



Neutral Citation Number: [2022] EWHC 992 (Admin)

Case No: CO/1271/2022

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

29<sup>th</sup> April 2022

**Before:**

**MR JUSTICE FORDHAM**

**Between:**

**SOCIAL WORK ENGLAND**  
**- and -**  
**CLAIRE SHAW**

**Applicant**

**Respondent**

**David Collins** (instructed by Capsticks) for the **Applicant**  
The **Respondent** did not appear and was not represented

Hearing date: 29.4.22

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

**MR JUSTICE FORDHAM:**

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, for a 6 month extension to a 12 month Interim Suspension Order (“ISO”) imposed by an Adjudicators’ Panel on 6 May 2021, which is due to expire on 5 May 2022. The mode of hearing was by MS Teams, in line with the practice for hearings of this nature, described in the Administrative Court Listing Notice issued on 21 April 2022 (available on the Courts and Tribunals Judiciary website), and in circumstances where no request had been made by either party for an in-person hearing and I did not identify any reason why one was needed. The open justice principle was secured through the publication in the Court’s cause list of the hearing and its start time, together with the mode of hearing and an email address (on this occasion, the Leeds Administrative Court Office email) usable by any member of the public or press who wished to observe the hearing. The Respondent (“Ms Shaw”) did not attend and I am quite satisfied that it is necessary and appropriate to proceed today. The papers were emailed to her on 12 April 2022 and she telephoned SWE later that day indicating her wish to provide written representations. Hardcopy documents were signed for on 13 April 2022 and she did provide written representations in the form of an email dated yesterday. All indications were that that was the way in which she wished to participate. She was sent the link to the MS Teams hearing in case she also wanted to join, which in the event she chose not to do. She asks that the Court take her written representations into account, which I have done. She opposes the extension to the ISO, saying she hopes it will not be granted and that the suspension will come to an end next month.
2. The approach to be taken by the Court is identified in General Medical Council v Hiew [2007] EWCA Civ 369 at paragraphs 28 and 31 to 33. The relevant test for an interim order, and for its extension, is necessity for the protection of the public and in the public interest (so far as is relevant to the present case). SWE must satisfy that necessity test as to the extension of the interim order, the species of interim order which is being extended, and the duration of the extension. The Court will take into account such matters as the gravity of the allegations, the nature of the evidence, the seriousness of the risk of harm to relevant members of the public, the reasons why the case has not been concluded, and the prejudice to Ms Shaw if an interim order is continued. The Court does not make findings of primary fact or consider the underlying merits (except in a case where the Court can clearly see that the case has little merit). The Court is considering the nature of what is being alleged against Ms Shaw, bearing in mind that these are unproven allegations at the present stage in the underlying proceedings and that she will have an ongoing opportunity to respond to them and an entitlement to a substantive hearing at which findings on the merits of those allegations are made.
3. The key matters which form the subject matter of SWE’s proceedings against Ms Shaw were identified by SWE’s Case Examiners who considered the case on 20 April 2021 and referred it for substantive consideration by a hearing Panel. They were also considered on 6 May 2021 by the Interim Orders Panel which imposed the ISO and on the three subsequent occasions (most recently 23 March 2022) when the ISO has been reviewed by a Review Panel and maintained. Three matters relate to conduct while Ms Shaw was acting as a community support worker in a care setting for Lancashire County Council (“LCC”), having completed a social work degree in 2016. Pursuant to regulation 25(2) of the 2018 Regulations, SWE has jurisdiction to deal with matters

preceding registration with its predecessor (the Health and Care Professions Council: “HCPC”) where it is considered to be in the public interest to do so. These three matters led to a finding of “gross misconduct” by LCC in 2017. The first matter relates to an incident in April 2017 when Ms Shaw is said to have been at the flat of a family member and failed to respond appropriately to serious welfare concerns relating to two young children. The second matter relates to conduct between November 2015 and February 2017 involving Ms Shaw having accessed records of service users who were also family members without a professional reason for doing so. The third matter relates to alleged failure to disclose a family connection with a service user, whose case was being discussed in a conversation which Ms Shaw listened to and then communicated to another family member. A fourth matter relates to the non-disclosure of LCC’s misconduct proceedings when Ms Shaw made an application to a fostering service for a job as supervising social worker and when she made an application to HCPC for registration as a social worker: the job which was offered to her by the fostering service; the HCPC registration was obtained by her on 23 August 2017. The fostering service is said to have discovered the non-disclosure and withdrawn the job offer, and to have alerted HCPC on 18 August 2017. In a distinct and fifth aspect of the case against Ms Shaw, the non-disclosure to the fostering service and to the HCPC is alleged to have involved dishonesty on her part.

4. The events themselves are a very considerable period of time ago: 2016 and 2017. However, the first three matters were not referred to HCPC by LCC because Ms Shaw was not at that time a registered social worker. As I have explained, she became a registered social worker in August 2017. She has never worked as a social worker. One of the points in Ms Shaw’s email representations is as to the lengthy nature of the whole process, given that “the investigation” (she means the LCC investigation) had commenced in April 2017 and given the transfer of responsibility from HCPC to SWE (which was December 2019). She asks the Court to consider the timeframe and how long the process is taking. I proceed on the basis that there was at the outset a lengthy and unexplained delay in this case, so far as the period of time between HCPC being alerted in August 2017 and the transfer to SWE in December 2019 is concerned. The Panel which imposed the ISO in May 2021 said that it was “regrettable” that there had been a “long delay”. Mr Collins tells me – and I accept – that a large volume of cases was transferred to SWE from HCPC in December 2019, that prioritisation was necessary and that one feature of that was whether there was an interim order in place. In the present case there was not. This case was considered and reviewed, under that prioritisation practice, and was then progressed in the latter part of 2020. By the end of 2020 the steps which had been taken took the case to a position where it was assessed as appropriate, and had been prepared so as, to be put to Case Examiners. An agreed and extended deadline followed to enable Ms Shaw to respond, as she did at the end of March 2021. The Case Examiners then dealt with the case in April 2021, the Panel hearing taking place the next month (May 2021), at which it was assessed that there was a necessity for imposing the ISO. The length of time since the referral by Case Examiners in April 2021, and since the imposition of the ISO in May 2021, does not in my judgment involve any lengthy or unexplained delay. I am satisfied that the investigation thereafter has been properly progressed. In any event, my primary focus has to be on the present time. The disclosure stage is now imminent and due to take place very soon (6 May 2022). That will involve the provision of the entirety of the evidence against Ms Shaw which has been gathered and prepared including witness statement evidence. The proposed “hearing window” between 13 June 2022 and 9

September 2022 had been identified and a proposed listing for the substantive hearing of the first week of August 2022. That has been confirmed this morning as having now been fixed.

5. In her representations Ms Shaw refers to the 12 month suspension as being a “punishment” which she has accepted. She asks what more punishment SWE wants to put her through, and why a 12 month suspension is not enough. She also says that at no stage was she aware or advised that the suspension could be extended so as to be longer than 12 months. Ms Shaw also questions how suspension can be for the purposes of ‘finalising enquiries’, and how it could be possible for her to be suspended without enquiries first being complete. She emphasises that, as she has made clear, she intends to remove herself from the register and that if the suspension does come to an end next month, she will then apply to remove herself from the register. In the light of those points it is important to explain a number of things.
- i) First, the ISO is not a “punishment”. Nor is it a response which is imposed at the end of all relevant enquiries. The ISO is an “interim” order. It is a ‘holding position’ which protects the public in circumstances where an SWE proceeding is ongoing. It is an order which is imposed, and where appropriate will be extended by this Court, without the ‘completion’ of the entire ‘investigation’ and without the making of any substantive ‘findings’. That is one of the reasons why the Court does not, under the approach identified in Hiew, get involved in findings which appraise the substantive merits. The time for that is not yet, and the place for that is the panel which will conduct the substantive hearing.
  - ii) Secondly, although the ISO was imposed for “12 months”, the statutory scheme provides for the possibility of a subsequent extension. That is important. Because the ISO is not a punishment, but is a “holding position” to protect the public while an enquiry and proceedings are progressed and completed, it would not be in the public interest for such an interim order automatically to lapse without any power to consider whether it should be extended. Indeed if that were the position it would enable those affected by interim orders, through a lack of cooperation, to seek to act so that the suspension would come to an end even though the proceedings had not been completed. Having said that, extension is serious and significant, which is why it has been considered appropriate for the High Court to deal with any question of extension. The stated purpose of the ISO in this case was made clear. It was to enable the investigative enquiry process to be completed. The Review Panel who decided the first review of the ISO in October 2021 rightly described the ISO as one which continued pending “the outcome” of that investigation. This case has not reached its “outcome”. I do not accept that anything that was misleading was said about the interim order and its extendability. Ms Shaw says she took it that it could not be extended, but no document to which my attention has been drawn by her records her being told that. On the contrary, Mr Collins has been able to confirm and demonstrate that the hearing notice sent to Ms Shaw in April 2021 described the power to extend the ISO: “Although the initial order can only be made for a period of no more than 18 months, Social Work England may apply to the High Court to extend, or further extend, the period for which it has effect.”
  - iii) Thirdly, the fact is that if the ISO were to come to an end next month, Ms Shaw would in those circumstances be under no restriction preventing her from then

practising as a social worker. She would also be able to point to this Court as having refused to extend the ISO. Ms Shaw emphasises that that is not her wish and what she wants to do instead is to get on with her life and be removed from the register. The fact that she does not intend to practise as a social worker is relevant when considering what the “prejudice” to her is from an ongoing suspension.

- iv) Fourthly, the intended action which Ms Shaw identifies is that she thinks she would be able simply to remove herself from the register if the ISO expired next month. That would mean ‘prejudice’ in that respect in the ISO continuing. But she is not correct. As was explained to her by SWE in an email dated 23 November 2021: because Ms Shaw has an open fitness to practise case against her, she will be “held on the register until that case is closed” in accordance with the 2018 Regulations. It is not appropriate for her to act to be removed from the register while she is the subject of fitness to practise proceedings. There is good reason in the public interest why proceedings should run their course to a hearing and a substantive decision involving appropriate findings, and not be avoidable by unilateral self-removal action.

I have taken some time to explain these important features in the light of the representations that were provided to the Court by Ms Shaw.

6. Ms Shaw, in her representations, emphasises that for her this has been an extremely lengthy and stressful process which is still causing her a great deal of stress and causing her extreme stress and anxiety. She asks when will the time come when she can ‘move forward’ with her life. I accept that the process has been, and continues to be, extremely stressful for Ms Shaw. In terms of ‘moving forward’, the hearing window is now listed for early August 2022. What I have to consider is whether it is appropriate for the ISO to continue pending the resolution of the process. The question is whether it should continue pending the final resolution of the proceedings, or whether it should be permitted to expire next month.
7. I am satisfied that SWE has discharged the onus of demonstrating the necessity, for the protection of the public and in the public interest, of the continuation of an interim order, of that interim order being an ISO, and of the duration sought of a further 6 months to 4 November 2022. It would, in my judgment, be contrary to the protection of the public and the public interest to allow this ISO to expire. The concerns raised have been cogently characterised as “relating to attitudinal issues of probity and trustworthiness” as well as “wide ranging professional concerns”. As has been recognised, there is a conflict in evidence as to what happened in the April 2017 incident, but there is on the face of it substantial information supportive of the features relied on against Ms Shaw from a safeguarding perspective. The accessing of confidential records and the circumstances of becoming aware of and imparting the substance of a confidential conversation are also serious matters. There is good reason for it having been said that the degree of insight demonstrated thus far is, on the face of it, limited. The non-disclosure allegations are also serious. The necessity, in the protection of the public, would not be met by a lesser order such as an interim conditions order. The public interest considerations make continuation of the ISO necessary notwithstanding the prejudice for Ms Shaw which the continuation of the ISO means for her. So far as prejudice from the ISO is concerned, it is relevant as I have explained that Ms Shaw has said she does not wish to work as a social worker, having “taken a

decision to leave the social care sector”; and it is relevant that she would not be able to remove herself from the register even if the ISO now expired. As to the length of the extension, if the matter is substantively resolved after the substantive hearing at the beginning of August 2022, as is hoped, the ISO will, one way or the other, fall away at that stage. But there are possible contingencies, and there will be a need for cooperation. The duration of the extension sought allows a sensible period of ‘headroom’ which is in all the circumstances necessary, appropriate and proportionate. It is not necessary for me to reduce the duration of the ISO, from the extension sought, so that were some contingency to arise, there would then be a need then for the SWE to return to this Court for further consideration in late summer or the autumn.

8. For all these reasons I will grant the order in the terms sought.

29.4.22