

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12446-2023

**BETWEEN:**

ANTHONY SMITH

Applicant

and

SOLICITORS REGULATION AUTHORITY LTD

Respondent

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Before:

Mr D Green (in the Chair)

Ms A Kellett

Dr A Richards

Date of Hearing: 3 July 2023

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## **Appearances**

The Applicant represented himself

Inderjit Johal, barrister, of the Solicitors Regulation Authority Ltd, for the Respondent

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**APPLICATION FOR  
REVIEW  
OF SECTION 43 ORDER**

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### **Preliminary Matter**

1. The hearing had been listed as in person hearing, however, Ms Kellett, Chair, was not able to attend in person due to circumstances not known until the morning of the hearing.
2. The parties were appraised of the situation and asked if they had any objections to Ms Kellett attending remotely by Zoom.
3. Neither party objected.
4. To ensure effective communication between those present in court and Ms Kellett, Mr Green took responsibility for being Chair and Ms Kellett became the solicitor member. Mr Green said that in the interest of fairness and preserving Mr Smith's Article 6 ECHR rights he, the other members and those in court would need to be vigilant to ensure that Ms Kellett could clearly see, hear, and participate in the proceedings and not merely as an observer. To this end the decision would be kept under continual review during the duration of the hearing.
5. The hearing proceeded as a hybrid hearing.

### **Background**

6. By an application dated 17 March 2023, Mr Smith, the Applicant applied to review (and remove) a "section 43 order" made by an adjudicator of the Respondent on 5 April 2017 ("the Order"). During the hearing the parties clarified and agreed that the correct date of the order under review was in fact 11 December 2017 and that this Order was an appeal of the Order dated 27 September 2017 by a single Adjudicator at the Solicitors Regulation Authority, pursuant to section 43(2) of the Solicitors Act 1974.
7. The Applicant sought to appeal this order and set out his appeal grounds in an email dated 29 September 2017. An Adjudication Panel convened and dealt with the appeal on 11 December 2017. The Panel dealt with the matter afresh and upheld the original decision.
8. The Order, made pursuant to section 43(2) of the Solicitors Act 1974 ("the Act") stated:
  - No solicitor shall employ or remunerate the Applicant in connection with his/ her practice as a solicitor;
  - No employee of a solicitor shall employ or remunerate him in connection with the solicitor's practice;
  - No recognised body shall employ or remunerate him;
  - No manager or employee of a recognised body shall employ or remunerate him in connection with the business of that body;
  - No recognised body or manager or employee of such a body shall permit him to be a manager of the body; and
  - No recognised body or manager or employee of such a body shall permit him to have an interest in the bodyexcept in accordance with a Society permission.

## **The Adjudication Panel's Findings of Fact**

9. Mr Smith was not a solicitor but was employed at Grenville J Walker Solicitors (the "firm") in a fee earning role.
10. The background to this case is that Mr Smith was acting for clients Mr and Mrs B, a married couple. In or around May 2012 Mr and Mrs B instructed Annabel Hull at the firm to prepare lasting powers of attorney ("LPA") in respect of property and financial affairs for each of them but these were not made and instead in mid-2012 Mr Smith started dealing with Mr and Mrs B's affairs.
11. At the time the firm's director agreed to be the second attorney instead but that Mr Smith would be the main point of contact. Subsequently Mrs B was in hospital with early onset Alzheimer's disease and Mr B was detained under the Mental Health Act. On 12 September 2012 Mrs B signed a general power of attorney appointing her son and Mr Smith as her attorneys. On 20 September 2012 Mr B signed a general power of attorney appointing Mr Smith as his sole attorney.
12. A consultant psychiatrist wrote a letter on 4 October 2012 confirming Mr B had mental capacity to give the general power of attorney to Mr Smith.
13. On 4 October 2012 using the power of attorney Mr B had granted Mr Smith made four payments from Mr B's personal bank accounts totalling £80,000 to Mrs B's account. Two further payments of £20,000 were made to Mrs B which were proceeds of the sale of their jointly owned property.
14. Mr B subsequently made a claim to the Solicitors compensation fund and was granted £100,000 from the fund plus accrued interest. This was authorised on the basis that Mr Smith had failed to account properly for the payments of £80,000 and £20,000.
15. The decision of the Adjudication Panel was made on 11 December 2017. The Adjudication Panel reviewed the original decision made by a single adjudicator on 27 September 2017.
16. The Adjudication Panel made the following findings:
  - (a) Mr Smith favoured Mrs B's interests over those of Mr B. Mr Smith failed to act in Mr B's best interests when he transferred the following money to Mrs B: £20,000 from Mr B's share of the sale proceeds of 69 R C, B Street, Blandford Forum, Dorset and £80,000 from Mr B's personal bank account.
  - (b) Mr Smith's conduct breached Principles 2 (act with integrity), 4 (act in the best interests of each client), 6 (maintain public trust) and 10 (protect client money and assets) of the SRA Principles 2011.
  - (c) Mr Smith was involved in relation to a legal practice and had occasioned or been a party to an act or default that involved such conduct on his part that in their opinion it would be undesirable from him to be involved in a legal practice.

## **Legal Framework**

17. Prior to submissions Mr Johal, for the Respondent, set out for the benefit of the Tribunal and Mr Smith, the law and procedure pertaining to Mr Smith's application.
18. Mr Johal, submitted that as the Order was made by the SRA, only the SRA could revoke it (by reference to section 43(3)(b) of the Act). The Tribunal had the power to review the Order, and on such a review, the Tribunal could quash, vary or confirm it (pursuant to section 43(3A)).
19. The position was set out correctly in section C of the Tribunal's [Guidance Note on other powers of the Tribunal, 6th Edition March 2022](#).
20. The Tribunal proceeds by way of a review and not a re-hearing. The Tribunal should not generally receive new evidence that was not before the original decision-maker, although it may do so if justice requires it; and it should interfere with a decision under review only if satisfied that the decision was wrong or that the decision was unjust because of a serious procedural or other irregularity in the proceedings. The Tribunal should not embark on an exercise of finding the relevant facts afresh; the starting point is the findings made by the Adjudication Panel and the evidence that was before the Adjudication Panel.
21. Mr Johal said that the principles by which such a review is conducted are contained in SRA v Arslan [2016] EWHC 2862 (Admin). Arslan suggested any review of a section 43 order was a narrow one and should be limited to the correctness of the Adjudicator's decision and that new evidence should not be received as the Tribunal was conducting a review and not a re-hearing. He submitted that paragraphs [38 – 40] of Arslan set out the correct approach of the Tribunal when reviewing a section 43 order and he summarised the approach as follows:

- “1     *The proper approach is to proceed by way of a review of the Section 43 order and not to rehear the case.*
- 2     *The review is analogous to a court dealing with an appeal from another court or Tribunal and accordingly it should not generally (pursuant to rule 52.11 of the CPR) receive new evidence that wasn't before the Adjudicator although it may do so if justice requires it.*
- 3     *The Tribunal shouldn't interfere with the Section 43 Order unless it is satisfied that it was wrong or that the decision was unjust because of a serious procedural or other irregularity.*
- 4     *Where there is room for reasonable disagreement as to the facts found by the Adjudicator, the Tribunal shouldn't interfere with the findings of fact unless they conclude that it is a fact that no reasonable decision maker could come to.”*

## The Submissions

*The Applicant*

22. Mr Smith's grounds for review of the Section 43 order were set out in his supporting statement dated 17 March 2023. Essentially, he was not a risk to the public and the Section 43 Order should be removed.
23. Mr Smith set out that the son ("the son") of Mr B came into the office of Grenville J Walker solicitors in September 2012 to advise him that his stepfather had stolen his mother's money and left her for dead.
24. The son told him that Mr B had visited Poole police station carrying a suitcase with £48,000 cash in it and had told the police that his stepson (the son) was trying to kill him. The police detained him in St Anne's hospital in Poole.
25. It transpired that Mr B had opened sole accounts for himself at Barclays Bank and transferred all of the money in joint accounts at Lloyds Bank held with his wife, Mr B, to his Barclays sole accounts with a view to depriving her of that money. He had assigned his wife's pension to be paid into his sole account. He had also put their apartment on the market to sell with a view to receiving all the proceeds himself. He had left his wife without care and badly dehydrated.
26. Mr B had been staying in the Sandbanks Hotel in Poole and telling people that his wife was dead. Luckily, the son was able to take his mother to hospital where she was treated.
27. Mr Smith said there is evidence that Mr B both neglected and bullied his wife. Mr B already had a history of bad behaviour with the banks. Lloyds Bank at Selsey Bill in Sussex refused to deal with him, and he had had accused Lloyds Bank of stealing his money.
28. Mr Smith said that he met with Mr B at St Anne's Hospital. They discussed the situation, Mr B was carrying £48,000 cash in his suitcase because he recognised that he was doing wrong, and this was his way of safeguarding some of the cash that he had stolen. He accepted that his wife's share money would need to be returned to her and he asked her to complete the sale of their apartment in Blandford Forum, and he understood, that, similarly, the proceeds of the jointly owned apartment would need to be shared. Therefore, he appointed Mr Smith as his attorney under a General Power of Attorney.
29. Mr Smith submitted that because Mr B complained to the SRA some 4 years later demonstrated that he became short of money and so approached the SRA with a story concocted to paint himself in a good light and Mr Smith in a bad light.
30. Mr Smith submitted that if Mr B had felt genuinely wronged, he would have approached the SRA in October 2012 or soon thereafter, and not waited for 4 years. Mr B had lied about Mr Smith.
31. Mr Smith submitted that the SRA did not make further investigations, such as checking the accounting information that Mr B had given them, speaking with Barclays Bank, Lloyds Bank, or the treating doctor at the hospital where Mrs B had been a patient.
32. The SRA should have considered that given Mr B could steal his wife's money and

leave her for dead, he may feel comfortable lying to the SRA. Additionally, both the Financial Ombudsman and Weymouth CID had already rejected his claim for his stolen money to be returned to him.

33. It was only the SRA which had been 'foolish' and 'naïve' to believe Mr B's lies, return stolen money to a criminal, and prohibit a hardworking, conscientious, and honest practitioner from doing his work.
34. In the report of 5 April 2017, the SRA investigator stated that Mr Smith acted dishonestly and recklessly, and paid sums of money belonging to one client to another client. Mr Smith said that this demonstrated that the SRA had not understand the facts of the case and has accepted Mr B's lies without question and without investigation.
35. Mr Smith's fundamental submission was that Mr B stole his wife's money. Therefore, it belonged to her, and it was only fair to return it to her. Mr Smith said he had not have favoured one party over another, and that he had acted fairly and honestly and with due consideration. Mr Smith said that none of the matters he had brought before the Tribunal was fresh evidence and he had set this all out before Adjudication Panel.
36. In summation, Mr Smith contended that the SRA did not carry out a proper or full investigation. They were 'hoodwinked' by Mr B and accepted his lies.
37. Mr Smith said he had worked for 40 years since October 1982 honestly and without any complaints being made against him and that his previous employers would attest to his character and that he had carried out his work honestly and to a good standard, and that, far from being a risk to the public, he had been able to help people.
38. Mr Smith acknowledged that he should not have been attorney for both Mr B and Mrs B as this represented a conflict of interest, and he would not do that again and he would not become personally involved in such a financial dispute.

#### *The Respondent*

39. Mr Johal opposed the application.
40. He said that matters regarding Mr Smith's honesty had not been pursued by the SRA and had not formed part of the case which resulted in the imposition of the Section 43 Order, which been properly made and should remain in effect.
41. The matter before the Tribunal was not one which concerned an ambiguous issue of morality. It concerned the straightforward fact that in favouring Mrs B's interests over those of Mr B Mr Smith had acted in breach of the conduct rules.
42. With respect the decision made by the Adjudication Panel, its role had been to decide whether Mr Smith's conduct of the was such that he should be made subject to regulatory control, not what motivated him to act as he did. In other words, Mr Smith's motives in transferring the money were not relevant to his conduct.
43. If Mr Smith believed Mr B had mistreated his wife, stole money, and lied to her, he

should have immediately ceased to act for him and referred the matter to the Police. Instead, he continued to act for both Mr and Mrs B and took Mr B's money in the sum of £100,000 and paid it to Mrs B.

44. It was not for Mr Smith to make the decision that the money was owed by Mr B to Mrs B. If there was a dispute between two clients as to who was entitled to the money Mr Smith should have made sure the money was held safely and was paid to neither party until such time as the dispute was resolved.
45. Mr Johal said that the Respondent did not consider that Mr Smith had shown sufficient insight into his behaviour. He sought to justify his behaviour by making a series of allegations against Mr B. He did not fulfil his duties in respect of client care and client instructions and became involved in a situation where his subjectivity and independence were compromised. He did not act in the best interests of his client Mr B at a time when both clients were vulnerable. Mr B had been sectioned under the Mental Health Act and Mrs B had early onset Alzheimer's disease.
46. As far as the Respondent is currently aware the SRA had received no applications from solicitors or firms for approval to employ Mr Smith. As demonstrated by his convictions for breach of the Section 43 order the Applicant has been seeking to circumvent the Section 43 order by failing to disclose the existence of the same to SRA regulated firms, he is seeking employment with, and the recruitment agencies he uses to secure locum positions. In the absence of any such applications, the SRA and the Tribunal are not in a position to judge, and the Mr Smith was not in a position to demonstrate, that he is fit to be employed within the profession without the necessary level of supervision, and any adverse effects of the Section 43 order have occurred.
47. It was only when Stephen Rimmer Solicitors reported to the SRA that Mr Smith had applied for employment with them and had not disclosed the existence of a Section 43 order that it came to the SRA's attention that he had sought locum employment with at least six SRA regulated law firms during the period and seemingly not disclosed the existence of a Section 43 order to either the employment agencies who helped him source the work or the employers themselves. On 20 April 2021 criminal proceedings against Mr Smith were listed before Hereford Magistrates' Court.
48. Despite the Section 43 order Mr Smith continued to seek and accept employment with solicitor firms whilst failing to inform them of the section 43 order. In doing so he committed offences under Section 44 of the Act. The offences covered a period of over three years and involved at least eight separate firms.
49. At the hearing on the 20 April 2021 Mr Smith failed to attend and accordingly the court convicted him in his absence of seven separate offences. The court then imposed a fine of £500 for each offence (total £3,500), and a victim surcharge of £170 giving him 40 days to pay.
50. Mr Johal referred the Tribunal to paragraph 41 of SRA v Liaqat Ali [2013] EWHC 2584 (Admin), which states:

*"... the purpose of the order is to safeguard the public and the Society's*

*reputation by ensuring that a person is currently only employed where a satisfactory level of supervision has been organised and for as long as that person requires such a level of supervision before being permitted to work effectively under his own steam. That cannot, in the absence of specific evidence, be established merely by somebody attempting, unsuccessfully, to obtain the necessary experience of working directly under supervision. The fact that a number of applications may have been made which constitute efforts to put himself in a position where he may be rehabilitated is, in my judgment, not a rational basis for concluding that rehabilitation has in fact occurred sufficient to make the Section 43 order no longer necessary”.*

51. As far as the SRA was aware no applications had been made by employers at SRA regulated law firms to employ the Mr Smith and Mr Johal submitted that the fact that Mr Smith may have been working without supervision because he chose to hide the existence of the Section 43 order did not demonstrate rehabilitation, but the opposite.
52. The Section 43 Order was necessary for the protection of the public and to maintain the reputation of the profession. The Order was imposed to protect the public and the maintain the good reputation of the solicitors’ profession, rather than to punish the Applicant.
53. Mr Johal made some observations on specific matters raised by Mr Smith:
  - Mr Smith referred to having worked for 40 years since October 1982 honestly and without any complaints being made against him. However, complaints had been received by the Respondent that he had failed to disclose the existence of the Section 43 order to potential new employers.
  - Mr Smith had referred to employers being willing to testify that his work has been good and honestly carried out, but he had not adduced any character witness statements to support this contention.
  - Mr Smith did show some level of insight in terms of the conflict of interest, but this was not sufficient given that he still believed his actions were justified.
  - Mr Smith had not provided any evidence to demonstrate he is now competent and has learned from the issues that arose.
  - Mr Smith is not barred from employment within a legal practice but instead requires permission from the SRA which would be dependent upon the SRA being satisfied that the relevant supervision and controls were in place for Mr Smith to be employed.
54. The Section 43 order is not an absolute prohibition on employment but is an order which is intended to be protective of the public interest and the reputation of the profession, and it is informed by the fact that conduct which has given rise to the order is such that it calls into question the fitness of the person to be employed by a solicitor without the necessary level of supervision which the SRA will seek to see established before it gives permission for such employment.

### **The Tribunal’s Decision**



55. The Tribunal referred to its own guidance and noted that it had the power to review a Section 43 Order made by the SRA or one made by itself. In conducting such a review, the Tribunal is not acting as a Tribunal of fact nor is it conducting a re-hearing of the original decision. The principles by which such a review is conducted are contained in Arslan.
56. In particular: Paragraph 38:
- “... A Tribunal conducting a review should not generally receive new evidence that was not before the original decision-maker, although it may do so if justice requires it; and it should interfere with the decision under review only if satisfied that the decision was wrong or that the decision was unjust because of a serious procedural or other irregularity in the proceedings”*; and
57. Paragraph 40:
- “... Where a challenge is made to conclusions of primary fact, the weight to be attached to the finding of the original decision-maker will depend upon the extent which that decision-maker had an advantage over the reviewing body: the greater that advantage, the more reluctant the reviewing body should be to interfere. Another important factor with the extent to which the original decision involved an evaluation of the facts on which there is room for reasonable disagreement. In such a case the reviewing body ought not generally to interfere unless it is satisfied that the conclusion reached stay outside the bounds within which reasonable disagreement is possible”*.
58. In the present case Mr Smith sought to challenge conclusions of primary fact made by the Adjudication Panel and that the SRA had not investigated sufficiently to show that Mr Smith had acted appropriately in the circumstances.
59. The Tribunal considered that Mr Smith was labouring under a misconception as to the issues which were in play before the Adjudication Panel.
60. The Adjudication Panel had not been considering the morality /rights and wrongs of matters between Mr B and Mrs B but a question fundamental to professional conduct namely whether Mr Smith had favoured Mrs B’s interests over those of Mr B.
61. The Adjudication Panel found that on Mr Smith’s own account he had transferred £20,000 from Mr B’s share of the sale proceeds and £80,000 from Mr B’s personal bank accounts and so doing he favoured the interests of one client over another.
62. The Adjudication Panel heard Mr Smith’s explanation as to the reasons why he was equalising Mr and Mrs B’s assets. However, this was not his decision to make and if Mr Smith believed there had been serious wrongdoing by Mr B he should have immediately ceased to act for Mr B and referred the matter to the police. Instead, Mr Smith continued to act for both Mr and Mrs B, taking Mr B’s money and paying it to Mrs B.
63. The Adjudication Panel concluded that *“[Mr Smith] unilaterally decided what to do*

*with £100,000 of Mr B's money. We consider this demonstrates a serious lack of judgment given Mr Smith's role as attorney under a power of attorney. We consider it is unethical behaviour."*

64. The Tribunal found Mr Smith's explanation had never varied and he recounted the same details before the Tribunal as he had set out before the Adjudication Panel.
65. The Tribunal considered that there was nothing in the point Mr Smith made regarding the failure of the SRA to investigate the matter sufficiently, as any further investigation would have simply established more information as to his motive. The Adjudication Panel and the Tribunal understood Mr Smith's motives, however, this was not relevant to the central issue relating to professional conduct.
66. In this case the finding of facts and the conclusions made by the Adjudication Panel i.e., that Mr Smith did not act in the best interest of each client, and he did not protect Mr B's money were not unreasonable and not outside the bounds within which reasonable disagreement was possible and the Tribunal dismissed his application for review.
67. Although not part of its core decision the Tribunal was concerned by Mr Smith's continued failure to recognise that his conduct had been wrong and his lack of insight not only into this conduct but also the role of the SRA adjudication Panel and indeed the Tribunal. The Tribunal considered that Mr Smith should take time to reflect upon the findings which had been made and the reasons for those decisions.
68. Mr Smith should be aware that a Section 43 order has a regulatory function, not a punitive function and that is why the order is of indefinite duration, and subject to revocation upon review. The purpose of the order is to safeguard the public and the reputation of the profession by ensuring that a person is only employed where a satisfactory level of supervision has been organised and for as long as that person requires such a level of supervision before being permitted to work effectively under his own steam.
69. The order did not preclude him from obtaining work subject to him disclosing the fact he was subject to a Section 43 Order to a prospective employer and obtaining the necessary permission from the SRA.

### **Costs**

70. Mr Johal applied for the Respondent's costs in the sum of £2,942.95. He stated that as only around half of the anticipated 7 hours had been needed for the hearing around £650 should be deducted from the total as set out in the schedule of costs which was £3137.95.
71. Mr Smith did not make any specific comments on the schedule of costs or his own means beyond indicating that he would not pay the Respondent's costs.
72. The Tribunal assessed the costs for the hearing. The Tribunal accepted that half of the sum claimed for the hearing should be deducted to reflect the fact that the hearing had taken only half of the time anticipated.

73. The Tribunal reviewed the remaining costs claimed in the costs schedule. The Tribunal considered that the costs claimed were reasonable, necessarily incurred, and proportionate. The Tribunal accordingly ordered Mr Smith to pay the Respondent's costs in the sum of £2,942.95.

**Statement of Full Order**

74. The Tribunal Ordered that the application of Mr ANTHONY SMITH for review of a S.43 Order be DISMISSED and it further Ordered that the Applicant do pay the costs of and incidental to the response to this application fixed in the sum of £2,942.95.

Dated this 17<sup>th</sup> day of August 2023  
On behalf of the Tribunal

*D Green*

D Green  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**17 AUG 2023**