



Neutral Citation Number: [2022] EWHC 627 (Admin)

Case No: CO/668/2021

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

Friday 18th March 2022

Before :

MR JUSTICE FORDHAM

Between :

SOCIAL WORK ENGLAND
- and -
HOPE WILSON

Claimant

Defendant

Cameron Scott (instructed by Capsticks) for the **Claimant**
The **Defendant** appeared in person

Hearing date: 18/3/22

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.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced and approved by the Judge, in lieu of an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

1. This was an application by the Claimant (“SWE”) pursuant to Schedule 2 §§14(2)(3) of the Social Workers Regulations 2018, for a 9 month extension (to 20 December 2022) of an interim order which is now an interim suspension order (“ISO”), and which is due to expire in three days’ time on (21 March 2022). As I will explain I decided to grant a 6-month extension to 20 September 2022. I announced that outcome at the hearing, with reasons to follow in writing, later in the day, as they now do.
2. The extension is opposed by the Defendant (“Ms Wilson”) who appears in person. Her position was set out in an Acknowledgement of Service document dated 14 March 2022 which (I accept) she emailed to the Claimant’s solicitors and posted to the Administrative Court Office in Leeds. Ms Wilson’s position is that the extension requested by SWE should be for a reduced period of 3 months (to 20 June 2022). Ms Wilson says that it should be possible for this case now to be heard and decided within that 3 month period. She emphasises the prejudice that she is suffering from there being an interim order. She says that it is unclear why there has been delay, and that the case should have been dealt with by now. I will return to all of that later in this judgment.
3. In light of the points made orally today by Ms Wilson, Mr Scott for SWE made clear that he would not resist the Court making a reduced extension order of 6 months (two 20 September 2022). SWE’s position is that the disclosure stage has now been reached in the full papers are available to be provided to Ms Wilson, and indeed attempts have been made in the to provide them by email and by post. He says that as soon as dates to avoid have been provided by Ms Wilson directions can be made for a hearing which it may well be possible to convene in May, June or July of this year. If that does prove possible and the substance of the case is determined in that timescale then the interim order will fall away, and the final substantive determination will govern Ms Wilson’s position.
4. As I have explained, I announced at the end of the oral hearing today that I had decided to make an order extending the ISO currently in place for a 6 month period until 20 September 2022. I also told the parties that I would in my written reasons make clear, as I now do, that it is very much to be hoped that the present case can indeed be heard and determined in May, June or July of this year, as SWE have described. That will require appropriate steps and appropriate cooperation on all sides including prompt provision by Ms Wilson of her dates to avoid. A 6 month extension rather than the 9 months originally sought by SWE reflects the recognition that it is appropriate to resolve this case as soon as reasonably practicable. It will allow some ‘headroom’ in case some circumstance makes that unachievable. But it will ensure that any substantial further delay would necessitate an explanation to this Court. I am satisfied that the Order which I am making is necessary and proportionate.
5. It is appropriate that I explain the background and context and that I also explain the circumstances relating to the hearing. The mode of hearing was by MS Teams. I am satisfied that that mode of hearing was justified and appropriate in all the circumstances. The open justice principle was secured in all the usual ways: the cause list published the name of the case together with its start time and mode of hearing, and an email address usable by any member of the press or public who wished to observe the public hearing. The hearing was, however, beset with these complications:

- i) In the first place, a skeleton argument dated 14 March 2022 on behalf of SWE had not been received by Ms Wilson. I was told and shown nothing which indicated that it had been sent to her. She had been served with the bundle including a witness statement whose contents substantially matched those set out in the skeleton argument. But she should have had the skeleton argument, not least because of communications between her and SWE's representatives in which she had made clear that she wished to participate. In order to secure fairness, I adjourned the hearing so that she could receive, read and consider the skeleton argument. She was able to do that we act with commendable prompt and the hearing resumed.
 - ii) Secondly, Ms Wilson's Acknowledgement of Service dated 14 March 2022 was not before the Court. It was fortuitous that Ms Wilson mentioned having made a written submission. Mr Scott was not aware of that document either but was able to confirm that it had been received by email by Capsticks. I had not seen it. Moreover, my clerk had specifically emailed the parties yesterday afternoon saying: "If Ms Wilson has submitted anything in writing, please can I ask that a further copy ... is sent to me so that I can pass it onto the Judge". Ms Wilson accepted that she did not reply to that email and did not resend her Acknowledgement of Service. Fortunately, we were able to rectify the position.
 - iii) Thirdly, a knock-on consequence was that Ms Wilson told me that she had an appointment which she needed to attend. That threatened, given the other circumstances, to 'squeeze' the time for the hearing, if the Court were going to need to proceed to give an 'ex tempore' judgment. In the event, we were able to avoid anyone being under time pressure. That was achieved by my offer to provide my reasoned ruling later in the day in writing, as Ms Wilson requested, so that the court time could be used for hearing the parties' representations, then announcing the outcome, with reasons to follow. This approach meant the parties could address their submissions, without any 'squeeze'. And Ms Wilson knew she would be able to leave in good time for her appointment.
6. I turn to the background and context. The interim order originally imposed in this case, at a hearing which Ms Wilson attended on 22 December 2020, was a 15 month interim conditions of practice order ("ICOPO"). It was maintained at review meetings on 8 June 2021, 24 August 2021 and 23 November 2021. At a fourth review meeting on 8 February 2022 the panel of adjudicators decided to replace the ICOPO with an ISO. That was a course which the panel at the third review meeting had declined to take. Ms Wilson was present at the first, third and fourth review meetings and represented at the third and fourth. An ICOPO is an interim order imposing restrictions or conditions "with which the social worker must comply"; and ISO is an interim order which suspends the social worker from practising: see Schedule 2 §8(5) to the 2018 Regulations.
7. I turn to the applicable law. In order to secure the extension which it seeks, SWE bears the onus of showing that a test of necessity is satisfied. That includes the necessity in there being an interim order, necessity in the order being an ISO rather than an ICOPO, and the necessity for the length of the extension. Matters which it is appropriate for the Court to take into account include the gravity of the underlying case against the social worker; the nature of the evidence; the seriousness of the risk of harm to the public including service users; the reasons why the proceedings have not been concluded; and

the prejudice to Ms Wilson if the interim order is continued. Relevant evidence includes evidence as to the opinion reached by any panel of adjudicators as to the need for an interim order. The principles are set out in the case of GMC v Hiew [2007] EWCA Civ 369 at §§28, and 31 to 33.

8. I turn to the underlying case against Ms Wilson. On 10 June 2019 there was a referral from West Sussex County Council's "Looked After Children" Team to SWE's predecessor the HCPC (Health and Care Professions Council). Ms Wilson had in May 2019 ended her employment with West Sussex, after starting about a year earlier, resigning her employment before a performance improvement process had satisfactorily been completed. The upshot was that concerns identified in five particular areas: carrying out visits; quality of written work; recording work in a timely manner; organisation and time management; and carrying out agreed actions. On 6 July 2020 Wandsworth London Borough Council contacted SWE referring to concerns regarding Ms Wilson's practice. That was during a period from the end of June 2019 to the middle of February 2020 when she had worked as a locum social worker for Wandsworth. According to SWE, what Wandsworth described included Ms Wilson struggling to perform required tasks and leaving some of those tasks uncompleted. When SWE's Case Examiners, by a decision on 11 January 2021, referred the concerns to a final hearing, they identified as a first regulatory concern the failure to demonstrate the necessary level of knowledge, skill and judgment in the five areas to which Wandsworth had referred. They also identified as a second regulatory concern that the actions in those respects placed vulnerable children at risk of harm. On the latest (fourth) review at which the nature of the interim order changed from an ICOPO to an ISO, the review panel said these things about the underlying case against Ms Wilson: that there is cogent and reliable information to support the allegations; that they come from an identifiable source and which comprise documents from previous employers, including supervision records, informal performance improvement plans and correspondence; that the concerns which gave rise to the imposition of the original ICOPO are serious; that they have the potential to place 'service users' at risk of harm; and that an interim order remains necessary on the ground public protection given the risk of harm.
9. I turn to the progress of the investigation. Ms Wilson's case was referred, by the Case Examiners, for a final hearing. That decision was on 11 January 2021, 14 months ago. The ICOPO was imposed in December 2020, 15 months ago. The referral by West Sussex was in June 2019, 2 years 9 months ago. There is prejudice to Ms Wilson from an interim order. She was working for Southend Borough Council from July 2020 for five months until December 2020. However, as her representative told the review panels in November 2021 and February 2022 – and as she told me today – the ICOPO has had the practical consequence of Ms Wilson being unable to get work as a social worker. SWE's evidence before this Court explained: that the investigation has been hampered by issues in engaging relevant witnesses and obtaining statements; that statements were obtained and have been finalised; and that the disclosure stage at which case materials were to be provided to Ms Wilson was anticipated as due for completion by 14 March 2022 (four days ago). As I have indicated, I was told that disclosure was ready and was sent on 15 March 2022, with email and postal delivery attempts being made and ongoing; that directions will take this case through to a hearing; and that SWE considers that it may be possible to list this case to be heard in a window May-July 2022. I have expressed the hope that this will prove achievable.

10. I turn to the substitution of an ISO for the previous ICOPO. The position is as follows:

- i) At the third review meeting on 23 November 2021 the review panel considered a question of breach of one of the conditions of practice which had been imposed in the ICOPO. That condition required Ms Wilson, within 7 days of any application for regulated work, to inform SWE that such an application had been made. It had come to SWE's attention, by reason of emails from employment agencies, that Ms Wilson had been applying for work. SWE's concern was that she had not provided the required notice. SWE considered that this non-compliance called into question Ms Wilson's willingness to abide by conditions, which in turn called into question whether the public would be fully protected by an ICOPO. SWE submitted to the third review panel that sufficient confidence of sufficient protection for the public no longer arose in the context of the ICOPO, which needed to be replaced with an ISO. Ms Wilson's representative submitted to the third review panel: that the default was by reason of Ms Wilson's misunderstanding of the conditions relating to timescale; and that no increased risk of harm had arisen since Ms Wilson had not been able to obtain any social work role despite her efforts. The third review panel concluded: that it was in a position to accept the explanation that had been put forward by Ms Wilson; that it did not have evidence that the default had been deliberate or defiant; and that in all the circumstances an ISO was not necessary. The third review panel accepted that various amendments were appropriate to the current conditions and varied the ICOPO. A condition of the ICOPO required a written copy of the conditions to be provided within 7 days (of the date on which the conditions took effect) to identified parties including any locum service or agency service with whom Ms Wilson was registered. The varied conditions were provided to Ms Wilson by SWE on 26 November 2021. The conditions were in effect.
- ii) At the review meeting on 8 February 2022 the fourth review panel considered the question of further breach. That was in circumstances where SWE's further concern was that Ms Wilson had not provided the written varied conditions within 7 days as required by an express condition. Ms Wilson was notified by written submissions dated 25 January 2022 that SWE considered this to be a breach of the ICOPO and that it would be seeking a replacement ISO at the February review meeting. On 31 January 2022 Ms Wilson filed a written response. In it she said: that she had been unable to provide a written copy of the reviewed ICOPO to the relevant agents; that she had verbally communicated the outcome of the hearing to them with a written copy to follow; that she had forwarded the written copy later than intended because of her focus on her well-being and taking up a family offer of support; that she had been out of the country from early December 2021 and had returned on 22 January 2022; that she had not been able to comply within an earlier timeframe due to the travel abroad; and that no person has been placed at risk since she had not been able to work.
- iii) It was in the circumstances that the fourth review panel determined that it was now necessary to impose an ISO. The panel explained that, having undertaken a careful assessment of the available information, it had concluded that the continuation of the current interim order (the ICOPO) was no longer sufficient

to protect the public and protect the public interest. The panel recognised that the condition now breached was not a substantive condition related to the safe discharge of Ms Wilson's professional duties in a practice setting; but it was nevertheless an obligation within a specified timeframe to provide evidence to professional third parties with whom she was registered; and it had been imposed for an important reason in light of concerns to be raised about her. The panel found that the wording of the interim condition was clear and straightforward. It observed that, without looking behind the reasoning of the third review panel, there had been a similar failure to adhere to an interim condition (which it described as identical). The panel also recalled the nature of the underlying concerns in the proceedings, which included organisational skills, undertaking agreed actions and working to agreed timescales. The panel concluded that Ms Wilson's actions prior to the 23 November 2021 review hearing, and her actions prior to the 8 February 2022 review hearing, in relation to failure to properly comply with an interim condition imposed for a proper purpose, echoed a pattern of alleged conduct on her part which had resulted in regulatory proceedings being initiated against her in the first place. The panel was satisfied that, as a result of her failure to evidence compliance with interim conditions imposed upon her for the protection of the public and to protect the public interest, the risk to the public had increased and the ICOPO was now no longer adequate to achieve those objectives. The panel decided that the only appropriate and proportionate step to take for the protection of the public, and to protect the public interest, was to replace the current ICOPO with an ISO. The panel recognised that its decision might cause financial or professional hardship to Ms Wilson but concluded that the need to protect the public and uphold the public interest outweighed her interests in that regard.

11. I turn to Ms Wilson's submissions. She began by outlining for the Court a number of points relating to the underlying case against her. It is sufficient to say that points that she raised with me in relation to the underlying merits included points about the working environment at West Sussex, points about what she did or did not do during that employment, points about the circumstances in which she came to leave, and points relating to her work at Wandsworth and at Southend and the implications of that work and evidence of it for the case that is being made against her. Ms Wilson next outlined a number of points relating directly to the interim order, and its continuation, and points relating to the progress of the investigation. She emphasised that the ICOPO had meant that she had not been able to get any job or even an interview and had not been able to earn as a consequence. She described the interim order as having had an impact on everything. She urged me to consider the justice of the case overall, and described it as being unfair and unjust for the interim order to continue. She explained that it was unclear to her why there had been delay and maintained that SWP ought to have been able to have finished dealing with the case by now. She emphasised that she wanted the case to be heard as soon as possible. On the question of the supposed breach of the ICOPO she reiterated that she had contacted the relevant agencies after every review, that she had been waiting for the new document, that she had not then provided it by means of an oversight which was not intentional and involved no disrespect or disregard, and that she had not been employed at any time. As I explained at the start of this judgment, she asked the court to extend the ISO only for three months.
12. Finally, I return to my decision:

- i) In my judgment, Ms Wilson is right and has adopted a realistic position in not resisting an extension for a period of time of the ISO that is currently in place. She is right that the real question for me concerns the length of the extension and whether the full 9 months is necessary and proportionate. Mr Scott for his part is right and has adopted a realistic position in not resisting an extension less than the 9 months which was sought.
- ii) I am satisfied that SWP has discharged the onus of demonstrating, in all the circumstances, a necessity for the protection of the public and in the public interest for having a continued ISO.
- iii) I am not making any finding about the rights and wrongs of the substantive merits of the underlying case against Ms Wilson. But the nature of that case is a matter of seriousness sufficient to necessitate an interim order. The public protection and public interest considerations outweigh the prejudice to Ms Wilson, subject only to the questions as to the appropriate length of the extension.
- iv) The fourth review panel, in my judgment, was objectively justified in imposing an ISO in replacement for the prior ICOPO. Full compliance with the conditions of an ICOPO was important. An ICOPO did not provide sufficient protection for the public and the public interest, absent confidence that there would be full compliance. The obligations were clear, including the obligation to provide the revised ICOPO in writing to relevant agencies. The prescribed time-frame for doing so was clear. It was also understood. The default, moreover, was rightly seen in the context of the clear warning at the third review panel stage and in light of the underlying concerns featuring in the case against Ms Wilson.
- v) Although criticised by Ms Wilson, the passage of time is properly addressed in the SWE witness evidence. SWE recognises that, having reached the disclosure stage, it should now be possible to have a final determination of this case between May and July 2022.
- vi) In those circumstances, I can end where I started. I am satisfied that it is necessary and proportionate that a 6 month extension of the ISO be granted.