



Neutral Citation Number: [2022] EWHC 62 (Admin)

Case No: CO/4299/2021

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

1 Oxford Row
Leeds LS1 3BG
14th January 2022

Before :

MR JUSTICE FORDHAM

Between :

SOCIAL WORK ENGLAND
- and -
BARBARA YANI DOH- NANI

Claimant

Defendant

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

Hearing date: 14/1/22

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 in a remote hearing.

MR JUSTICE FORDHAM :

1. This is an application by Social Work England (SWE) pursuant to the Social Workers Regulations 2018 Schedule 2 paragraph 14(2) and (3). The application is for an extension, for a further 18 month period to 14 July 2023, of an Interim Suspension Order originally imposed on 16 July 2019 (for 18 months) by the Investigating Committee of the Health and Care Professions Council (HCPC), and extended by this Court on 7 January 2021 for 12 months.
2. The mode of hearing was by Microsoft Teams. I am satisfied that that mode of hearing has involved no prejudice to the interests of any party and that the open justice principle has been secured in the usual ways: through the publication in the cause list of this case and its start time; and the publication there of an email address usable by any member of the press or public who wished to observe the hearing. In the event, the hearing started a little later in the day than had been scheduled, but the mechanism that was in place (notification by email) ensured that, had anyone wished to observe, they would have been able to do so.
3. I am satisfied that the Defendant has been notified of this hearing, there being evidence before me of the service of the relevant papers and evidence that they were delivered to the Defendant's address on 22 December 2021. When the Interim Order was most recently reviewed by SWE's adjudicators' panel on 23 November 2021 there was no engagement or response by the Defendant. The position is that she has not engaged with the HCPC or with SWE, in relation to the proceedings against her being dealt with by them, since January 2019.
4. The question for me – both in terms of whether to extend the Interim Order and in terms of the duration of any extension – involves the application of necessity test. I need to be satisfied – with the onus being on SWE – that the extension, and its duration, are necessary for the protection of the public or in the wider public interest or in the best interests of the social worker (the Defendant). The approach which the Court should take to that necessity test is, in material terms, guided by the Court of Appeal's reasoning in General Medical Council v Hiew [2007] EWCA Civ 369, in particular at paragraphs 28 and 31 to 33. I have to consider: the gravity of the allegations; the nature of the evidence; the seriousness of the risk of harm to the public or the public interest; the reasons why the case has not been concluded; the prejudice to the Defendant if the order is continued; alongside the other features and circumstances of the case.
5. Although my role involves considering afresh and as at today the continuation of the Interim Order, and the duration of any continuation, I have in this case been greatly assisted by the careful and clear reasoning of the adjudicators' panel when they discharged their function of considering continuation of the Order at the remote meeting which was convened on 10 November 2021. I am in a position, in the light of the helpful witness statement of Hannah Appleyard and the helpful skeleton argument of Ms Etemadi for SWE, ultimately to reflect in my own reasons the same themes that were reflected in the reasons given on that occasion by the adjudicators.
6. The background is that the Defendant had worked as a registered social worker for the London Borough of Merton. As a result of investigations into her conduct an audit report was written and provided to the HCPC, as the body which until December 2019 had the regulatory responsibility now discharged by SWE. That report was, in due

course, reflected in a decision by the CPS to prosecute the Defendant and there are ongoing criminal proceedings. As the audit report had explained, the concerns were these: that the Defendant had acted so as to gain financially from placements which had been made by the local authority; that some sums amounting to nearly £900,000 had been paid to an entity with which she had an undisclosed connection; that she had deliberately misled local authority staff; that she had failed to declare an interest; and that she had also deliberately provided false information and used her position to enable a family member to obtain a property to which they were not entitled. The position as at June 2019 was: that the Defendant had by that time been charged with three counts of fraud by abuse of position, one count of fraud by false representation and one count of converting criminal property; that she had appeared before the magistrates' court and had pleaded not guilty; and that the case had been referred to the Crown Court.

7. The position taken by SWE (having taken the case over from the HCPC) is that in the present case it is not appropriate to attempt to progress its own investigation 'in parallel', while criminal proceedings on the same matters are pending and have not yet concluded, particularly given the magnitude of the matters in question. That, on the face of it, provides a cogent explanation for the passage of time in relation to this matter so far as SWE is concerned, at least up to today. The position so far as concerns the progress of the criminal proceedings is this. Various trial dates for the trial in the Crown Court have been set, but the case has been adjourned. There was to be a trial originally in February 2020, and then September 2020, but the case did not proceed. That is understood (in part at least, if not entirely) to be linked to the pandemic and the fact that this was and is not a 'custody' case. The trial was then due to take place in May 2021 but was deferred again, in circumstances where (as is understood) it was the defence who would not trial-ready at that point. The trial is now scheduled to take place on 6 June 2022. It is expected to last three weeks, reflecting the complexity of the case.
8. I am quite satisfied that it is necessary and proportionate, for the protection of the public and in the public interest, to extend the Interim Suspension Order in this case. I have also been persuaded by SWE that, in the particular circumstances of the present case, what is acknowledged to be a very lengthy extension of 18 months is justified as necessary and proportionate. The allegations against the Defendant are extremely serious, relating to alleged dishonesty abuse of process and fraud. The allegations span a prolonged period of time, were sustained and repeated and involve large sums of money. The CPS is pursuing the case to trial. The allegations arise directly out of the Defendant's work as a social worker at the relevant time. I am not, of course, making any findings of fact in relation to the substance of this case. In the first instance it will be a matter for the Crown Court to consider questions of guilt or innocence so far as criminality is concerned. But my role involves considering the seriousness of the allegations and evaluating necessity and the public interest and protection of the public in the light of them. I have no doubt at all that it is necessary for the Interim Order to continue until after the Crown Court has dealt with this matter and the Defendant has either been convicted or acquitted of the criminal charges. I proceed in the hope, and expectation, that the June 2022 date for the Crown Court trial will be held and will be effective.
9. The question in this case that has caused me anxiety and concern is as to whether the full 18-month extension sought by SWE is justified and necessary. I have considered the alternative of a 12-month extension, mirroring the duration of the extension which

this Court previously ordered in this case a year ago. That would provide the ‘backstop’ of a need for this Court to be informed as to the position, at the start of next year, and to be able to evaluate again the necessity and justification for the Interim Order continuing if at that stage, it is still extant, and if at that stage a further extension is being sought.

10. Ms Etemadi has persuaded me that that would not be an appropriate course. She has assisted me on the two essential scenarios that can arise, in principle, out of the Crown Court trial. She has explained what are likely, or at least anticipated, to be the practical realities so far as SWE is concerned, were there to be a conviction and ensuing action by SWE, or were there to be an acquittal but nevertheless an SWE investigation culminating in a decision as to fitness to practice. I am satisfied that, although a conviction would no doubt serve as a ‘platform’ for any subsequent action by SWE, substantial work is likely nevertheless to need to be done in such a situation, including obtaining full disclosure, then steps culminating in careful consideration by case examiners, and then steps through to a hearing. I am satisfied that SWE would also need to consider, following any acquittal, whether to conduct an investigation; and that if one were appropriate, it would be likely to take significant time (as well as resources). In effect, SWE’s position is ‘on hold’ and its work – even no doubt informed by the result of the criminal process – will really ‘only begin’ once that process has come to an end.
11. There are two important safeguards in relation to all of this. The first is this. Were there to be an acquittal and an assessment by SWE that no further investigation or action is needed, well then the Interim Suspension Order would ‘fall away’ at that stage. The same is true, were there to be a conviction and the conduct of an expedited investigation through to the point of a speedy hearing and determination. In either of those situations, the Interim Order would not continue beyond those points, in any event. There is also the second safeguard. That involves three-monthly reviews of the Interim Suspension Order, based on the circumstances as they are at the time of each review, conducted under the regulations by the panel of adjudicators. As to that, there are also the rights which the Defendant would have, to request such a review where there to be a set of circumstances said to warrant the discharge of the Interim Order. I am not abdicating to the panel of adjudicators this Court’s important supervisory role. But I am satisfied that the full 18 month extension is necessitated in this case and that it is not appropriate to interpose a further hearing before this Court during that 18 month period, in all the circumstances of the present case.
12. For all those reasons I will grant the order and granted in the terms sought.

14.1.22