

Claim No: CO/4213/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT AT LEEDS

Neutral Citation Number: [2020] EWHC 430 (Admin)

The Courthouse
1 Oxford Row
Leeds
LS1 3BG

Thursday, 9th January 2020

Before:
HIS HONOUR JUDGE KLEIN SITTING AS A HIGH COURT JUDGE

B E T W E E N:

CEDRIC ANDERSON

Appellant

and

SOCIAL WORK ENGLAND

Respondent

THE APPELLANT appeared In Person
MS BRUCE, counsel, appeared on behalf of the Respondent

JUDGMENT
(Approved)

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HH JUDGE KLEIN:

1. This is the judgment in an appeal by Mr Cedric Anderson from the decision of a conduct and competence panel of the Health and Care Professions Council to suspend his registration as a social worker for a period of 12 months from the date the panel's order is or was to come into effect ("the 12 month final suspension order"). The panel also imposed an interim suspension order on Mr Anderson for a period of up to 18 months, pending the final determination of any appeal ("the interim suspension order").
2. In the documents he filed in support of his appeal against the 12 month final suspension order, Mr Anderson also complained about the interim suspension order. In fact, it is not possible, by way of an appeal, and, in particular, by way of this appeal, to complain about the interim suspension order. As Mr Anderson was informed by the administrative court lawyer, a challenge to an interim suspension order made at the same time as a final suspension order must be made by way of a separate claim, which Mr Anderson has not made. In any event, as the panel made clear, when imposing the interim suspension order, it lapses on the final determination of Mr Anderson's appeal. The reason why the panel was invited to make an interim suspension order was, in practice, because the final suspension order has not taken effect yet because of Mr Anderson's appeal.
3. Mr Anderson represented himself today. He was supported by Ms Mariam Salam, a team manager in the children's services department of the City of Bradford Metropolitan District Council ("Bradford"), who was Mr Anderson's line manager during a period of his employment with Bradford, between April 2018 and July 2019, and would be his line manager again, if a further contract of employment is offered to him. In what is clearly an anxious situation for Mr Anderson, he impressively presented his appeal clearly and moderately. He said all that could have been said on his behalf and I commend him. I also commend Ms Salam for the support she has given Mr Anderson today.
4. Social Work England, which, as a result of an order I made during the course of the hearing, has been substituted as the respondent to the appeal in place of the Health and Care Professions Council, is represented today by Ms Bruce. She provided a very helpful, comprehensive, and clear extensive argument, and her oral submissions were focused and fair. She clearly had in mind her obligations to the court and to Social Work England. Nevertheless, consistently with those obligations, she also did what she could to ensure that Mr Anderson's case was put. I am very grateful to her.
5. The background to the panel's decision is as follows. It was alleged against Mr Anderson that, during the course of his locum contract with Rotherham Metropolitan Borough Council ("Rotherham"), he overclaimed mileage and/or parking expenses for 13 weeks between the weeks of 8 September 2017 and 1 December 2017. It was alleged that this was dishonest and constituted misconduct, and it was alleged that, by reason of Mr Anderson's misconduct, his fitness to practice was impaired. A hearing of those allegations took place between 30 September and 1 October 2019. Mr Anderson did not attend the hearing. At the time, he was in Canada seeking to renew his visa to work in the United Kingdom; his previous visa having expired at the end of June 2019.
6. I had thought, on reading the documents Mr Anderson filed in support of his appeal, that he complained that there was an irregularity in the panel's decision which made it unjust, because the panel proceeded in his absence. During the course of the hearing today, it became clear to me that that was not a complaint which Mr Anderson makes. As it happens, had he done so, I would have rejected that complaint, because I am satisfied, having considered the matter in any event, that the panel did apply the relevant fitness practice rule, namely rule 11

of The Health Professions Council (Conduct and Competence Committee) (Procedure) Rules 2003, and because I am satisfied that, in any event, the panel properly balanced the competing factors which it was required to take into account in deciding whether to proceed in Mr Anderson's absence. In any event, there has been no injustice to Mr Anderson, because the information which he wanted the panel to take into account was considered by the panel, as is clear from paragraph 27 of its decision, and because this appeal is a rehearing, in which I can and do take all the information on which Mr Anderson relies (including not only the information before the panel but further information Mr Anderson has provided today) into account in deciding whether the panel's decision was wrong.

7. Mr Anderson gave the following information to the panel by way of a written statement, which as I have indicated, is set out in paragraph 27 of its decision, and which I now quote:-

‘I would like to first apologise for not being able to attend the panel meeting due to unforeseen circumstances. I would like to make you all aware that I do accept all responsibility for the accusations against me, and I do not deny the overclaim of public expenses and parking. I understand the seriousness of the matter and I should never have put myself in a position to be dishonest. I made a mistake. I should never have done it. I am embarrassed and ashamed for what has happened, and I will never make the same mistake again. Because I understand that I made a mistake and was dishonest, I made every effort to find a new job to pay my former employers what I owe..., to show that I was serious about taking responsibility and doing my part to make things right. Since this incident, I have made the necessary changes. I have educated myself on the proper ways to claim expenses. I informed my new employers of the events that took place and that I was under investigation with the HCPC, and when a decision is made, I will make them aware of the outcome as well, as I want to uphold the trust I have built so far with my new employers. Also, since the incident, I have made sure that all expenses claim are reviewed and signed off by upper management to ensure I am following the correct procedures, and everything is documented. I also have regular monthly supervision with my managers to check...and ensure I have continued to do what is required of me. I understand what I did was wrong and the seriousness of that, but I also want to inform the panel that this will never happen again. I value my work as a social worker and understand the impact that can have on the people that I work with every day. I know that honesty is very important, and I will do my best moving forward to rebuild the trust that may have been lost and improve as a person. I will never forget this experience and will continue to make every effort to ensure this never happens again’.

8. The panel also heard evidence from Mr Anderson's line manager at Rotherham who gave the following evidence, as recorded in paragraph 25 of the decision:-

‘During a meeting on 12 December 2017, between [the line manager] and [Mr Anderson], [the line manager] told [Mr Anderson] that she was concerned about the amount of mileage and parking expenses that he was claiming. She asked him if he had kept receipts for his parking and if he had recorded his mileage on the spreadsheet she had provided him at the outset of his employment. [Mr Anderson said he had not]. [The line manager] said that [Mr Anderson] then admitted to claiming for mileage and parking expenses that he had not incurred and apologised for doing so. [The line manager] asked him why he had done it and [Mr Anderson] said that he had

a wedding to pay for and needed the extra money’.

9. By the time of the panel hearing, Mr Anderson had repaid the sums that he had wrongly claimed and the amount was in terms of about £2,600’.
10. Against that background, the panel found proved the allegations against Mr Anderson, including that he was dishonest and that his fitness to practice was impaired. To be clear, in this appeal Mr Anderson does not challenge those findings.
11. Having reached those findings, the panel turned to consider sanction. As I have indicated, the sanction the panel imposed was a 12 months’ suspension of registration, but, as in the case of all relevant final suspension orders, as is not disputed in this appeal, subject to review. In reaching its decision on sanction, the panel took into account the following matters which are set out in paragraph 62 to 64 of the decision, which I now quote:-

‘The panel considered the aggravating factors in this case to be: the Registrant’s dishonesty was sustained and repeated over a 13 week period. The actions of the Registrant amounted to a breach of trust towards an employer for personal gain of £2,600. The Registrant has shown only limited insight in respect of the gravity of his actions and the possible consequences to the public, his employer and his profession. There is a potential risk of repetition’.

The panel considered the following to be mitigating features in this case: the Registrant cooperated throughout the agency's investigation, has taken responsibility for his actions, and made early admissions to the Council, the Agency and to this panel. The Registrant repaid the money to the Agency within a year. The Registrant has engaged with these regulatory proceedings and the panel acknowledged that he is unrepresented to date. The Registrant has told the panel that he is currently employed and working without incident and that his employer is aware of the allegation faced by the Registrant’.

12. Although it did not consider the following to be mitigating factors, the panel noted that the dishonesty in this case was not directly related to service users and that there was no identifiable risk posted to service users by Mr Anderson.
13. Mr Anderson appealed the decision by an appellant’s notice filed on 28 October 2019. At that time, the Health and Care Professions Council was the regulatory body for social workers. Since that time, that regulatory function has been transferred to Social Work England. The effect of that transfer, in the circumstances of this appeal, is that this appeal continues as if it was an appeal under paragraph 16 of Schedule 2 of the Social Work and Regulation 2018; see regulation 21 of the relevant transitional regulations.
14. Mr Anderson appeals the panel’s decision on the ground that it was wrong to impose the sanction that it did. By paragraph 19 of the CPR Practice Direction 52D, this appeal is by way of rehearing. So I was entitled to, and did, hear further evidence from Mr Anderson and from Ms Salam.
15. Today, Mr Anderson told me as follows. He is a Canadian citizen who is in the United Kingdom on a work visa sponsored by Bradford. He lives in the United Kingdom with his wife, who is also a Canadian citizen, and whose presence in the United Kingdom is dependent on Mr Anderson's visa and works for Bradford NHS Trust, and with his daughter, who is also a Canadian citizen but who is settled in a local school. The effect of a suspension is that Bradford, which is currently his visa sponsor, is likely to withdraw that sponsorship, with the result that he is likely to be unable to remain in the United Kingdom and take up Bradford's further offer of employment as a social worker. In these circumstances, he will have to return to Canada, where he has no employment and where during the period that he was there renewing his visa, he lived with friends, and his wife and daughter will have to return to

Canada with him. He will be unable to support his wife and daughter in Canada, because he has everything in the United Kingdom, and, as I have indicated, because he has no employment in Canada. Mr Anderson also repeated much of what he said in his written statement which was before the panel, and he reminded me that the facts found against him occurred over two years ago. Mr Anderson struck me as genuinely remorseful and as having insight into what he did wrong. He has, as I have said, repaid the sum wrongly obtained by him.

16. Ms Salam explained that, if the appeal is unsuccessful, it is uncertain whether Bradford would offer Mr Anderson any contract of employment, and indeed, it was likely that Bradford would withdraw the sponsorship of Mr Anderson's visa because of the real need for social workers in Bradford. She also pointed out to me that it was Mr Anderson who brought the allegations against him to Bradford's attention, and it was he who has, at all times, kept Bradford up to date about the proceedings against him. She added that the Health and Care Professions Council made no contact with Bradford, or put it on notice of the allegations and proceedings against Mr Anderson, and that the Council made no enquiries of Bradford as to Mr Anderson's conduct whilst in Bradford's employment.
17. I have considered all the evidence which Mr Anderson and Ms Salam gave today, together it should be said, with all Mr Anderson's submissions and all the documents I was taken to and was asked to pre-read with care.
18. Even though this appeal is by way of rehearing, I cannot interfere with the decision of the panel unless I am satisfied that the panel's decision was wrong. In deciding whether the panel's decision was wrong, I have to have in mind, to the appropriate degree, the specialist nature of the panel as the 2019 White Book explains at page 1820:

‘In an appeal by way of re-hearing from a profession's regulatory or disciplinary tribunal, the court will have to decide how much deference it should accord to the decision of the tribunal members. In *Council for the Regulation of Health Care Professionals v General Medical Council* [2004] EWCA Civ 1356; [2005] 1 W.L.R. 717, CA, the Court of Appeal formulated the approach as follows at para.78: “Where all material evidence has been placed before the disciplinary tribunal and it has given due consideration to the relevant factors,...the court should place weight on the expertise brought to bear in evaluating how best the needs of the public and the profession should be protected. Where, however, there has been a failure of process, or evidence is taken into account on appeal that was not placed before the disciplinary tribunal, the decision reached by that tribunal will inevitably need to be reassessed.”.

19. With that in mind, and in particular taking into account the fact there is evidence before me which was not placed before panel, in deciding whether the panel's decision was wrong I have to consider a number of matters.
20. Ms Bruce reminded me of what Sir Thomas Bingham said in *Bolton v Law Society* [1994] 1 WLR 512, which merits quotation in full:-

‘It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his

debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires.

Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price'.

21. Ms Bruce also took me to the decision of the Mr Justice Mitting in *Parkinson v Nursing and Midwifery Council* [2010] EWHC 1898 (Admin) (09 July 2010), where the judge said, at paragraph 18:-

‘A nurse who has acted dishonestly, who does not appear before the Panel either personally or by solicitors or counsel to demonstrate remorse, a realisation that the conduct criticised was dishonest, and an undertaking that

there will be no repetition, effectively forfeits the small chance of persuading the Panel to adopt a lenient or merciful outcome and to suspend for a period rather than to direct erasure’.

In that case, at least, the judge took the view that, in cases of dishonesty, a sanction of less than removal from the professional register is lenient.

22. To the same effect is the decision of Mr Justice Julian Knowles in *Professional Standards Authority for Health and Social Care v General Dental Council & anor* [2019] EWHC 2640 (Admin) (18 October 2019), where the judge said this, at paragraph 41:-

‘Findings of dishonesty lie at the top end of the spectrum of gravity of misconduct. Where dishonest conduct is combined with a lack of insight, is persistent, or is covered up, nothing short of erasure is likely to be appropriate. The sanction of erasure will often be proper even in cases of one-off dishonesty. The misconduct does not have to occur in a clinical setting before it renders erasure, rather than suspension, the appropriate sanction. Misconduct involving personal integrity that impacts on the reputation of the profession is harder to remediate than poor clinical performance. Personal mitigation should be given limited weight, as the reputation of the profession is more important than the fortunes of an individual member’.

23. I also need to have in mind the sanctions policy of the Health and Care Professions Council, which provided as follows:-

’...10. The primary function of any sanction is to protect the public. The considerations in this regard include: any risks the Registrant might pose to those who use or need their services; the deterrent effect on other Registrants; public confidence in the profession concerned; and public confidence in the regulatory process.

11. Sanctions are not intended to punish Registrants, but instead ensure the public is protected. Inevitably, a sanction may be punitive in effect, but should not be imposed simply for that purpose...

20. In making proportionate decisions on sanction, panels need to strike a balance between the competing interests of the Registrant and the HCPC’s overriding objective to protect the public. Therefore, decisions should deal with the concerns raised, but be fair, just and reasonable.

21. Sanctions are not intended to be punitive. Panels should only take the minimum action necessary to ensure the public is protected. This means considering the least restrictive sanction available to them first, and only moving on to a more restrictive sanction if it is necessary to protect the public...

25. Matters of mitigation are likely to be considerably less significant in regulatory proceedings where the overriding concern is the protection of the public than a court imposing retributive justice...

28. A key factor in determining what, if any, sanction is appropriate is likely to be the extent to which a Registrant recognises their failings and is willing to address them. Where a Registrant does recognise their failings and is willing to address them, the risk of repetition is reduced...

40. There are some concerns which are so serious, that activities intended to remediate the concern cannot sufficiently reduce the risk to the public or public confidence in the profession. Despite the steps the Registrant has taken to attempt to remediate the concerns, the panel is still likely to impose

a serious sanction. These might include cases involving dishonesty...

45. Trust is a fundamental aspect of the relationship between a Registrant and a service user or carer. Breaching this trust can have significant impacts on public protection. For example, a service user may not engage with a Registrant because they are concerned that they cannot trust them, delaying treatment or support...

49. A repetition of concerns, or a pattern of unacceptable behaviour, leads to greater potential risks to the public, for a number of reasons such as: the fact the conduct or behaviour has been repeated increases the likelihood it may happen again; and the repetition indicates the Registrant may lack insight...

56. The standards of conduct, performance and ethics require Registrants to be honest and trustworthy. Dishonesty undermines public confidence in the profession and can, in some cases, impact the public's safety.

57. Dishonesty, both in and outside the workplace, can have a significant impact on the trust placed in those who have been dishonest, and potentially on public safety. It is likely to lead to more serious sanctions...

58. Given the seriousness of dishonesty, cases are likely to result in more serious sanctions. However, panels should bear in mind that there are different forms, and different degrees, of dishonesty, that need to be considered in an appropriately nuanced way. Factors that panels should take into account in this regard include: whether the relevant behaviour took the form of a single act, or occurred on multiple occasions; the duration of any dishonesty; whether the Registrant took a passive or active role in it; any early admission of dishonesty on the Registrant's behalf; and any other relevant mitigating factors...

121. When is a suspension order appropriate? A suspension order is likely to be appropriate where there are serious concerns which cannot be reasonably addressed by a conditions of practice order, but which do not require the Registrant to be struck off the Register. These types of cases will typically exhibit the following factors: the concerns represent a serious breach of the standards of conduct, performance and ethics; the Registrant has insight; the issues are unlikely to be repeated; and there is evidence to suggest the Registrant is likely to be able to resolve or remedy their failings.

122. A suspension order should be imposed for a specified period up to one year. When determining how long a suspension order should be imposed for, panels must ensure that their primary consideration is what is necessary and proportionate in order to ensure that the public is protected.

130. When is a striking off order appropriate? A striking off order is a sanction of last resort for serious, persistent, deliberate or reckless acts involving (this list is not exhaustive) dishonesty'.

24. I have found this case to be a very difficult one. It has weighted heavily on me as will have been clear to those in court today that, if the appeal is dismissed, the position of Mr Anderson and his family, including his young daughter who will be an innocent victim of what Mr Anderson did, is likely to be precarious. As has been repeatedly recognised, and as the sanctions guidance acknowledges, these factors and the other matters of personal mitigation to which Mr Anderson refers have to be weighed in the balance when determining a sanction, as must the degree of Mr Anderson's insight and remorse, about which I have already commented, and the extent of remediation by Mr Anderson. I give all these matters their due

weight. I bear in mind particularly that the sanction of suspension in this case may very well have a greater impact than in other cases, because of Mr Anderson's particular circumstances, being on a sponsored visa in the United Kingdom. I also bear in mind particularly the fact that the sanction of suspension in this case will affect not only Mr Anderson, but his wife and young daughter; although, of course, this will not be the first case, nor may it be uncommon, that the sanction of suspension or removal from the register has effect on the registrant's family.

25. However, in this case, Mr Anderson was repeatedly dishonest over a concerted period. If Mr Anderson was permitted, as he has sought, to continue to work but subject to the conditions of practice order, there would, in effect, be no sanction for that dishonesty. A conditions of practice order would not act as a deterrent to other registrants. Indeed, such an order might act as some encouragement to other registrants that dishonesty might not affect their continued ability to practice as social workers. The absence of a deterrent for dishonesty is liable to undermine public confidence in the profession, and in my view, is liable to undermine confidence in the regulatory procedure. Social workers work with some of the most vulnerable members of society. They have to be honest, and the profession as a whole has to be seen as being honest. The profession has to have in place robust procedures to ensure that honesty is maintained. I cannot improve on what the Master of the Rolls said in *Bolton*; that "...the essential issue,...is the need to maintain among members of the public a well-founded confidence that any [regulated professional] will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the [professional] may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price".
26. In the circumstances of this case, taking into account and weighing all I have said, but recognising, in particular, that, in this case, there was repeated dishonesty over a concerted period, I am unable to say that the panel's decision was wrong, and so, it is with a very heavy heart, that I dismiss this appeal.

End of Judgment

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