



Neutral Citation Number: [2024] EWHC 826 (Admin)

Case No: AC-2024-LDS-000059

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

Friday, 12th April 2024

Before:
FORDHAM J

Between:
SOCIAL WORK ENGLAND
- and -
FLOYD EDMUND

Claimant

Defendant

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

Hearing date: 12.4.24

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 :

Introduction

1. This application for an extension of an Interim Suspension Order (ISO) is made pursuant to Sch 2 §14 to the Social Workers Regulations 2018. The guidance in GMC v Hiew [2007] EWCA Civ 369 at §§28 and 31-33 applies. The Defendant (Mr Edmund) opposes an extension. He has helpfully provided an 11-page written statement with supporting materials, explaining why. I am satisfied that it is necessary in the interests of justice, and the public interest, to proceed today. Mr Edmund has explained that he is unable to appoint and provide a representative for this hearing, and that he is unable to attend the hearing in person due to the significant impact of these proceedings on his health. He does not ask for any adjournment. He recognises that the ISO is due to expire. He has made his points, clearly, in his statement. All of that is entirely proper. He is not required to attend. I have considered his points (just as though he had been present to make them directly and orally). Ms Bass who appears for SWE has also at this hearing assisted me by summarising Mr Edmund's key points and explaining SWE's position in the light of them. I am grateful to her for the balanced and careful way in which she has assisted me in grappling with this case.

What SWE's Proceedings Are About

2. What is at the heart of this case is an allegation that at an unscheduled visit in June 2022 to the home of a service user – a child with whom Mr Edmund was working – Mr Edmund physically assaulted an adult family member, by grabbing them forcefully by the arm and pushing them through a doorway, witnessed by another adult family member. There is evidence about this, about it this was reported, about what was said to have happened, and about what happened next. There is photographic evidence said to show bruising said to have been caused in the incident. An investigation report was compiled by the employing Agency in June 2022. A Case Investigation Report was produced by SWE in March 2023. Mr Edmund's answer to the allegation is that the incident never took place, and that a very serious and false allegation has been made against him.

Examining the Evidence

3. Mr Edmund submits that the extension to the ISO should be refused by this Court, on the basis of conclusions which can be reached by paying particular attention to the quality of the evidence. He says this: that the evidence is all hearsay; that there was a completely inadequate SWE investigation report; that the two adult family members have never been interviewed by SWE; that there is little corroborative documentary evidence; that there has been no contact with the police at any point; that there is no medical evidence; that there is nothing to prove that the photograph was taken around the relevant time; that the Agency's investigation was undertaken by an individual with no relevant qualifications; that the raising of the allegation is explained by it being borne out of an unhappiness with social worker intervention; and that consideration needs to be given to whether there was a racist element to the complaint, or in the way in which the investigation was conducted, or both. Mr Edmund submits, overall, that the nature of the evidence calls for significant consideration to be given to whether it justifies an 18 month extension of an interim order, or any extension. He says the answers to those questions is that it does not.

4. I recognise that there is room in an appropriate case for this Court, in considering the justification for extending an interim order, to pay close attention to the quality of the evidence. In the Hiew case the Court of Appeal said that it is not the function of this Court, when considering this kind of application, to make findings of primary fact about underlying events; but that if the Court can “clearly see” that “the case has little merit”, that is a factor which may properly be taken into account in weighing the decision on the application of the extension.
5. Having carefully considered the points made about the evidence by Mr Edmund, I am not able “clearly” to see that this is a case which has “little merit”. I am not a case examiner, making a decision to refer the case for a final hearing; nor am I exercising even a supervisory review jurisdiction over any such a decision. I cannot say what a panel, reading and hearing all the evidence and all the arguments about the evidence at a substantive hearing, would conclude or even would be likely to conclude; still less with clarity and confidence. There is evidence. There is a photograph of bruising. There are investigating reports. There were two adult family members. They made their formal complaint. There are questions about whether this unscheduled visit took place, and if so when, and what happened. When the ISO was imposed by an interim orders panel on 24 October 2022, that panel concluded that there was a sufficient evidential case, involving a sufficient degree of apparent credibility, to give rise to a sufficient concern for the purposes of an interim order based on the assessment of risk, protection of the public, the public interest and public confidence. I think that was and remains correct. Mr Edmund may or may not be vindicated at the end of the process. But the allegations do, at this stage, have an evidential basis; and they are in my assessment sufficient, at this stage, to trigger the public protection and public interest concerns which can justify continuation of an ISO. I cannot say that the evidence is, of itself, insufficient to justify as necessary any continuation.

Other Features of the Case

6. I agree with Mr Edmund that close scrutiny needs to be given in the present case to the justification for the 18 month extension being sought. In her approach and the assistance that she has given me Ms Bass for SWE has also proceeded on the basis that such scrutiny is appropriate. Alongside the nature of the underlying allegation, there are the other features of the case and the circumstances, including the passage of time. The ISO is due to expire on 23 April 2024. The extension that is sought is a further 18 months, through to 22 October 2025. Whether that and indeed anything remotely approaching it can be justified as necessary, in the particular circumstances of the present case, raises serious concerns.
7. The alleged incident was in June 2022. The referral to SWE by the Agency was on 24 June 2022. I have not seen, or been given, any persuasive basis for thinking that this is a complicated case. It is likely to turn on what was – and is – said by three people: the two adult family members; and Mr Edmund himself. The Agency’s own investigation report was June 2022. The adult family members had then made a formal complaint. SWE’s Case Investigation Report goes back to March 2023.
8. SWE and its external lawyers had still – as at 25 March 2024 – not made direct contact with the two adult witnesses. There is no update today to provide any reassurance that that has happened, even now. That means they had not been interviewed and statements had not been obtained for the purpose of the disciplinary

proceedings. Documents were obtained from the local authority, but only in February 2024. SWE says that there would now need to be a 10 to 16 week period for the papers to be dealt with by case examiners and – if referred to a final hearing – there would then be the written case, response from Mr Edmund, and fixing of a hearing. I am told in a witness statement that no hearing can be scheduled before April 2025 at the earliest, in the light of the current “resources” position, “unacceptable” as it is recognised to be. That picture is described in materially the same way as it was being described in January 2024 when I raised concerns and made observations: see SWE v Sobrany [2024] EWHC 67 (Admin) at §8.

9. This, moreover, is a case where there is cogent evidence of serious detrimental impacts for Mr Edmund. As he has explained, he has a 38 year employment history of working in social care and social work, with no previous fitness to practise history, and with a completely unblemished employment history. He has provided evidence of the serious economic effects, the huge financial hardship and the financial difficulties in circumstances where he is unable to work. He describes his resort to borrowing money to cover the bills, and the huge pressure on him and his family from the constant worry about how they are going to afford to live. He has also provided medical evidence of the health and mental health implications. He urges the Court to consider principles of proportionality, while appreciating and understanding the need for the regulator to protect the public. He asks the Court to consider whether the position, 21 months into this investigation, justifies an 18 month extension of an order that will continue to prevent him from being able to practise his profession.
10. In all these cases the regulator, the interim orders review panels and the Court are all anxiously concerned with the protection of the public, the public interest and public confidence. But it is important to have well in mind that there are serious and significant public interest and public confidence implications in social workers being sterilised from being able to continue to act as a social workers, for extended periods of time, while unacceptable delays are taking place in dealing with the cases and therefore in arriving at those outcomes (a) which may stand to support final disciplinary action or (b) through which they may be vindicated and finally allowed to return to work.
11. Ms Bass has at today’s hearing specifically, and properly, drawn to my attention the observations that were made by the latest interim orders review panel on 29 February 2024. That panel has decided to confirm the ISO and decided against replacing it with an interim conditions of practice order (iCOPO) that might allow the Mr Edmund to continue to work but under close conditions of supervision. The panel noted the delay and in particular that “the investigation appears not to have progressed for a significant period of time”. It recorded: “the panel is gravely concerned that the witnesses to the alleged assault by Mr Edmund have still not been interviewed to provide their version of events, which are said to have taken place in June 2022, which as of today’s date is some 18 months ago. The panel considers that if this evidence is not recovered as soon as possible this will have a significant impact on the fairness of these proceedings including Mr Edmund’s suspension. In addition the panel consider that the further delay in gaining this evidence may impact the ability of the regulator to discharge its duty to protect the public”. The panel went on to say that it, nevertheless, determined in all the circumstances that the need to protect the public outweighed Mr Edmund’s interest in this regard “at this stage”.

12. It is worth adding that Mr Edmund and his representative have been urging SWE as to the impact of the passage of time and urging them to make contact with the complainants. At the April 2023 interim order review which Mr Edmund attended he did not oppose continuation of the ISO at that stage, but he specifically asked that contact be made with the complainants, and he specifically drew attention to the impact for him of the ongoing delay.

Binary Questions and iCOPOs

13. One of the implications of the circumstances of the case like the present is that it brings into sharp focus whether the resolution – or the best resolution – of the competing public interest imperatives resolves into a binary question of (i) continuing an ISO or (ii) allowing the social worker to return to work with no restriction at all. One way in which the question is often point is to ask whether conditions of practice can be identified which would sufficiently and adequately protect the public, the public interest and public confidence. But that may not always be the only, or the decisive, question. It may be that a position can be reached where there is no longer a public interest justification in the necessity and proportionality of continuing to deny a social worker the right to work at all pending further ongoing delay. As it seems to me, it may become relevant and appropriate to consider an iCOPO, not by reference to whether conditions are optimal, but by reference to whether in all the circumstances they constitute the appropriate and justified resolution of all the competing considerations.
14. Ms Bass submits that my jurisdiction in a case such as the present is itself binary: being limited to either granting the extension for the interim order that currently exists (here, an ISO) or refusing it. She accepts that a Court could, in principle, make observations about less intrusive alternatives (such as an iCOPO). But she submits that it would be for an interim orders panel – if necessary convened urgently – to make any decision which would involve the lesser alternative of an iCOPO in place of an ISO. It has not been necessary, for the purposes of determining today’s application for the ISO extension, for me to hear full argument on this topic, nor to make any decision about whether that is the legal position. I can quite see that it may be necessary to do so in another case or possibly in the present case and a subsequent hearing.

Five-Month Extension

15. I am not able to accede to Mr Edmund’s submission that the ISO should now be allowed to lapse. SWE has discharged the onus, for the purposes of today, of establishing that there is a necessity of a short extension of this ISO. That will allow the current protective arrangements to remain in place in order to see what concrete next steps can with proper expedition be undertaken that includes the position in relation to the two adult family members and any engagement with the process including material elicited from that engagement. It includes consideration being given to the acceleration of the preparation of witness statements and the statutory processes that culminate in consideration by case examiners. It may also involve an “early review” by the interim orders review panel, on the basis of new circumstances including my own observations and anything emerging from next steps, ahead of what will otherwise be a review in August. It will allow preparation for this Court at a further hearing, should the matter not have been resolved, equipped with evidence as

to what has happened and evidence of what is happening. I would expect any further application to grapple with the question of a middle way (iCOPO), as an alternative to the binary question of the ISO continuing or no interim order being in place. It will also give an opportunity for the evidential picture relating to resources, which this Court was given in the January cases, and is still being given in cases in April, to be updated by reference to what concrete steps or actions have or have not been taken to address a picture which SWE itself properly characterises as “unacceptable”. I will extend the ISO, not for the 18 months sought, but rather for 5 months to 22 September 2024.

16. The Order which I will make is as follows. (1) The Interim Order made by the Claimant’s Adjudicators on 24 October 2022, which would otherwise expire on 23 April 2024, be extended by a further 5 months until 22 September 2024. (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) There shall be no order as to costs.
17. I am not retaining this case so that any subsequent hearing in September 2024 needs to be listed before me, but I record that one possibility is that that course proves to be suitable and achievable.

Assistance in Court

18. Finally this, by way of a postscript. Mr Edmund explains in his written submissions that he has previously had the assistance of a representative (Mr Anderson) from the British Association of Social Workers. He says: “unfortunately Mr Anderson does not have the necessary rights of audience to represent me at the High Court”. It may be that Mr Edmund and Mr Anderson would wish to liaise with SWE and then raise with the Court at any subsequent hearing in this case, the question of whether in the particular circumstances of this case it would be appropriate to allow Mr Anderson – who no doubt has assisted Mr Edmund in preparing his written representations for this hearing and who has attended before the interim orders panel when it was making and continuing the interim order – similarly to assist this Court with oral submissions. I am not saying that that will be an appropriate course. I have heard no submissions; still less have I reached any conclusions. But I simply record the point so that consideration can, if appropriate, be given to it.

12.4.24