



Neutral Citation Number: [2022] EWHC 93 (Admin)

Case No: CO/4327/2021

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

18th January 2022

Before:

MR JUSTICE FORDHAM

Between :

SOCIAL WORK ENGLAND
- and -
JOANNE SMITH

Claimant

Defendant

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

Hearing date: 18/1/22

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, pursuant to paragraph 14(2)(3) of Schedule 2 to the Social Workers Regulations 2018, for an 8-month extension (to 18.9.22) of an interim suspension order (ISO). The ISO was imposed (on 21.11.19) by the Investigating Committee of the Health and Care Professions Council (HCPC), from whom the Claimant (SWE) took over regulatory responsibility in December 2019. The ISO is due to expire tomorrow (19.1.22), having previously been extended for 8 months by HHJ Kramer in this Court (on 19.5.21). The hearing before me was a remote hearing by Microsoft Teams, arranged in accordance with the practice described in O'Donnell [2022] EWHC 61 (Admin) at §2. The open justice principle has been secured in the same ways as described in O'Donnell at §3. I am satisfied, on the evidence, that the Defendant social worker was emailed the papers (on 23.12.21) and that they were delivered to her home address (on 30.12.21). On the evidence, she 'disengaged' with the ISO review process, and with the SWE substantive investigation, in June 2021. I am quite satisfied that it is in the interests of justice and the public interest to deal with the case today.
2. The basis for the application is set out in detail in a witness statement of Eleanor Poole (21.12.21) and a skeleton argument by Ms Etemadi (12.1.22). A 304-page bundle of materials has been placed before the Court by SWE. I have to decide whether the necessity test for extension of the ISO is met. The Court's approach is guided by GMC v Hiew [2007] EWCA Civ 369 at §§28 and 31-33. The onus is on SWE to persuade the Court that the extension, and its duration, are necessary and proportionate for the protection of the public and/or in the public interest and/or in the best interests of the social worker. It is appropriate to take into account matters such as: the gravity of the allegations; the nature of the evidence; the seriousness of the risk of harm to service users; the reasons why the investigation has not been concluded; and the prejudice to the social worker if the interim order is continued. This Court is not making findings of primary fact as to the underlying events which are the subject of the investigation.
3. Three strands in particular are present in this case as to the underlying investigation and ongoing proceedings which SWE is taking against the Defendant. First, there are the circumstances described in a referral (on 23.3.17) to HCPC by Suffolk County Council, by whom the Defendant had been employed as a social worker. That referral describes circumstances in which the Defendant is said to have attended a prearranged visit at the home of a service user under the influence of alcohol, earlier in March 2017. That strand led to a 'case to answer' decision by the HCPC Investigating Committee on 14 August 2017, referable to alleged 'misconduct'. Secondly, there are the contents of a psychiatric assessment undertaken on the instructions of HCPC in February 2019, describing a diagnosis of Bipolar Affective Disorder and a long-standing and heavy use of alcohol and cannabis. That report recorded that at that stage the Defendant herself felt that she was not fit to practise as a social worker and would not be fit to practise for at least a year. The psychiatrist expressed the opinion that the Defendant's ability to practise was affected by her health condition and that she would need to be abstinent from both alcohol and cannabis, completely without any relapses, for at least a year before she could be reassessed and her fitness to practise reconsidered. That second strand led to the allegations against the Defendant being amended by SWE (on 28.8.19) to include 'impairment'. The third strand is a decision by the Disclosure and Barring Service (DBS), notified to HCPC (on 4.9.19), to bar the Defendant both from the

‘children’s list’ and the ‘adults list’. That was based on the events regarding the first strand but also on conclusions about the Defendant having neglected the basic care and emotional needs of her own children. The DBS decision led to a separate referral decision by SWE’s Case Examiners on 8 December 2021 and formal joinder will be the subject of the case-management hearing due to be held next month.

4. The SWE investigation has proceeded, with some difficulties, including at some stages difficulties relating to an ongoing refusal of consent by the Defendant as to access to her medical records. Progress has been made and the case is now ready for a 3-day hearing, with a listing window between 18 April 2022 and 24 June 2022. The purpose of the eight month extension to 18 September 2022 is to allow a ‘headroom’ to avoid having to revert to this Court if there is some circumstance involving some further delay, for example adjournment of the hearing part-heard. If the matter is resolved prior to 18 September 2022 then the ISO would, in any event, fall away.
5. In her skeleton argument Ms Etemadi submits as follows:

[The ISO] continues to be necessary for the protection of the public and is also in the public interest to maintain public confidence in the social work profession as well as the Defendant’s best interests. The allegations in this case are serious involving an unmanaged health condition and a decision that the Defendant is not suitable to work with adults or children... [T]here is a real risk of harm in the event the Defendant were permitted to practise unrestricted... [An ISO] is necessary to maintain public confidence in the profession and the regulator... [T]he continuation of the [ISO] may have the potential to cause prejudice to the Defendant. The extent of the prejudice caused ... is not known due to her recent lack of engagement.... The prejudice caused by the extension of the [ISO] is mitigated by the fact [that] the DBS have also barred the Defendant from working with children and adults.... [T]he need to protect the public from risk of harm outweighs any such prejudice.

I agree. In my judgment, SWE has discharged the onus of demonstrating that the necessity test, and the principle of proportionality, are met both as to the extension and its duration. I grant the Order in the terms sought.