



Neutral Citation Number: [2024] EWHC 186 (Admin)

Case No: AC-2024-LDS-000003

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

Friday, 2nd February 2024

Before:
FORDHAM J

Between:
SOCIAL WORK ENGLAND
- and -
REBECCA GARDENER

Claimant

Defendant

Adrian Harris (instructed by Capsticks) for the **Claimant**
The **Defendant** in person

Hearing date: 2.2.24

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.

FORDHAM J

Note: This judgment was produced and approved by the Judge, after using voice-recognition software during an ex tempore judgment.

FORDHAM J:

A Re-Start

1. The hearing today had a false start. I accept that it was nobody's fault. The position was that SWE and the Court were aware that Ms Gardener intended to attend the hearing today. She and everybody knew that it was scheduled as a 30 minute hearing to begin on MS Teams at 10am. Emails and links had been sent. A further email went from my clerk resending the link. In the end, Ms Gardener join the hearing at 10:20. I had not heard any submissions on any substantive matters at all, because everything had been set out in the papers, there was no update and I had no questions. I was on the verge of making an order and was beginning to give a ruling. But I was doing so having already made clear that any order I made today, and any ruling that I gave today, would be subject to a "liberty to apply" protection. The point of that protection was so that Ms Gardener would be able to say to me that something had gone wrong from her end, and that she would have wanted to address me. If appropriate, I could then have heard what she wanted to say, and would have considered whether to make a different order.
2. When Ms Gardener joined the hearing she ultimately indicated that she did want to make some oral representations. That meant I did not need to use the liberty to apply mechanism. Instead, I re-started afresh. I began by explaining what had happened since 10am so that Ms Gardener would know that all of the substantive points being made by SWE were in the documents served in the case; no further point had been made. I then described the exchanges that I had had with Mr Harris. Next, I listened to the oral representations which Ms Gardener made to me. I am satisfied that, by taking this course, she has had a full and fair opportunity to put forward her perspective.

Ms Gardener's Position

3. I am grateful to Ms Gardener for explaining the position from her point of view, so that I could take that into account in deciding what to do in this case. She appreciates that I am dealing only with an application to extend and interim order. I am not dealing with the underlying regulatory concerns which are the subject of SWE's proceedings. Ms Gardener also, realistically, accepts that an extension is appropriate but her concerns are about the length of time, and the effect of having the case hanging over her with the stressing and depressing implications of that. She has repeated to me what – as I had seen from the papers – she told the Interim Orders Panel back in August 2022, about working at present in a different area, and about not looking to return to social work at present. That ability to work is relevant to the question of prejudice. But I accept that there is significant prejudice. Ms Gardener has expressed a wish, at some future stage, to be able to return to being a registered social worker. The ongoing passage of time delays that prospect. She asks me to limit any extension to 12 months or less. She points to the ongoing passage of time. She describes the case as "going back in time". I have considered all of these points.

Extension

4. As an application for an extension of an Interim Suspension Order (ISO) this case arises 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 to my function. I am satisfied that SWE has demonstrated the necessity – for the protection of

the public and public confidence – of an extension of an interim order, to continue as an ISO. I have recorded that Ms Gardener is not opposing an extension, but is raising concerns about the length of that extension. I will return to that. As to the extension, there are regulatory concerns which are serious matters. They are allegations. They are for the regulatory process, which is designed to ensure that Ms Gardener has a full opportunity to respond. She tells me today that she has been engaging with that process and I can see in SWE’s Chronology the various references to her responses including in August 2023 and November 2023. I am satisfied that it is necessary for the protection of the public and in the public interest that the interim order should continue, as an ISO. There are public interest imperatives, and these decisively outweigh the prejudice, subject to the question of duration to which I will return. I cannot allow the ISO to lapse on 18 February 2024.

Open Justice

5. At this stage I record that Mr Harris, very properly, had raised in his skeleton argument SWE’s concern that a part-private hearing could be necessitated under CPR39.2(3), had it become necessary to refer in open court to certain matters described in the case materials. In the event, I had the materials and could read them. It was not necessary for those matters to be described in anyone’s oral submissions; nor in this judgment.

Duration

6. I return to the length of the extension. SWE seeks a 17 month extension to 17 July 2025. Ms Gardener asks me to restrict the extension to 12 months or less. I have from SWE a detailed Chronology and a witness statement. After concerns came to light in August 2020, these were investigated by the local authority Children’s Trust who was Ms Gardener’s employer. After that process ended in November 2021, SWE struggled to elicit materials from the Trust, and that matter was eventually escalated. The Trust had acknowledged the delays and there were references by the Trust to needing permission and to seeking a court order. The Case Investigation Report was finalised in July 2023 and the regulatory concerns were amended in September 2023. At each stage there was a representations stage for Ms Gardener to respond.
7. I cannot accept that this case is “going back in time”. I am satisfied, based on the evidence that I have received, that this case is moving forward. The Case Examiners’ decision is said by SWE to be imminent. If this case is referred for a final hearing, SWE has explained that some 6 months would be needed for that case-preparation including further witness evidence and expert evidence.
8. That brings me to the question of SWE’s predicament, its under resourcing and its caseload. I have been given the same evidential picture – including as to the currently available resources – as I set out in my observations in SWE v Sobrany [2024] EWHC 67 (Admin) at §8. Again, the evidence is that SWE has no “current” capacity to list new hearings until “after” April 2025. As I have explained, the extension is sought for 17 months to 17 July 2025. I can understand why. I understand the need for headroom, and the work needed to prepare to come back to this Court, and the risk of some diversion of attention and resource. I have made observations in SWE v Yalden [2024] EWHC 84 (Admin) at §6. They apply here too.

9. I will extend the ISO for 16 months to 17 June 2025. If there is no referral for a substantive hearing, the ISO will fall away much sooner. If the case can be resolved at an earlier stage, within those 16 months, the ISO again will fall away. The next review of the ISO is due to take place in May 2024. I have considered all the circumstances, including the stages which are needed in moving this case forward. I have considered the need to be realistic, given the realities for SWE. I have considered the implications for Ms Gardener of the case hanging over her with a further lengthy ISO extension. It is not for me to make decisions, or impose decisions, about resources. I have referred to the observations I have made in earlier cases. If this case proves incapable of final resolution within the 16 month timeframe, SWE will need to return to this Court with an explanation, including what was done by all relevant authorities and agencies about the additional resources which SWE's evidence recognises are badly needed, in the context of a picture accepted to involve "unacceptable" timescales.
10. In my judgment, 16 months as a further ISO extension at this stage is necessary and proportionate; no more, but no less.

CPR 5.4C and Notice

11. In the particular circumstances of the present case, I will also accede to the invitation to direct 14 days prior notice to the parties – SWE and Ms Gardener – of any non-party application for the Court's permission (CPR5.4C(2)) to obtain copies of any document other than a statement of case, judgment or order; adding liberty to any person to apply on notice to expedite that process. As to why, the observations in Yalden at §2 apply equally to this case.

Order

12. I will make the following Order. (1) The Interim Order made by the Claimant's Adjudicators on 19 August 2022, which would otherwise expire on 18 February 2024, be extended by 16 months until 17 June 2025. (2) The Interim Order shall be reviewed by the Claimant's Adjudicators in accordance with Schedule 2, Part 4, Paragraph 14(1) of the Social Workers Regulations 2018. (3) Subject to paragraph (4) of this Order, any application to obtain documents other than the claim form, judgment or order, made by a non-party under CPR 5.4C, is to be made on at least 14 days' notice to the parties. (4) Any person has liberty to apply in writing on notice to the parties to abridge the time for notice in paragraph (3). (5) There shall be no order as to costs.

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