

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION
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NURSING AND MIDWIFERY COUNCIL

Applicant:

-v-

CN

Respondent:

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STEPHENS J

Introduction

[1] This is an application under Article 31(8) of the Nursing and Midwifery Order 2001 for a six month extension of an interim order imposed on the respondent suspending her registration as a nurse. If I grant the application the new date of expiry will be 23 October 2015. The initial order was imposed for a period of 18 months on 25 October 2012. This court has already extended the period of suspension for a further 12 months. This is a second application for an extension of the interim order.

[2] The concern of the court relates to delay. The allegations against the respondent relate to a matter which should be simple to investigate expeditiously, namely the theft of drugs by the respondent from the hospital in which she was working. The theft was first reported in August 2012, some 2 years and 8 months ago and the council is seeking an extension for a further 6 months. Accordingly it is anticipated that the total time to be taken in processing an allegation of theft will be 3 years and 2 months. That cannot be appropriate. The explanation proffered by the council is that the criminal proceedings took a substantial period of time and it could not take any substantive steps until the criminal proceedings had been concluded. That in turn raises an issue as to why the criminal proceedings took so long to determine together with an issue as to whether, before granting an extension, this court should be satisfied that the council has engaged with the PSNI and the Public Prosecution Service ("the PPS") so that the time taken over the criminal proceedings

takes into account the important public functions to be discharged by the council and the impact on the nurse or midwife concerned.

[3] There was no appearance by the respondent.

Anonymity

[4] At the start of this short ex tempore judgment I will consider the question as to whether to anonymise the identity of the respondent. I have decided to do so. The circumstances in which she has been suspended relate not only to a criminal offence of which she has been convicted but also relate to her health and personal circumstances. There is medical evidence that she has an addiction to opiates and suffers from depression. Those issues have not as yet been determined and in those circumstances I consider that the balance comes down in favour of anonymity. In arriving at that conclusion I emphasise that the respondent has not made an application for anonymity. I have not heard any opposing argument in relation to whether I should make an anonymity order. I give liberty to apply to set aside the anonymity order, which application can be made not only by the parties, but also by others, including, for instance, a representative of the press.

The role of the court

[5] There is a triangulation of interests involving the council, the respondent and the public. The council have obvious responsibilities to discharge. The individual nurses and midwives are vitally affected financially, professionally and emotionally by investigations such as this. So far as the public is concerned it is entitled to the services of nurses and midwives who should be registered and it should be protected in circumstances where nurses and midwives should not be registered. Delay impacts on all three interests including the public interest. I consider that the court on an application to extend an interim order should consider the impact of an extension not only on the respondent but also on the public, so that even in a case in which the application is not opposed by the respondent, it is still incumbent on the court to consider the public interest. If the council submits, as they do in this case, that there has been delay on the part of others in a criminal investigation, then I consider that prior to granting an extension, as one of the factors to be taken into account, the court has an obligation to determine whether the council have taken appropriate steps at *the appropriate level* to establish a system of liaison with the relevant public authorities involved in the criminal investigation. The sanctions that the court can impose if there is a failure to have a proper system of liaison are limited because if the court does not grant an extension then the respondent could return to nursing with a real risk to the public. The alternative is to require the attendance of those in authority to explain the delay and that is a course that might be followed in future applications. Accordingly those bringing such applications in the future should anticipate that a court may wish to hear from representatives of the relevant public bodies.

Delay

[6] I emphasise that I have not seen any of the documents relating to the criminal investigation nor have the PSNI or the PPS made any submissions to the court. It may be that the criminal investigation was of some complexity. However, ordinarily the investigation of an allegation of theft would require the investigating police officer to take statements from witnesses and to interview the suspect. Ordinarily that can be done in a short time frame. Ordinarily upon receipt of the file the PPS can direct within a short time. Thereafter, ordinarily the task of the council is simplified because the investigation into the alleged theft will have been conducted by the PSNI. The council need not duplicate but once the prosecution is complete it is obvious to the PSNI and to the PPS that the council requires prompt access to the documentation.

[7] I turn to consider what time frame actually occurred as opposed to what ordinarily occurs. The respondent, who I will refer to as CN, was employed as a nurse by one of the Health Trusts in Northern Ireland. Her employers reported suspected criminal activity to the PSNI in or about August 2012. The police investigation took 8 months with a file being sent to the PPS in April 2013. 11 months later and on 24 March 2014 the PPS indicated that there had been “a clerical error which had held the whole thing up ...” So it was not until 2 years after the matter was reported to the police and on 2 September 2014 that the criminal proceedings came on for hearing at which stage the respondent pleaded guilty to the charge of stealing medication belonging to a hospital contrary to Section 1 of the Theft Act (Northern Ireland) 1969.

[8] So between August 2012 and September 2014 as a result of the criminal investigation and proceedings the council was prevented from pursuing their public function and since October 2012 the respondent’s registration as a nurse has been suspended. As soon as the criminal proceedings were concluded it might have been anticipated that immediately thereafter either the PSNI or the PPS would have informed the council of the outcome and would have made available to the council the documents that the council obviously required to perform its important public function. However after the conviction on 2 September 2014 no information was supplied by the PPS or the PSNI to the council. The nurse’s previous employers, the Health Trust, informed the council of the outcome of the criminal proceedings by letter dated 7 September 2014.

[9] On 9 September 2014 the council wrote to the police seeking disclosure of witness statements and other documentation in relation to the criminal investigation. Those documents were obviously necessary for the council to discharge its responsibilities. On 1 October 2014 the police provided those documents to the council.

[10] Also on 9 September 2014 the council wrote to the court service asking it to provide a certificate of conviction. It was not until 13 November 2014 that the certificate of conviction was provided.

[11] I record what I have been informed today namely, that the council were continually throughout the period August 2012 to September 2014 corresponding with the PSNI and then the PPS to encourage them to deal with the matter expeditiously. However I am not satisfied that at an appropriate level the council have a method of liaising with both the PSNI and the PPS.

Discussion

[12] It is clear that the Council has a considerable task to undertake. I have been informed that there are some 670,000 registered nurses and midwives in the United Kingdom and in the Channel Islands for whom the Council is responsible. If a nurse or midwife is registered then they are entitled to practise. The Council presently has approximately 4,000 active cases, the majority of which are at the investigation stage. They face considerable problems in discharging their public responsibility of bringing these matters on within an appropriate timescale in the interests of the community and of the individuals concerned. There is a need for, but on the evidence before me I have found, a lack of co-operation at an appropriate level between the PSNI/PPS and the council so that criminal investigations are expedited and so that the council can timeously discharge its obligations. However I do not consider that the lack of such liaison in this case should result in a refusal of the application to extend the suspension. I also consider that on this occasion, given that a conclusion to this case is now in sight and no further delay is anticipated, I will not require the attendance of anyone from the PSNI or the PPS.

Conclusion

[13] The council is entitled to the relief that they seek. I grant a six month extension of the interim order suspending the respondent's registration as a nurse. The new date of expiry will be 23 October 2015.