



Neutral Citation Number: [2023] EWHC 1707 (Admin)

Case No: CO/104/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 July 2023

Before :

THE HONOURABLE MR JUSTICE MURRAY

Between :

FARID EL DIWANY
- and -
SOLICITORS REGULATION AUTHORITY
LIMITED

Respondent

Applicant

The **Respondent** appeared in person and represented himself.
Mr Benjamin Tankel (instructed by **Capsticks LLP**) for the **Applicant**

Hearing date: 8 December 2022

Approved Judgment

This judgment was handed down remotely by circulation to the Applicant's representatives and to the Respondent by email and by release to The National Archives. The date and time for hand-down are deemed to be 7 July 2023 at 10:30 am.

Mr Justice Murray :

1. At a hearing on 8 December 2022, on the application of the Solicitors Regulation Authority Limited (“the SRA”), made by application notice dated 12 October 2022 (“the Application”), I made an extended civil restraint order (“ECRO”) against Mr Farid El Diwany.
2. That hearing was listed by my order of 15 November 2022 (“the November 2022 Order”), which was made following my dismissal of Mr El Diwany’s appeal against the order of the Solicitors Disciplinary Tribunal (“SDT”) dated 18 November 2021 (“the 2021 SDT Decision”), in which the SDT refused his application for restoration to the Roll of Solicitors.
3. On 18 October 2022, I heard Mr El Diwany’s appeal against the 2021 SDT Decision. At the conclusion of the hearing, I dismissed the appeal and certified the grounds of appeal as totally without merit, with my full written reasons to follow. On 15 November 2022, I handed down my judgment setting out those reasons (neutral citation number: [2022] EWHC 2882 (Admin)) (“the November 2022 Judgment”).
4. In the November 2022 Order, I gave directions for the hearing of the Application, to allow time Mr El Diwany time to prepare and serve a response to the Application, as he had not done so prior to the hearing on 18 October 2022. In doing so, I was making allowance for the fact that he was representing himself and that, at the hearing on 18 October 2022, he had been focused solely on his appeal.
5. By application notice dated 30 November 2022, Mr El Diwany applied under CPR r 52.30 for permission to reopen my final determination of his appeal against the SDT decision. His application was supported by a witness statement dated 30 November 2022. By order dated 6 December 2022, I refused the application, noting that the proper route to challenge the November 2022 Order was by way of a second appeal to the Court of Appeal, and noting that there was nothing in Mr El Diwany’s witness statement that supported the conclusion that the criteria for reopening the final determination of an appeal had been satisfied.
6. At the hearing on 8 December 2022, I gave summary reasons for making the ECRO and indicated that my written judgment would follow. This is the written judgment.
7. The lengthy background to this matter is summarised in the November 2022 Judgment at [16], where there is a cross-reference to a more detailed summary of the background in the judgment of Saini J in the related case of *El Diwany v Solicitors Regulation Authority* [2021] EWHC 275 (Admin) (“the Saini J Judgment”), in which Saini J set out his reasons for refusing the appeal by Mr El Diwany against the original decision of the SDT made on 11 December 2019 to strike him off the Roll of Solicitors (“the 2019 SDT Decision”). I have taken that background into account and do not repeat it here.

The Application and evidence

8. The Application is supported by evidence in the form of a witness statement dated 12 October 2022 from Mr Mark Lloyd Rogers, a solicitor at Capsticks Solicitors LLP, the SRA’s solicitors for the appeal proceedings, to which he exhibited a number of

documents. In response, Mr El Diwany filed a witness statement dated 23 November 2022, to which he exhibited a number of documents.

Legal principles

9. The power to make a civil restraint order (“CRO”), including an ECRO, is conferred by CPR r 3.11, cross-referring to Practice Direction 3C (“PD3C”), which sets out the circumstances in which the court has the power to make a CRO, the appropriate procedure, and the relevant consequences. PD3C sets out the specific criteria relevant to the making an ECRO at paragraphs 3.1 to 3.11.
10. Under paragraph 3.1 of PD3C, an ECRO may be made by, among others, a judge of the High Court “where a party has persistently issued claims or made applications which are totally without merit”. An ECRO has the effect of requiring the person against whom it is made to obtain permission from the judge specified in the ECRO before issuing any claim or making any application in the High Court or in the County Court “concerning any matter involving or relating to or touching upon or leading to the proceedings in which the order is made”.
11. Under paragraph 3.9 of PD3C, an ECRO will be made for a specified period not to exceed 3 years, must identify the courts in which the party against whom the ECRO is made is restrained from issuing claims or making applications, and must identify the judge or judges to whom an application for permission under the ECRO should be made.
12. In *Nowak v The Nursing and Midwifery Council* [2013] EWHC 1932 (QB) Leggatt J helpfully summarised the rationale for the making of a CRO, as well as its effect, as follows at [58]-[59]:
 - “58. As explained by the Court of Appeal in the leading case of *Bhamjee v Forsdick* [2004] 1 WLR 88, the rationale for the regime of civil restraint orders is that a litigant who makes claims or applications which have absolutely no merit harms the administration of justice by wasting the limited time and resources of the courts. Such claims and applications consume public funds and divert the courts from dealing with cases which have real merit. Litigants who repeatedly make hopeless claims or applications impose costs on others for no good purpose and usually at little or no cost to themselves. Typically such litigants have time on their hands and no means of paying any costs of litigation – so they are entitled to remission of court fees and the prospect of an order for costs against them is no deterrent. In these circumstances there is a strong public interest in protecting the court system from abuse by imposing an additional restraint on their use of the court’s resources.
 59. It is important to note that a civil restraint order does not prohibit access to the courts. It merely requires a

person who has repeatedly made wholly unmeritorious claims or applications to have any new claim or application which falls within the scope of the order reviewed by a judge at the outset to determine whether it should be permitted to proceed. The purpose of a civil restraint order is simply to protect the court's process from abuse, and not to shut out claims or applications which are properly arguable.”

13. At [63]-[70] of *Nowak*, Leggatt J discussed the specific requirements for the making of an ECRO. He identified three questions that the court needs to ask. For present purposes, those three questions may be summarised in relation to this case as follows:
 - i) Has Mr El Diwany persistently issued claims or made applications that are totally without merit?
 - ii) If so, has Mr El Diwany objectively demonstrated that he will, if unrestrained, issue further claims or make further applications which are an abuse of the court's process?
 - iii) If so, what order, if any, is it just to make in order to address the risk identified?
14. Looking in more detail at the first of these questions, a claim or application is “totally without merit”, if it is bound to fail: *Sartipy v Tigris Industries Inc (Practice Note)* [2019] EWCA Civ 225, [2019] 1 WLR 5892 at [27] (Males LJ). In *Sartipy*, Males LJ made clear at [28] that persistence in this context normally requires the identification of at least three claims and/or applications that are totally without merit.
15. In *Sartipy* at [30], Males LJ further clarified that persistence is not simply a quantitative test. The court must assess whether the party against whom the ECRO is sought has acted “persistently”, which requires consideration of his or her overall conduct. Males LJ noted, for example, that the court is more likely to conclude that a person has acted “persistently” in issuing claims or applications that are totally without merit if he or she “seeks repeatedly to re-litigate issues which have been decided” than if, over a period of time, he or she has issued three or more such claims or applications that are unrelated.
16. In *Sartipy* at [37], Males LJ made clear that for the purpose of determining persistence, the court is entitled to take into account any claim or application that the court concludes was totally without merit, even if the relevant claim or application was not certified as such at the time it was dismissed or refused. This is, of course, subject to the court having confidence that it knows enough about the previous claim or application to reach that conclusion safely.

Submissions

17. In support of the Application, Mr Benjamin Tankel, counsel for the SRA, submitted that the requirement of persistence is established both quantitatively and qualitatively, having regard to Mr Rogers's evidence, which sets out details of various orders that have been made by the High Court or Court of Appeal refusing applications by Mr El

Diwany. A number of these orders certify the application as totally without merit. In relation to other applications referred to by Mr Rogers that were not formally certified as totally without merit, Mr Tankel invited the court, having regard to the terms of the order, the reasons given for making the order, and the relevant background, to conclude that the relevant application was totally without merit, as contemplated by *Sartipy* at [37].

18. In relation to the risk of Mr El Diwany continuing to make claims and applications that are totally without merit, Mr Tankel submitted that the risk is amply demonstrated by Mr El Diwany's past conduct. One example was Mr El Diwany's application on 5 August 2021 to be restored to the Roll of Solicitors, less than 20 months after the 2019 SDT Decision, without advancing, in substance, any reasons why he should be restored to the Roll beyond the reasons he originally gave in opposition to the SRA's application to strike him off, which were rejected by the SDT in the 2019 Decision and by Saini J in the Saini J Judgment.
19. Mr Tankel submitted that Mr El Diwany has been dogged in his single-minded pursuit of his desire to be restored to the Roll of Solicitors on grounds that have been found repeatedly to be totally without merit. This has been accompanied, Mr Frankel submitted, by abusive conduct by Mr El Diwany towards persons involved in various proceedings that have arisen out of Mr El Diwany's conduct following his convictions in Norway in 2001 and 2003, including:
 - i) his conduct in relation to, and arising out of, defamation claims brought by Mr El Diwany in 2010 against two individuals, which were struck out by Sharp J in the case of *El Diwany v Hansen* [2011] EWHC 2077 (QB);
 - ii) the proceedings that led to the 2019 SDT Decision, the related unsuccessful appeal heard by Saini J, and Mr El Diwany's application for permission to bring a second appeal before the Court of Appeal; and
 - iii) Mr El Diwany's application for restoration to the Roll of Solicitors, which was refused by the SDT, as set out in the 2021 SDT Decision.
20. Mr Tankel submitted that the persons who have been subjected to abusive conduct by Mr El Diwany, as set out in the evidence of Mr Rogers, include judges, solicitor members of the SDT panels that made the 2019 SDT Decision and the 2021 SDT Decision, and certain barristers and solicitors involved in the various proceedings. Mr Tankel submitted that for these reasons it was necessary and just for the court to make an ECRO to protect against the risk of Mr El Diwany making further claims and/or applications that are totally without merit.
21. As to the scope of the order, Mr Tankel drew my attention to the discussion in *Nowak* at [82]-[87] of the scope of the ECRO made in that case, where Leggatt J concluded that it was necessary to make an ECRO that was wider than the "default form" of ECRO (presumably a reference to Form N19A, or a predecessor form). He invited the court to give similar guidance as to scope in this written judgment.
22. In response, Mr El Diwany submitted that he simply spoke the truth, reprimanding individuals and institutions that are racist and Islamophobic. He viewed himself as a hero and considered that he was at the forefront of protest against sickening

Islamophobia. He went into some detail in relation to the defamation actions that were dismissed by Sharp J in 2011 and why she was wrong to have dismissed them. He also went into some detail as to why Saini J had been wrong to reject his appeal against the 2019 SDT Decision and why Warby LJ, who refused on paper his application to appeal the Saini J Order, should have recused himself as a result of his having been, while still at the Bar, in the same chambers as a barrister who had acted against Mr El Diwany during the defamation proceedings in 2010/2011.

23. Mr El Diwany submitted that many (if not all) of the decisions that have been made against him relating to the defamation proceedings in 2010/2011 and the SDT proceedings in 2019 and 2021 would have been decided differently if heard by a Muslim judge.
24. In relation to his alleged abusive conduct against barristers and solicitors who had acted for adverse parties in the defamation proceedings or SDT proceedings or, in the case of the SDT proceedings, as SDT panel members, Mr El Diwany submitted that he had acted reasonably. For example, accusations had been made against him during proceedings that he lacked insight into his conduct and that websites that he had set up to expose Islamophobia in Norway were “hate sites”. These accusations were false, and he was entitled to respond robustly. In making complaints to the SRA or the Bar Standards Board (“BSB”), as the case may be, and in seeking permission to apply for judicial review of the SRA’s and the BSB’s decisions refusing to investigate certain individuals, Mr El Diwany considered that he had acted reasonably. He was justified in seeking to defend his name and reputation.
25. Mr El Diwany did not dispute that various orders had been made against him, refusing applications that he had made and certifying them as totally without merit. But he did not accept that those decisions were correct, and, as already noted, he considered that if a Muslim judge had made the decisions, then they would have been decided in his favour.
26. As to persistence, Mr El Diwany submitted that it was not necessary to make an ECRO against him at this stage because his efforts in relation to the SDT proceedings were currently at an end, and he was not contemplating any further applications. The only outstanding matter in that regard was the one referred to in the November 2022 Judgment at [12]-[13].

Discussion and conclusion

27. I am satisfied that the relevant criteria for making an ECRO as set out in PD3C, having regard to the relevant case law, are satisfied. The ECRO is sought in relation to matters involving or relating to or touching upon or leading to the SDT proceedings brought by the SRA against Mr El Diwany to which I have referred, arising out of his criminal convictions in Norway in 2001 and 2003. I will deal with the question of the scope of the ECRO at the end of this judgment.
28. In determining that the jurisdictional threshold for the making of the ECRO sought by the SRA has been surmounted, I rely on four applications made by Mr El Diwany, each of which relates to or arises out of the disciplinary proceedings brought by the SRA and each of which was refused by an order that certified the application as totally without merit:

- i) the order of Collins Rice J order dated 24 January 2022 refusing Mr El Diwany's renewed application for permission to apply for judicial review of the SRA's decision refusing to investigate a complaint he made against Mr Colin Chesterton and Mr Gerald Sydenham, who were the solicitor members of the SDT panel that made the 2019 SDT Decision;
 - ii) the order of Heather Williams J dated 1 July 2022 refusing permission to apply for judicial review of the BSB's decision dated 27 September 2021 refusing to investigate his complaint against Mr Rory Mulchrone, the barrister who acted for the SRA in relation to Mr El Diwany's appeal before Saini J of the 2019 SDT Decision;
 - iii) my order dated 17 October 2022 refusing Mr El Diwany's application to adjourn the hearing on 18 October 2022; and
 - iv) the November 2022 Order.
29. The foregoing is sufficient, in my view, to show that Mr El Diwany persistently makes applications that have been certified as totally without merit. That conclusion is reinforced by his application under CPR 52.30 for me to reopen the November 2022 Order, which I refused for the reasons summarised at [5] above.
30. I am satisfied that it has been objectively established by the evidence before me, including the witness statements of both parties and their various attachments, that there is a significant risk that Mr El Diwany will continue to issue further claims and/or make further applications in relation to matters arising out of or connected to the SRA disciplinary proceedings that are totally without merit and, therefore, an abuse of the court's process.
31. In reaching that conclusion, I have had regard to the full background, as set out in the evidence, and the wider history, which includes events leading up to and following the convictions in Norway, the defamation proceedings in 2010/2011, and the SDT proceedings in 2019 and 2021.
32. It has been drawn to my attention that on 18 January 2022 Sweeting J made two ECROs against Mr El Diwany, which each expire on 18 January 2024, in relation to proceedings brought by Mr El Diwany against the Judicial Appointments and Conduct Ombudsman. Those proceedings ultimately arose out of the defamation proceedings in 2010/2011. I have seen those ECROs and two related orders of Sweeting J in which he refused and certified as totally without merit applications by Mr El Diwany for permission to apply for judicial review of decisions of the Judicial Appointments and Conduct Ombudsman.
33. Mr Rogers at paragraph 42 of his witness statement set out excerpts from a bundle of email correspondence exhibited to his witness statement, which correspondence was sent by Mr El Diwany principally to Capsticks LLP, but also to the SRA and to Mr Rogers individually, some of which included intemperate and/or abusive language (such as, in an email sent to Capsticks LLP on 8 May 2021, the words: "Burn in hell you Muslim-hating bastard Mulchrone. Burn in hell. Burn in hell. Burn in hell"). Other messages excerpted in that paragraph appeared to include threats by Mr El Diwany to confront Mr Mulchrone or others physically.

34. Mr Rogers also referred me to articles in the Law Society Gazette on 25 February 2022 and 16 March 2022, which reported that:
- i) Mr El Diwany had been made the subject of a restraining order under the Protection from Harassment Act 1997 to prevent further harassment by Mr El Diwany of the solicitor members of the SDT panel that made the 2019 SDT Decision or any current or former members and employees of the SDT.
 - ii) Sweeting J had found Mr El Diwany to have breached the restraining order in relation to Ms Geraldine Newbold, the then chief executive of the SDT, and Mr Chesterton, one of the solicitor members of the SDT panel that made the 2019 SDT Decision, and that he had been made the subject of a suspended sentence order by Sweeting J.
 - iii) Bennathan J had granted a permanent injunction against Mr El Diwany under the Protection from Harassment Act 1997 and ordered him to pay £5,000 to each of Ms Newbold and Mr Chesterton. Bennathan J had declined to continue the suspended sentence ordered by Sweeting J but had noted that if Mr El Diwany breached the permanent injunction, the suspended sentence was bound to be taken into account as an aggravating factor.
35. This further background reinforces my assessment that there is a material risk that if an ECRO is not made, Mr El Diwany will make further applications that are totally without merit.
36. In light of the foregoing, I have no hesitation in concluding that it is just to make an ECRO against Mr El Diwany.
37. The final question for determination is the scope of the ECRO. The ECRO made on 8 December 2022 includes the following words, which are found in the standard form (N19A):
- “It is ordered that you be restrained from issuing claims or making applications in any court specified below concerning any matter involving or relating to or touching upon or leading to the proceedings in which this order is made without first obtaining the permission of [the judges specified for this purpose in the order].”
38. The judges specified in the order are me and, if I am unavailable, any other High Court Judge of the King’s Bench Division. The courts specified are the High Court and the County Court.
39. It is axiomatic that the scope should be no broader than is necessary, and that the scope should be sufficiently clear so that Mr El Diwany knows when he is required to obtain permission under the ECRO and what falls outside the ECRO.
40. In my view, “any matter involving or relating to or touching upon or leading to the proceedings in which this order is made” refers to any such matter that is a direct or indirect consequence of the SRA disciplinary proceedings that led to the 2019 SDT

Decision. This includes, for example, any matter brought in the High Court or County Court relating to:

- i) the SRA disciplinary proceedings, the 2019 SDT Decision, or Mr El Diwany's appeal against the 2019 SDT Decision;
 - ii) Mr El Diwany's application to be restored to the Rolls of Solicitors, the 2021 SDT Decision, or his appeal against the 2021 SDT Decision; or
 - iii) any claim or application against any of the SDT, any member or employee of the SDT, the SRA, or any director or employee of the SRA; or
 - iv) any person involved in a professional capacity in any of the foregoing, for example, as a solicitor or barrister for the SRA, including Capsticks LLP, as the firm acting as the SRA's solicitors in relation to some of these matters.
41. I have noted, by way of background, the material in Mr Roger's witness statement relating to matters that followed the defamation proceedings in 2010/2011, resulting, among other things, in an order dated 28 May by Jay J in which he refused an application by Mr El Diwany and certified it as totally without merit and an order dated 22 December 2021 by Bean LJ in which he refused Mr El Diwany's application for permission to appeal the order made by Jay J, which, although not formally certified as totally without merit, appeared to show that in the view of Bean LJ the application had no merit. As these matters do not, strictly speaking, concern or arise out of the SRA disciplinary proceedings, I merely note this background. I do not rely on it as part of my reasons for making the ECRO.
42. I made the ECRO for a period of three years as I am satisfied that the risk that the ECRO is aimed at addressing will persist for at least that period of time, if not longer, having regard to the history of these matters.
43. In making this order, I wish to make clear that I have no reason to doubt that Mr El Diwany has been the subject of vile Islamophobic abuse in Norway. In this regard, I refer to what I said in the November 2022 Judgment at [57], namely, that any such abuse is inexcusable, must be condemned, and I do condemn it. That unfortunate history, however, is not relevant to my determination of the Application, because the only questions with which I was concerned for the purposes of determining the Application were those questions set out at [13] above. I cannot, for these limited purposes, re-open decisions that have already been made, against which there has been no successful appeal.