SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12566-2024

BETWEEN:

RYAN HERRMANN Applicant

and

SOLICITORS REGULATION AUTHORITY LTD Respondent

Before:

Ms A Kellett (in the Chair)
Ms A Banks
Mr D Kearney

Date of Hearing: 17 June 2024

Appearances

The Applicant represented himself.

Inderjit Johal, barrister, of the Solicitors Regulation Authority Ltd ("SRA"), for the Respondent.

APPLICATION FOR REVIEW OF SECTION 43 ORDER

Preliminary Matter

Application for hearing to be held in Private

Note: this application was made in private, however, the matters set out below provide an open high-level summary without redaction.

1. Mr Herrmann applied under Rule 35 of The Solicitors (Disciplinary Proceedings) Rules 2019 ("SDPR 2019") which states:

   "(1) Subject to paragraphs (2), (4), (5) and (6), every hearing of the Tribunal must take place in public.

   (2) Any person who claims to be affected by an application may apply to the Tribunal for the hearing of the application to be conducted in private on the grounds of— (a) exceptional hardship; or (b) exceptional prejudice to a party, a witness or any person affected by the hearing."

2. Mr Herrmann explained it was likely that in the course of the hearing he would need to mention the names of the parties involved in the Family Court/ Children Act proceedings forming the factual basis of the allegations he had faced. He argued that to ensure the continued confidentiality and privacy of the family proceedings the Tribunal's hearing should be in private.

3. Additionally, Mr Herrmann said there were presently parallel matters being litigated and that if this hearing was held in public, it would likely prejudice his position with respect to those other matters, effectively muddying the waters of those proceedings.

4. In response, Mr Johal said there was nothing in Mr Herrmann's submissions to satisfy the requirement of Rule 35 SDPR 2019 as Mr Herrmann had not demonstrated how a hearing held entirely in private could be justified on the grounds of exceptional hardship or exceptional prejudice.

5. Mr Johal argued that there was no need for any reference to be made to the parties' names in the family proceedings and, in the unlikely event that it was, then the Tribunal could go into private session for that very limited purpose or simply refer to them by ciphers e.g. "Child A"; Father/ Mother of Child A".

6. Similarly, there was nothing in Mr Herrmann's secondary submission regarding other proceedings to provide any derogation from the open justice principle as there was no real factual nexus between the matters.

The Tribunal's Decision

7. The Tribunal noted that under its rules every hearing of the Tribunal must take place in public unless a party demonstrates that they would be caused exceptional hardship or exceptional prejudice. For the reasons set out by Mr Johal, the Tribunal did not find that Mr Herrmann had satisfied the test set out in Rule 35 SDPR 2019 in either of his two submissions. The hearing would be held in public. The parties were warned to exercise great care when referring to the Children Act proceedings and to use ciphers

as suggested by Mr Johal. The Tribunal confirmed it would go into private session if the need arose and it was an absolute necessity for it to do so.

Application to Adduce Fresh Evidence

8. Mr Herrmann sought the Tribunal's permission to rely on evidence which had not been before the Adjudicator when she made her decision. In his submission the fresh material showed that he had no propensity to refer to himself as a solicitor or hold himself out as one. He had been prevented in putting this material before the Adjudicator as an application he had made for an extension of time in which to do so had not been granted.

9. Mr Herrmann stated that in the present matter he had applied to the Tribunal for an extension of time to submit the material and this had been granted by the Tribunal. He believed that this represented the Tribunal's permission to rely on the material at the substantive hearing.

10. In opposing the application Mr Johal said that given this was a review and not a re-hearing, then there was no provision, other than in the interests of justice, for material which was not before the Adjudicator to be considered by the Tribunal.

The Tribunal's Decision

11. The Tribunal was aware of the admonition set out in SRA v Arslan [2016] EWHC 2862 (Admin) at 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."*

12. The Tribunal also referred to the decision it had made earlier in proceedings on 20 May 2024 and upon which Mr Herrmann placed reliance, this stated:

> *"Notwithstanding that the application should have been made on the prescribed form by the Applicant,* ***I have considered and granted the application in the interests of justice*** *(emphasis added) and to ensure that no further delay accrues. I am satisfied that the extension of time will not impact on the date set for the substantive hearing. The Applicant should be aware that in the absence of cogent and persuasive reasons any further extension of time is unlikely to be granted."*

13. The Tribunal noted that this decision had been with respect to a procedural matter only (i.e. the submission and receipt of evidence out of time) and it had not been a decision on whether permission would be granted ultimately for that evidence to be adduced, which would have required a further application setting out reasons why it was not adduced before the Adjudicator and why it should now be admitted into evidence in the interests of justice.

14. The Tribunal decided, however, that Mr Herrmann may not have appreciated the

distinction between the type of permission granted on 20 May 2024, which had been administrative, and the judicial permission he required to adduce and rely on the evidence at the hearing. It appeared that Mr Herrmann had proceeded on the basis that he had been granted permission to rely on the evidence.

15. In the interests of fairness, the Tribunal was prepared to grant Mr Herrmann permission to adduce the material to allow him to develop his arguments, however, this would be subject to relevance and the Tribunal's power to decide the weight, if any, to apply to the material when it came to make its final decision.

The Legal Framework

16. Prior to substantive submissions, Mr Johal set out for the benefit of the Applicant and observers the Tribunal's powers with respect to a S.43 Order made by the SRA.

17. 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.]

18. The Tribunal's Guidance Note contains details of its jurisdiction and its approach to reviewing and revoking S.43 Orders. The following is relevant as to its jurisdiction:

> *"(9) The Tribunal has jurisdiction under Section 43(3) and (3A) of the Act to decide an application by the person subject to a Section 43 Order or by the SRA for review of that Order (Section 43(3)(a)). In addition, the Tribunal having made a Section 43 Order, may at any time revoke it (Section 43(3)(b)). Under Section 43(3A) the Tribunal may order:*
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> *(a) the quashing of the order;*
> *(b) the variation of the order; or*
> *(c) the confirmation of the order;*
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> *and where in the opinion of the Tribunal no prima facie case for quashing or varying the order is shown, the Tribunal may order its confirmation without hearing the applicant. The Tribunal, on hearing any application under Section 43(3) may make an order for the payment of costs by any party to the application.*
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> *(11) A Section 43 Order has a regulatory function, not a punitive function. That is why the Order is of indefinite duration, subject to review and revocation as set out at paragraph 9 above. The purpose of the Order is to safeguard the public and the reputation of the legal profession by ensuring that certain steps in relation to employment can be taken."*
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> *(12) If the SRA made the original Section 43 Order an application for it to be revoked must be made to the SRA (see Section 43(3)(b)). If the SDT made the original Order then an application for revocation of the Order must be made to the SDT (see Section 43(3)(b))".*

19. As the SRA made the S. 43 Order, only the SRA could revoke it. The Tribunal's jurisdiction was limited to carrying out a review..

20. On a review of the S.43 Order, the Tribunal may, under S.43 (3A) order:

- quashing of the order;
- variation of the order;
- confirmation of the order and where in the opinion of the Tribunal no prima facie case for quashing or varying the order is shown, the Tribunal may order its confirmation without hearing the applicant.

The Tribunal's approach to be taken on a review of a S.43 Order

21. The following paragraphs from the Guidance Note were relevant to the Tribunal's approach to a review:

> *" (15)The Tribunal has 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 SRA v Arslan [2016] EWHC 2862 (Admin)14("Arslan) at paragraphs 38 – 42. Those paragraphs are repeated here:*
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> *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*
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> *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".*
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> *Paragraph 41: "In the present case the SRA adjudicator did not hear any oral evidence. His decision was based entirely on written evidence and submissions, all of which were available to the Tribunal. In that respect, the Tribunal was in as good a position as the adjudicator to assess the evidence and draw appropriate inferences from it; and there was nothing to prevent the Tribunal, if satisfied for good reason that a finding of the adjudicator was wrong, from reaching a different conclusion."*
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> *Paragraph 42: "I do, however, see force in the point made by Mr Dutton that in the case of a finding made under Section 43(1)(b) the language of that provision requires the Tribunal to afford some independent weight to the opinion of the adjudicator if there is scope for reasonable differences of view.*

> *The statutory test is not simply whether the person concerned has "occasioned or been party to ... an act or default in relation to a legal practice", but whether that is so "in the opinion of the Society". It seems to me that this wording requires the Tribunal on a review to treat the adjudicator's opinion as an evaluation with which it should not readily interfere."*

22. Mr Johal said that it was clear from the case of Arslan and the Tribunal's Guidance Note that the scope of the Tribunal's review of a S.43 Order is a narrow one. The review is limited to considering the legality of the decision based principally on the evidence that was before the Adjudicator who made the S.43 Order.

23. The Tribunal should not interfere with the S.43 Order unless it is satisfied that it was wrong or that the decision was unjust because of a serious procedural or other irregularity.

Factual Background

24. By an application dated 22 February 2024 Mr Herrmann, had applied to the Tribunal for a review of an order made on 24 January 2024 by an SRA Adjudicator, pursuant to Section 43(2) of the Solicitors Act 1974 ("the S.43 Order").

25. The Applicant was an unadmitted person and was employed as an associate at Morgans Solicitors ('the Firm') from 30 August 2018 until sometime between August and December 2022. Mr Julian Prus-Streicher was a Principal Solicitor at Morgans Solicitors at the time of the Applicant's employment and the Firm had trading names linked to Herrmann Lawyers LLP.

26. In 2021, Mr Herrmann acted in Children Act proceedings for a client of the Firm, in which his client sought a Child Arrangements Order and a Prohibited Steps Order. On 14 October 2021, Goughs solicitors who were acting for the respondent to the application, lodged a report with the SRA in which they alleged that Mr Herrmann had held himself out as a solicitor in court proceedings.

27. Following an investigation by the SRA, a Notice was prepared on 1 November 2023 by an Investigation Officer which recommended that a S.43 Order be imposed on Mr Herrmann.

28. The allegations against Mr Herrmann in the Notice were that he:

    - Signed and submitted to the court a C100 application form on behalf of a client on which he falsely stated that he was the applicant's solicitor, and that he held the position of Partner at Morgan Solicitors; and

    - Drafted a court order in which he falsely referred to himself as a solicitor.

29. The allegations in the Notice were advanced on the basis that his conduct was dishonest.

30. Mr Herrmann submitted representations on the Notice on 13 December 2023 which included his 1st Defence following which a Supplemental Notice was prepared by the Investigation Officer on the same date. The Supplemental Notice was deemed

necessary in light of Mr Herrmann's representations about the impartiality of the Investigation Officer.

31. Mr Herrmann submitted representations on the Supplemental Notice and a 2nd Defence in respect of it, dated 4 January 2024.

32. Further correspondence between the Investigation Officer and Mr Herrmann took place about the representations between the 5th and 8th January 2024.

33. A bundle of documents containing all the Notices and Mr Herrmann's representations were placed before an Adjudicator on 24 January 2024.

Adjudicator's Decision

34. The Adjudicator, having considered the allegations in the Notice and the evidence, made the following findings against Mr Herrmann:

- On 11 February 2021, Mr Herrmann signed a court application form on behalf of a client in which he stated that he was a solicitor and partner at Morgans Solicitors, when he was neither.

- Between 5 July 2021 and 3 August 2021, Mr Herrmann engaged in negotiations and the drafting of a court order in which he referred to himself as a solicitor, when he was not qualified as such.

- In doing so, Mr Herrmann's conduct was dishonest.

35. By virtue of the above findings, the Adjudicator imposed a S.43 Order on Mr Herrmann as she was of the view that it was undesirable for him to be involved in legal practice without the SRA's prior written consent. The Adjudicator also decided that her decision should be published and set out the order for publication within her decision.

The Applicant's Grounds for Review

36 Mr Herrmann submitted that the Adjudicator's decision had been inconsistent and flawed.

37. Essentially, he said that the Adjudicator had been wrong to conclude he had falsely referred to himself as a solicitor in the C100 application form or the draft order when he had had no other viable option with respect to the C100 form. There were two options for signature: the applicant or the applicant's solicitor. He was not the applicant, so his only option was to tick the other box. References to *'the'* solicitor for the father had not been made by him and he had not been dishonest. In summary his grounds for challenging the Adjudicator's decision were as follows:

- The proceedings were brought against him prejudicially and the Investigation officer was biased;

- He did not falsely refer to himself as a solicitor in the C100 application form or the draft Court order;

- The S.43 Order was manifestly excessive and out of scope;
- His conduct did not pose a threat to the public or the parties involved;
- The Adjudicator considered the Supplementary Notice which contained irrelevant matters in respect of the allegations which raised questions about the fairness and impartiality of her decision;
- The Adjudicator's conclusion that Beckwith v SRA was irrelevant showed that she did not read his pleadings properly;
- The Adjudicator's decision that the additional evidence was not necessary and would not assist was prejudicial;
- The Adjudicator's decision that the C100 form should have been signed in the firm's name was incorrect and the reasons given, speculative.
- He did not refer to himself as a solicitor in the draft order;
- The Adjudicator was incorrect in finding that he was not a partner in the firm, which was confirmed in correspondence and by a statement from Mr Prus Streicher;
- The Adjudicator disregarded that the draft order was approved by Mr Prus Streicher.
- That the Applicant did have rights of audience to appear in the Family Court as an exempt person;
- The Order for publication was misleading and did not reflect the finding fairly.

38. Mr Herrmann submitted that the C100 form had been completed in accordance with the options available and he could not amend the form.

39. Mr Herrmann said that the Adjudicator had accepted that he had had little choice but to sign as Applicant's Solicitor. Mr Herrmann directed the Tribunal's attention to the later iteration of the form in which the options had been amended to indicate the status of the signing party than merely, *'Applicant'* or *'Applicant's solicitor'* as it had stated in the version of the form he had signed.

40. Mr Herrmann said the conclusions drawn by the Adjudicator as to why he had signed as a solicitor were incorrect, and the reasons she gave for doing so had been entirely speculative. It had not been dishonest and his actions could not have been deemed to be dishonest by standards of ordinary decent people.

41. As to the Court Order, Mr Herrmann said that in drafting it he did not refer to himself as a solicitor and actually wrote, *"The Father represented by Dr Herrmann. "* There was no reference to the word *'solicitor'*. Mr Herrmann said he had been extremely careful not to mislead the court and not to refer to himself as a solicitor. The remaining

recitals referred to *'solicitors'* for the applicant and respondent, as the parties were represented by 2 firms of solicitors authorised by the SRA i.e. Morgans and Goughs.

Respondent's Submissions in Opposition

42 Mr Johal said it was the Respondent's case that the S.43 Order was properly made, and it should remain in place unvaried. The Tribunal was invited to confirm the Order under S.43(3)(c). It was clear from the Adjudicator's decision that she carefully considered the documentary evidence in the bundle, in particular the central documents underpinning the allegations and that she had considered all of the Applicant's representations when making her findings.

43. Mr Herrmann held himself out as a solicitor and partner in a C100 form that he submitted to Court and again held himself out as a solicitor in a draft Court Order when he knew he was neither a solicitor nor a partner in the firm. Mr Herrmann completed the C100 form and drafted the Court Order in which he included reference to himself as the *'father's solicitor'* and that the Court had heard from *'solicitor'* for the applicant. He repeatedly referred to himself in court documents as a solicitor. On that basis, it was plainly open to the Adjudicator to find him dishonest.

44. Mr Johal said that it had also been open to the Adjudicator to find that Mr Herrmann could have signed the C100 form in the name of the Firm rather than in his name and clarified his role in the Firm. If she was wrong to suggest that, then it did not make her findings in respect of the allegations wrong, as the Applicant should not have signed the C100 form as the Applicant's solicitor, as he was not a solicitor and he had known he was not a solicitor.

45. The Adjudicator was aware that the Respondent's records did not show Mr Herrmann as a partner of the Firm. Although the witness statement of Mr Prus-Streicher referred to the Applicant as his *'business partner'*, it did not refer to him as being a partner in the Firm. Although Mr Herrmann claimed that he was a partner of his law firm in America and that they had merged with the Firm there was no evidence, such as a Partnership Deed, presented to the Adjudicator to confirm that he was a partner in the Firm. If such evidence existed then it should, logically, have been in Mr Herrmann's possession.

46. Mr Herrmann admitted that he was '*employed*' by the Firm in some capacity. There was no evidence before the Adjudicator that the Applicant had applied for the role as a manager of the Firm. Against that background it was open to the Adjudicator to find that he was not a partner in the Firm.

47. Mr Johal said that the S.43 Order was not manifestly excessive and/or out of scope, and Mr Herrmann had provided no reasons why he considered the S.43 Order to be manifestly excessive and out of scope.

48. The S. 43 Order made by the Adjudicator was one that she was empowered to make in accordance with S. 43(2)(a)(b) and (c). The Adjudicator found his conduct to have been dishonest and that the order imposed was needed to protect the public as dishonest conduct by a legal representative plainly makes it undesirable for them to be involved in legal practice.

49. It was clear from paragraph 6.26 of the Adjudicator's decision that she considered Mr Herrmann's submissions about Mr Prus-Streicher approving the draft court order and it was wholly inaccurate for Mr Herrmann to say that she *'utterly disregarded'* that the draft order had been approved by Mr Prus-Streicher.

50. As to the claim by Mr Herrman he did have rights of audience to appear in the Family Court as an exempt person, Mr Johal referred to paragraph 6.33 of the Adjudicator's decision which said:

> *"He does not as far as I am aware, have rights of audience to appear in the County Court in children act proceedings".*

51. Mr Johal said that the Adjudicator's comments on this point were not findings per se but merely an observation. The Adjudicator did not have evidence before her to make a finding as to whether Mr Herrmann had rights of audience as an exempt person. If her observations were misplaced and he did have rights of audience, this did not make her decision wrong.

52. With respect to Mr Herrmann's assertion that the order for publication was misleading and did not reflect the finding fairly, Mr Johal said that the order for publication contained a fair summary of the Adjudicator's decision.

53. Mr Johal submitted that the application and grounds of review did not cast any doubt on the correctness of the Adjudicator's decision or that her decision was not wrong or unjust. Where the Applicant challenged primary facts found by the Adjudicator, it was open to her to find those facts on the evidence before her and they were reasonable.

54. In support of his contention Mr Johal quoted relevant extracts from the Adjudicator's findings:

<u>C100 form</u>

> *"It is accepted that Mr Herrmann completed the form and signed it as the 'Applicant's solicitor'. It is also accepted that Mr Herrmann indicated that he was signing on behalf of the firm, where his position/office was 'Partner'. The SRA alleges that both these statements were dishonest.*
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> *Mr Herrmann accepts that he signed the form as the Applicant's solicitor. He says he did so because his client was represented by solicitors-namely the firm. I do have some sympathy with Mr Herrmann's argument that the form (as it was at the time) left him with little choice but to sign either as the Applicant's solicitor or as the Applicant. The form has since been amended by HMCTS to refer to the 'Applicant's legal representative', which would have been a more accurate description for Mr Herrmann….. However, this does not explain why Mr Herrmann chose to sign the form in his own name., when he could have signed it in the name of the firm.*
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> *Signing in the name of the firm would have made it clear that the applicant was represented by a firm of solicitors, not an individual solicitor. The form is designed to allow this- it has a box that the individual may complete as to what*

office or role they hold if they are signing on behalf of a firm. Mr Herrmann knew this – he completed that box to say that he was a partner. It was therefore open to him to sign the form in the name of Morgans Solicitors, before indicating whatever his role was there.

However, instead of completing the form as a representative of the firm, Mr Herrmann signed it in his personal name, saying he, personally, was the Applicant's solicitor. This would logically give rise to the assumption by any independent reader that he, personally, was qualified as such.

Mr Herrmann says that any such illusion would have been dispelled by him saying that he was a 'Partner'. I do not agree. The terms 'partner' and 'solicitor' are not synonymous, but they are also not mutually exclusive.... Adding that he was a partner did nothing to clarify that although he had personally signed as a solicitor, in fact it was the firm who were solicitors and he was unqualified.

Furthermore, there is no evidence that Mr Herrmann was actually a partner at the firm. He says he was a partner in his own American law firm, which had merged with the firm. I have no substantive evidence of that from the SRA, nor do I consider it to be particularly relevant. Even if Mr Herrmann was a partner of the US firm, the client had not instructed Mr Herrmann's US law firm, but the firm based in England and Wales, where he was not a partner. Mr Herrmann also says that Mr Prus-Streicher refers to him as a 'business partner'. While this may be true, this does not mean that Mr Herrmann was a partner of the firm.

.....There is no evidence that Mr Herrmann is legally qualified, or that he ever applied for approval of the role of manager at the firm. There is no evidence that Mr Herrmann was ever a partner at the firm."

Court Order

The second allegation relates to the drafting of a Court Order. The SRA allege that Mr Herrmann drafted the order and referred to himself as a solicitor. Mr Herrmann says that he did not. He says that, again, he only referred to the applicant being represented by a firm of solicitors. He says he was careful to ensure that he did not hold himself out as a solicitor.

He says that the order was approved by his principal, Mr Prus-Streicher. I have reviewed the correspondence passing between Mr Herrmann and Mr Drew. Mr Herrmann has accepted that he drafted a recital, which read: 'Upon hearing solicitor for the Applicant... He says that it was Mr Drew who inserted the word 'the' before the word 'solicitor'. Although he does not explicitly say this in his representations, the suggestion is that insertion of the word 'the' materially changed the meaning of the sentence. Mr Herrmann says, again, that he was only referring to the firm of solicitors representing his client when he drafted the order. He says that if he had attempted to hold himself out as a solicitor, he would have put at the beginning of the order that the father was represented by 'Dr Herrmann, solicitor', which he did not do.

However, even if I were to accept this, I note that on 3 August 2021, Mr Herrmann inserted a paragraph in the draft order that specifically referred to 'the father's solicitor'. He did so, notwithstanding the fact that the rest of the order (or at least the parts added/drafted by Mr Drew) referred to him as 'the father's legal representative'.

Mr Herrmann therefore not only drafted a recital saying that the applicant was represented by a singular 'solicitor', but later inserted a paragraph referring to himself, again in the singular, as the father's solicitor. I do not accept that he was referring to the firm as a whole when he did so. Anyone referring to the firm would have included reference to solicitors in the plural. Furthermore, the court had not heard from any solicitor for the applicant.

It had heard from Mr Herrmann, who could reasonably be described as a 'legal representative' but not as a 'solicitor'. Mr Herrmann says that the order was approved by Mr Prus-Streicher. I do not know whether that is accurate or not. I have no evidence from Mr Prus-Streicher about this, nor is there any copy correspondence in the bundle passing between Mr Herrmann and the firm's principal about the order. However, even if Mr Prus-Streicher had approved the order (which for the avoidance of doubt I cannot say he did), this would not entirely absolve Mr Herrmann of any responsibility.

Mr Herrmann was the one who attended at court. He drafted the document (and amendments). He was the one who sent it to Mr Drew. It is not attractive for him to seek to absolve himself of responsibility for the words he chose to use by blaming someone else (from whom I have no evidence either way).

Dishonesty

In determining whether or not Mr Herrmann has acted dishonestly, I must first determine his genuine knowledge and belief at the time.

Mr Herrmann knew he was not a solicitor. He also knew that he was not a partner of the firm. Even if he was a partner of his law firm in America, he knew that the client had not instructed that firm, but had instructed Morgans Solicitors, where he knew he was not a partner. I do not accept that Mr Herrmann truly believed that he was a partner of a law firm in England and Wales, even if he believed that his US firm had merged with one based in the UK.

In addition, I find that Mr Herrmann knew that signing the C100 in his own name and referring to the father's 'solicitor' in the draft court order, would lead any reader to assume that he was, himself, qualified as such. He knew that Mr Drew had chosen to refer to him as the 'father's legal representative' in the sections of the order Mr Drew had drafted.

Despite this knowledge and belief, Mr Herrmann chose to sign the C100 in his own name. Although he says he 'clarified' the matter by referring to himself as a partner, in fact this only confused matters further (given he was not a partner either). He also chose to draft a court order which said that the court had heard

from 'solicitor' for the applicant and inserted a paragraph referring to himself as the 'father's solicitor'. Mr Drew's insertion of the word 'the' in the recitals did very little to change the meaning of the sentence.

It is, in fact, unclear under what capacity Mr Herrmann signed the form, or indeed appeared at court. Mr Herrmann is not a solicitor. He does not, as far as I am aware, have rights of audience to appear in the county court in children act proceedings. Despite this, he not only represented the client, but referred to himself as a solicitor (in the singular) in a court order he drafted. If Mr Herrmann wanted to avoid confusion, he could have signed the C100 in the name Morgans Solicitors. He could have included in the 'position/office held' box that he was an unqualified legal representative. He could have copied the existing drafting of Mr Drew and referred to himself as a 'legal representative' in the court order he drafted. Instead, he chose to refer to himself, repeatedly, as a solicitor.

Having established Mr Herrmann's genuine knowledge and belief as to the facts at the time, I must consider whether ordinary decent people would regard his behaviour as dishonest. As I have set out above, an independent reader of these documents would reasonably conclude that Mr Herrmann was a solicitor (and partner at the firm). Ordinary decent people would regard someone repeatedly referring to themselves as a 'solicitor' in court documents, when they knew they were not qualified as such, as dishonest."

Undesirable Conduct

55. In concluding that it was undesirable for the Applicant to be involved in legal practice, the Adjudicator found the following:

"Mr Herrmann's conduct was serious. He repeatedly referred to himself as a solicitor in court documents. He did so to the extent that his opponent in the litigation, Mr Drew, was motivated to raise concerns with the SRA that Mr Herrmann was holding himself out as a solicitor. Mr Herrmann deliberately completed documents giving the clear impression that he was a solicitor, and a partner, when he was not.

Mr Herrmann says that the allegations are personally motivated and the consequences of a 'pending court case in which [he] has not been found guilty'. I note that the notice says that Mr Herrmann is presently wanted by the police, having failed to appear at court on suspicion of offences under Section 14 of the Legal Services Act. Mr Herrmann says that he did not fail to appear, but that he did not get notification of the hearing.

Either way, I note that Mr Herrmann has not, at today's date, been convicted of any criminal offence. Nonetheless, I have not made my decision on the basis of any criminal charges or convictions. I have made findings, on the Page 11 of 13 Final Decision - Confidential written evidence in the bundle, including a finding that Mr Herrmann acted dishonestly.

This is a serious matter for a member of a profession whose reputation depends

on trust. Honesty is required from all those involved in the provision of legal services and Mr Herrmann has proved that he can act without this. Mr Herrman's conduct, which was dishonest, warrants imposing a Section 43 Order. For the reasons set out above, the nature and severity of his conduct justifies prohibiting him from being involved in a legal practice in the ways set out in Section 43(2) of the Solicitors Act 1974 without the SRA's consent."

56. The Adjudicator also reminded herself of the purposes of a S. 43 Order. The relevant paragraphs of her decision are repeated here:

The High Court explained the purpose of a Section 43(2) Order in R (on the application of the Solicitors Regulation Authority) v Solicitors Disciplinary Tribunal and Solicitors Regulation Authority v Liaqat Ali [2013] EWHC 2584 Admin, at paragraph 41:

"As they themselves [the Solicitors Disciplinary Tribunal] acknowledge, the Section 43 Order has a regulatory function, not a penal function. That is why the order is of indefinite duration, subject to revocation upon review. The purpose of the order is to safeguard the public and the [Law] 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 level of supervision before being permitted to work effectively under his own steam."

57. The Applicant's assertions of bias against the Investigation Officer appeared to be based upon an alleged comment he made to Mr Prus-Streicher in a telephone conversation, and which was the subject of the Supplementary Notice, and that the Investigation Officer anticipated the imposition of a S. 43 Order on the Applicant prior to the Applicant's 1st Defence. This ground also related to the Adjudicator's decision to consider the Supplemental Notice and her decision to refuse to grant an extension for the Applicant to obtain further evidence.

58. In respect of this ground, Mr Johal submitted:

58.1. It was clear from the Adjudicator's decision that she gave little weight to the Supplemental Notice and that although she did not make findings in respect of the bias issue, she concluded that she had not seen any evidence of bias. Also, the Adjudicator was correct in concluding that Beckwith v SRA was not relevant to the allegations as they did not relate to the Applicant's private life but to his professional activities. Mr Johal relied upon the following comments from her decision:

"These alleged comments do not form any part of the formal allegations against Mr Herrmann. As such I have given the content of the supplemental notice only limited weight and consideration. In my view it does not matter much whether the investigation officer made the comments alleged, or whether those comments were made by Mr Prus-Streicher, or at all

Mr Herrmann says that the alleged comments are evidence of bias against him in the investigation process. However, I am not tasked with determining any complaint Mr Herrmann may have against the SRA. Instead, I am asked to

determine whether the allegations are proven, on the basis of the evidence in the bundle.

In his third set of representations, Mr Herrmann develops this point further. He says that there has been an abuse of the investigative powers of the SRA. He quotes the case of Beckwith v SRA, in which he says the High Court expressed the view that there were limits on how a regulator should take action in relation to matters of private life.

However, the case of Beckwith is not relevant to this matter. The allegations do not relate to events in Mr Herrmann's private life, but to his professional life as a legal representative. It is entirely right and proper for the SRA to investigate the kinds of concerns raised by the report from Goughs Solicitors into Mr Herrmann's alleged conduct.

In any event, I can say that I have seen no evidence of bias or abuse of process in the bundle of documents. Furthermore, as an adjudicator, I am functionally separate from and have no contact with the investigation teams. I am tasked with making an unbiased decision, based only on the evidence before me. Mr Herrmann should therefore be assured that any alleged bias is eliminated by the matter being passed to an independent decision maker."

58.2. Mr Johal submitted that it had clearly been open to the Adjudicator to conclude that that there was no evidence of bias, particularly in light of Mr Prus-Streicher's admission that he had made the alleged comment about the Applicant rather than the Investigation Officer. The Investigation Officer's recommendation in the Notice that a S.43 Order be imposed (prior to receipt of the 1st Defence) was not evidence of bias or prejudice. The recommendation was made in accordance with established procedure and practice for investigations and in any event, the Adjudicator was not bound by the recommendation and was free to depart from it.

58.3. The Adjudicator's decision to refuse Mr Herrmann an extension was a reasonable one and he relied on the following from the Adjudicator's decision:

"Mr Herrmann also says in his representations that he has been unable to properly defend himself against the allegations. He has asked for additional time to obtain evidence from the court. I do not know specifically what evidence Mr Herrmann seeks, but he suggests that he has written to the District Judges who dealt with the [redacted] *matter.*

Mr Herrmann says that evidence from these judges will show that the accusation that he held himself out as a solicitor is entirely unfounded. I do not believe it is necessary to stand this matter over for any more evidence. I have been provided with the documents on which the SRA seeks to rely (namely the C100, Court Order of 5 July 2021 and associated correspondence).

I have Mr Herrmann's detailed representations in response to those documents. This is sufficient for me to make a decision on the specific allegations that have been put to Mr Herrmann, on the civil standard of proof. Additional evidence is not necessary and would not assist me in making a decision.

The SRA received a report about Mr Herrmann in October 2021, about conduct going back to March 2021. This investigation has already taken over two years. It is not in the public interest, nor frankly in the interests of Mr Herrmann, for this matter to be delayed any further without a decision"

58.4. The Adjudicator had the central evidence underpinning the allegations and Mr Herrmann's detailed response to those allegations. Mr Herrmann did not say what specific evidence he was seeking from the Judges or how long it would take to get that evidence. Against that background, the Adjudicator's decision was a reasonable one and her comments in respects of the additional evidence, were fair.

58.5. Further, the decision of the Adjudicator to refuse to stand the matter over was essentially a case management decision with which the Tribunal should not interfere provided it was satisfied that Mr Herrmann was given a fair opportunity to present his case. It was submitted by Mr Johal that the Tribunal could be so satisfied bearing in mind the detailed representations made by Mr Herrmann, which were fully considered by the Adjudicator.

58.6. As to the charge levelled by Mr Herrmann that the allegations had been brought prejudicially against him, Mr Johal said that, irrespective of the motivations of the complainants, it was clear that the Adjudicator's decision was solely based upon the written evidence in the bundle, and that she was not influenced by the motivation of the complainants or other extraneous and irrelevant matters.

58.7. Mr Johal said that with respect to the Court Order there had been documentary evidence before the Adjudicator which showed that Mr Herrmann had referred to himself as a solicitor and he referred the Tribunal to an e-mail dated 3 August 2021 timed at 10:11 from Mr Herrmann to Mr Drew, of Gough's Solicitors which stated:

"Dear Mr Drew
I have further reviewed the draft order and taking into account that it is paramount in this case to bring before the Court all the necessary evidence to rule in [redacted] *best interest, I have added two paragraphs. For the avoidance of doubts, the new paragraphs are drafted in red. If you finally agree with this final version, we can submit it to the judge."*

Mr Johal said the amended paragraphs read as follows:

15. (1) The applicant father to file with the court and serve on the Mother's solicitor by 4 pm on August 5, 2021, a letter from his GP in [redacted] *confirming whether the father has been diagnosed currently or in the past with any mental health issues and if so comment on his compliance with any medication or services recommended by the doctor-;*

(2) The applicant mother to file with the court and serve on the Father's solicitor by 4 pm on August 15, 2021, a letter from her GP confirming whether the mother has been diagnosed currently or in the past with any mental health issues and if so comment on her compliance with any medication or services recommended by the doctor-;

AND

18. (1) The respondent Mother has leave to file with the court and serve on the Father's legal representative an additional narrative statement not exceeding 10 pages of A4 by 4 pm on August 30, 2021;

(2) The applicant Father has the right to respond if he so wishes by 4 pm on September 6, 2021;

58.8. Mr Johal said that the Adjudicator had been correct to use this information in reaching her conclusion that Mr Herrmann had taken active steps to refer to himself as a solicitor by amending the draft order to this effect when he knew he was not entitled to use this professional title.

58.9. With respect to this issue, Ms Kellett, Chair, asked Mr Herrmann directly whether he had amended the order. He replied that he had not and that the amendments which had been made to the draft order had in fact been made by Mr Drew, as he had stated to the Adjudicator in his submissions.

58.10. On the face of it there was an obvious inconsistency between the e-mail of 3 August 2021 and draft order in which the two amendments appeared, one of which at paragraph 15.2 of the draft referred to the "*Father's solicitor.*"

58.11. Mr Herrmann resolved the inconsistency by informing the Tribunal that the e-mail of 3 August related to a completely different order, one which had concerned later matters in the same proceedings and post-dated the order relied upon by the SRA, and the Adjudicator in reaching her findings *(paragraphs 14.10-14.11 and 6.24 of the decision)*.

58.12. The Court Order in which Mr Herrmann stated that Mr Drew, alone, had made the various amendments was dated 5 July 2021 by the court, a month earlier than the email of 3 August 2021. Mr Herrmann explained that he had not been able to correct the Adjudicator's misconception because the decision she had made when imposing the S.43 Order had been on the papers and he had not had a chance to present an oral argument.

The Tribunal's Decision

59. The Tribunal referred to its own Guidance. It noted that it had the power to review a S.43 Order made by the SRA. In conducting such a review, the Tribunal was not acting as a tribunal of fact nor was it conducting a re-hearing of the original decision. The principles by which such a review is conducted were contained in Arslan, particularly paragraphs 38 and 40 as set out above.

60. The Tribunal observed that 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.

61. In the present case Mr Herrmann sought to challenge conclusions of primary fact made by the Adjudicator in her decision, namely that he had dishonestly referred to himself

as a solicitor on the C100 form and the court order.

62.. The Tribunal found the following:

The C100 form

62.1. The Tribunal accepted that Mr Herrmann did sign it in his own name, but he did so only in the absence of being able to amend a pro forma template form. This was a fact which the Adjudicator commented upon in her decision:

> *"6.14 Mr Herrmann accepts that he signed the form as the Applicant's solicitor. He says that he did so because his client was represented by solicitors - namely the firm. I do have some sympathy with Mr Herrmann's argument that the form (as it was at the time) left him with little choice but to sign either as the Applicant's Solicitor or as the Applicant. The form has since been amended by HMCTS to refer to the 'Applicant's legal representative', which would have been a more accurate description for Mr Herrmann. However, I accept that, at the time, he arguably had little choice but to sign as the Applicant's 'solicitor', given the only other option was to say he was the Applicant himself."*

62.2 The Tribunal found, as did the Adjudicator, that in the circumstances presented to him, Mr Herrmann had had no other option than to tick as the applicant's solicitor: he was not the applicant. The Tribunal however, disagreed with the Adjudicator's suggestion that he should have signed on behalf of the firm for the very reason that he was not a solicitor, and he did not hold an SRA authorised position at the firm.

62.3 The Tribunal disagreed also with the Adjudicator's conclusion regarding Mr Herrmann's use of the term *"partner"*. The Adjudicator had taken this as supporting evidence that Mr Herrmann had used the term to bolster the false assertion that he was a solicitor:

> *"6.17 Mr Herrmann says that any such illusion would have been dispelled by him saying that he was a 'Partner'. I do not agree. The terms 'partner' and 'solicitor' are not synonymous, but they are also not mutually exclusive. Someone can be a partner and a solicitor, just as someone can be one or the other. Adding that he was a partner did nothing to clarify that although he had personally signed as a solicitor, in fact it was the firm who were solicitors and he was unqualified.*
>
> *6.18 Furthermore, there is no evidence that Mr Herrmann was actually a partner at the firm. He says he was a partner in his own American law firm, which had merged with the firm. I have no substantive evidence of that from the SRA, nor do I consider it to be particularly relevant. Even if Mr Herrmann was a partner of the US firm, the client had not instructed Mr Herrmann's US law firm, but the firm based in England and Wales, where he was not a partner. Mr Herrmann also says that Mr Prus-Streicher refers to him as a 'business partner'. While this may be true, this does not mean that Mr Herrmann was a partner of the firm".*

62.4. Whilst the Tribunal considered that the Adjudicator had been correct in finding that the terms *'partner'* and '*solicitor'* are not synonymous it found that she then went beyond what could in fairness be drawn from its use in the circumstances. Mr Herrmann said he was a business partner to Mr Prus-Streicher and the deployment of the term by him was, at the most, ambiguous, as the term, *'partner'* may have a number of meanings. The C100 asked merely *'the position or office held'* and it did not set out within it any excluded definitions of the term *partner'*. The Adjudicator had exaggerated the significance of Mr Herrmann's use of the word.

62.5. The Tribunal considered that the conclusion the Adjudicator had reached was outside the bounds '*within which reasonable disagreement is possible'* given the serious consequences which flowed from the Adjudicator's conclusion.

62.6. Accordingly, and for the reasons set out above, the Tribunal found on the balance of probabilities that the Adjudicator had erred in the conclusions she had drawn from the very limited evidence before her.

<u>The Draft Order</u>

62.7. During the course of submissions, it became clear to the Tribunal that the Adjudicator had laboured under a misunderstanding as to the essential facts. In simple terms, the Adjudicator had mistakenly assumed that the e-mail of 3 August 2021 and the reference therein to two amendments Mr Herrmann had made to a draft order had been in relation to the order of 5 July. The Adjudicator even made the following observation:

> *"4.12 This additional paragraph (and one other suggested by Mr Herrmann) were not incorporated into the final sealed order produced by the court. I do not know why not."*

62.8. The Tribunal reviewed the final order of the court, dated the 5 of July 2021, and it did not contain the text set out in amended paragraphs 15.2, or 18 2. There was nothing in the final order which referred directly to Mr Herrmann as a solicitor, save for a general reference to *'the Applicant's solicitor'* in paragraph 2 of the recitals which Mr Herrmann said had been amended by Mr Drew. Throughout the bulk of the order reference was made only to the *'Father's legal representative'*.

62.9. There was room to doubt that the e-mail of 3 August 2021 had had any factual relationship with the order of 5 July 2021. This was of serious concern given that the Adjudicator had placed significant reliance upon it in her reasoning. The Tribunal noted that Mr Herrmann had tried to correct her mistake at the time of the finding.

62.10. As to the Adjudicator's decision with respect to the draft Court Order she had based her reasoning on an incorrect assumption or understanding as to the factual position. The Tribunal considered this mistake to have led the Adjudicator into error, representing a *'serious or other procedural irregularity.'*

62.11. The Tribunal found that as the factual matrix underpinning the making of the S.43 Order had fallen away so did the issue of Mr Herrmann's dishonesty. It was likely that an ordinary and decent member of the public, knowing the full facts would not have found him to have been dishonest.

62.12. Therefore, when all matters were viewed individually and in the round the Tribunal was satisfied on the balance of probabilities that Mr Herrmann's application should succeed and the S.43. Order be quashed.

62.13. In reaching its decision the Tribunal found nothing of substance in Mr Herrmann's grounds relating to bias and prejudice, Beckwith and his various other grounds. The Tribunal attached little weight to the fresh evidence which it had permitted Mr Herrmann to adduce, and this material had played no part in its decision making.

Costs

63. On the basis of the Tribunal's decision Mr Johal confirmed that although the Respondent had submitted a claim for costs in the sum of £3,149.00, he would not be making an application for the recovery of those costs from Mr Herrmann.

64. Mr Herrmann applied for the recovery of his costs (as set out in his Schedule) from the Respondent, incurred in having to challenge the Adjudicator's order.

65. Mr Herrmann stated that he had based his claim upon the rates applicable to a Grade C fee earner i.e. £190 per hour. The total time claimed was c.44 hours with a total cost of £8,331.50. Mr Herrmann said that it was right for the Respondent to pay his costs as the order should never have been made and he had been placed under significant stress during the entire process.

66. Mr Johal reminded the Tribunal that costs did not necessarily follow the event in SRA regulatory proceedings. He referred to the case of Baxendale-Walker v The Law Society [2007] EWCA Civ 233.

Tribunal's Decision on Costs

67. The Tribunal considered the matter of costs carefully and Rule 43 of the SDPR 2019 Rules which gives the Tribunal a wide power to award costs. The Tribunal also recognised the constraints on the Tribunal's power to award costs against the SRA, as set out by Mr Johal. The mere finding in favour of Mr Herrmann was not, without more, sufficient to reverse the commonly held position.

68. However, the matters set out in Baxendale-Walker were a starting point, the Tribunal was not restricted in making a costs order against the SRA only in circumstances where the proceedings had been a shambles from start to finish and there were other situations in which there were good reason for such an order to be made.

69. The Tribunal considered that this was one such case. The case against Mr Herrmann had been brought on a flawed and misconceived basis in which the evidence purportedly showing that he had dishonestly held himself out as solicitor had not been properly analysed by the SRA to ensure that it accurately supported the case against him. Further, nothing had been done to prevent the Adjudicator from falling into error. The Tribunal had found this to be a serious irregularity.

70. It was unlikely that the proceedings would have progressed any further than the complaint stage had the details of the evidence been competently checked by the SRA.

Whilst there was no bad faith on the part of the SRA, its failure had been a serious procedural failing amounting to a good reason.

71. Therefore, the SRA should bear the burden of a costs order.

72. As to quantum, this was within the Tribunal's discretion. The Tribunal noted that Mr Herrmann had not provided a detailed breakdown of the costs other than headlines. The Tribunal determined that it would not allow costs relating to his preparation of the unarguable grounds or the time involved in the investigatory process. Therefore, taking into consideration those matters which would be disallowed the Tribunal assessed that a costs order in the sum of £5,000.00 would be proportionate and reasonable in all the circumstances.

Statement of Full Order

73. The Tribunal Ordered that the application of MR RYAN HERRMANN, for review of a S.43 Order be GRANTED, and it QUASHES the said S.43 Order.

74. The Tribunal further Ordered that the Respondent, the Solicitors Regulation Authority Ltd, pay the Applicant's costs of and incidental to this application fixed in the sum of £5,000.00.

Dated this 18th day of July 2024
On behalf of the Tribunal

A Kellett

A Kellett
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
18 JULY 2024