



Neutral Citation Number: [2023] EWHC 992 (Admin)

Case No: CO/1200/2023

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

28<sup>th</sup> April 2023

**Before:**

**MR JUSTICE FORDHAM**

**Between:**

**SOCIAL WORK ENGLAND**

**Claimant**

**- and -**

**KIMBERLEY-ANN ROSE**

**Defendant**

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**Ed Carey** (instructed by Capsticks) for the **Claimant**  
**The Defendant** in person

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Hearing date: 28.4.23

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 using voice-recognition software during an ex tempore judgment in a remote hearing.

**MR JUSTICE FORDHAM:**

1. Pursuant to paragraph 14 of Schedule 2 to the Social Workers Regulations 2018, the Claimant (SWE) applies to this Court for an extension to the interim order in this case. The interim order is an Interim Conditions of Practice Order (iCOPO) which was imposed for the maximum period of 18 months on 2 November 2021. Unless extended by this Court today it will expire on Bank Holiday Monday 1 May 2023. The extension sought is 12 months to 30 April 2024. This is because there is a listing window between October 2023 and February 2024, and to allow some headroom for eventualities after that should they arise. It does mean an interim Order would have been in place for some 2½ years. The claim for an extension was made on 31 March 2023 and is supported by a witness statement of Hannah Appleyard. The witness statement sets out the background, describes the chronology of the proceedings and explains the current position. There is a 419-page bundle. A skeleton argument dated 19 April 2023 by Mr David Collins sets out the basis on which the extension is sought.
2. The papers were served on the Defendant (Ms Rose) by email. She has been in Canada since around July 2022 and an Order dated 6 April 2023 from this Court was secured giving permission for that mode of service out of the jurisdiction. In response to the papers seeking the extension, Ms Rose has provided an email on 18 April 2023, giving written reasons for opposing the making of the extension. In response to an email from my clerk providing the link for this remote hearing (by MS Teams) today she provided a further email yesterday on 27 April 2023. It attached materials a letter and “social worker impact statement” and a “portfolio of evidence” of “steps taken towards unrestricted practice”. Ms Rose raised concerns, which she says were well known to SWE, about the morning (10am) listing of the hearing today and said she would be able to attend at 2pm. Counsel for SWE (Ed Carey) promptly and cooperatively confirmed by email that a deferral to 2pm was unopposed. I moved the hearing to 2pm and ensured that any observers of the hearing, which was scheduled and published as 10am, were made aware of the new time.
3. The approach which the Court takes to extension applications of this kind is the subject of authoritative guidance of the Court of Appeal in GMC v Hiew [2006] EWCA Civ 369 at §§28 and 31-33. The Court applies the same criteria as are applicable to the making of the interim order by the Interim Orders Panel: necessity for the protection of the public and/or public confidence and/or the practitioner’s own interests. The Court can take into account matters such as the gravity of the allegations, the nature of the evidence, the seriousness of the risk of harm to relevant members of the public, the reasons why the case has not been concluded, and any prejudice to the practitioner if the order is continued. The onus is on SWE to satisfy the Court that the Order being extended is necessary, including as to its nature and the duration of the extension. The Court is not making findings of primary fact, but it can appropriately ask whether it can be seen clearly that the case has little merit. Beyond that the Court is not expressing a view on the merits of the case.
4. It is relevant, in my judgment, that the iCOPO was reviewed recently on 15 March 2023 by a Review Panel. Ms Rose appeared at that hearing. She addressed the necessity for the iCOPO continuing, by reference to materials before that Panel. She has done so again in this Court, by reference to the materials before me.

5. The case arises out of a referral by Bath and North East Somerset Council on 4 August 2021. In the recent review on 15 March 2023 the Panel described the allegations in this case as being based on reliable information which was, on the face of it, credible and cogent and give rise to a case to answer. The Panel explained that the allegations were wide ranging and serious, emphasising that the capability concerns included allege inadequacies in risk assessments and decision-making in relation to vulnerable service users with a pattern of repetition of similar concerns. The nature of the underlying concerns was also described in detail by the Interim Order Panel which imposed the original order on 2 November 2021 in a determination which set out details. The Appleyard witness statement summarises the matters which Case Examiners on 28 September 2022 referred to a final hearing:

*Whil[le] registered as a social worker on or around April 2019-July 2021: You failed to demonstrate the necessary level of knowledge, skill or judgement in the following areas: 1.1 Assessing risk and making sound decisions regarding the children on your caseload. 1.2 Organisational skills. 1.3 Communication with Young People, their carers and other professionals. 1.4 Undertaking required duties including: Visiting children within required timescales; Completing reports in a timely manner and/or to a sufficient standard; Completing referrals as part of care plans. 1.5 Keeping accurate and up to date case records. 1.6 Failing to follow management advice or instruction 1.7 Failing to engage with support offered. The matters outlined ... amount to the statutory ground of lack of competence or capability.*

6. Ms Rose has explained her position clearly. She says that SWE should not be given more time for investigation, the process should now be concluded. She says that registration organisations will not allow registration for social work until the investigation has concluded. She says there is no need for an extension, and that all of the evidence has been collected from the local authority whose final report was submitted. She questions about what evidence and witness statements could now relevantly be needed bearing in mind the relevant focus of time so far as relevant events are concerned. She points out that the witnesses who can speak about what happened in 2019 to 2021 are in no position to speak to the current position regarding her professional development. She says that there is no current evidence to demonstrate that she is any risk to the public service users. She also explains that she does not wish to be left in limbo and describes that as extremely unreasonable and unfair. She says that SWE are spending far too many resources on this case and resources would be better spent in other ways. Ms Rose emphasised to me at this hearing today the impact and implications on being in limbo, and that this case is taking a very long time from her perspective. She asks that it should be concluded as soon as possible, and she understandably emphasises the various impacts that are described in her social worker impact statement and the contents of the materials that she has gathered together in her updated portfolio of evidence.
7. It is important to emphasise the following point. I am not making findings of fact. I am not in a position to make any such findings. I have summarised the nature of what is alleged against Ms Rose. She has given her answer to those matters, and she will have the opportunity to make a case in response to them. Nothing that I am saying in this ruling constitutes any finding, whether upholding the case that has been put forward against her, or for that matter any finding on any feature of the position that she is putting forward in response. What I have to do today in essence is to grapple with the question of risk and to consider whether there are sufficient risks to warrant as necessary the extension of the iCOPO.

8. I have reached the following conclusion. I am satisfied that it is necessary for the protection of the public and to maintain public confidence that the interim order should continue and should not be allowed to expire on Monday. It is proper and appropriate – and it is necessary in the public interest and for public protection – that the concerns in this case should be ventilated at a substantive hearing with due process. There is no question of this Court today ordering that the investigation or process must now conclude. The steps towards a hearing are appropriate and they are necessary. Indeed, they would continue, with or without an iCOPO. And if registration by other bodies require the investigation to be concluded that is not a function of my decision today about whether the iCOPO should continue. When it has been reached, in light of the outcome of the proceedings, a final view can be taken as to what if any measure is appropriate and necessary. The iCOPO is an interim measure which is protective, while that process runs its course.
9. Having had regard to the chronology and sequence and all of the evidence and materials before the Court, I am satisfied that the Court has had an adequate explanation and that progress has appropriately been made. As I have said, the extension which is sought is 12 months to 30 April 2024. Mr Carey gave me a further update today. The position is that disclosure at which was required by SWAC was received yesterday 27 April 2023. Witness interviews which had provisionally been scheduled for 20 April 2023 have needed to be put back for a short period to 15 May 2023. I am satisfied that it is appropriate and indeed necessary that the evidence needs to be put into the form of final witness statements. The update was that the draft statement of case and the witness statements and documents will all be completed and gathered together ready for disclosure which is currently scheduled for the end of July 2023. That disclosure means disclosure of the full evidenced case being made to Ms Rose so that she is then able to provide her response at that stage. The hearing listing window is still the period beginning of October 2023 to February 2024. Mr Carey tells me, and I accept, that it is the hope of those dealing with this case that it will be possible for a hearing to be listed towards the beginning of that window rather than towards the end of that window. I record – conscious as I am that I am only considering this case and do not have visibility as to SWE’s other caseload – that from my perspective the Court shares the hope that it will be possible to list the hearing in this case for the early part of that listing window.
10. I bear in mind that in this case the interim order is not a “suspension” order but a “conditions of practice” order. The conditions in substance come to this. If continuing in a social worker role Ms Rose needs prior approval and a workplace supervisor regularly reporting to SWE. She is not to act in solo practice as a social worker and is required to notify any application for foreign registration. There are requirements for information exchange and supply of the conditions of practice to those assessed as needing to have them. Those are the conditions. In the event, Ms Rose is currently working in Canada in a related field as an Advanced Support Worker, and not as a social worker. It would in principle be open to Ms Rose to return to social work in England, acting in accordance with the conditions. I do accept that the proceedings have been lengthy and that they place Ms Rose in ‘limbo’. She says that it has not proved possible to “move up to social work”, at least in part because of the iCOPO. I will proceed on the basis that this is correct. But the prejudice to Ms Rose is, in my judgment, decisively outweighed by the public protection and public confidence justifications for the iCOPO continuing. Reference has been made by Ms Rose to

resources and to protecting children, and to SWT focusing on doing its principal job. But I am satisfied: that protecting children extends to proper investigation and procedures, with due process, in order to ascertain relevant facts and evidence and to make appropriate decisions in relation to relevant concerns; that resources are properly and necessarily used for that purpose; and that this falls within the scope of SWE doing its job. The witness statement of Hannah Appleyard explains in detail as do the underlying documents placed before the Court the chronology of proceedings in this case and the various reasons why there have at particular stages been delays. There is a clear explanation of the progress which has taken place and of the current position.

11. Ms Rose has put together a portfolio of materials which are relevant to seeking to demonstrate that she can return to social work. The Panel on 15 March 2023 considered the picture based on what I accept was in substance at similar material It dealt with that picture and said this:

*The panel noted that Ms Rose has provided some further documents about her continuing professional development. The panel also noted that she has previously provided detailed written submissions and documents for the panel and a portfolio of evidence titled "towards unrestricted practice." She has also previously provided additional documents written by her describing her perspective, her analysis and reflections on past events ... The panel took account of Ms Rose's submissions about her current role. She appears to be taking steps to develop her skills in the social care role she holds in Canada. However, that role is not that of a social worker, and it is not comparable to the role of a social worker in England. It is not easy for the panel to draw direct comparisons between the roles, and the panel did not have before it any references or testimonials from her current employer, or any independent information about her current role. The panel also noted that Ms Rose is also relatively new to the role.*

The Review Panel, for its part, concluded that it was necessary for the protection of the public and in and the protection of public confidence that the interim conditions of practice order should continue. I agree with that conclusion.

12. As to the duration of an extension, I ventilated at the hearing today the possibility that the extension might be limited to 9 months so that expiry would be on 30 January 2024. The rationale for doing that would have been as follows. It would have been a signal from this Court that, if at all possible, a scheduled hearing at the early part of the listing window should be achieved. It would focus minds on seeking to achieve that position. In so far as something happened and meant that that was not achievable a further application could be made to this court for a further extension. I have decided, on reflection, that that would not be an appropriate course for me to take. I am already able to give the clear signal, and I have done so in this judgment, that it is the hope of the Court that it will prove possible for the hearing to take place early in the window the begins in October 2023. I have no reason to doubt that those within SWE, who have communicated to the Court today that that is their hope, will seek to achieve that if achieving that is possible. But I accept the submission made by Mr Carey. He says that it is foreseeable that there might be features or events which mean that that optimal position is not achieved. Were there to be any such feature, there would then necessarily need to be another application to this court. He submits that SWE should be left to pursue such expedition as is reasonably achievable. If, as it hoped, the case is resolved well within the extension then, whatever happens, the extension of the iCOPO will fall away. That is because there will be a determination, one way or the other, by the Committee or Panel dealing with the substantive matters.

I have been persuaded that it is both necessary and proportionate that SWE today should be given the 12 month extension that it seeks. That means that if there is some eventuality, which I accept is foreseeable, which means that resolution within 9 months is not achieved, it will not be necessary at that 9 month stage to make a further immediate application to this Court.

13. For all those reasons I am satisfied that SWE has discharged the onus of demonstrating the required necessity: of the extension of the order; of the conditions of practice in the iCOPO; and of the duration of 12 months. I will therefore make the Order for the extension that is sought.