



Neutral Citation Number: [2023] EWHC 2456 (Admin)

Case No: AC-2023-LDS-000198

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

Thursday, 5<sup>th</sup> October 2023

**Before:**

**MR JUSTICE FORDHAM**

**Between:**

**SOCIAL WORK ENGLAND**

**Claimant**

**- and -**

**NDODA NATHANIEL MASINGA**

**Defendant**

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**Jennifer Holdsworth** (instructed by Capsticks LLP) for the **Claimant**  
**The Defendant** in person

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Hearing date: 5.10.23

Judgment as delivered in open court at the hearing  
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**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, after delivering an ex tempore judgment in a remote hearing.

## **MR JUSTICE FORDHAM:**

### Introduction

1. In this case I am satisfied that SWE has discharged the onus of demonstrating the necessity, for the protection of the public including public confidence, of a 10 month extension to 24 August 2024 of an Interim Suspension Order (“ISO”). An 18 month ISO had been imposed on 27 April 2021. This was replaced with an Interim Conditions of Practice Order (“ICPO”) at a review meeting on 15 June 2022. That was extended for 12 months by this Court on 25 October 2022, but then replaced with an ISO at a review meeting on 31 October 2022. I am declining to grant an extension for 14 months to 24 December 2024 as sought. But otherwise, I grant the claim for an extension in the terms sought and I will explain why. The extension is pursuant to Schedule 2 §14 to the Social Workers Regulations 2018. The guidance in GMC v Hiew [2007] EWCA Civ 369 at §§28, 31-33 applies. I can only grant the extension if satisfied – as I am – that the extension, the nature of the interim order being extended (an ISO not an ICPO), and the duration of the extension which I am granting are all justified as necessary in the interests of public protection including public confidence.

### The Defendant’s Position

2. The Defendant’s engagement at various stages in the process, including on 27 April 2021, 15 June 2022 and 14 April 2023 meant I had been able to pre-read the summaries recording the key points which he had made. In an email yesterday he described his confusion as to why another extension has been requested, having agreed to an extension last year, and – he said – “clearly no progress has been made”. A previous email (11 September 2023) and an attendance note (25 September 2023) refers to a decision not to consent to the extension, and specifically a concern about an extension “for so long”. The Defendant has appeared at this hearing. He has addressed me with clarity and also with moderation. I have been assisted by the points that he has brought to my attention. He has a ‘backward-looking’ point and a ‘forward-looking’ point. The Defendant’s ‘backward-looking’ point is that the matters of concern in the present case are all historic matters. They go back to the position up to around February 2021. SWE has had plenty of time to gather information, material and evidence, and to progress its proceedings. Certainly the 12 month extension that this Court granted in October 2022 should have been enough. His ‘forward-looking’ point is this. He now faces the prospect of a further 14 months. He says that is far too long and the Court should be concerned about it, including in the context of the “free rein” that he describes SWE as having and exercising. Why, he says, should there be another 14 months? If there were to be an extension it should be more like 6 months or, as a “compromise”, 10 months. He emphasises the circumstances of prejudice and hardship from his perspective.

### Discussion

3. As the Interim Order Panel convincingly explained (27 April 2021), the matters with which SWE is concerned in this case include alleged domestic violence by the Defendant against his estranged wife – described in the papers as his ex-wife – and the potential for emotional abuse of their child, leading to a series of interventions by police, social services and the courts; together with alleged concealment of events from an employer, in obtaining employment and during employment, and from SWE itself; together with further concerns as to the Defendant’s ability to recognise the impact of

his actions. The concerns touch on fitness to practise and public protection, in a setting requiring protection of service users, as well as probity and public confidence in the profession. My function today is to consider risk, not to decide questions of fact or substantive questions for adjudicative appraisal. As the Review Panel has also cogently explained (14 April 2022), alongside the nature of regulatory concerns there have been and are concerns as to the nature of insight, and concerns about an incident in February 2022 involving the Defendant's attendance at the ex-wife's residence, and his position as to whether that incident needed to be declared. There are in this case behavioural and attitudinal concerns.

4. The public interest imperatives decisively outweigh the undoubted impact on the Defendant's ability to obtain employment, which he has described, and the prejudice and hardship. I am, however, very concerned about delay and the passage of time. The points which have been made by the Defendant as to that are powerful points. Moreover, this Court was given a detailed chronology in October 2022 and was told that it was expected that the process could be completed within a further 12 months. That has not happened. On the other hand, I do not think it is right to say that no progress has been made; nor is it right to say that the position is a confused one. The Court papers contain a clear explanation. I have an updated detailed chronology, including as to what has happened since October 2022. Based on a Case Investigation Report (17 October 2022), the Case Examiner made a referral (10 November 2022) to a final hearing. Capsticks solicitors have been on the case since January 2023, with further investigation, interviews and statements in the months since then. Communications with the family court, who had made a February 2020 non-molestation order, have been taking place since June 2023. I am told that service of a finalised case against the Defendant is anticipated for 30 November 2023 and an anticipated final hearing window between May and November 2024.
5. I do not underestimate the difficulties in this case, and the bigger picture faced by SWE with its case-load, but I do think it would give quite the wrong signal to now grant a 14 month extension, on top – as it is – of a previous 12 month extension by this Court.

#### Generic Evidence

6. I will record here what I have been told in SWE's witness statement evidence in this (and in other) cases:

*Since [SWE] became the specialist regulator of social workers in England in December 2019 it has seen higher levels of fitness to practise concerns referred to it than anticipated during its establishment (approximately 30% more than anticipated). Alongside this, [SWE] inherited 1,459 fitness to practise investigations from the Health and Care Professions Council. Disposal of these aged cases has been a priority for [SWE]. These factors have resulted in longer wait times to progress investigations and hold hearings with the resources [SWE] has available. The Covid-19 pandemic further impacted on [SWE]'s ability to progress investigations. In order to enable the social work workforce to concentrate on responding to the pandemic, [SWE] sought to progress cases where there was a higher risk to the public. With the lifting of restrictions associated with the pandemic [SWE] has now resumed a more normal level of service and is working through cases based on risk assessment and age. [SWE] is working collaboratively with social work employers to expedite information needed for investigations. It is hoped that these actions will reduce the overall delay during the investigation stage. In order to reduce delays, [SWE] increased the number of hearings by 50% from June 2022 until June 2023. [SWE] received additional funding from its sponsor department, the Department for Education (DfE), to assist with this work. The number of hearings held has reduced back to original resourcing capacity of 10 - 12 final hearings per*

*month from July 2023. Cases are being listed for a hearing in priority of risk and age. [SWE] continues to hold discussions with the DfE exploring future funding options that may allow them to increase capacity to progress more cases to hearings.*

7. This sort of evidence from SWE is appropriate. The Court does need to understand the real world, bigger picture. Candour is also appropriate, including – at the end of the passage which I have quoted – as to there having been a July 2023 ‘scaling back’ of resourcing capacity, but also there having been subsequent consideration of additional resources to scale back up again.

### Implications

8. Where a social worker has been suspended and is prevented from working – and indeed perhaps especially if it is not a case which is said to be a “higher” or “priority” risk to the public – there are very real and anxious concerns about ongoing delays and prejudice. The legislation confers on this Court the responsibility of examining necessity and proportionality.

### This Case

9. This ISO goes back to April 2021. The events are historic. There has been no ‘parallel process’ to await. This Court has already given a 12 month extension. In all the circumstances, I will grant an 10 month extension. I will not, in the present case, grant the 14 months sought. I am satisfied, in the present case, that if the ISO is to continue beyond a further 10 months (24 August 2024), a further application to this Court will be necessary and a full explanation given.

### CPR 5.4C

10. Finally, SWE had brought to my attention the fact that a child features in this case. I was not asked to hold a private hearing and I am satisfied that that was not necessary. I had been invited within SWE’s supporting witness statement – but not in the claim form or the skeleton argument – to make an Order that:

*The parties be given 14 days’ notice should a non-party make an application to obtain documents other than the claim form, judgment or order (pursuant to CPR 5.4C(2)), before the Court considers any such application, and that the parties be given the opportunity to respond to the application (including proposals for editing/ redacting sensitive content).*

That invitation has not been maintained. I would have declined it. It is not said that the Court should restrict access (CPR 5.4C(4)) to the claim form, judgment or order. I have been shown no document which has been filed, which identifies the child by name or gives any address for the child and mother. The Court’s permission is needed to obtain other documents (CPR 5.4C(2)). No further prospective order is justified as necessary or proportionate.

### Order

11. I will Order as follows: (1) The Interim Order made on 27 April 2021, and extended by the Court on 25 October 2022, which would otherwise expire on 25 October 2023, be extended as an Interim Suspension Order by a further 10 months until 24 August 2024. (2) The Interim Order shall be reviewed in accordance with Schedule 2 Part 4 Paragraph 14(1) to the Social Workers Regulations 2018. (3) No order as to costs.

5.10.23