



Neutral Citation Number: [2021] EWHC 1766 (Admin)

Case No: CO/1986/2021

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

Leeds Combined Court Centre
1 Oxford Row, Leeds, LS1 3BG

Date: 28th June 2021

Before :

MR JUSTICE FORDHAM

Between :

SOCIAL WORK ENGLAND
- and -
HOWARD WILSON-MUDARIKWA

Applicant

Respondent

Adrian Harris (instructed by Capsticks Solicitors LLP) for the **Applicant**
The **Respondent** in person

Hearing date: 28th June 2021

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.

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THE HON. MR JUSTICE FORDHAM

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

MR JUSTICE FORDHAM :

1. This is an application pursuant to paragraph 14(2) and (3) of Schedule 2 to the Social Workers Regulations 2018. The Applicant asks the Court to extend, for a further 5 months until 5 December 2021, an interim suspension order which is currently due to expire on 6 July 2021. This case came before me on 2 December 2020 (the “December hearing”) and I gave a judgment at [2020] EWHC 3304 (Admin) (the “December Judgment”). The December Judgment sets out the nature of the case, the background, and the position as it was at that date. It also sets out the substance of the representations which were being made in writing at that stage by the Respondent. I invite attention to the December Judgment, whose contents I do not repeat in this judgment.
2. The mode of today’s hearing was by MS Teams. I am satisfied that that mode of hearing was necessary, appropriate and proportionate. The Respondent has told me that he had some difficulties which delayed his being able to access the hearing this morning on time. Happily, he was able to resolve those difficulties and we restarted the hearing once he had joined us. I was not able to see him, but he could see me and Mr Harris, and we could all hear each other clearly. I was satisfied that the mode of hearing involved no prejudice to him or to the Applicant. The hearing secured the open justice principle. The case and its start time were published in the cause list, as was an email address usable by anyone – whether a member of the press or the public – who wished to observe this public hearing.
3. This Court’s approach is as before, so far as the principles which are applicable are concerned: see the December Judgment paragraph 4. As I have today emphasised to the Respondent, it is not the function of this Court, in considering whether to continue an interim suspension order, to make any finding as to the underlying substantive merits, but rather to have regard to the nature of what it is that is being alleged. The same concerns lie at the heart of the case: see the December Judgment at paragraph 5. The interim suspension order has continued to be reviewed (see the December Judgment paragraph 6) and has now been reviewed on 11 occasions. In the latest review decision on 18 May 2021 the panel of adjudicators considered the updated position, including as to health conditions and health concerns. The review panel expressed concern about the length of time that it has taken to bring this case to final hearing and the hope that it can now be concluded as quickly as possible. I share that concern and that hope. The concern is very much linked to the submissions that the Respondent has made to me orally this morning.
4. The Respondent confirmed to the panel, at that review hearing, that he had no current intention to return to practice. Likewise, he has told me this morning that he is not intending to practise as a social worker while the regulatory proceedings are ongoing. That is relevant to the question of ongoing prejudice (see the December Judgment paragraph 13). But the Respondent has submitted that there is other prejudice arising from an interim suspension order being in place. He says that such an order is not needed; he says it does not look good, and he identifies a link between the suspension order continuing and his health. He explained to me, clearly and courteously why it is – for those and other reasons – that he refuses his consent to an order today continuing the interim suspension order, and why he invites me to make no order. The consequence of that, as he appreciates, is that the interim suspension order currently in place would expire on 6 July 2021. The Respondent reminds me that the regulatory

proceedings against him have been hanging over him since the referral to the HCPC in January 2018, and that the interim suspension order was first imposed in June 2018. He submits that he has never breached any obligation; rather, he has been ill, and was not aware that he was diabetic. He submits that these proceedings have gone on for far too long and the ongoing delay is unjustifiable. He says that the proceedings could and should have been resolved earlier; and that it is not his fault that that has not happened. He emphasises that he has signed consent forms, in relation to medical records and other medical matters, on what he says is now no fewer than six occasions. He says he has made offers for steps to be taken, such as the appointment of an independent medical clinician to undertake an assessment. He says that an assessment which was undertaken in the spring of this year, following contact from Capsticks in December of last year, ought to have been undertaken earlier. He has described the day-to-day implications of these proceedings still hanging over him, the implications for his health including his mental health, and the repeated experience of opening the post and his emails to find repeated contact from the Applicant or Capsticks in relation to these matters.

5. I have read the witness statement evidence, the supporting documents and the skeleton argument filed on behalf of the Applicant. I have been able to consider the steps that have been taken by the Applicant, following on from those described in the December Judgment at paragraph 8. I have considered the materials relating to the delay between December of last year and April of this year in relation to the medical assessment. A five-day final hearing in this case was scheduled to start on 27 September 2021. It has been possible to bring that hearing date forward to 16 August 2021. Doing so is a step which, in my judgment, reflects the fact that the Applicant is seeking to bring this matter to a conclusion as speedily as is now reasonably possible. In my judgment, the Applicant has discharged the onus on it, of demonstrating that it is necessary for the protection of the public (including public confidence) pending determination of the substantive proceedings for the interim order to continue, and further that a five-month extension is necessary and proportionate in all the circumstances. It is very much to be hoped that 5 months will not be necessary, particularly in light of the accelerated final hearing date. But it is sensible, justified and proportionate to allow headroom, and avoid a further application to this Court, bearing in mind the potential for circumstances to arise, not least given health considerations, including having regard to medical circumstances earlier this year: I have in mind the admission to hospital in April of this year. The statutory function of ongoing review the interim suspension order will moreover continue, as it should. I adopt as equally applicable today the observations I made previously (the December Judgment paragraph 12) concerning the Respondent's own interests.
6. I reach those conclusions having had regard to the points made by the Respondent, including those about the experience from his perspective, about the delay and its implications, and about his willingness to state (and restate) that he does not intend to practise as a social worker. In my judgment, it is necessary for the protection of the public and public confidence, and it is in the public interest, that the Respondent's position – as to whether he is in a position to practise during the period between now and the resolution of the regulatory proceedings – should be the subject of a measure which is clear and certain and enforceable. In my judgment, the fact that the Respondent has stated his intention not to practice is not a good and sufficient reason to allow the interim suspension order to expire. That stated intention, moreover,

qualifies the extent of the prejudice through the interim suspension order continuing. I have had regard to the other aspects of prejudice, described eloquently by the Respondent at today's hearing. I do not belittle them. However, I am quite satisfied that the public interest considerations remain in place to justify as necessary the continuation of the order. I will grant the application with no order as to costs.

25.6.21