# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11439-2015

**BETWEEN:**

SIMON HORWOOD — Applicant

and

SOLICITORS REGULATION AUTHORITY — Respondent

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Before:

Mr L. N. Gilford (in the chair)
Mr R. Nicholas
Mr S. Hill

Date of Hearing: 5 February 2016

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**Appearances**

The Applicant, Simon Horwood, appeared and was represented by Jeffrey Jupp, Counsel of 7BR Chambers, 7 Bedford Row, London, WC1R 4BS.

Robin Horton, solicitor, of The Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Respondent.

The application to revoke the s43 Order was dated 23 October 2015.

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# APPLICATION FOR REVOCATION OF A SECTION 43 ORDER

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**The Application**

1. On 25 March 2002, a Solicitors Regulation Authority ("SRA") Adjudicator made an Order under section 43 of the Solicitors Act 1974 (as amended) against the Applicant.

2. The facts giving rise to the section 43 Order were that, on 5 July 2000 the Institute of Legal Executives ("ILEX") Disciplinary Tribunal (IDT) found the following allegations proved against the Applicant:

    - 3 allegations that the Applicant had created fictitious client files
    - 4 allegations that the Applicant had made false travel claims

3. The Applicant was excluded from membership of ILEX.

4. In 2003 the Applicant applied to lift the section 43 Order. On 6 May 2004, a SRA Adjudicator refused the application. The Applicant appealed and on 15 July 2004 an Adjudication Panel refused the appeal on the basis that the section 43 Order had only been in place for 2 years, the findings had been "particularly serious" and there was a continuing need to protect the public.

5. On 6 March 2007, the Applicant applied to the Tribunal to lift the section 43 Order. The Tribunal refused his application stating that the section 43 Order had not hindered the Applicant's career and that it was still necessary for such an Order to remain in place in the wider interests of the good reputation of the profession.

6. On 23 October 2015, the Applicant made a further application to the Tribunal to lift the section 43 Order.

**Documents**

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

Applicant - Mr Simon Horwood:

- Application and supporting documents from the Applicant to the Tribunal dated 23 October 2015
- Applicant's Bundle of Documents in Support
- Reply to SRA Response to the Applicant's Application dated 6 January 2016
- Applicant's Statement of Costs dated 28 January 2016

Respondent - the Solicitors Regulation Authority:

- Response to the Application to Revoke s.43 Order dated 3 December 2015 with supporting documents
- SRA's Statement of Costs dated 5 February 2016

**Witnesses**

8. No witnesses gave evidence.

**Submissions of the Applicant**

9. Mr Jupp, on behalf of the Applicant, submitted that the section 43 Order had been made against the Applicant in 2002 and related to matters from 19 years ago. The Applicant had now been offered a promotion which he was unable to accept due to the section 43 Order being in place. Mr Jupp submitted that although the Applicant did not seek to minimise the original conduct, there was evidence of rehabilitation which the Tribunal should take into account.

10. Mr Jupp stated that the Applicant had previously been employed as a Legal Executive at FW Solicitors but things had not gone well there. At that time, the Applicant had felt that he had not been treated well. He did something very stupid and dishonest. The amount involved was £103 and had been repaid in full. The Applicant was struck off the ILEX Register and the section 43 Order was made. This stupid mistake had cast a long shadow over the Applicant's career.

11. The Applicant accepted his first application to lift the section 43 Order in 2004 had been premature. In 2007 matters had been more finely balanced. Mr Jupp submitted the correct approach for the Tribunal to adopt was that set out in the case of Ojelade v The Law Society [2006] EWHC 2210 (Admin) in which Mr Justice Ouseley had stated:

> "12. ..... The starting point is that a section 43 order is not a punishment. As was submitted by the Law Society to the Tribunal, and as is plainly correct, section 43 is a regulatory provision designed to afford safeguards and exercise control over those employed by solicitors when in any given case that was considered to be appropriate. It should not be viewed as a punishment. The fundamental principle involved was the maintenance of the good reputation of the solicitors' profession, both in the interests of the profession and of the public."

12. Mr Jupp also referred the Tribunal to the case of Jideofo v The Law Society, Evans v The SRA and Begum v SRA [31 July 2007] which concerned three solicitors seeking readmission to the Roll. In relation to the matter of Ms Begum, she had acted dishonestly which resulted in convictions for seven counts of theft in September 2004. She had then failed to disclose her convictions on the Law Society student re-enrolment form in December 2004. Her student membership of the Society was cancelled in November 2006 after an interview with a Law Society adjudicator. In that case, Sir Anthony Clarke MR had stated:

> "36. ..... It does not follow that Ms Begum will never be able to become a solicitor. It is of course a matter for the Law Society but, while this is a case of dishonesty, there have been many worse cases over the years. It seems to me that there is likely to come a time in the not too distant future in which it will be possible to say, both that Ms Begum is not a risk to the public and that the time has come when the reputation of the profession will be better served by the admission of Ms Begum with all that she has to offer both the profession and its clients than by her continued exclusion."

13. Mr Jupp submitted that in the Applicant's case, it was 19 years since the misconduct, and nearly 14 years since the section 43 Order had been imposed. The Tribunal was taken through the Applicant's career history which showed that since the section 43 Order was imposed, the Applicant had been employed continuously by solicitors' firms. He had been held out as a Litigation Executive and had a clean unblemished record throughout this employment. Since 2014 the Applicant had been employed by Clarke & Son Solicitors, working for one particular client. A number of character references had been provided which included references from the Applicant's previous employers, current employers and a client for whom he had acted since 2014. The Applicant's employers supported his application and indeed one of the partners had attended the Tribunal hearing to support the Applicant.

14. Mr Jupp submitted the fact that the Applicant had been offered a promotion to Associate level at his firm indicated that the control required by a section 43 Order was no longer necessary in this case. The Applicant had demonstrated he had rehabilitated. He would also be subject to the supervision of a Partner. Mr Jupp submitted the section 43 Order was now holding back the Applicant's career and it was appropriate for it to be revoked.

**Submissions of the Respondent**

15. Mr Horton, on behalf of the SRA, confirmed the application was opposed. He accepted there were aggravating factors in the other cases which were not present in this particular case. In the case of Gregory v The Law Society [2007] EWHC 1724 (Admin), there had been two separate offences. In the case of SRA v Liaqat Ali [2013] EWHC 2584 (Admin), Mr Ali had wrongly informed the Tribunal that the struck off partners in the sham firm where he had previously worked were now practising again. In Begum v The SRA, Ms Begum had convictions which she had failed to notify to the Law Society. Notwithstanding this, Mr Horton submitted in the Applicant's case he had been found to have made four false travel expense claims on three fictitious client files and these were very serious matters.

16. Mr Horton referred the Tribunal to the comments of Elias LJ in the case of Kaberry v SRA [2013] EWCA Civ 1124 which stated:

> "18. …It is well established in the authorities that in order to be restored to the Roll, it must be demonstrated to the Tribunal that restoration would not affect the good name and reputation of the solicitors' profession, nor would it be contrary to the interests of the public."

17. Mr Horton submitted that revoking the section 43 Order could affect the good name and reputation of the profession. He submitted the section 43 Order allowed the SRA to have some control over where the Applicant could work and ensured the level of supervision he received was satisfactory. This had been the case at Clarke & Son Solicitors. His employers did appear to have confidence in him as they were now offering him a promotion and although it appeared he would continue to do the same type of work which he had done for a long time, there would not be the same level of supervision in place in his new role.

18. Whilst Mr Horton accepted there was a distinction between an application for restoration to the Roll and an application for revocation of a section 43 Order, he submitted similar considerations applied to both. Mr Horton reminded the Tribunal of the comments of Sir Anthony Clarke MR in the case of Jideofo v The Law Society where he had stated:

> "14. These considerations in my opinion point strongly to the conclusion that the same underlying principles apply to conduct both pre-admission and post-admission. It would be irrational to hold that a different test applies where matters come to the Law Society's attention pre-admission from the case where those same matters come to its attention post-admission."

**The Tribunal's Decision**

19. The Tribunal had carefully considered all the documents provided, and the submissions of both parties. The Tribunal was mindful that the purpose of an Order under section 43 of the Solicitors Act 1974 (as amended) was a regulatory provision designed to afford safeguards and exercise control over those employed by solicitors where appropriate. The order was not punitive in nature but was there to protect the public, to maintain the good reputation of, and confidence in, the solicitors' profession. It did not prohibit a person from working for a solicitor, but simply allowed the regulator to scrutinise the circumstances in which such a person was employed. A section 43 Order ensured that a person was only employed where a satisfactory level of supervision had been organised for as long as that person required such a level of supervision.

20. The Tribunal noted the Applicant had provided a number of character references, including from his current and previous employers, confirming he had been continuously employed since the section 43 Order had been imposed. There was clear evidence of rehabilitation over a long period of time and his referees spoke well of him. Indeed one reference was from a District Judge who had been instrumental in his firm engaging the Applicant to cover his own workload after he had been appointed to the judiciary.

21. The misconduct was very serious. However, the Tribunal was mindful that it had taken place many years ago, and since then the Applicant had worked for three different solicitors' practices with no problems. The Applicant had now been offered a promotion which could not be accepted whilst he was subject to the section 43 Order. Although there appeared to be a hindrance to the Applicant's career by virtue of the section 43 Order being in place, this was not relevant to the criteria the Tribunal had to take into account. The offer of promotion was evidence that his employers had confidence in his abilities and were willing to employ him in a more senior position. The test for the Tribunal to consider was whether the section 43 Order was still necessary for the maintenance of the good reputation of the solicitors' profession, both in the interests of the profession and of the public.

22. The conduct which had led to the section 43 Order being made had taken place in 1997/1998. Since that time the Applicant had been continuously employed with no problems. He had demonstrated insight. He had repaid the losses. The SRA had been satisfied that he could continue to be employed by solicitors' firms for many

years subject to a section 43 Order knowing about the nature of his misconduct. The Applicant had demonstrated rehabilitation and his employers were clearly very satisfied with his work as they were willing to offer him employment in a senior position knowing about the original ILEX findings. The Applicant had demonstrated that he had become of good character over the many years that had passed since the incidents.

23. In this case, the Tribunal was satisfied the Applicant had learnt from his mistakes. He had demonstrated this by his continuous unblemished employment over a considerable period of time. The Tribunal was satisfied that in this case, it was no longer necessary for the level of regulatory control imposed by a section 43 Order to be in place and therefore ordered the section 43 Order be revoked.

**Costs Application**

24. Mr Jupp, on behalf of the Applicant, requested an Order for his costs in the sum of £991.50. He provided the Tribunal with a Schedule containing a breakdown. He submitted costs should follow the event and that the SRA did not have to resist the Applicant's application. The matter could have been agreed, and dealt with by consent, without the necessity for attending before the Tribunal.

25. Mr Horton, on behalf of the SRA, reminded the Tribunal that costs did not follow the event in these proceedings. He referred to the case of Baxendale-Walker v The Law Society [2007] EWCA Civ 233. Mr Horton submitted that an order for costs made against the regulator would have a chilling effect on the regulator's duty and could inhibit its regulatory function.

26. Mr Horton made an application for the SRA's costs in the sum of £1,989. He referred the Tribunal to a Schedule providing a breakdown. He submitted the SRA's attendance had been necessary at the hearing to deal with this application. This was a historic case and it had been necessary to review the file in full, as the person who had dealt with the matter originally was no longer an employee. Mr Horton also stated that the cost of his train ticket had been slightly more than the amount claimed.

27. Mr Jupp resisted the SRA's application for costs. He submitted the Applicant had been successful and should not therefore be required to pay costs. It had not been necessary for the SRA to oppose this application. The actual costs claimed were excessive, particularly the amount of time spent on documents by an in-house solicitor. Mr Jupp stated it had not been necessary to incur overnight accommodation when Mr Horton could have travelled from Birmingham that morning on an advance ticket. He requested a reduction of £1,000 if any order for the SRA's costs was to be made.

28. The Tribunal considered the matter of costs carefully. The Tribunal also considered the case of Baxendale-Walker v The Law Society in which it was stated:

> "In respect of costs, the exercise of its regulatory function placed the Law Society in a wholly different position from that of a party to ordinary civil litigation. .....when the Law Society was discharging its

responsibilities as a regulator of the profession, an order for costs should not ordinarily be made against it on the basis that costs followed the event."

29. The SRA was a regulatory body and as such became a necessary party to an application to revoke a section 43 Order. That Order had been imposed as a result of the Applicant's own conduct and the SRA had a duty to respond to any application made to lift that Order. This was part of its regulatory function. Indeed Mr Horton had produced a number of helpful authorities to assist the Tribunal, which Mr Jupp had also referred to. The Tribunal was satisfied that costs did not follow the event in these proceedings. The SRA was entitled to its costs and the Tribunal refused the Applicant's application for costs.

30. In relation to the amount of costs claimed by the SRA, the Tribunal considered the time spent on internal emails of 30 minutes and attendance on documents was high. The Tribunal disallowed the 30 minutes spent on internal emails and reduced the time spent on documents to 6 hours. The Tribunal did not consider the claim for the cost of hotel accommodation or travel to be unreasonable. The Tribunal assessed the SRA's costs in the total sum of £1,800 and Ordered the Applicant to pay this amount.

**Statement of Full Order**

31. The Tribunal Ordered that the application of SIMON HORWOOD, for revocation of a S.43 Order be **GRANTED** with effect from 5th February 2016 and it further Ordered that he do pay the costs of the response of the Solicitors Regulation Authority to this application fixed in the sum of £1,800.00.

Dated this 14th day of March 2016
On behalf of the Tribunal

R. Nicholas, Solicitor Member
On behalf of L. N. Gilford, Chairman