

# **SOLICITORS DISCIPLINARY TRIBUNAL**

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12595-2024

## **BETWEEN:**

HUSEYIN ARSLAN

Applicant

and

SOLICITORS REGULATION AUTHORITY LTD

Respondent

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Before:

Mr W. Ellerton (in the Chair)  
Mrs L. Murphy  
Ms E. Keen

Date of Hearing: 21 February 2025

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## **Appearances**

The Applicant attended the hearing and represented himself.

Michael Collis, counsel, employed by Capsticks Solicitors LLP, Wellington House, 60-68 Wimbledon Hill Road, London, SW19 7PA, for the Respondent

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**APPLICATION FOR  
REVIEW OF  
SECTION 43 ORDER**

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## Application

1. The Applicant was made subject to a Section 43 Solicitors Act 1974 Order (“the S.43 Order”) on 16 January 2015 preventing him from being employed by a solicitor or recognised body or being a manager or holding an interest in a recognised body, without the prior consent of the Solicitors Regulation Authority (‘the SRA’).
2. The Applicant applied to the SRA to revoke the S.43 Order. This application was refused by an SRA Adjudicator in a decision dated 25 November 2022<sup>1</sup>.
3. By an application dated 15 April 2024 the Applicant applied to Solicitors Disciplinary Tribunal (‘the Tribunal’) for a review of that decision..

## Background

4. The Applicant’s case had a lengthy procedural history which preceded this application as summarised below: -
  - i) 2013: a complaint was made against the Applicant whilst he was employed as a consultant with Duncan Lewis Solicitors.
  - ii) December 2013: the SRA commenced an investigation into the allegation. The initial complaint was closed with no further action but during the SRA’s investigation separate concerns were raised when it was identified that the Applicant had provided false and misleading information to the SRA.
  - iii) 16 January 2015: An SRA Adjudicator considered that the Applicant had provided falsified and misleading information to the SRA during its investigation and imposed a S.43 Order against him, restricting his employment by solicitors or recognised bodies, save for in accordance with the SRA’s permission.
  - iv) 13 February 2015: the Applicant applied to the Tribunal for review of the S.43 Order, pursuant to Section 43(3) of the Solicitors Act 1974.
  - v) 11 February 2016: the Tribunal upheld the review and revoked the S.43 Order.
  - vi) 11 November 2016: on application for judicial review by the SRA, the High Court quashed the Tribunal’s decision to revoke the S.43 Order, which was reinstated.
  - vii) 25 August 2021: the Applicant contacted the SRA regarding an application to revoke the Order and was incorrectly advised to apply to the Tribunal for revocation.
  - viii) 11 October 2021: the Applicant applied to the Tribunal for revocation of the Order, pursuant to Section 43(3)(b) of the Solicitors Act 1974. The Tribunal did not have jurisdiction to hear an application for revocation, in circumstances

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<sup>1</sup> The SRA Adjudicator’s decision of 25 November 2022 can be viewed [\[here\]](#)

where the SRA had made the original Order. The Tribunal could review the Order. The Applicant therefore requested a review.

- ix) 10 November 2021: the SRA filed its Answer, opposing the application.
- x) 21 February 2022: the Tribunal dismissed the Applicant's application for a review of the S.43 Order.
- xi) 5 April 2022: the Applicant applied to the SRA for revocation of the Order, pursuant to Section 43(3)(b) of the Solicitors Act 1974. He relied on the same application, with the same supporting documents as submitted to the Tribunal on 11 October 2021.
- xii) 27 October 2022: the SRA Authorisation Officer recommended refusal of the application for revocation
- xiii) 7 November 2022: the Applicant provided representations and further documents in response to the recommendation by the SRA Authorisation Officer.
- xiv) 25 November 2022: an SRA Adjudicator refused the Applicant's application for revocation
- xv) 30 November 2022: an Authorisation Officer of the SRA emailed the Applicant attaching the Adjudicator's decision and incorrectly advised him that he had a right of review to the SRA and a right of appeal to the High Court
- xvi) 9 December 2022: the Applicant filed his application to appeal the Adjudicator's decision with the High Court.
- xvii) 2 May 2023 (and by way of amended grounds on 24 October 2023): the SRA applied to strike out the application on the grounds that the High Court did not have jurisdiction to hear the appeal.
- xviii) 12 April 2024: the Honourable Mr Justice Ritchie struck out the appeal for want of jurisdiction.
- xix) 15 April 2024: the Applicant applied to the Tribunal for a review of the SRA decision of the Adjudicator, refusing the application for revocation of the S.43 Order.

### **Legal framework**

5. As the Order was made by the SRA, only the SRA could revoke it (by reference to section 43(3)(b) of the Solicitors Act 1974). 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) Solicitors Act 1974).

6. The Tribunal was assisted by Section C of the Tribunal's [Guidance Note on Other Powers Tribunal's, 7th Edition February 2025](#) which set out that the Tribunal proceeds by way of a review and not a re-hearing.
7. 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.
8. 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.
9. The principles by which such a review is conducted are contained in *SRA v Arslan* [2016] EWHC 2862 (Admin) ('*Arslan*') which detailed that any review of a S.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. Paragraphs [38 – 40] of *Arslan* set out the correct approach of the Tribunal when reviewing a S.43 Order and he summarised the approach as follows:

*"1 The proper approach is to proceed by way of a review of the S.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 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.*

*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 Applicant's Case**

10. The Applicant submitted that the indefinite restriction of the S.43 Order was disproportionate and infringed upon his rights under, *inter alia*, Article 6 and 8 of the of the European Convention on Human Rights.
11. The Applicant submitted that the decision imposed an unreasonable and disproportionate burden on his personal, family, and professional spheres, failing to balance the interests of justice against the severe impact on their life. In addition, the decision made by the SRA Adjudicator was beset with procedural flaws and irregularities. The Tribunal was urged to recognise this violation and revoke the S.43 Order.

12. The Applicant, a Turkish attorney registered with the SRA, was said to face indirect discrimination under the S.43 Order which should not limit his practice in England and Wales. Given the Applicant's extensive experience, qualifications, and significant change in circumstances the Applicant submitted that revoking the order was warranted.
13. The Applicant submitted that the Adjudicator's refusal to revoke the S.43 Order was fundamentally flawed and manifestly unjust. The Adjudicator's decision failed to adequately consider the substantial evidence of the Applicant's professional growth, qualifications, and the significant changes in circumstances since the imposition of the S.43 Order.
14. The Applicant referred to the SRA granting his SQE 2 Exemption as a Turkish Attorney and the recognition of his professional status by the Bar Standards Board through the Bar Transfer Test (BTT) Certificate (BPTC Full Exemption) from BPP Law School which included a professional ethics element, demonstrating his enhanced insight and addressing any concerns about his suitability.
15. The SRA Adjudicator concluded that the Applicant posed a risk to the public, but in the Applicant's submission this conclusion needed to be justified. The Applicant had no conduct issues for over 10 years and maintained good standing with all of his professional associations which should have been considered when the SRA Adjudicator was assessing any risk to the public.
16. The Applicant submitted that the Adjudicator's approach was marked by a superficial review, evident bias, and a disregard for the principles of proportionality and fairness. This misapplication of legal standards, coupled with a lack of coherent reasoning, underscored the need for the decision to be overturned to rectify the ongoing injustice and undue burden imposed on the Applicant.
17. The Applicant's Skeleton Argument detailed the basis of his application – [[Click Here](#)]

### **The Respondent's Case**

18. Mr Collis firstly, by way of background, referred the Tribunal to the circumstances that brought about the imposition of the S.43 Order. The Applicant was found to have provided a false and misleading information to the SRA during the course of an investigation thereby breaching Principles 2, 6, 7 of the SRA Principles 2011 and failing to achieve Outcome 10.6 of the SRA Code of Conduct 2011.
19. The finding of lack of integrity (arising from submitting misleading information to the SRA) and the Applicant's failure to cooperate with his regulator were said to demonstrate a level of contempt for the SRA and the regulatory process and were indicative of attitudinal and character issues. It was not said to be reflective of any deficiencies or failings in his professional knowledge base or skill set. Mr Collis submitted that this was an important distinction for the Tribunal to note when considering the SRA Adjudicator's decision from November 2022. The key balancing exercise that the SRA Adjudicator had to perform was the extent to which the Applicant's further experience and training completed since the imposition of the S.43 Order mitigated what the SRA Adjudicator had identified as a lack of insight, remorse and rehabilitation and attitudinal issues.

20. The SRA Adjudicator determined, appropriately in Mr Collis' submission, that the attitudinal issues, lack of insight, remorse and rehabilitation were not properly remedied and remediated. It was therefore entirely reasonable and correct for the SRA Adjudicator to arrive at the decision that they did in refusing to revoke the S.43 Order.
21. The Respondent opposed the Applicant's application on the basis that the SRA Adjudicator applied the correct test and gave due consideration to all of the material before them.
22. It was also submitted by Mr Collis that the Applicant had not advanced any grounds that were capable of demonstrating that the decision of the Adjudicator was wrong.
23. The SRA's Answer to the application set out the Respondent's position - [[Click Here](#)]

### **The Tribunal's Decision**

24. The Tribunal carefully considered the oral submissions of the parties and the supporting written material in determining the Applicant's application for the Tribunal to review the SRA's refusal to revoke the S.43 Order. The absence of any reference to particular submission or document should not be taken as an indication that the Tribunal did not read, hear or consider it.
25. The Tribunal applied the guidance set down in Arslan in which it was held that the Tribunal should not interfere with the S.43 Order unless it was satisfied that it was wrong or that the decision was unjust because of a serious procedural or other irregularity.
26. The Tribunal was satisfied that the SRA Adjudicator applied the correct test when determining the Applicant's application to revoke the S.43 Order. This test was referred to in the SRA Adjudicator's decision in the following terms:-

#### *"5. Reasons*

*5.1 Rule 7.1 of the RDPR states that Mr Arslan may apply to revoke the section 43 order where there has been a material change in circumstances.*

*5.2 Applying the case of SRA v Ali<sup>2</sup> – the material change in circumstances must demonstrate that the section 43 order is no longer necessary to protect the public or to maintain the public's trust and confidence in the profession."*

27. The Applicant maintained that the SRA Adjudicator's decision was wrong as it was "...fundamentally flawed, irrational, and biased, disregarding substantial evidence and professional achievements. The refusal to acknowledge the material change in circumstances and the discriminatory nature of the Section 43 Order".
28. The Applicant therefore challenged the SRA Adjudicator's decision on both procedural/legal grounds and also on the basis that the SRA Adjudicator failed to give

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<sup>2</sup> SRA v Liaqat Ali [2013] EWHC 2584 (Admin)

proper weight to the Applicant's evidence which was said to demonstrate a material change in circumstances such that the S.43 Order was no longer necessary.

29. Included amongst the procedural and legal grounds advanced by the Applicant was an objection to the test used by the SRA Adjudicator, additionally the Applicant submitted that an incorrect standard of proof had been applied by the SRA Adjudicator, a breach of the Equality Act 2010 was also cited, along with general procedural impropriety by the SRA in considering and making the decision.
30. The Applicant criticised the SRA Adjudicator's decision on the basis that it did not adequately apply the principle of proportionality and that his application should have been determined by a "*proportionality test*." The Applicant stated that the "*...Adjudicator fails to explain why the proportionality test was not applied, demonstrating a clear bias and an unreasonable approach. This omission further underscores the lack of fair reasoning and undermines the credibility of the decision.*" The Applicant submitted that this was a key factor in determining whether the restriction should remain and was not applied in the decision-making process. However, the Tribunal rejected this submission as the SRA Adjudicator had relied on the correct test and considered the appropriate, applicable principles (as defined above) to determine the application.
31. In relation to the standard of proof the Applicant maintained that "*...a criminal standard of proof is necessary for fairness in the adjudication process, as the SRA has misused the civil standard of proof to justify staff misconduct. Comments by the High Court on the standard of proof are considered non-binding obiter dicta. It is asserted that SRA staff have often relied on the balance of probabilities to evade liability.*"
32. The Tribunal rejected the Applicant's submission regarding the standard of proof. The High Court in Arslan confirmed that the standard of proof is the civil standard and this was applied correctly and consistently throughout by the SRA Adjudicator.
33. The Applicant submitted that the S.43 Order was in breach of the Equality Act 2010 as it was directly and indirectly discriminatory. The Applicant maintained that the S.43 Order did "*...not have any purpose in my case to begin with.*" The Tribunal could not identify any aspect of the S.43 Order that was discriminatory. The purpose of the S.43 Order was clear in that it provided a safeguard for the public in respect of the Applicant continuing to work in the profession.
34. The Applicant was critical of the delays and procedural errors involved in the SRA's treatment of his case "*The Adjudicator's decision which was made in November 2022, is a defence for his colleague [the SRA Authorisation Officer who recommended refusal of the application for revocation in October 2022]... who delayed the application intentionally and recklessly... The SRA is expected to be a neutral public body under section 6 of the HRA but unfortunately they behave like a defendant in these proceedings instead in order to save their own staffs from professional negligence and misconduct liability. The SRA has been appearing as a defendant in these cases in order to defend their own staffs rather than appearing as a neutral body.*"

35. The Tribunal noted that there had been an initial procedural error whereby the SRA incorrectly advised the Applicant that he had a right of appeal to the High Court. This was regrettable and had undoubtedly added to the duration of the Applicant's case given the associated delay involved in the procedural position being corrected and the case brought before the Tribunal as opposed to the High Court. The Tribunal did not find that this error constituted procedural impropriety of itself and the Applicant had provided no evidence or cogent submissions that demonstrated any wider bias, bad faith or procedural impropriety by the SRA.
36. The Tribunal identified no procedural defects by the SRA Adjudicator when making the determination on 25 November 2022 refusing the Applicant's application to revoke the S.43 Order.
37. The Tribunal next considered the extent to which the SRA Adjudicator had proper regard for the Applicants evidence of professional qualifications and rehabilitation. The Applicant had cited a "...*refusal to acknowledge the material change in circumstances*" arising from the SRA Adjudicators failure to give sufficient weight to his professional qualifications and achievements that included, *inter alia*:-

*"Post Order Qualifications and Attorney Experience:*

- *Postgraduate Diploma in Legal Practice (LPC) from City Law School – October 2014*
  - *Bar Transfer Test (BTT) Certificate (BPTC Full Exemption) from BPP Law School -Nov 2020*
  - *Law Society's Immigration, Accreditation, and Asylum Senior Caseworker Level 2 Exam – April 2020*
  - *Bar Transfer Test (BTT -equivalent to Bar Training Course-) and Professional Ethics Exam – Nov 2020 – BPP Law School*
  - *Lincoln's Inn Membership and Qualifying Sessions Completion 2020-2021*
  - *Called to the Bar Certificate – May 2021 – Lincoln's Inn*
  - *Alternative Dispute and Mediation Certificate – Aug 2022 – Izmir Economy University Diploma in Public Services Interpreting (DPSI) – Law Certificate – Oct 2022 – IS Linguist*
  - *SQE 2 Exemption as a Turkish Attorney – March 2023 – the SRA*
  - *PGC In Philosophy – 2022-23 -PT – University of Cambridge*
  - *Tunceli Bar Council Registration, Good Conduct and Practice Certificate – April 2024*
  - *Continuing to practice as an attorney. "*
38. It was the Applicants submission that this evidence of professional competence and qualifications served to obviate the continuing necessity of the S.43 Order and the SRA Adjudicator had given this insufficient weight in reaching their decision. However, within their decision the SRA Adjudicator stated "*Even if I were to give Mr Arslan the benefit of considerable doubt and rely solely on his qualifications and work as a Turkish attorney, I cannot escape the fact that rehabilitation is more than simply not repeating the misconduct. It is recognising and understanding why the misconduct occurred and accepting the consequences of the misconduct, including any form of sanction or*



*control that may derive from it there is no persuasive behaviour before me of any of this.”*

39. The Tribunal noted that SRA Adjudicator had weighed all of the Applicant’s evidence of professional competence, experience and training completed since the imposition of the S.43 Order and determined that it did not mitigate the lack of insight, remorse and rehabilitation and attitudinal issues that were identified.
40. The Tribunal considered that this was an appropriate approach for the SRA Adjudicator to adopt. Particularly given that in the course of his correspondence with the SRA the Applicant questioned the need to demonstrate rehabilitation and indicated that he did not want to engage with the SRA as a regulator<sup>3</sup>. The Applicant also stated in correspondence with the SRA Authorisation Officer dated 12 September 2022 “*As you know, I did not accept any wrongdoing, I am standing with the SDT’s first decision. The High court’s decision was biased and partial..... You need to move on. I do not have any criminal conviction and genuinely believe that I have not done anything wrong.*” The Tribunal found that it was open to the SRA Adjudicator to balance the Applicant’s lack of insight and attitudinal issues when considering whether the S.43 Order remained necessary.
41. The Tribunal found that the Adjudicator had appropriately weighed the supporting material supplied by the Applicant<sup>4</sup> against the evidence of insight and rehabilitation in arriving at the decision made.
42. As the Tribunal was not satisfied that the SRA Adjudicator’s decision to refuse the Applicant’s application to revoke the S.43 Order was wrong and had not identified that the decision was unjust because of a serious procedural or other irregularity, the Tribunal dismissed the Applicant’s application for review.
43. Although not part of its core decision the Tribunal noted the Applicant’s continued failure to recognise that his conduct had been wrong and lack of insight. There was an opportunity for the Applicant to reflect on the findings which had been made. The ongoing necessity of the S. 43 Order was predicated on lack of insight, remorse and rehabilitation as opposed to the Applicant’s professional experience and qualifications. The SRA Adjudicator stated “*...I have had to bear in mind that a finding of lack of integrity was made against Mr Arslan, which is a serious matter. The evidence required to demonstrate that the profession and the public can trust that a person no longer has a lack of integrity needs to be persuasive and there is no evidence in the documents to show this has been done*” which offered guidance to the Applicant.
44. The Applicant should be aware that a S.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

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<sup>3</sup> Albeit the Applicant did seemingly withdraw this comment when it was queried by the Tribunal during the hearing.

<sup>4</sup> As was available in November 2022, when the SRA Adjudicator made the decision. Albeit the Tribunal noted that given the basis of the decision was a lack of insight and attitudinal issues as opposed to professional deficiencies, any information post-dating November 2022 did not represent a material change in circumstances.

requires such a level of supervision before being permitted to work effectively under his own steam.

45. The order did not preclude the Applicant from obtaining work subject to him disclosing the fact he was subject to a S.43 Order to a prospective employer and obtaining the necessary permission from the SRA.

### **Costs**

46. Mr Collis applied for costs on behalf of the Respondent and referred the Tribunal to the Respondent's Statement of Costs dated 5 September 2024. The Respondent claimed its cost in the amount of £4,071.60. The Respondent had succeeded its case and Mr Collis submitted that the costs claimed were reasonable and proportionate. The Applicant had filed a significant amount of material prior to the hearing that was of limited relevance to the application but had increased the Respondent's costs.
47. Mr Collis confirmed that the costs incurred at a previous hearing had not increased the overall amount claimed and that this approach was taken to ensure fairness to the Applicant.
48. The Applicant opposed the amount claimed in costs by the Respondent. The Applicant invited the Tribunal to adopt a proportionate approach when considering costs, the SRA's position in relation to his application had been settled for some time and no further work was required. The Applicant submitted that the costs claimed were excessive and that they should be reduced on account of his financial circumstances. The Applicant submitted that he was not currently in work and made submissions regarding his family life and current health.

### **The Tribunal's Decision**

49. The Tribunal assessed the Respondent's Statement of Costs in detail, guided by reference to Rule 43 of the Solicitors (Disciplinary Proceedings) Rules 2019, and had regard for the conduct of the parties, whether the amount of time spent on the matter was proportionate and reasonable and whether the application was pursued or defended reasonably.
50. The Respondent had succeeded in its case and the Tribunal considered that the costs claimed by the Respondent were reasonable and proportionate.
51. The Tribunal reviewed the statement of means provided by the Applicant pursuant to Rule 43(5) of The Solicitors (Disciplinary Proceedings) Rules 2019. The Applicant had filed no supporting evidence which impacted on the weight that could be attached to his submissions regarding his means. The Tribunal had regard for the Applicant's current financial circumstances but also considered that it was realistic that his financial position would improve in the future.
52. The Tribunal ordered that the Applicant do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,071.60.

**Statement of Full Order**

53. The Tribunal ORDERED that the application of HUSEYIN ARSLAN 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 £4,071.60.

DATED AND FILED WITH THE LAW SOCIETY  
This 28<sup>th</sup> day of May 2025

On behalf of the Tribunal

*W. Ellerton*

W Ellerton  
Chair