-----  
-----  
**Matthew Edwards** (instructed by Capsticks LLP) for the **Claimant**  
The **Defendant** did not appear and was not represented

-----  
-----  
Hearing date: 3.5.23

Judgment as delivered in open court at the hearing

-----  
**Approved Judgment**

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment remote hearing.

**MR JUSTICE FORDHAM:**

Introduction

1. By a claim issued on 20 April 2023 the Claimant (“SWE”) seeks a 9 month extension to 8 February 2024 of an Interim Conditions of Practice Order (“iCOPO”) originally imposed on 11 May 2021. There have been a number of ‘Review Panel Hearings’, at which it has been assessed that continuing the iCOPO is necessary. In the High Court, a 10 month extension was granted by consent on 28 April 2022; and a 2 month extension was granted at a hearing by Deputy High Court Judge Ward on 6 March 2023. That was a hearing at which the Defendant appeared remotely, as is recorded in a recital. The position at that time was that the Fitness to Practise Hearing in this case was scheduled to take place on 17 April 2023. Unless extended by me today the iCOPO will expire on 9 May 2023. This Court’s power to extend the iCOPO derives from paragraph 14 of Schedule 2 to the Social Workers Regulations 2018. The Court of Appeal’s guidance in GMC v Hiew [2007] EWCA Civ 369 at §§28 and 31-33 is applicable. The onus is on SWE to demonstrate the necessity of the extension, the nature of the interim order being extended, and the duration of the extension. The necessity test which the Court applies is the same as is applicable in the imposition of an interim order by Adjudicators. That is, so far as the present case is concerned, necessity for the protection of the public and/or public confidence. I can take into account matters such as the gravity of the allegations, the nature of the evidence, the seriousness of the risk of harm, the reasons why the case has not been concluded, and the prejudice to the practitioner. I am assessing risk and not making findings of primary fact, or deciding or expressing a view about the merits of underlying allegations, unless I can clearly see that the case against the practitioner has little merit.
2. The present position is that the Fitness to Practise Hearing which commenced on 17 April 2023 had to be adjourned. A number of interrelated reasons meant it was “in the interests of justice” to adjourn the case. It was directed that the case will now be fixed for hearing, on a date not earlier than August 2023, with an allocation of an increased 8 day hearing slot. The circumstances and reasons for the adjournment are all set out in the reasoned Determination of the Fitness to Practise Panel who made that adjournment decision. This means that the completion of the underlying proceedings, which was within near reach when Judge Ward gave the two month extension on 6 March 2023, has not proved possible consistent with fairness and the interests of justice. I am satisfied that this was for good and legitimate reason, and indeed not only in the interests of justice but the Defendant’s own interests.

Defendant’s Position

3. The Defendant is in Sierra Leone where he is currently caring for relatives. In February 2023 he had notified his intention to attend the Fitness to Practise Hearing remotely, from Sierra Leone. When that Hearing commenced on 17 April 2023 he did attend remotely. By Order dated 25 April 2023, I gave SWE permission for this claim (for an extension of the iCOPO) and the supporting papers to be served (a) by email and (b) out of the jurisdiction. I am satisfied that the papers were sent to the Defendant by email on 25 April 2023 and have duly been served. Pursuant to my Order, the Defendant had until 12 noon UK time yesterday 2 May 2023 to file with the Court any Acknowledgement of Service of the claim, if he wished to participate at

this hearing. No Acknowledgement of Service was filed with the Court. There has been no consent from him for the extension sought or any extension. I have been able to see and consider the substance of what the Defendant previously wrote and said about the iCOPO being made and then maintained. In my judgment it is appropriate to proceed on the basis of treating the application as being controversial and resisted. The Defendant attended the original hearing on 11 May 2021, and I have seen the Adjudicators' description in their reasoned Determination of the submissions that he made on that occasion. At one of the Review Hearings, namely on 13 April 2022, he again appeared and again I have seen the Panel's description in its reasoned Decision of what he said on that occasion. In his submissions summarised in May 2021 the Defendant had made clear that the underlying allegations in this case are contested on their merits; he observed that it was ironic to impose an interim order against his practice, supposedly to protect the public, with the consequence of restricting his ability to act as a Social Worker protecting the public; he submitted that his practice was not impaired, that an interim order was unnecessary and unfair and that there was no compelling justification for it. At the April 2022 Review Hearing his submissions included that employers would not employ him with interim conditions against him; that he contested the underlying merits; and he reiterated that an interim order was not necessary as he is not a risk to service users or the profession. I have assumed in his favour that he would want this Court to examine carefully the question of an extension having regard to the points of the same nature as those which he has previously made and maintained.

#### Remote Participation from Overseas

4. One of the issues which had arisen in the April 2023 Fitness to Practise Hearing concerned the question of allowing the Defendant to "give evidence from overseas" at a "remote hearing". Reference was made to the decision of the Upper Tribunal in SSHD v Agbabiaka [2021] UKUT 00286 (IAC).
5. The "taking of evidence" from abroad by a tribunal or court is the subject of particular rules. In civil courts there is Civil Procedure Rule 32.3, Practice Direction 32 Annex 3 and a Practice Note of 11 May 2021. A good working illustration is Deutsche Bank AG v Sebastian Holdings Inc [2022] EWHC 1555 (Comm). During the pandemic and under the temporary legislation previously in force, participation and observation from overseas was addressed in cases like Huber v X-Yachts (GB) Ltd [2020] EWHC 3082 (TCC). Recent Court of Appeal cases on receiving "evidence from overseas" include the criminal case of R v Kadir [2022] EWCA Crim 1244 [2023] 1 WLR 532 and the tribunal case of Raza v SSHD [2023] EWCA Civ 29 (see in particular §76).
6. In the present case, at my direction in my Order for service-out, SWE have filed very helpful written submissions by Mr Matthew Edwards, addressing whether a Court Order would be necessary if the Defendant had wished to observe this hearing and/or to make submissions from Sierra Leone. Those submissions convincingly distinguished between the "taking of evidence" – with its special rules and diplomatic and other implications (see Kadir §§33, 36) on the one hand, and the observation of proceedings including the making oral "submissions" on the other. That distinction is clearly seen in Agbabiaka at §23. SWE's position is that this Court has ample power, that a specific or prior Order is unnecessary, but that if an Order is necessary this Court could grant one in order to hear from the Defendant. I agree with that analysis.

7. Had the Defendant filed the necessary Acknowledgement of Service in accordance with my Order, and had he sought to be heard orally at this hearing by way of submissions, the question would then have arisen as to whether I had that power to permit that course, and whether a specific Court Order was necessary.
8. I was and am satisfied that the Court does have that power, and that I could simply have given permission at the hearing itself. This means that it was lawful for me to have heard the defendant social worker in a case like SWE v Rose [2023] EWHC 992 (Admin). I am satisfied that a suitable direction could (and would if sought) have been in the interests of justice, in all the circumstances of the case; to ensure that this was a fair and effective hearing for both parties; in circumstances where the Defendant is a party and is defending the Claim; where the Claim for the extension has necessarily been brought at short notice; where the Defendant is overseas for a given, and on the face of it good, reason; where the Court has made an Order for service on him out of the jurisdiction; where the position of all parties would have been elicited with no objection being taken; where the importance and implications as to not recording, videoing, screenshotting or photographing could and would clearly have been explained at the hearing; having regard to the Court's case-management powers and the overriding objective. I would have had close regard to whether the Defendant – who is unrepresented and in person – was making “submissions”, or seeking to provide “evidence”; and if “evidence” I would have considered carefully whether to require a document from him rather than an oral statement or assertion.

#### Defendant's Absence

9. In the event, the position was as follows. Having been sent the link for this hearing by my clerk, the Defendant has not appeared. Nor has he communicated to the Court or to SWE a wish to observe this hearing or make submissions at it. I was and am satisfied of the appropriateness, in the interests of justice and the public interest, of proceeding today in the Defendant's absence. I am satisfied that there is no unfairness, and that he could have appeared as he has at other and recent remote hearings, as well as filing an Acknowledgement and placing any written submissions or observations, or for that matter evidence, before this Court for today. He has not. In those circumstances, the question of the Court's powers has become academic.

#### Assessment

10. As recently as 6 March 2023, Judge Ward in this Court was satisfied that the continuation of the iCOPO met the test of necessity. Having considered afresh the position today, and in the current circumstances, I am satisfied for my part that SWE has discharged the onus of showing that it is necessary, for the protection of the public and public confidence, that the iCOPO be maintained while the proceedings continue to their completion. The nature of the underlying concerns (allegations) is as follows. What is raised is that, in 2019 while working as a registered social worker for a local authority: (i) the Defendant gave his manager cause to believe that he had completed visits that he had not completed; (ii) he misled his manager regarding his whereabouts during working hours; (iii) he failed to safeguard an adult in need of care and support; (iv) he did not complete assessments and reviews in a timely manner or at all. What is also raised is that (i) and (ii) were dishonest. I agree with the assessment of the Interim Orders Panel recorded at the latest review in November 2022: this is alleged conduct which is serious; its alleged nature is not isolated; if proved it stands to have

placed vulnerable service users at risk of harm; and dishonesty is by nature something striking at the heart of core social work values. I recognise, and record, that the Defendant denies the entirety of the allegations and has provided an alternative account. He may be vindicated when the proceedings have been completed. But it is not my role, and I am in no position, to resolve conflicts in evidence or draw conclusions on facts and merits. As the Review Panel observed, the evidence in the case has been obtained from several sources and is sufficient to establish a prima facie case. That is the context for considering the risk to the public and the question of public confidence.

11. I accept that the iCOPO is prejudicial to the Defendant's interests. It is a restriction. It has negative impacts. It casts a shadow. On the other hand, it is right to recognise that this is not an Interim Suspension Order ("ISO") but an iCOPO. An iCOPO is a less intrusive measure than an ISO under the statutory and regulatory scheme. The conditions of the iCOPO involve supervision and reporting. They are designed to be workable and proportionate. They are intended to be such as would enable the Defendant to work as a Social Worker, subject to supervision and reporting. I am satisfied that the prejudice to the Defendant is decisively outweighed by the public interest imperatives. I am satisfied that it would not be in the public interest, or consistent with public protection and public confidence, to allow this iCOPO to expire and that it is necessary to continue the iCOPO on the present terms. Although it is regrettable that the proceedings have not completed, the adjournment decision has been made for good reason in the interests of justice. The direction is that the Fitness to Practise Hearing will be listed to take place after 31 July 2023, as I have said. The context for that is that July 2023 is the date which the Defendant has given as the date from which he plans to be back in the United Kingdom. That would mean he would be able directly to participate at the Fitness to Practise Hearing in person.
12. The remaining question relates to the duration of the extension. I record that there was some potential for confusion because of typographical error in the Skeleton Argument, but there has been no possible prejudice. The Part 8 Claim Form, the Draft Order, and the Witness Statement in support – all of which were served on the Defendant – refer clearly to an extension being sought of 9 months to 8 February 2024. The Skeleton Argument as a whole also made very clear that it was a 9 month extension which was being sought. I have explained that this is a case which was most recently the subject of a 2 month extension granted by this Court on 9 March 2023. That, and the adjournment of the Fitness to Practise Hearing, is why the case has come back to this Court so soon. The papers before the Court which were served on the Defendant describe a hope that the Fitness to Practice Hearing could be scheduled from October 2023 onwards. The latest update from Mr Edwards, as at today, is this. The Fitness to Practise Hearing is now likely to be listed for November 2023 at the earliest; it may in fact not be possible to list it until a date after that; and that this might possibly even be in the New Year. I am satisfied of the necessity of the 9-month extension. It allowed a suitable 'headroom' even in the context of the hope that the hearing could be scheduled as early as October 2023. I am satisfied that, if and insofar as it is possible to complete the Fitness to Practice Hearing through to a substantive conclusion in this case, with reasonable expedition and well within the 9 months, that that is the course which will be taken by SWE. But I am also satisfied that it is foreseeable that, for good reason, this may not prove possible. In those circumstances, a lesser extension than 9 months would run the clear and unnecessary

risk of a yet further application to this Court. In all the circumstances I am persuaded of the necessity and proportionality of the 9 months duration. I will order the extension sought for the 9 months to 8 February 2024. There is no application for costs and there will be no Order as to costs.