



Neutral Citation Number: [2020] EWHC 3259 (Admin)

Case No: CO/2386/2020

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30 November 2020

Before:

Margaret Obi
(sitting as a Deputy High Court Judge)

Between:

Linda Anita Northover

Appellant

- and -

Social Work England

Respondent

The appellant appeared in person
Matthew Kewley (instructed by **Capsticks**) for the **Respondent** appeared via court video-
link

Hearing date: 18 November 2020

JUDGMENT
(Approved by the court)

Margaret Obi:

Introduction

1. The Appellant is a registered social worker, and the Respondent is the regulator of social workers in England.
2. This is an appeal made under paragraph 16 of Schedule 2 of the Social Workers Regulations 2018 (“the 2018 Regulations”). The appeal is against the decision of the Respondent’s independent panel of adjudicators (“the Panel”), dated 10 June 2020, to impose an interim conditions of practice order on the Appellant’s registration for a period of 12 months pending a substantive hearing of the fitness to practise allegations.
3. Since the interim order was imposed, the Respondent’s investigation stage has been completed. The Appellant has been served with documents in support of the Respondent’s case and a substantive hearing has been scheduled to take place before a differently constituted panel of adjudicators between 11 and 15 January 2021.
4. The Appellant argued her case with courtesy and moderation. However, her appeal is without merit and is refused. I reserved my decision in order to ensure that the position is set out very clearly without the expense and delay of a transcript.

Recusal Application

5. In advance of the appeal hearing the parties were put on notice that I sit as an independent legal adviser to the Respondent’s independent panel of adjudicators. It was made clear to the parties that I had no prior knowledge of the Appellant’s case and did not regard this as a conflict but wanted to give them sufficient time to consider whether to raise an objection.
6. At the outset of the hearing the Appellant made an application for me to recuse myself on the basis that I am paid for my advisory role. She referred to the idiom ‘*you don’t bite the hand that feeds you*’. By implication she submitted that I would be less likely to find in her favour because of my role. Mr Kewley opposed the application.
7. I refused the application and provided brief reasons. Those reasons are included in this judgment for completeness.

8. The legal principles are well-established and clear. The right to a fair hearing includes the right to adjudication by an independent and impartial judge. Impartiality means that there is no actual bias or appearance of bias. There was no suggestion by the Appellant that I had demonstrated actual bias. In determining whether there is apparent bias on the part of a Court the test is whether the fair-minded and informed observer, having considered the relevant facts, would conclude that there was a real possibility that the Court was biased. This is the test authoritatively laid down by the House of Lords in *Porter v Magill* [2002] 2 AC 357. It is an objective test, depending on all the circumstances. The concept of bias includes any perceived interest in the case but extends further to any real possibility that a judge would approach a case with a closed mind, or with anything other than an objective view. The fair-minded and informed observer “...can be assumed to have access to all the facts that are capable of being known by members of the public generally, bearing in mind that it is the appearance that these facts give rise to that matters, not what is in the mind of the particular... tribunal member who is under scrutiny.” - [see *Gillies v Secretary of State for Work and Pensions* [2006] 1 WLR 781] and “a reasonable member of the public is neither complacent nor unduly sensitive or suspicious.” – [see *Johnson v Johnson* [2000] 201 CLR 488].
9. As an independent legal adviser I do not make decisions; I advise the independent decision makers based on the regulations, guidance and caselaw. Recruitment to the pool of legal advisers and panel of adjudicators is through an open and transparent process. A key requirement is independence and remuneration is via the Department of Education. I had no prior knowledge of the Appellant’s case.
10. In these circumstances, I concluded that there was no realistic possibility that the fair-minded and informed observer would conclude that I would approach this case with anything other than an open mind.

Background

11. The background to this appeal can be briefly summarised as follows.
12. The Appellant, having qualified in 2015, commenced employment as a newly qualified social worker with the London Borough of Islington (“the Council”) in 2016. In June 2018, the Health and Care Professions Council (“HCPC”) received a referral which raised concerns about the Appellant’s practice as a social worker.
13. On 2 December 2019, responsibility for the regulation of social workers was transferred from the HCPC to the Respondent.

14. On 10 May 2020, the Respondent’s independent Case Examiners concluded that there is a realistic prospect that a panel of adjudicators would find: (i) the alleged facts proved; (ii) the facts (or most of them) amount to misconduct; and (iii) the Appellant’s fitness to practise is impaired as a consequence. The Case Examiners also directed that the matter should be referred to the Respondent’s adjudicators to determine whether an interim order should be imposed to restrict the Appellant’s practice as a social worker pending the substantive hearing of the Allegation. The Allegation (as amended by the Case Examiners) includes dishonesty and inappropriate conduct towards a service user. One of the amendments made by the Case Examiners was inclusion of an overarching allegation to reflect the concern that, specific interactions the Appellant had with a 17 year old service user (CV), may have been in order to pursue a sexual and/or improper emotional relationship.

Interim Order Hearing

15. On 22 May 2020, the Respondent provided the Appellant with notice of an interim order hearing that was due to take place on 3 June 2020. However, the Appellant made an application for a postponement of that hearing in order to obtain representation. The Respondent agreed to a postponement of the hearing.
16. The Appellant subsequently secured representation from a representative (“the Appellant’s representative”) from the British Association of Social Workers.
17. The interim order hearing was relisted on 10 June 2020. It took place as a remote hearing. The Appellant and her representative attended. The Respondent was represented by counsel.
18. The Panel consisted of two lay members (one of whom was the Chair) and a registered social worker. The Panel was assisted by an independent legal adviser.
19. At the outset of the hearing, the Chair confirmed that the Panel had read the papers in advance which included the Appellant’s detailed written submissions and asked both parties whether there were any preliminary matters. Both representatives confirmed that there were no issues to raise. The Panel first heard opening submissions from the Respondent’s representative. The Appellant then gave oral evidence under affirmation and questions were asked by the Panel. The Appellant’s representative made a detailed closing submission. The Panel then received advice from the legal adviser in the presence of the parties before deliberating in private.
20. The primary submission made by the Appellant’s representative was that no interim order should be imposed. However, she further submitted that if the Panel were to impose an order, the Appellant “...*would request an interim*

conditions of practice order is agreed until the full hearing is held'. The Appellant's representative submitted that the conditions should permit the Appellant to work as an assessor of foster carers. The Panel was informed that this role involved mainly working with adults and in that role the Appellant's direct contact with children would be limited. The Panel was also informed that the Appellant was willing to be made subject to increased levels of supervision, attend training courses, and complete a reflective journal to demonstrate her learning.

21. The Panel commenced its deliberations at 13:08. At 18:01, the Panel announced its decision to impose an interim conditions of practice order for a period of 12 months. In summary, the conditions require, amongst other things, that the Appellant (i) produces a personal development plan; (ii) works under the supervision of a supervisor; (iii) does not work as an independent social worker; (iv) works at premises where at least two other social workers are present; and (v) must not carry out direct work in a front line children's social work team.
22. The Panel provided detailed written reasons explaining its decision to impose an interim order.

The Legal Framework

23. Paragraph 8 of Schedule 2 of the 2018 Regulations provides:

(1) Where the case examiners consider an interim order may be necessary for the protection of the public or in the best interests of the social worker—

(a) they must notify the regulator accordingly,

(b) the regulator must appoint two or more adjudicators to consider whether to make an interim order in accordance with this paragraph

(2) Subject to sub-paragraph (3), the adjudicators may make any interim order they consider is necessary for the protection of the public, or in the best interests of the social worker.

(3) The adjudicators may not make an interim order unless they have first informed the social worker of the proposed order and given them the opportunity—

(a) to make written submissions, or

(b) to attend before the adjudicators and be represented, in order to make oral submissions.

(4) Where they make an interim order under sub-paragraph (2) the adjudicators must—

(a) inform the following of the terms of the order—

(i) the regulator,

(ii) the social worker,

(iii) any person by whom the social worker is employed, or with whom they have an arrangement, to provide services as a social worker or in relation to social work (where known),

(iv) any regulatory body with which the social worker is registered (where known), and

(v) where the fitness to practise proceedings were instigated following a complaint against the social worker, the complainant, and

(b) notify the social worker of their right to appeal to the High Court under Part 5.6

(5) An interim order may—

(a) suspend the social worker from practising (an “interim suspension order”), or

(b) impose a restriction or condition with which the social worker must comply (an “interim conditions of practice order”), for such period, not exceeding eighteen months, as is specified in the order.

24. Paragraph 16 of Schedule 2 of the 2018 Regulations provides:

16.—(1) A social worker may appeal to the High Court against—

(a) the decision of adjudicators—

(i) to make an interim order, other than an interim order made at the same time as a final order under paragraph 11(1)(b),

(ii) not to revoke or vary such an order,

(iii) to make a final order, (b) the decision of the regulator on review of an interim order, or a final order, other than a decision to revoke the order.

(2) An appeal must be made within 28 days of the day on which the social worker is notified of the decision complained of.

(3) *On an appeal the High Court may—*

(a) dismiss the appeal,

(b) quash the decision,

(c) substitute for the decision appealed against any other decision that the adjudicators or the regulator (as the case may be) could have made,

(d) remit the case to the regulator to dispose of in accordance with the directions of the court, and may make any order as to costs as it thinks fit.

The Court's Approach

25. The authorities addressing the Court's approach to challenges to interim orders largely arise out of legislative schemes that specifically confer a power to consider an application for a termination of an interim order. Unlike the legislative schemes considered by Thirlwall J in *Perry v Nursing and Midwifery Council* [2012] EWHC 2275 (Admin) and Julian Knowles J in *Agoe v General Medical Council* [2020] EWHC 39 (Admin), the 2018 Regulations do not provide for an 'application' for a termination of an interim order. Paragraph 16(1) of Schedule 2 of the 2018 Regulation provides that a social worker may 'appeal' to the High Court against the decision of the adjudicators to make an interim order (or a final order imposed at the conclusion of a substantive hearing of an allegation).

26. Appeals against decisions of professional regulatory or disciplinary tribunals are governed by CPR 52.21:

(1) Every appeal will be limited to a review of the decision of the lower court unless—

(a) a practice direction makes different provision for a particular category of appeal; or

(b) the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.

(2) Unless it orders otherwise, the appeal court will not receive—

(a) oral evidence; or

(b) evidence which was not before the lower court.

(3) The appeal court will allow an appeal where the decision of the lower court was—

(a) wrong; or

(b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.

27. Paragraph 19.1 of Practice Direction 52D provides that appeals against decisions affecting the registration of architects and health care professionals shall be by way of rehearing.

28. In considering an appeal under Paragraph 16 of Schedule 2 of the 2018 Regulations, HHJ Klein sitting as a Deputy High Court Judge in Anderson v Social Work England [2020] EWHC 430 (Admin) held that:

“[18] Even though this appeal is by way of rehearing, I cannot interfere with the decision of the panel unless I am satisfied that the panel's decision was wrong. In deciding whether the panel's decision was wrong, I have to have in mind, to the appropriate degree, the specialist nature of the panel as the 2019 White Book explains at page 1820:

“In an appeal by way of re-hearing from a profession's regulatory or disciplinary tribunal, the court will have to decide how much deference it should accord to the decision of the tribunal members.””

29. In Council for the Regulation of Health Care Professionals v General Medical Council [2004] EWCA Civ 1356; [2005] 1 WLR 717, CA, the Court of Appeal formulated the approach as follows at paragraph 78:

"Where all material evidence has been placed before the disciplinary tribunal and it has given due consideration to the relevant factors,...the court should place weight on the expertise brought to bear in evaluating how best the needs of the public and the profession should be protected. Where, however, there has been a failure of process, or evidence is taken into account on appeal that was not placed before the disciplinary tribunal, the decision reached by that tribunal will inevitably need to be reassessed."

30. Drawing these authorities together, the central issue for the Court in this appeal is whether the Panel was wrong to impose an interim conditions of practice order on the Appellant's registration. If the Panel's decision was wrong, the Court may (i) quash the decision; (ii) remit the case; (iii) or substitute the decision with any other decision that the Panel could have made.

Grounds of Appeal and Submissions

31. The Appellant chose to give oral evidence. She outlined her family history, professional background and what motivated her to qualify as a social worker after a long unblemished career working with children in local authority care. The Appellant informed the Court that prior to qualification as a social worker she provided support and advocated on behalf of '*100's of children*'. She was critical of the Council's internal disciplinary process which resulted in her dismissal for gross misconduct and it was clear that at the substantive hearing she intends to challenge the allegation that her interaction with CV was in pursuit of a sexual or improper emotional relationship.
32. In essence, the Appellant invited me to quash the Panel's decision and make no further order. Thus, enabling the Appellant to return to unrestricted practice as a social worker.
33. The Appellant's grounds of appeal were as follows:
 - (i) Ground 1: There was a serious procedural irregularity in that the Respondent failed to properly investigate the case having only received the Appellant's evidence/submissions on the day before the interim order hearing.
 - (ii) Ground 2: The decision to impose an interim order was unjust because the Panel acted on inaccurate and misleading information.
 - (iii) Ground 3: The regulator took several years to impose an interim order - delay
 - (iv) Ground 4: The Panel was under representative of the Appellant's race, culture and diversity and the Chair did not have a social work background.
 - (v) Ground 5: The Panel's decision breached the Appellant's Article 8 rights.
34. Mr Kewley submitted, on behalf of the Respondent, that the Panel's decision to impose an interim order cannot be described as wrong. He stated that the Panel adopted a fair approach to the hearing. The Appellant was provided with the opportunity to give evidence and had the benefit of a representative who made detailed submissions on her behalf. Mr Kewley further submitted that the Panel produced careful and detailed reasons supporting its decision to impose an interim order and acted proportionality by imposing the least restrictive type of interim order which affords the Appellant with the opportunity to continue to practise as a social worker.
35. Mr Kewley invited the Court to dismiss the appeal.

Analysis

36. Although I carefully considered the submissions made by the Appellant, in addressing her grounds of appeal, I have not made reference to every point or observation she made; only such matters which have enabled me to conclude whether the Panel's decision was wrong.

Ground 1 – Procedural Irregularity

37. As I explained to the Appellant, during her submissions, it does not matter whether the Panel read the hearing bundle a few days before, the day before or on the day of the hearing itself. What is important is that a panel considers all the available material and conducts a comprehensive risk assessment.
38. At the outset of the hearing on 10 June 2020, the Chair confirmed that the Panel had read three bundles in total: (i) the service and supplementary bundle; (ii) the proposed interim order application; and (iii) the Appellant's submission bundle. Having heard submissions from both parties the Panel went on to make a decision and subsequently produced detailed written reasons explaining its decision to impose an interim order. Furthermore, the Panel gave the parties the opportunity to raise any preliminary issues before the Respondent made the application for an interim order. The Appellant's representative expressly confirmed that there were no issues arising. The Appellant stated, during her submissions, that neither she nor her representative, had any previous experience of interim orders' hearings. I have no reason to doubt that. However, that does not mean that there was any procedural irregularity. If the Appellant or her representative had any concerns about the Panel's ability to proceed fairly on 10 June 2020, those concerns ought to have been raised at the outset of the hearing. I am satisfied that no issues were raised because, as submitted by Mr Kewley, there could be no reasonable objection to the Panel proceeding to consider the imposition of an interim order having expressly confirmed that it had read all of the material, including the material submitted by the Appellant, in advance of the hearing.
39. The Respondent carried out its initial investigation for the purposes of enabling the Case Examiners to determine whether there is a realistic prospect that a substantive hearing panel would determine that the Appellant's fitness to practise is impaired. That information was considered by the Panel on 10 June 2020 and there is no aspect of the procedure which was followed to support a finding that there was a procedural irregularity.

Ground 2 – Interim order was unjust

40. The Appellant submitted that the evidence relied on by the Panel is inaccurate and misleading.
41. There is always a tension between unproved allegations and the right of a social worker to practise their chosen profession (subject, of course, to the public interest in the regulation of the profession). However, as I explained to the Appellant, the Panel could not make any findings of fact or resolve any inconsistencies, and neither can I. The purpose of the hearing before the Panel was to undertake a risk assessment by balancing both the interests of the public and the social worker, in order to determine whether an interim order is necessary to protect the public or is in the best interests of the social worker. The protection of the public includes promoting and protecting public trust and confidence in the profession and upholding proper standards of conduct. Relevant factors include the nature and seriousness of the allegations, and the quality and credibility of the available information.
42. A number of the points the Appellant made about the overall quality of the evidence are perfectly valid and, no doubt, she will have the opportunity to raise these issues at the substantive hearing in January 2021. The Appellant may or may not at the substantive hearing be able to undermine the evidence presented by the Respondent, or in any event, show that the criticisms made of her have been embellished, but that is not something which can be resolved at this stage. Whilst not making findings of fact, it is apparent from the Panel's determination that it properly considered the nature and overall strength of the evidence and determined that the '*...concerns were of such a wide-ranging and serious nature*' and '*that the concerns were supported with credible evidence*'. Credible in this context simply means 'not fanciful'. The Panel concluded that the Appellant tended to minimise her responsibility for her actions and passed blame to her employer. The Panel considered that in the absence of insight there was a risk of repetition and therefore a potential risk of harm to the public if the Appellant were permitted to practise without restriction. The Panel also concluded that public confidence in the social work profession would be undermined if the Appellant was permitted to practise without restriction. The Panel was entitled to reach these conclusions based on the information that was available. Their reasons are cogent and justified.
43. As the Appellant explained, the interim conditions of practice order, has restricted her employability. She stated that she had been working for a local authority for 10 months, via an agency, immediately prior to the imposition of the interim order and her work was considered to be of a high standard. Nonetheless, her contract was terminated once her employer was made aware of the conditions of practice. The Appellant made it clear during her submissions that, in her view, there are no amendments that could be made to the conditions of practice which would make a positive difference to her

employability; the mere fact that she is subject to conditions will deter any prospective employer. She may well be right about that. I appreciate that being unable to practise has caused the Appellant considerable distress and hardship. However, it seems to me, that once the Panel had reached the view that there was a real risk of harm to the public it becomes impossible to argue that the imposition of conditions (the least restrictive of the two available options) was unfair.

Ground 3 - Delay

44. As stated in paragraph 13 above, the Respondent took over the Appellant's case from the HCPC on 2 December 2019. On 10 May 2020, the Case Examiners concluded that there is a realistic prospect that the Appellant's fitness to practise would be found to be currently impaired. The Case Examiners also directed that the matter should be referred for consideration of an interim order. Therefore, until 10 May 2020, no decision had been made with regard to whether there was 'a case to answer'. The Case Examiners are independent of the Respondent and Para 8, Schedule 2 of the 2018 Regulations confers on the Case Examiners the power to refer a social worker to a panel of adjudicators for consideration of an interim order.
45. I accept the submission made by Mr Kewley that the Panel was best placed to determine whether an interim order was necessary based not only the evidence considered by the Case Examiners, but also the oral evidence of the Appellant. The Appellant's representative made no objection to the Panel considering the imposition of an interim order on 10 June 2020 and no procedural point was taken in relation to delay.
46. Given that the initial referral was made to the HCPC in June 2018, there can be no doubt that overall the proceedings have continued for a significant period of time. However, the fact that the HCPC did not make an application for an interim order is not capable of making the decision made by the Panel, on 10 June 2020, wrong.

Ground 4 – Unrepresentative Panel and non-social worker Chair

47. The composition of Panel is governed by Rule 34 of the Fitness to Practise Rules 2019 which provides:

(a) Where a case is to be considered under these Rules by the adjudicators or the case examiners, the regulator must appoint at least one lay person and at least one registrant.

(b) ...

(c) The chair of any hearing or meeting must be a lay person.

48. The Panel consisted of two lay members and a registered social worker. The Appellant's complaint that the Chair was not a social worker is in clear conflict with the statutory requirement in Rule 34(c).
49. Furthermore, the Appellant's challenge to the racial and cultural diversity of the Panel is simply unarguable.
50. The Panel was properly constituted and adopted a conspicuously fair approach to the hearing.

Ground 5 – Breach of Article 8

51. The Panel produced a detailed written determination explaining why it had decided to impose an interim order. The determination stated that it had accepted the advice of the legal adviser which included the need to consider '*the potential impact on the Social Worker and balance the needs of the Social Worker with those of the Regulator in protecting the public*'. The Panel approached the decision making process proportionately by considering firstly, whether it was necessary to impose any order, at all. Having concluded that an order was necessary, it was only then that the Panel went on to consider what type of interim order would be proportionate. The Panel expressly rejected the imposition of an interim suspension order on the basis that it would be disproportionate to the Appellant.
52. I do not consider that Article 8 is engaged. An interim conditions of practice order does not constitute an interference with the Appellant's right to family or private life. Even if it does, in my judgment the interference is proportionate to the need to protect the public.

Conclusion

53. In conclusion, it is clear that what lies behind the Appellant's appeal, is her deep sense that she has unfairly been made subject to restrictions on an interim basis in respect of allegations, most of which, she strongly believes are ill-founded. It

is impossible not to have some empathy for her predicament. However, it is inevitable that imposing a restriction on a social worker in order to protect the public, pending a substantive hearing, will cause some degree of hardship. Sometimes that hardship will turn out to have been unjustified because the allegations are not found proved. Where that happens it is a great misfortune. The best that can be done is for a panel to do its best to hold the balance fairly. That is what was done in this case.

54. In my judgment, there is no basis upon which I ought to conclude that the Panel was wrong. The Panel was well qualified to assess the material before it and clearly did so conscientiously.
55. For these reasons, the appeal is dismissed.
56. No oral submissions were made with regard to costs. Any consequential applications are to be dealt with in writing.

CO/2386/2020

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

IN THE MATTER OF AN APPEAL UNDER PARAGRAPH 16 OF SCHEDULE 2 OF THE
SOCIAL WORKERS REGULATIONS 2018

BEFORE MARGARET OBI SITTING AS A DEPUTY JUDGE OF THE HIGH COURT

BETWEEN:

LINDA NORTHOVER

Appellant

and

SOCIAL WORK ENGLAND

Respondent

ORDER

UPON the Appellant's appeal dated 6 July 2020 against the decision of the Respondent's Adjudicators dated 10 June 2020

AND UPON hearing the Appellant in person and Mr Matthew Kewley of Counsel for the Respondent appearing remotely at a hearing before Margret Obi sitting as a Deputy Judge of the High Court on 18 November 2020

IT IS ORDERED THAT:

1. The appeal is dismissed.
2. The Respondent is to file and serve short written submissions on costs no later than 4pm on 4 December 2020.
3. The Appellant is to file and serve any written submissions in response by no later than 4pm on 11 December 2020.