



Neutral Citation Number: [2024] EWHC 827 (Admin)

Case No: AC-2024-LDS-000063

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

Friday, 12th April 2024

Before:
FORDHAM J

Between :
SOCIAL WORK ENGLAND
- and -
HELEN SPENCE

Claimant

Defendant

Jessica Bass (instructed by Capsticks) for the **Claimant**
The **Defendant** did not appear and was not represented

Hearing date: 12.4.24

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.

FORDHAM J

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

FORDHAM J:

Introduction

1. This application for an extension of an Interim Suspension Order (ISO) is pursuant to Schedule 2 §14 to the Social Workers Regulations 2018. The guidance in GMC v Hiew [2007] EWCA Civ 369 at §§28, 31-33 applies.
2. The Defendant opposes the extension and has provided a helpful 8-page written submission with supporting materials. In addressing me orally at this hearing Ms Bass for SWE has given a summary drawing further attention to the key themes and elements of the Defendant's written submission and materials.
3. I am satisfied that it is necessary in the interests of justice and the public interest to proceed today. I have considered including provision for "liberty to apply" in any order that I make. The Defendant's acknowledgement of service on 28 March 2024 indicated that she was considering making an application for a "postponement". She has informed the Court, and I fully accept, that she is unable to attend today's hearing for reasons which are concerned with health. She has also referred to time to respond to materials and to time to obtain representation. No application for a postponement has, in the event, been made. The written submissions do not ask for any adjournment or express the wish to attend a hearing to revisit the issues. The health position is described not as specific to the current time or the present hearing. The ISO is due to expire on 3 May 2024. That date was and is known to the Defendant. She signed the consent order in this Court (27.4.23) which extended the ISO to that date; and she has received the materials relating to the latest review (25.1.24) which also record the expiry date. The claim for an extension was issued on 19.3.24 and the notice of hearing was received by the Defendant on 20.3.24. I am satisfied that the Defendant has had, in all the circumstances, a full and fair opportunity to make her points in writing; and to make any application for a postponement for a hearing to take place at a subsequent date. It is not necessary to defer today's hearing; nor to make "liberty to apply" provision giving the Defendant a further opportunity to make written representations or to insist on the Court convening a further oral hearing.

Extension

4. I am satisfied that SWE has demonstrated the necessity of an extension of an interim order, to continue as an ISO, pending final hearings of the disciplinary process, but subject to an important question about the necessity and proportionality of the duration of the extension.
5. The regulatory concerns in this case include serious matters. In particular, there is this. The Defendant is said to have undertaken work for another local authority as an approved mental health practitioner (AMHP) social worker, (a) without giving the necessary notification to her principal local authority employer; and moreover (b) at a time when she was temporarily suspended from her principal employer's AMHP rota because of practice concerns. It is said, in each respect, that this was in contravention of important regulatory obligations on her, both as to the giving of notification and as to not undertaking work as an AMHP with another authority while suspended. She is also said to have undertaken Mental Health Act assessments leading to deprivations of liberty during that work in those circumstances for that other authority. Issues relating

to honesty and integrity, and issues regarding actioning deprivations of liberty without authority, have been raised.

6. I emphasise that these are allegations. The Defendant has made some admissions as to some practice matters. She has set out her position, including that she gave verbal notification; and that she believed her AMHP status to be intact, including when making the assessments leading to the deprivations of liberty, until the last day of her employment with the principal authority. She denies any dishonesty or lack of integrity. She has also given a detailed response relating to the context and circumstances in which issues including practice matters relating to record-keeping and the writing of documents had originally arisen. This includes concerns on her part relating to the adequacy of supervision, support and adjustments. All of this arises in the context of health and well-being and the pandemic.
7. I am not making any findings or drawing any conclusion in relation to any of the allegations, or any of what is said against, and by, the Defendant. But I do have to consider the questions of public protection, public confidence and the public interest, viewed from a risk assessment perspective, in the context of the nature of the concerns which are at the heart of the underlying case. Viewed in terms of the assessment of risk, SWE has, in my judgment, demonstrated the necessity of the ISO continuing, rather than being permitted to expire on 3 May 2024.

CPR 5.4C and Notice

8. In the particular circumstances of the present case, I will also accede to SWE's invitation to direct 14 days prior notice to the parties of any non-party application for the Court's permission (CPR5.4C(2)) to obtain copies of any document other than a statement of case, judgment or order; adding liberty to any person to apply on notice to expedite that process. My attention has been drawn to specific documents in the bundle relating to medical matters. The liberty to apply protects any person who wishes to argue that urgent access from the court records is justified. I am not ruling on any third party application. Nor am I restricting access (CPR5.4C(4)) to any claim form, judgment or order. I am simply making provision as to prior notice.

Duration

9. That leaves the important question of the duration of the extension, to which I now turn. In the present case I have been given the same evidential picture – including as to “currently” available “resources” – as I described in SWE v Sobrany [2024] EWHC 67 (Admin) at §8. The evidence is – as it was in January 2024 – that SWE has no “current” capacity to list new hearings until April 2025 at the earliest. This is recognised by SWE as being “unacceptable”. It is the product of the position relating to “current resources”, absent any improvement.
10. The regulatory concerns in this case were referred to a final hearing by the case examiners on 30 January 2023. The Case Investigation Report had been written in November 2022 and the Defendant had responded on 9 January 2023. The High Court had then been told by SWE in April 2023 that the 12-month ISO extension, to which the Defendant in the event consented, was with a view to the disclosure of the case being expected in June 2023 with disposal of the case in the first few months of 2024.

11. Since then, there have been delays in working on witness statements and having them returned approved. One witness was interviewed in May 2023 and a witness statement sent to them in August 2023 for review and, following chasers in October, November and December 2023, as a result of a set of circumstances which have been explained in the papers, this remained outstanding in mid-March 2024. A set of records relating to the evidence of another witness was still under review in December 2023. I am told that work was then paused in light of a January 2024 application by the Defendant for voluntary removal from the register (an application signed by her in November 2023), which was ultimately refused on 3 April 2024. Ms Bass had today made clear that no imputation or criticism is made or intended on the part of SWE of the Defendant, for making that application or for being responsible for ongoing delay or any pause or inactivity while it was being considered. It is now intended that the work should resume with an expectation of the disclosure of the case now to be in August of this year. However, given that no hearings can currently be listed before April 2025 at the earliest, and given SWE's other cases waiting in the queue for hearings, the extension of 18 months to 2 November 2025 is being sought.
12. In opposing any extension, the Defendant's written submissions emphasise – among other points – the harmful effects on her of what she describes as this “long punitive process”. She describes this 28 month investigation and the detriment to her physical and mental health. She has provided a detailed picture as to health and health implications. I have referred to her voluntary removal application. She points to the delay and confusion. She asks this Court to “bring an end to this long and protracted process”. She also emphasises that since she now has “no intention of ever returning to the social work profession”, there can be no ongoing risk to the general public and the balance of risk has now decisively moved towards consideration of her well-being and safety.
13. It is important to emphasise that I am concerned with whether or not to extend the ISO. I do not have the jurisdiction to curtail, or accelerate, the disciplinary process. Nor am I considering any application to challenge the decision not to accept the Defendant's request for voluntary removal. I accept that there is a seriously detrimental impact of the long protracted process. I also accept that there is a significant detriment in the continuation of the ISO as an interim order pending the process running its course. As to that specific detriment, from continuation of the interim order, it is right to recognise that it is tempered by what the Defendant expresses as her intention of never returning to social work. I do not accept that that expression of the absence of an intention to return, including in the context of the evidence relating to health, removes the risk or removes the utility of an ISO.
14. It is important for public protection and the public interest that the position should be fully secured. But I am not prepared to grant an 18 month extension to November 2025 based on the picture relating to the timeframe for dealing with cases through to hearings, including given the background and circumstances of the present case. I am persuaded only that it is necessary and proportionate to grant an extension of 12 months to 2 May 2025. That is not in the nature of a judicial indication that this case should somehow jump the queue or displace other cases injecting delay and prejudice for those other social workers. But it is a further recognition, 3 months on from what I said in Sobraný and the other January 2024 cases (ie. SWE v Yalden [2024] EWHC 86 (Admin) and SWE v Gardener [2024] EWHC 186 (Admin)), that the picture has

rightly been recognised by SWE as “unacceptable”. Should it truly be necessary to return to this Court for a further application for a further extension, so be it. If that proves necessary there will need to be an explanation of what was done in the present case. So far as the bigger picture is concerned any court will look for an update which provides a clear and current position as to what has been done and considered to address the serious backlog and queue, linked as it recognisably is to the question of “current resources”. This case, which was referred for a substantive hearing back in January 2023, does need to be dealt with within a timeframe which can be described as acceptable, rather than one which is expressly acknowledged by SWE to be unacceptable. And as in the January cases, I am not prepared to adopt, as a premise, that the resources picture will continue to be left unimproved and unaddressed.

Order

15. I will make the following Order. (1) The Interim Order made by the Claimant’s Adjudicators on 5 November 2021 and extended by this Court on 28 April 2023, which would otherwise expire on 3 May 2024, be extended by a further 12 months until 2 May 2025. (2) The Interim Order shall be reviewed by the Claimant’s Adjudicators in accordance with Schedule 2, Part 4, Paragraph 14 (1) to the Social Workers Regulations 2018. (3) Subject to paragraph (4) of this Order, any application to obtain documents other than the claim form, judgment or order made by a non-party under CPR 5.4C, is to be made on at least 14 days’ notice to the parties. (4) Any person has liberty to apply in writing on notice to the parties to abridge the time for notice in paragraph (3). (5) There shall be no order as to costs.

12.4.24