



Neutral Citation Number: [2023] EWHC 2458 (Admin)

Case No: AC-2023-LDS-000209

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

Thursday, 5th October 2023

Before:

MR JUSTICE FORDHAM

Between:

SOCIAL WORK ENGLAND

Claimant

- and -

CHARMAINE MORGAN

Defendant

Alex East (instructed by Capsticks LLP) for the **Claimant**
The **Defendant** did not appear and was not represented

Hearing date: 5.10.23

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 delivering an ex tempore judgment in a remote hearing.

MR JUSTICE FORDHAM:

Extension of the ISO

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 10 August 2024 of an Interim Suspension Order (“ISO”) imposed on the Defendant on 12 April 2022, whose continued effect was recorded in an Order of this Court dated 30 November 2022. The guidance in GMC v Hiew [2007] EWCA Civ 369 at §§28, 31-33 applies. I am satisfied that the extension, the nature of the interim order being extended, 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 is aware of the application and today’s hearing. She has made clear that she does not consent to the Order. I am satisfied that she has been served, and has had the opportunity to make written or oral representations or both, and that it is in the interests of justice to proceed today; not to adjourn; nor to allow the ISO to expire on 11 October 2023.
2. There has already been a first “final hearing” in this case. By a substantive determination dated 4 April 2022, a first allegation (Allegation (1)) was ‘struck out’ and the others (Allegations (2) to (4)) were found proven. The substantive sanction imposed was an 18 month suspension order (“SO”). An appeal to this Court by the Professional Standards Authority for Health and Social Care (“PSA”) was allowed on 30 November 2022. It was agreed in that appeal, between the PSA and SWE, that the Allegation (1) had been wrongly ‘struck out’, and the SO did not adequately protect the public as a final sanction. The ISO had been made on 12 April 2022 to secure public protection in the face of any appeal by the Defendant. She had not attended the final hearing that month. In the event, she did not appeal against the SO or the determinations on Allegations (2), (3) or (4). Nor did she agree the Consent Order in the PSA’s appeal. Nor did she pursue the ‘liberty to apply’ to set aside the Order disposing of the appeal on the papers. This Court’s Order (30 November 2022) left the adverse substantive determinations on Allegations (2), (3) and (4) undisturbed, and remitted the hearing of Allegation (1), together with the revisiting of overall sanction as appropriate.
3. In an email dated 27 September 2023 the Defendant tells this Court that she is fully occupied at university and is also doing a college course. Insofar as there is prejudice to her from the ISO and its continuance, this is in my judgment plainly and decisively outweighed by the public interest imperatives. My assessment of risk takes as its starting point the substantive adverse determinations which remain undisturbed. There is then the case to answer so far as the Allegation (1) is concerned. I will return below to a description of the Allegations to which I have been referring. A detailed chronology from SWE tells me what steps were taken in April and May 2023, at which point a 7 day hearing date was identified for 10-18 January 2024, which has now been fixed with directions. I accept the witness statement evidence from SWE that the effectiveness of that hearing, finished in that time scale, is heavily reliant on those whose evidence is being adduced. It must be hoped that the case can be resolved in January 2024. But I agree with SWE that a ‘headroom’ is justified in the present case through to August 2024 as a sensible precaution and that – should circumstances arise in which there is a need for that scale of further time – it should not be necessary to return to this Court with another application for another extension.

4. I return then to the nature of the Allegations. This Court's substantive determination in the previous appeal was reference CO/2257/2022. The Order of 30 November 2022 incorporating a Statement of Reasons recorded that the April 2022 determinations made in relation to the Defendant on Allegations (2), (3) and (4) remain undisturbed. The four Allegations (1)-(4) are recorded in the Order as follows:

(1) In or around March 2019 whilst registered as a social worker you: (i) reconnected with Person A, who is a vulnerable person and used their home to carry out sex work; (ii) used Person A's vulnerability to financially exploit them; (iii) demonstrated controlling, manipulative and threatening behaviour towards Person A.

(2) Whilst registered as a Social Worker you have frequently been in possession of and used Cannabis, an illicit substance.

(3) Whilst employed as a level 3 social worker by Kirklees Council during the period 25 June 2018 until 25 March 2019 you failed to demonstrate the necessary knowledge skills or judgement in the following areas: (i) maintaining accurate records including promptly completing and uploading reviews and assessments to assist with effective communication and information sharing; (ii) safeguarding; (iii) completing necessary funding paperwork; (iv) carrying out visits; (v) completing time sheets.

(4) You have adverse health conditions as set out in Schedule 1 that impact upon your ability to practise as a social worker... Schedule 1: (a) Physical health issues including refractory helicobacter pylori and irritable bowel syndrome. (b) Mental health issues including anxiety and depression.

Redacting a Court Order

5. A version of that November 2022 Order, included in the bundle for this application, had been redacted so that these Allegations were not identifiable. I asked for the origin of these redactions. It was confirmed that they did not emanate from the Court. The Court's order is fully unredacted. Instead the redactions had emanated from those preparing SWE's application for this extension of the ISO. Reassuringly, I was told that SWE's advocate Mr East had recognised the inappropriateness of redacting the Court's previous Order and had arranged for an unredacted version to be supplied with the papers.

CPR 5.4C(2)

6. I am invited to make an Order as follows, 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).

The justification given is that "the documents include reference to sensitive information concerning the [Defendant]'s health and personal circumstances. The final fitness to practise hearing on 4-12 April 2022 took place entirely in private to protect the [Defendant]'s private life and that of Person A. Accordingly, the final hearing decision has not been published by [SWE]". Mr East has today drawn my attention to the appealed determination of April 2022 and its summary of the medical evidence. He identified as the concern that there are matters, which he characterised as being of detail with quotations from underlying materials. His submission is that, were that documentation containing that summary to be applied for by any third party,

concerns could legitimately be raised and that, in order to be in an informed position, the Court should now prospectively order a required minimum notice period.

7. I emphasise that I was not asked to hold a private hearing or anonymise the Defendant, and I am satisfied that these were not necessary steps. I decline the CPR 5.4C(2) Order which is sought. The substantive appeal was resolved in November 2022 by way of a Court Order with reasons. The open justice principle applies to that as a judicial act: see the Administrative Court Judicial Review Guide 2023 §24.4.1 and fn.460. Had there been an oral hearing, and had there been a written judgment, the nature of the Allegations would have been identified. The Order itself – in Schedule 1 – identifies the nature of the medical conditions in question. These, I emphasise, have been the subject of a substantive determination on Allegation (4), which has been upheld in the course of a substantive decision of this Court on an appeal. It is true that the medical evidence is summarised in the April 2022 substantive determination which was the subject of that appeal. But I cannot see how that summary could successfully have been sought to be ‘stripped out’ of a judgment of the Court in dealing with the appeal. I do not regard the nature and implications of the reference to the health conditions, or the summaries of the relevant evidence, as capable of justifying a restriction on open justice. It is not said that the Court should restrict access (CPR 5.4C(4)) to any claim form, judgment or order. That includes – in respect of the court records for CO/2257/2022 – the November 2022 Order in the appeal. Further, and in any event, the Court’s permission is needed to obtain other documents (CPR 5.4C(2)) and SWE has registered its wish for it and the Respondent to have notice. If an application is made for permission to access documents from the court file, the Court will be able to deal with that application and the appropriate process at that stage. No further prospective order is, in my judgment, justified as necessary or proportionate.

Review of the ISO

8. Having given my judgment in this case, and in announcing that I was going to make the order in the terms which had been sought, I referred to paragraph 2 of the draft Order that had been put forward by SWE itself. It read as follows:

The Interim Order shall be reviewed in accordance with Schedule 2 Part 4 Paragraph 14(1) to the Social Workers Regulations 2018.

9. Having reached that point in the hearing Mr East has now raised a point with me as to whether, on reflection, this is an appropriate provision for inclusion in the Court’s Order. He accepts that it is contained within the draft that was provided to the Defendant and the Court. He also accepts that the position had not been clarified in any of the documents before the Court including the skeleton argument. Nowhere was it spelt out that this part of the order was considered, on reflection, to be inappropriate and was not in the event being sought. The legal analysis, based on what Mr East has told me and show me is this. The mandatory review described in paragraph 14 of Schedule 2 is described as applicable only to interim orders applied under certain paragraphs including paragraph 11(1)(a) but not paragraph 11(1)(b). That is to say, not where a “final order” had been made. The SO was a final order. On that basis, Mr East submits the statutorily-prescribed mandatory review is not triggered. That explains why there have not been 6 monthly reviews of this ISO in the period since 12 April 2022. I note that, when this Court dealt in November 2022 with the substantive

appeal the court order in terms described the interim order as continuing. But it did not refer to any review.

10. I think there is an open question whether this Court's own jurisdiction in extending the ISO under paragraph 14 extends to imposing a review. Even assuming that there is such a jurisdiction, I am not presently persuaded that it should be exercised in this case. I am, however, concerned that the Defendant has been led to believe that the Order being sought will contain a provision which it does not in the event include. Indeed, she was asked to sign a Consent Order containing such a provision. I will grant liberty to apply should she wish to exercise it. I am not encouraging that course, but I am providing that protection.

Order

11. I will Order as follows: (1) The Interim Order made on 12 April 2022, and continued by Order of this Court on 30 November 2022, which would otherwise expire on 11 October 2023, be extended by a further 10 months until 10 August 2024. (2) No order as to costs. (3) Liberty to the Defendant to apply to vary this Order.

5.10.23