



Neutral Citation Number: [2021] EWHC 1697 (Admin)

Case No: CO/1969/2021

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

Date: 22.6.21

Before :

MR JUSTICE FORDHAM

Between :

SOCIAL WORK ENGLAND
- and -
ANNA WAUGH

Claimant

Defendant

Gemma Gillet (instructed by Capsticks) for the **Claimant**
The **Defendant** in person

Hearing date: 22.6.21

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 for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

Introduction

1. The Claimant applies, pursuant to paragraph 14(2) of Schedule 2 to the Social Workers Regulations 2018, for a 9 month extension to an interim order, in the context of ongoing actions as a regulator. The interim order was originally imposed on 20 December 2019 as an 18 month interim suspension order (ISO). The case had been referred to the Claimant's predecessor, the HCPC, on 5 November 2019 by Lancashire County Council (the Council) who had employed the Defendant as a social worker. That was following two underlying incidents. The first incident was on 1 October 2019 at work when it was reported that the Defendant's speech was delayed and slurred intermittently and she was acting in a vague manner. There were concerns as to whether she was intoxicated through alcohol and she was sent home and advised to seek support from her GP. The second incident was just over a month later on 4 November 2019 when the Defendant drove her car into work and crashed into a parked car belonging to another member of staff outside the office building. The police were called and she was breathalysed, being found to be over twice the legal limit for alcohol. She was convicted, fined and disqualified from driving on 19 November 2019. The Council dismissed her on 19 February 2020 after a disciplinary hearing on 6 February 2020. Regulatory proceedings were commenced and the Claimant's adjudicators' panel imposed the 18 month ISO. That interim order has subsequently been the subject of six reviews. It is due to expire on 26 June 2021, in four days time. The 9 month extension sought today is intended to allow for the regulatory proceedings to run their course. The Claimant's position is that continuation of the interim order is necessary in the public interest and proportionate in all the circumstances. The extension is opposed by the Defendant who has made representations in a series of emails which I have seen and read, and has attended today's hearing and made oral submissions.

Mode of hearing

2. The mode of hearing is by Microsoft Teams. I am quite satisfied that that mode of hearing is appropriate in the context of the pandemic and involved no prejudice to the interests of any party. The open justice principle has been secured. This case and its start time were published in the Court's cause list. Also published was an email address usable by any person who wished to observe the hearing. The hearing has been recorded and this ruling will be released in the public domain.

The reviews

3. At the first of the six reviews on 5 June 2020 the interim order, which until then had been an ISO, was varied so as to become an interim conditions of practice order (ICOPO). That order was then reviewed at subsequent hearings, when it was maintained by the review panel with variations. The review hearings, involving maintenance of the order with variations, took place on 19 August 2020, 4 November 2020, 15 January 2021 and 1 April 2021.
4. At the sixth review hearing on 16 June 2021, last week, the review panel varied the order to substitute an ISO. In restoring an ISO the review panel identified two specific concerns. The first was that the Defendant had not produced any updated GP report.

Previous documents had been relied on by the Defendant, including documents from January 2021, to evidence the position regarding alcohol consumption (or rather abstention), the obtaining of support and the stabilisation of the position. It had been made clear on the fifth review on 1 April 2021 that the panel would need an updated GP report. Condition 10 of the conditions of practice in the ICOPO, then maintained by the panel, required the Defendant to provide such an update for the next review. I have been told that compliance with such a condition, it having been imposed in an ICOPO, would be financially underwritten by the Claimant. The Claimant had written to the Defendant on 9 April 2021 reminding her specifically that the next review hearing was scheduled for 16 June 2021 and that she needed to provide the updated report 14 days beforehand in order to comply with the condition. At the time of the sixth review hearing on 16 June 2021 she was in default. No updated GP documentation was available. The review panel recorded that the Defendant had told the panel that she had not made any arrangements with the GP until early June 2021 and had attended an appointment with the GP on 4 June 2021. The panel recorded that the Defendant had told them that she was alcohol abstinent. The panel concluded that the defendant was in breach, that her assertion about alcohol abstention was not sufficient to protect the public from the risk of harm, and that it did not have sufficient confidence that the risks in the case could be managed by conditions of practice.

5. There was a second concern. The review panel explained that the conditions of practice were clear in requiring the Defendant to be transparent and fully disclose her conditions of practice in her “first contact” with any agency when looking for work. The panel concluded that she was, on the face of it, in breach of that condition. The circumstances were described by the panel. The Defendant had submitted her CV to an agency, as an enquiry for a role as an independent social worker, but did not include the conditions of practice in her CV or attached to her CV. Her explanation was that she regarded this as an “invitation to have a conversation” not a formal application. She confirmed that in the subsequent conversation with the agency she did make the disclosures. More detail is given in an email exchange with the agency which has been placed before this Court for today. The Claimant had inquired about the possibility of completing independent social worker assessments on behalf of an agency called Advanced Childcare in April 2021. She submitted her CV and had a follow-up conversation. In that discussion about the role, she spoke about her drink-driving conviction and the conditions of practice which the Claimant had placed on her practice. The review panel’s concern was that the Defendant had not made the disclosure on “first contact”.
6. I have noted what, in my judgment, was relevant background to that second concern. At the second review hearing on 19 August 2020 there was a concern of a breach of an equivalent previous condition, on that occasion in or around July 2020 in the context of work with Keys Group, where the conditions of practice which had been imposed by the Claimant were disclosed by the Defendant only on interview. The Claimant’s position was that that was a breach of the relevant condition. The Defendant’s response was that it had been an “oversight”. The review panel had regarded that breach as a “serious matter”, about which it had concerns, but it determined that the conditions of practice remained appropriate, proportionate and enforceable, particularly in circumstances where the Claimant’s position was that it accepted that the Defendant’s July 2020 action had indeed been an “oversight”. In my

judgment, that is clearly relevant background when the second concern, about April 2021, is considered.

The current position

7. The current state of the regulatory proceedings is the subject of a witness statement from Hannah Appleyard dated 4 June 2021 and I have been able to put questions about the position to Ms Gillet who appears on behalf of the Claimant today. As Ms Appleyard explains, on 8 September 2020 the papers were before Case Examiners who requested further enquiries. There were five identified lines of further enquiry. These related to: medical evidence and health conditions support, both sought and offered; the current medical position; details of the treatment plan, and progression.
8. The local authority – the Council – who had employed the Defendant have failed to respond and the Claimant has escalated that aspect. The Claimant is hopeful that that escalation will prove fruitful and that the materials required from the local authority will speedily now be obtained. It is very much to be hoped, in everybody's interests, that that is correct, and that the local authority will now promptly provide the information required in this case. Indeed, it may be that it will be of assistance for the local authority to be shown what I have just said.
9. A consent form sent to the Defendant involved some delay of 3 months in receiving consent from her to enable certain additional medical information to be sought. The Defendant has told me in her oral submissions today that that was the consequence of a misunderstanding. She says that she thought she had already signed a consent form and did not realise that a further separate form needed to be signed. I do not have today, nor in my judgment do I need, complete visibility on all communications between the parties in relation to the consent form. On the evidence, the fact is that there was a period of delay linked to a form being awaited. Independent medical testing took place on 18 December 2020. Analysis from January 2021 was obtained, as was a letter dated 15 December 2020 from the GP. Outstanding information is awaited and the Case Examiners' consideration of the case has been paused.

Medical information and funding: interim review and substantive consideration

10. The Claimant through Ms Gillet has told me at today's hearing that the cost of the provision of medical information for the evaluation of the substantive merits is a cost which could be expected to be underwritten by the Claimant and would not need to be paid by the Defendant. In that respect, the provision of the updating report needed for compliance with the condition in the previous ICOPO, and the provision of updating materials for substantive consideration, are – as Ms Gillet today submitted – clearly linked. They are linked not only in terms of who would have paid for them, but they are also linked in terms of the current difficulties in relation to progressing this matter while information is awaited. The position going forward is that that link is severed – or broken – now that no ICOPO is in place. The Defendant has been told, and Ms Gillet has today confirmed, that if the Defendant now wishes to provide an update with medical testing and a report for the purposes of any interim order review hearing, it is open to her to do so. But she would need to fund that herself. That is because that would be an evaluation of the interim position, not the substantive merits. It is also because the provision of that material would not be the discharge of a condition of practice imposed in an ICOPO. Having said that, the speedy obtaining of medical

evidence including as to the updated position, as required by the Case Examiners, is a feature that would be paid for by the Claimant. That is because this is evidence that is required for consideration of the substantive merits under the regulatory process, by the Case Examiners, and by any subsequent substantive decision-maker.

This Court's approach

11. As the Claimant correctly sets out in its skeleton argument dated 18 June 2021, the approach by this Court to an extension of an interim order is described in the context of the General Medical Council in the case of Hiew [2007] EWCA Civ 369 at paragraphs 28 and 31-33. I have to consider necessity to protect the public, the public interest and the registered social worker's own interests. I 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 patients, the reasons why the case has not been concluded and the prejudice to the social worker if an interim order is continued. The onus of satisfying me that the criteria for continuation of the order are met falls on the Claimant. I am not making findings of primary fact about the events leading to the suspension or considering the merits of the case for suspension.

The Defendant's position

12. The Defendant says that the regulatory proceedings against her need a timely conclusion; and that an extra nine months is not required for that purpose. She emphasises the detriment which she has faced and would continue to face by reason of the ongoing delay and by reason of an interim order being in place. She says that, even with an ICOPO, she has effectively been excluded from work as a social worker. She has needed to find alternative work opportunities while this process continues, with the interim order in place. She describes the de-skilling and sterilising implications of the interim order. She speaks of being anxious to continue in the valuable role of social worker. She objects to the ongoing delay. She has explained to me how the social worker's skillset is one that can risk sliding, particularly in the changing world of social work and practices. She has described her hope that this case would have been concluded by July 2021, next month. She has emphasised the emotional, professional and financial impacts. She has also explained the practical difficulties in being able to provide any medical update for an interim review panel hearing, for example, one which may take place in 3 months time in September 2021. She is concerned that her inability to fund what could be some £800 for a medical testing update is something that could be held against her, since it may mean that the review panel decides that the ISO, if extended today by this Court, would then be continued.

My assessment

13. In my judgment, it is necessary for the protection of the public, and to preserve public confidence, that the interim order currently in place should not lapse in 4 days time, but should be continued while the regulatory process is progressed. In my judgment, the underlying concerns in this case justify the regulatory proceedings that are in place and under pursuit, and justify as necessary the continued imposition of an interim order pending that process leading to consideration of the substantive merits. In my judgment, the review panel was, moreover, fully justified in the circumstances in restoring the ISO on the sixth review. The fact is that the panel did not have an

updated medical picture, having previously imposed a condition requiring one. There was, in addition, the second concern which I have described earlier. In my judgment, it is necessary and proportionate that the ISO currently in place should continue for a suitable period of time. The Claimant has discharged the onus of establishing that that is the case. I am not, however, persuaded that it is appropriate to extend the interim order for a period of 9 months as sought. In my judgment, the necessary and proportionate extension is one of 7 months.

14. In arriving at these conclusions I have taken carefully into account the prejudice to the Defendant from the ongoing regulatory proceedings. I have also taken into account the link, so far as evidence is concerned, between the current incomplete picture and what the panel found last week had been a breach of a condition. On the face of it, the materials required by the Case Examiners (in September 2020) are important materials properly sought. The three-month delay in relation to the consent document, whatever the explanation for it, is a regrettable fact. The difficulty in obtaining materials from the Council is another regrettable fact. Ms Gillet has emphasised today that the ongoing pursuit of this matter will call for cooperation on the part of the Defendant. That is clearly quite right. It is important that opportunities are given and taken for speedy engagement, so that a full and complete picture can be provided as soon as possible to the Case Examiners. They will evaluate that material and decide whether it is appropriate to make any referral. I am told that were there to be a referral a hearing could be listed within a few months following that referral, should there be full cooperation.
15. I am not persuaded that a 9 month period is necessary or justified as proportionate. I do not have a complete picture of what has gone on in this case prior to, and after, September 2020. But I am satisfied that, were this case to be the subject of further delay, it is appropriate and in the public interest that this Court would need to consider a further application – with full and complete evidence as to the sequence of events – if any interim order is to continue beyond the date 7 months from now. I am conscious that, if the proceedings were to be completed in the meantime, the interim order would fall away in any event. I am also conscious that the order I am extending today will be regularly reviewed by the interim review panel, starting at a hearing in September 2021. Nothing I have said today ties the hands of that panel in relation to such decision as it may consider appropriate. It will consider the updated position which may be before it and the materials at that stage. I appreciate the dilemma that the Defendant has, now that an ISO has been imposed, given the problems of affordability of her now putting her own updated medical evidence before an interim review panel. That is not a difficulty which arises so far as medical information for substantive consideration is concerned. No doubt the review panel would have those realities in mind. Moreover, if this case can be progressed with cooperation, then there should for that reason be updated materials – funded by the Claimant – which can be made available to the review panel.
16. It may be that when the merits of this case come to be substantively evaluated, the relevant decision-maker will be satisfied that the concerns that arose in October and November 2019 – with the public interest and public protection considerations that arose from their nature – will be allayed. The relevant decision-maker may be satisfied that everything has been resolved, that the Defendant has sought and obtained the appropriate support, that she can show a course of action which provides

the assurance that is needed. All of that, however, is a matter for the relevant substantive decision-maker at the relevant time.

17. The position as at today is that it is in the public interest that the regulatory process should continue, and it is necessary for the protection of the public (and public confidence) that the interim order currently in place should also continue. I will extend the order for a period of 7 months to 22 January 2022. There will be no order as to costs.

22.6.21