



Neutral Citation Number: [2022] EWHC 61 (Admin)

Case No: CO/4373/2022

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

1 Oxford Row,  
Leeds LS1 3BG  
14<sup>th</sup> January 2022

**Before:**

**MR JUSTICE FORDHAM**

**Between:**

**SOCIAL WORK ENGLAND**  
**- and -**  
**JANETTE LYNNE O'DONNELL**

**Claimant**

**Defendant**

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**Sadaf Etemadi** (instructed by Capsticks) for the **Claimant**  
The **Defendant** did not appear and was not represented  
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Hearing date: 14/1/22

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:**

Introduction

1. This is an application by Social Work England (SWE) pursuant to paragraph 14(2) and (3) of Schedule 2 to the Social Workers Regulations 2018. The application is for a six-month extension of an Interim Suspension Order, due to expire in two days' time on 16 January 2022, to extend that Order to 15 July 2022. The application is supported by detailed witness statement by Hannah Appleyard and a detailed skeleton argument filed by Ms Etemadi who appears on behalf of SWE. The Interim Suspension Order was first imposed by the Investigating Committee of the Health and Care Professions Council, the predecessor regulator whose powers and responsibilities were passed on to SWE at the beginning of December 2019. The committee imposed the Order on 18 April 2019. It has been maintained at a sequence of three-monthly review meetings by panels of adjudicators. The Order has also been before this Court on three previous occasions, in the context of three previous applications made by SWE. A nine-month extension was granted by this Court on 2 April 2020, by a consent order, so that the Interim Suspension Order would run until 17 January 2021. A six-month extension was granted on 7 January 2021 to 16 July 2021. The current due date for expiry is the consequence of a further six-month extension granted, by consent, on 15 July 2021.

Mode of hearing

2. The mode of hearing was by Microsoft Teams. In the current circumstances relating to the pandemic the general practice has now developed, in the context of applications of this kind to the Administrative Court, whereby a 'default position' is – in practice – now adopted, that these short but important hearings are provisionally listed to take place remotely by MS Teams. The general 'default position' of SWE is that, for its part, it regards that mode of hearing to be an appropriate starting point. All of that is, however, only a starting point. It is open to SWE in any case to invite the Court instead to list the hearing in-person. Very importantly, it is also open to any social worker, in respect of whom an application of this kind is made, to ask the Court to list the case to be heard in-person.
3. In the present case there has been no request for an in-person hearing. SWE is satisfied, as am I, that this mode of hearing involves no prejudice to the interests of any party in the circumstances. The open justice principle has been secured, through the publication of the case and its start time in the Court's cause list. Also published on the cause list is the email address of my clerk, which any member of the press or public would be able to use if they wished to observe this public hearing, and a note to that effect in the cause list makes clear that is the position.

Adjournment?

4. The first question with which I have to grapple is whether, in the circumstances, it is appropriate for the Court to proceed today at all. There have been some complications in this case, so far as concerns service of the papers and hearing date on the Defendant. There has been no attendance or response by the Defendant to the application. As is obvious, from the fact that two previous orders by this Court have been made in circumstances of consent, this is a case where in the past there has been a response from

the Defendant to this Court in the context of an application being made for an extension of the Interim Suspension Order.

5. I have received a detailed explanation in writing, brought up to date today orally, as to the sustained attempts which have been made by SWE to notify the Defendant of this hearing and notify her of the nature of the extension which is being sought. The waves of attempts began with special delivery of documents on 17 December 2021. Then there were various telephone calls made on 5, 6 and 7 January 2022, in circumstances where the ‘track and trace’ investigation showed that the documents had not been delivered or collected. A third wave of communications was by way of email on 5 January 2022, using an email address which had previously been used in this case. No ‘bounceback’ email was received but nor was any response or acknowledgement. The fourth wave was a further letter, this time by first class post. Then there was a further attempt by special delivery on 8 January 2022, as to which it later transpired that Royal Mail had not processed that attempted redelivery. Then, on 11 January 2022, there was service by special delivery, and it is understood that a slip was left for redelivery to be arranged, but no request from the Defendant was received.
6. All of this took place in a context where the Court had notified SWE that this hearing was to take place on 13 January 2022, that is yesterday. The case was subsequently switched to today but SWE and its representatives, having investigated their systems, are unable to find any record of the court email about the change of date having been received. I proceed on the basis that it was not received. What this has meant is that the various documents which were attempted to be served and notified to the Defendant were in fact giving yesterday’s date for the hearing, rather than today’s date. However, had it been the position that there had been any engagement on the part of the Defendant, that would have in fact been a day early, and it would have come to the attention of both SWE and the Court. In any event there was a final wave of attempts by SWE, again by special delivery post but also I understand by other means, to inform the Defendant of the switch of the date of the hearing to today, and to secure that notice and the documents filed with the Court came into her possession.
7. I am quite satisfied, as regards notification to the Defendant of this hearing, that all reasonable attempts and all reasonable steps have been made by SWE in this case. I am quite satisfied that it is appropriate, and indeed necessary, for this Court to consider this case today. I have in mind that the Interim Order is due to expire at the weekend. It could not, in my judgment, be in the interests of justice in the circumstances, or in the public interest, for this Court to do other than to consider this application on its merits on the papers before the Court today.

Liberty to apply

8. Against that backcloth, I was able to raise with Ms Etemadi for SWE the prospect of including in any Court Order today provision for “liberty to apply”. What that would do would be to provide a protection for the Defendant. If there were some circumstance of which this Court is unaware, and if there was some reason why the Defendant would want this Court to consider again the question of the ongoing applicability of this Interim Suspension Order, she would be able to use that “liberty to apply”: to make an application; to give her explanation; and to ask for a different course to be taken for the future. In the meantime, the Interim Suspension Order would be extended. In the event,

I am quite satisfied that precisely that is the appropriate course in this case. Before I turn to the reasons why, there is one other ‘loose end’ that I ought to tie up.

Typo in the draft consent order

9. The ‘draft consent order’ that was provided in the materials sent to the Defendant referred not to an extension of six months to 15 July 2022, but rather an extension of three months to 15 April 2022. I do not and cannot know whether that draft consent order has been seen by the Defendant. But certainly no consent has been forthcoming from her in response to it. Had there been a consent order agreed by her, for a three month extension of time, then SWE and the Court would both have needed to consider what to do at this hearing in those circumstances. The claim form, which accompanied the draft order in the papers sent to the Defendant, made clear that what was in fact being sought was a six month extension to 15 July 2022. For reasons I will come on to explain, that six month extension is one that makes good sense in the circumstances of this case. Be all of that as it may, what is clear is this: that there was a typo; that it was a typo on the face of one document only; that that document was the draft consent order; and that that consent order has not been agreed to. I am satisfied, in all the circumstances, that no material prejudice has arisen from any of that which impacts on the questions with which I need to grapple.

Reasons

10. I turn finally then to the substantive reasons why I am satisfied that the Order sought from this Court is necessary, appropriate and proportionate. This, as is already obvious, is a case in which there has been a substantial passage of time, with several extensions already previously granted by this Court. The context is important.
11. The underlying case, which SWE is progressing against the Defendant, relates in essence to matters concerning her health and impairment of fitness to practise as a social worker. That has been the focus at least since 21 June 2021 when SWE’s Case Examiners made a decision that it was appropriate for this case to proceed to a final hearing. At a previous stage there had been a distinct, though interrelated, topic: that is to say, as to possible ‘misconduct’. The context of the case, which back several years, concerns acknowledged alcohol-related issues. They gave rise to events concerning the Defendant’s attendance in a work setting, in November 2018 and subsequently in March 2019, in which the concerns were that the Defendant was attending work and driving to work under the influence of alcohol. Those events arose in circumstances in which, on both those occasions, the Defendant was undertaking a ‘phased return’ to work as a social worker in the light of previous periods of sick leave linked to the same difficulties. Subsequently, in November 2019, the Defendant suffered a brain haemorrhage. This had implications both for her health and ability to work, but also for her ability to participate in SWE’s process. By that stage, that process had involved a decision that there was ‘a case to answer’, that decision having been made on 30 October 2019. The Defendant had been suspended by her former local authority employer in March 2019, following which she had resigned. One projection was that it was anticipated that the injury in November 2019 would itself involve a recovery timeline of some two years.
12. During the more recent stages of SWE’s processes, following the June 2021 decision that a final hearing was necessary in this case, a period of time was taken in obtaining

medical records and reports. These were received in October 2021. A ‘hearing window’ in this case has been identified, namely the period 28 February 2022 to 29 April 2022. In the light of that ‘hearing window’, the suggestion of a three-month extension to 15 April 2022 would not make good sense. As I have explained, the position of SWE has always in truth been that the extension should be for six months. The rationale so far as the timing is concerned is that it would allow for the hearing to be completed, within its ‘hearing window’, but with some ‘headroom’ lest there be unanticipated problems, and therefore that it is appropriate that the Interim Order should continue through to the middle of July 2022. SWE informs the Court (and tells the Court that it has informed the Defendant) that it is anticipated that both the alcohol-related issues, and also the November 2019 brain injury, should all be considered at the final hearing in this case, so that an informed evaluation can be arrived at on the underlying an important question of health-related impairment.

13. I am not making any findings, for the purposes of today, in relation to the underlying substantive case. But the nature of SWE’s underlying case against the Defendant and its progress are important features of the context when I come to consider my role. The test, for the purposes of both imposing and extending an Interim Suspension Order, involves focusing on whether the order is necessary for the protection of the public, in the wider public interest, and/or in the best interests of the social worker. The alternatives which are available, including in principle the imposition of conditions on registration, need to be taken into account in grappling with that question of necessity. The leading authority is the well-known case of General Medical Council v Hiew [2007] EWCA Civ 369 in particular paragraphs 28 and 31-33. It is appropriate to consider matters such as: the seriousness of what is being said in the underlying substantive case against the practitioner; the nature of the evidence; the seriousness of any risk of harm; the reasons why the case has not been concluded; and the prejudice and any hardship to the defendant practitioner. The onus is on SWE to satisfy the Court that the extension is necessary and proportionate, and that the duration of the extension is necessary and proportionate, in all the circumstances and having regard to those matters.
14. Applying that approach, I am satisfied that this extension is necessitated, and that the extension and its duration are necessary and proportionate. The necessity in my judgment arises in this case for the protection of the public, and also in the public interest to maintain public confidence in the social work profession. The allegations in this case are serious. They involve unmanaged health conditions, potentially impacting on the Defendant’s ability safely to undertake the practice of a social worker. On the face of it, there are serious concerns entertaining a real risk of harm in the event that the Defendant were now to be permitted to return to practising as a social worker, with or without restrictions by way of conditions. I also accept that the extension of the order is necessary as being in the Defendant’s best interests. I acknowledge the prejudice that ongoing suspension will inevitably have to the Defendant. Having said that, it is right to record that, when the Interim Suspension Order was most recently considered at a review meeting on 10 November 2021, it was recorded that email contact on 11 June 2021 from the Defendant had stated that she no longer wished (at least at that stage) to be registered as a social worker.
15. I have had the advantage of the detailed consideration on that occasion by the panel of adjudicators and its detailed reasons, relating to the underlying allegations and as to its

own decision as to the necessity and proportionality of the continuation of the Interim Suspension Order. I have to arrive at my own view afresh. But I agree with what the panel of adjudicators said on that occasion: that the allegations in this case are serious; that there is medical evidence of cognitive deficit arising from the brain injury; that there remains a high risk of repetition of the alleged behaviour; that members of the public would be concerned in light of the allegations if (prior to full consideration at a substantive hearing) the Defendant were permitted to return to unrestricted practice; that the Interim Suspension Order is on the face of it also in the Defendant's own best interests, given her medical history, and her history relating to her difficulties with alcohol; that there are no realistic workable or proportionate interim conditions that could be imposed; that continuation of the Order does involve prejudice and hardship; but that that prejudice and hardship is clearly and decisively outweighed by the strong considerations in favour of the Interim Order remaining in place rather than being now discharged or permitted to expire.

16. It is regrettable that this case has taken so long to get to the position where a hearing is now imminent. But I am satisfied that there are reasons in the background which explain why that has been the case. I am satisfied that the case has been progressed, and is being progressed, appropriately by SWE. For all these reasons, and in the light of all the circumstances, I make the six-month extension order sought.

14.1.22