

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11353-2015

BETWEEN:

RONALD RAYMOND HEYWOOD

Applicant

and

SOLICITORS REGULATION AUTHORITY

Respondent

Before:

Mr K. W. Duncan (in the chair)

Miss T. Cullen

Mrs L. McMahon-Hathway

Date of Hearing: 6 May 2015

Appearances

Mr Christopher Filer, Solicitor Advocate of 10 Woodlands Avenue, Shelton Lock, Derby DE24 9FQ for the Applicant.

The Respondent was represented by Mr Inderjit Singh Johal, a barrister employed by the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN.

**JUDGMENT ON APPLICATION TO REVIEW/REVOKE A
SECTION 43 ORDER**

Application

1. The Application to review/revoke a section 43 Order was made by the Applicant on 19 February 2015 by means of Form 3, as required by Rule 8(4) of the Solicitors (Disciplinary Proceedings) Rules 2007 (“SDPR 2007”).

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent, which included:

Applicant:

- Application dated 19 February 2015;
- Grounds of Application for Review/Revocation;
- Statement of the Applicant dated 15 April 2015, together with exhibits RRH1 - RRH11;
- Statement of Deborah Funmilola Heywood dated 23 April 2015;
- Second Statement of the Applicant dated 5 May 2015;
- Report upon the Applicant from Mr Andrew Sinclair dated 2 May 2015;
- Statement of the Applicant dated 28 April 2015, relating solely to an application under Rule 12 (4)-(6) SDPR 2007 for a private hearing.
- Statement of the Applicant dated 5 May 2015, together with further exhibit RRH1, relating solely to the issue of costs;
- Four additional character reference letters.

Respondent:

- Outline Submissions of the SRA dated 20 March 2015, together with exhibits SM1-SM8;
- Copy email dated 1 May 2015 from the Respondent to the Tribunal opposing the Applicant’s application for a private hearing;
- Copy Judgment in Paul William Miller v GMC [2013] EWHC 1934 (Admin);
- Copy Judgment in “L” v The Law Society [2008] EWCA Civ 811.

Factual Background

3. On 11 January 2011 an Adjudicator of the SRA resolved to make an Order under section 43 (2) of the Solicitors Act 1974 (as amended) against the Applicant. The Adjudicator had considered the Applicant's conviction for an offence of failing to notify change of circumstances which regulations require in relation to the claiming of disability benefit from November 2004 to 1 May 2007, during which time he worked as an unadmitted clerk for the legal firms of McGrath and Co and Atkinson, Cave and Stuart.

4. The Applicant was sentenced to a community rehabilitation order with a supervision period of 12 months. The SRA had received information that the Applicant had been convicted on his own confession of the offence. The SRA obtained a copy of the certificate of conviction from Preston Crown Court which confirmed that the Applicant was convicted of the offence on 18 May 2009 and sentenced on 16 June 2009. The sentencing remarks of the Judge had been obtained and considered.

Preliminary Matter

5. Mr Filer said that the Applicant had prepared his second witness statement, concerning his son at a late stage in the proceedings and asked for consent for its admission into evidence.
6. Mr Johal said that he had no objection to the late admission of the further witness statement, although it was in breach of the Tribunal's directions. He did however question its relevance to the proceedings.

Tribunal's Decision on the Preliminary Matter

7. The Tribunal, having considered the matter, allowed the second statement of the Applicant to be admitted into evidence.

Preliminary Application

8. The Applicant made application that the hearing be conducted in private under Rule 12 (4) – (6) of the SDPR 2007 on the basis that he would suffer exceptional hardship and/or exceptional prejudice for the hearing to take place in public.
9. Mr Filer told the Tribunal that the application was on the basis that those parts of the Applicant's statement that dealt with his first marriage, his son and his health would harm the Applicant if they were to become public knowledge.
10. Mr Johal said that the initial application made by the Applicant had covered the entire hearing but that now appeared to have been refined. Mr Johal said that the SRA did not object to certain sensitive parts of the evidence, such as those indicated by Mr Filer, being heard in private. The proper test was that under Rule 12 of the SDPR 2007 and he asked the Tribunal to bear in mind the principles in Paul William Miller v GMC and "L" v the Law Society. The default position was that the hearing should be in public but this was not absolute and the protection of the Applicant's private life under Article 8 of the European Convention on Human Rights must be borne in mind.

The Tribunal's Decision on the Preliminary Application

11. The Tribunal had listened carefully to the representations made by both the Applicant and the Respondent. It had considered the Applicant's witness statements dated 28 April 2015 and 5 May 2015 and the Judgments to which it had been referred by Mr Johal.

12. The Tribunal noted that the more limited application made by Mr Filer was not opposed by the SRA. In all the circumstances, it had determined that certain information concerning the Applicant's first marriage, son and health would cause the Applicant exceptional hardship and exceptional prejudice were it to become public knowledge. To that extent the hearing would be conducted in private and the Judgment of the Tribunal would not contain any detail concerning those matters.

Submissions on behalf of the Applicant

13. The grounds given by the Applicant for revocation or review of the section 43 Order were that:
- 13.1 Over four years had elapsed since the Order was made;
- 13.2 The Applicant had also been excluded from the Chartered Institute of Legal Executives in March 2011. On 22 August 2014 the Professional Conduct Panel of CILEX Professional Standards had considered the regulatory issues of protection of the public and had reinstated the Applicant to membership;
- 13.3 The Applicant had been fully rehabilitated, as evidenced by:
- (i) the fact that no further convictions had taken place;
 - (ii) he had been repaying the overpayment that had occurred;
 - (iii) the Charity Commission had provided a general waiver in the period before statutory rehabilitation occurred under the Rehabilitation of Offenders Act 1974 (as amended) for the Applicant to hold position as a Charity Trustee;
 - (iv) during the intervening years the Applicant had undertaken further academic legal and research studies;
 - (v) the Applicant had, since 2011, been a certificated money adviser through the Institute of Money Advisers, which required CPD which had been fully undertaken;
 - (vi) the Applicant held a non-commercial Consumer Credit Licence for non-commercial debt advice (together with FCA interim permission);
 - (vii) the Applicant had continued to undertake pro bono work for a Citizens Advice Bureau since 2010 and other pro bono work for Christian organisations to benefit their members and community;
 - (viii) the Applicant delivered legal training in housing law;
 - (ix) the Applicant was a lecturer/module leader at the University of Salford in housing legal framework;
 - (x) the Applicant undertook undergraduate teaching in land law and legal obligations;

- (xi) the Applicant was medically fit to work as certified by his medical general practitioner.
14. Mr Filer told the Tribunal that the Applicant was now aged 57. His specialism was in social welfare, particularly housing but because of government cuts few positions were available to him in a solicitor's firm. He had therefore gone into the field of education and lecturing; however when he applied for work in those areas he had to declare that he had been previously excluded from his profession. This had a prejudicial effect and although his conviction was now spent the section 43 Order remained extant. The Applicant therefore sought removal of the section 43 Order in order to remove the blight upon his academic applications. Mr Filer said that the Applicant accepted that it was very unlikely he would ever return to a solicitor's practice.
15. The evidence which the Applicant wished to put before the Tribunal was contained within his witness statement; in Mr Filer's submission the matters which he referred to in that statement had played a part in his original behaviour.
16. Mr Filer said that the facts were bizarre. The Applicant had been readmitted to CILEX and that organisation had taken the decision that he was fit person to have access to the public. In Mr Filer's submission the Tribunal was entitled to take that into account. The Applicant had tried to seek rehabilitation despite his difficulties in finding legal work due to government cuts. He undertook complex Citizens Advice Bureau work and was a member of a debt charity. He had undertaken University lecturing and money advice; in all the circumstances he felt that he was doing all he could to rehabilitate himself. It was difficult to see how he could undertake traditional rehabilitation in the current financial circumstances.
17. Mr Filer went on to say that the Applicant was prepared to give an undertaking that he would not work in a solicitor's office. The Applicant saw his future in legal education.

Witness evidence of the Applicant

18. The Applicant gave sworn oral evidence. He told the Tribunal that he relied upon his witness statements dated 15 April and 5 May 2015, the contents of which were true to the best of his knowledge and belief.
19. The Applicant said that he accepted his conviction. It was put to him by Mr Filer that in his sentencing remarks the Judge had said that the Applicant had been working but at the same time claiming that he could not prepare the main meal of the day. The Applicant said that benefit had been granted to him on two bases, the first to do with his medical condition and the second to do with his dyspraxia; both of these had meant that he had been unable to prepare food.
20. Mr Filer took the Applicant through his evidence concerning his first marriage and the effect this had had upon his behaviour at the time he committed the offence and of his conviction. The details were fully laid out within his witness statement.

21. He had been awarded Disability Living Allowance and when he had secured employment he had notified the Department in relation to one issue. He had also taken advice as to whether he needed to give notification to the Department but had been told that since his condition had deteriorated this did not amount to a change in circumstances.
22. He had encountered a number of difficulties with the section 43 Order. When he had tried to get employment in private practice he had made no progress; employers did not want to get involved in making an application concerning a section 43 Order. Since the Legal Aid cuts had come into effect there had been a tremendous impact upon suppliers who had reduced from three to one.
23. The Applicant said that he had no idea of going back into legal practice as, apart from anything else, his age was against him. His career was now in advice and education, but the existence of the section 43 Order was holding him back as it had to be disclosed. In general these employers did not want to employ somebody subject to a regulatory control order and he did not get shortlisted for jobs. In contrast his conviction did not need to be disclosed in most circumstances.
24. The Applicant gave details concerning his work with the Citizens Advice Bureau where he had been assigned to a project involving housing and debt work. These were complex matters with long analytical issues and the work was quite technical. He was highly regarded at the Citizens Advice Bureau and he worked there once a week on an ongoing basis but sometimes he would have to take breaks if there was a surge of training.
25. The Applicant gave details of his charitable work and said that he had also undertaken four lectures for the Institute of Money Advisers in the past year. He had sought to become a charity trustee and had obtained a general waiver from the Charity Commission. He had been reinstated by CILEX which had taken the view that he was no longer a threat to the public and that his health was robust enough not to have an adverse effect. His reinstatement had been on the basis that he would not work in private practice.
26. In cross-examination by Mr Johal the Applicant was asked whether he accepted that he had been guilty of the offence. The Applicant said that he had pleaded guilty to the offence so he had to accept that he was guilty. Mr Johal put it to the Applicant that in his witness statement he had said that he had pleaded guilty not because he considered he was guilty, far from it, but because he had felt that this would release the pressure from him. The Applicant said that at that stage he had been too ill to go on. The advice given to him had been to the effect that he was not guilty as he had notified the Department that he was working, however he had pleaded guilty because he could not take any more and now he had to accept the situation. The Applicant also accepted that the certificate of conviction was evidence of his guilt in the matter.
27. The Applicant agreed that his attendance at the Citizens Advice Bureau had been erratic because of his health issues and his academic studies, which had been taking up a lot of his time. However his attendance had since improved and had been consistent for the past three years apart from when he was providing training.

28. The Applicant said that he had not told the Citizens Advice Bureau about the application before the Tribunal as he had not wanted to embarrass himself and there was no reference from them. The Citizens Advice Bureau was not aware of why he had been excluded from CILEX and he had only told them that he was applying for reinstatement.
29. Mr Johal asked the Applicant how long he had been a lecturer at the University of Salford and he replied that he had been a lecturer from September 2012 to January 2013, although his contract had lasted until June 2013. The University had decided to discontinue the course. A reference had been provided from the University but under cross-examination by Mr Johal, the Applicant admitted that it was not in respect of this application and that he had not asked the University for one in relation to it.
30. The Applicant also said that there was no reference from the Institute of Money Advisers, as he did not think it went to the heart of the matter and none from his current employer as he had only just commenced employment.
31. The Applicant was asked by the Tribunal how much of the repayment of benefit wrongly claimed was outstanding. The Applicant said that the figure had originally been £13,000 and that he was not sure as to what was outstanding but he believed it to be around £9,000.

Further Submissions on behalf of the Applicant

32. Mr Filer said that the Applicant had been trying to rehabilitate himself in very difficult circumstances. He was unable to become any further rehabilitated. There were references before the Tribunal, although some were not contemporary. Mr Filer repeated the reference that he himself had supplied. In his submission, in all the circumstances it was not necessary for the Tribunal to further extend regulatory control upon the Applicant.

Submissions of the Respondent

33. Mr Johal said that he relied upon the outline submissions of the Respondent before the Tribunal. The application was opposed.
34. The correct test to be applied when considering an application under Section 43(3) to revoke an order made under section 43(2) was confirmed by Wilkie J in Solicitors Regulation Authority v Ali [2013] EWHC 2584 (Admin):

“... whether it was, in all the circumstances, any longer necessary for the level of regulatory control to be imposed upon the applicant...”.
35. Mr Johal said that the Tribunal was required to balance the seriousness of the matters substantiated against the Applicant, the length of time elapsed since these matters occurred and whether the Applicant had been sufficiently rehabilitated.
36. In Mr Johal's submission the matters of which the Applicant had been convicted were of the most serious kind, being a benefit fraud that had gone on for some three years. The Tribunal had seen the Judge's Sentencing Remarks and it was clear from those

that he had been claiming the higher rate of the mobility element of disability living allowance whilst at the same time commuting to work. It was therefore no surprise that the Judge had said that "this was a thoroughly dishonest matter on your behalf". It was also clear from those Sentencing Remarks that the Applicant had been fortunate to have avoided an immediate custodial sentence.

37. The Tribunal had heard from the Applicant who had given a number of reasons undermining his conviction. Mr Johal asked the Tribunal not to accept those reasons; permission for the Applicant to appeal had been refused and he continued repayment of the overpayment of benefit.
38. It had been over four years since the conviction of the Applicant and that conviction was now spent. The Respondent accepted that time had now elapsed but in Mr Johal's submission this was not of itself sufficient to merit revocation of the section 43 Order.
39. There was some evidence of rehabilitation by the Applicant but Mr Johal said that the Respondent did not accept that the Applicant was fully rehabilitated. Whilst credit should be given to the Applicant for his pro bono work and furthering his own education, he had only been in paid employment for six months at the University of Salford since the imposition of the section 43 Order. No references were before the Tribunal either from that University or the Citizens Advice Bureau and these would have assisted the Tribunal.
40. Mr Johal said that the Tribunal could rightly take into account the fact that the Applicant had been reinstated as an associate by CILEX but the question that CILEX would have addressed at the time would have been different to that addressed by the SRA. The Applicant had been excluded by CILEX as a disciplinary sanction whilst the section 43 Order was a regulatory device.
41. In Mr Johal's submission, whether there was sufficient evidence of adequate rehabilitation should be at the forefront of the Tribunal's considerations.
42. Mr Johal was asked by the Tribunal for the Respondent's view on the offer of an undertaking not to work in a solicitor's practice by the Applicant. Mr Johal said that as the Applicant was not a solicitor such an undertaking would not have the same amount of weight as that given by a solicitor and it would be difficult for the SRA to police. Once the section 43 Order was discharged the Applicant would be free to work in any field. However, the Respondent acknowledged that the work being done by the Applicant was a valuable public commodity.

The Tribunal's Decision

43. The Tribunal had paid careful attention to all of the documentation that had been placed before it, including the written statements of the Applicant, the further evidence adduced by him, the submissions of the Respondent and the case law referred to by the Respondent. The Tribunal had also listened most assiduously to everything that had been said by both Mr Filer and Mr Johal and to the witness evidence of the Applicant.

44. The Tribunal had considered its own Guidance Note on Sanctions in particular paragraphs 58 to 61. Further, the Tribunal had due regard to the Applicant's right to a fair hearing and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
45. The Tribunal noted that whilst he acknowledged his plea of guilty to the original offence, the Applicant appeared not to accept his culpability and appeared to have little insight into the offence that he had committed. The Tribunal had paid particular attention to the Sentencing Remarks of the Judge.
46. The Tribunal noted that the evidence before it of the Applicant's attempts to obtain work within the legal profession was slight. The Tribunal was also concerned that the Applicant appeared to have been economical with the truth as regards his current employers and that the references produced for the hearing did not specifically relate to the application. The Tribunal would have been greatly assisted by contemporary references from employers, given in full knowledge of the Applicant's conviction and his application to the Tribunal.
47. The Tribunal recognised that the work that the Applicant was doing was a valuable public service and that what he had to offer was in short supply. However, what was of overwhelming importance was the perception that the public had of the legal profession. The Applicant had committed a serious offence and one that was much in the public eye. If the section 43 Order was to be discharged there was no way in which the SRA could police the Applicant's subsequent activities and the public would find the situation to be wholly unacceptable.
48. The Tribunal had considered the fact that the Applicant had been readmitted to CILEX but agreed with the Respondent that his exclusion from CILEX had been imposed as a punitive measure which contrasted with a section 43 Order which was regulatory in nature. The Tribunal did not therefore find that this matter could be given much weight.
49. The Tribunal therefore concluded that the application should be refused.

Costs

50. The Respondent asked for its costs in the sum of £2,100, as specified on the Costs Schedule before the Tribunal.
51. Mr Filer said that he could make little comment about the amount of the costs but that they did seem to be high in all the circumstances. He referred to the Applicant's witness statement concerning costs and said that he would ask that no order be made due to the Applicant's limited means.
52. The Tribunal considered the Respondent's costs schedule and determined that the costs were fair and proportionate. It would therefore summarily assess costs in the sum of £2,100.

53. The Tribunal was satisfied that the Applicant was impecunious. However, it was conceivable that his financial situation may improve in the future. The Tribunal would therefore order that costs were not to be enforced without its leave.

Statement of Full Order

54. The Tribunal Ordered that the application of Ronald Raymond Heywood for the revocation of a S.43 Order be Refused and it further Ordered that he do pay the costs of the response of the Law Society to this application fixed in the sum of £2,100.00, such costs not to be enforced without leave of the Tribunal.

Dated this 24th day of June 2015

On behalf of the Tribunal

K. W. Duncan
Chairman