



Neutral Citation Number: [2021] EWHC 1588 (Admin)

Case No: CO/1819/2021

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

Date: 10th June 2021

Before :

MR JUSTICE FORDHAM

Between :

SOCIAL WORK ENGLAND
- and -
ROY REID

Claimant

Defendant

Louisa Atkin (instructed by Capsticks Solicitors) for the **Claimant**
The **Defendant** in person

Hearing date: 10.6.21

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.

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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 remote hearing.

MR JUSTICE FORDHAM :

Introduction

1. This is an application pursuant to paragraph 14(2) of Schedule 2 to the Social Workers Regulations 2018, brought by CPR 8 claim form, to extend by 12 months an interim order of suspension imposed by a panel of adjudicators at a hearing on 13 December 2019. The interim order of suspension was made for a period of 18 months and is due to expire on 13 June 2021 unless extended by this Court pursuant to paragraph 14(3). The Defendant (Mr Reid) was served with all of the papers in this case and has been able to attend this hearing and to address me, clearly and courteously, to explain his position.

Open justice

2. The mode of hearing was by MS Teams. The hearing and its start time were published in the Court's cause list, as was an email address usable by any member of the press or public wishing to observe the hearing. The hearing has been recorded and this ruling will be released in the public domain. I am satisfied that the open justice principle has been secured and that this mode of hearing was justified and appropriate. Ms Atkin for the Claimant, in her original skeleton argument, properly raised with the Court the question whether it would be appropriate for part of this hearing to be in private pursuant to CPR 39.2(3) given the nature of matters for which the Defendant was under investigation and the fact that he had not yet been charged with any offence. In my judgment, it would not have been necessary or proportionate for the hearing to have been in private in whole or in part; nor for there to be any anonymity order. In the event, the updating information sent to the Court and the Defendant is that he has now been charged. The justification for the interim suspension order and any continuation of this is linked to the fact that allegations have been under investigation by the police and the prospect of criminal proceedings. Neither the imposition of the interim suspension order by the Claimant, nor any continuation of it by this Court, would involve any finding of fact in relation to those criminal allegations. It would not have been necessary for the purposes of hearing this application, or giving this judgment, to have gone into detail at the hearing in relation to the precise nature of the allegations. I am satisfied that it was always possible to strike the appropriate balance and that the requisite necessity for any anonymity order or private hearing was and is not present. However, given that the Defendant has now been charged with criminal offences, and he has been able to confirm this morning the accuracy of that updating development, I will say a little more than I would otherwise have done.

The interim suspension order

3. The justification identified by the panel of adjudicators for imposing the interim order of suspension in December 2019 – with the panel recording that the Defendant did not object (although he had said an order was not necessary because he would not in any event take up gainful employment as a social worker) – was this. An order of interim suspension was necessary and proportionate to protect the public and maintain public and professional confidence. That was in light of the serious and credible concerns which had arisen in conjunction with actions involving the police. A regulatory investigation could not in the circumstances of this case properly proceed while a

police investigation and potential criminal proceedings were running in parallel. The circumstances of the case justified interim suspension. Neither the then bail conditions on which the Defendant had been released, nor the alternative of an interim conditions of practice order, were sufficient in order to secure the relevant public interest imperatives. That was the essential basis and thinking behind the imposition of the order originally. Substantially the same justification has been recognised by successive panels who have considered continuation of the interim suspension order, alongside information as to the ongoing police investigation, at regular intervals between June 2020 and March 2021. At all of those stages it is been clear that, in the circumstances of this case, the Claimant's own investigation has been placed 'on hold' pending the steps being taken by the police and any criminal proceedings.

The Defendant's position

4. The Defendant says this. He says plenty of time has now lapsed for a proper investigation to have been pursued by the Claimant. He says that it is important that the Claimant, as an 'independent' regulator, should be taking its own position and pursuing its own investigative steps. He emphasises the need for an 'objective' evaluation by the Claimant. He says what is needed is a thorough and objective consideration which takes into account his 18 years record as a social worker. He says that the Claimant should not be 'piggybacking' on the steps being taken by the police or criminal prosecuting authorities. He says that he has not seen any evidence of any investigative steps being taken by the Claimant, and that they should have been producing their own material. He says that 'enough time' has now lapsed and this court should take the same sort of position was taken in relation to bail conditions when, in June 2020 at the magistrates' court, it was concluded that sufficient time had elapsed and that in all the circumstances it was not appropriate for bail conditions to continue to be in place. For all those reasons the Defendant asks this court to refuse the application and therefore to allow the interim suspension order to expire in 3 days' time.

Continuation of the interim suspension order

5. I have to consider the protection of the public and the public interest. The onus of satisfying me that it is necessary and proportionate for an interim suspension order to continue, and as to the duration of that order, lies on the Claimant. It is relevant for me to consider matters such as the gravity of the allegations, the nature of the evidence, the seriousness of the risk of harm to service users, the reasons why the case has not been concluded, and the prejudice to the Defendant if an interim order is continued. In discharging my function it is not appropriate for me to arrive at or express any view on the underlying merits of the case against the Defendant. An encapsulation of the relevant principles can be found in the parallel case of General Medical Council v Hiew [2007] EWCA Civ 369 paragraphs 28, 31 and 33 in particular.
6. In my judgment, in the circumstances of this particular case, the Claimant was fully justified throughout in taking the position that it would not be appropriate to proceed with an investigation, looking at the substantive merits of regulatory action in the context of the Defendant as social worker, while the police were undertaking an investigation and while any criminal proceedings were being pursued. As Ms Atkin in her submissions rightly recognises, there may be cases where it can be appropriate for

the Claimant as regulator to be undertaking its own steps, notwithstanding that a police investigation is on foot. This is a case involving serious criminal allegations, which have now resulted in a charging decision. It is those matters which were the focus of the regulatory steps and investigative procedure which the Defendant, rightly, says calls for the 'independent' and 'objective' evaluation by the Claimant as regulator. Once the outcome of the police and prosecutorial steps is known, in relation to those matters, that will be the proper time in this case for the Claimant as regulator to evaluate and determine the appropriate substantive outcome. In this case the Claimant, in my judgment, has been fully justified in not pursuing a parallel investigation at the same time as the investigation being undertaken by the police. This is a case in which the Claimant as regulator would necessarily need to look at the product of the police investigation. It would not be appropriate for the regulator to be treading precisely the same ground, seeking to access the same mobile phone, seeking to undertake the same analysis, and seeking to interview the same individuals, as are relevant for the purposes of the ongoing police investigation and any prosecution. The consequence of waiting for the police and criminal process to run its course clearly has disadvantageous implications for the Defendant. It is important that that prejudice is carefully considered, at all times. But I cannot accept the Defendant's submission that the Claimant has had 'enough time' to undertake a parallel investigation, looking objectively at these matters for themselves. For the reasons which I have explained, it is not only sensible but also necessary that there should be a sequence. The Defendant is right, as I have explained, to emphasise that ultimately the regulator needs to look at the position, for itself, objectively and not simply 'piggybacking' on what is decided through the criminal process. But the time at which the substantive determination comes to be made will be the time for precisely that objective evaluation, looking at all matters in the round. One matter of central relevance will be the position that has emerged during the criminal process in relation to the matters which are at the heart of this case.

7. I am quite satisfied in the present case that it is necessary and proportionate to continue the interim suspension order, and to do so for the period of 12 months which is sought by the Claimant. This is a case in which a social worker working with children at a London local authority, through an agency, had his employment terminated in September 2019 having been arrested at work in connection with the allegation that he had sent a video to another staff member or members, the contents of which video were a matter of serious and credible concern on the part of the police. By the time of the first review by the Claimant's panel of adjudicators on 2 June 2020, the information from the police confirmed that an initial review had been undertaken of the Defendant's mobile phone. By July 2020, downloads had been completed. However, as at December 2020 further evidence was being requested by the police from the laboratory. The serious and credible concerns, which began with a video allegedly sent in September 2019, were subsequently reinforced by the police having reported to the Claimant the nature of further images said to have been found on the Defendant's mobile phone. The categorisation of those images for the purposes of criminal investigation reflects their seriousness. The Claimant as regulator has received updating information throughout from the police as to the progress of the investigation and as to the nature of what it has uncovered. The police have not, however, been sharing as Ms Atkin emphasises, on an ongoing basis the evidential picture itself. Nor would it have been appropriate, still less necessary, to do so in all the circumstances of the present case. What has been necessary and appropriate has

been to receive a sufficient update as to the state of the police investigation and its progress. The papers were sent to the CPS by the police for a charging decision in February 2021. Bail conditions were in place until June 2020. A charging decision, awaited in April 2021 and still awaited at the time that this application to this Court was filed, has now been made. The Claimant has been advised that the Defendant has been charged with two counts of distributing an indecent image of a child (one Category A and one Category C image), one count of making an indecent image of a child (Category A) and possession of extreme pornographic images.

8. It is wholly appropriate that the Claimant should be seized of regulatory proceedings concerning the Defendant's position as a registered social worker; and that substantive investigative and regulatory action by the Claimant should await the ongoing police investigation and now criminal proceedings. It is also fully justified, as necessary and proportionate, that an interim suspension order should have been in place and should now be maintained. The position of the Claimant and this Court in relation to the interim suspension order cannot, in my judgment, be equated with the position of the magistrates' court in considering ongoing bail conditions. I have well in mind the prejudice to the Defendant from not being able to work as a social worker during the substantial period of time in which this matter has been under consideration by the police and prosecuting authorities, including the ongoing period of time which can now be expected as a result of the prosecution. I also have in mind the pandemic. There is a clear and pressing need in my judgment to protect the public and maintain public and professional confidence, which need can be met only by an interim order of suspension continuing. It would not be compatible with those public interest imperatives for the order to lapse, and for the Defendant now to be able to resume work as a social worker including working with children, at the very time at which he has been charged with the serious offences to which I have referred. It was acknowledged at the outset, and the Defendant accepts, that in principle the Claimant regulator could and should be seized of its own investigatory function. For the reasons which I have explained, the approach to that investigatory function, and the continuance of the interim suspension order while it runs its course, is fully justified and appropriate. I have considered imposing a lesser duration than the 12 months' continuation sought but I am satisfied that 12 months is a justified and proper period, in the light of what can reasonably be expected so far as the criminal proceedings are concerned, together with such regulatory or investigative steps as may prove appropriate once the outcome of that criminal process is known. I am satisfied that it is unnecessary for this Court to revisit the question of continuation of the interim suspension order during the next 12-month period. The order continued by this Court today will need to be the subject of ongoing and regular review at which a panel of adjudicators can be further updated.

Order

9. I will make the following order. (1) The interim order of suspension made by the Claimant's adjudicators on 13 December 2019 which would otherwise expire on 13 June 2021 be extended by a further 12 months until 12 June 2022. (2) The interim order shall be reviewed by the Claimant's adjudicators in accordance with Schedule 2 paragraph 14(1) to the Social Workers Regulations 2018. (3) No order as to costs.