Neutral Citation Number: [2023] EWHC 3329 (Admin)

Case No: CO/265/2023
AC-2023-LON-000475

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
ON APPEAL FROM THE SOLICITORS DISCIPLINARY TRIBUNAL
(Case No. 12320-2022)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/12/2023

Before :

Mr Justice Calver

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Between :

DAVID DAVIES — **Applicant**

- and -

DAVID GREENE — **Respondent**

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- -

Elaine Banton (instructed by **Kilgannon Law**) for the **Applicant**
Ben Hubble KC (instructed by **Kingsley Napley)** for the **Respondent**

Hearing dates: 12 December 2023

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RULING ON COSTS

This ruling was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives Thursday 21 December 2023.

Mr Justice Calver:

1. So far as the costs of this appeal are concerned, Mr. Hubble KC (for Mr. Greene) submits that, as the losing party, Mr. Davies should pay the costs of the appeal. He points out that Mr Davies is not a regulator charged with any responsibility to act in the public interest; nor is he funded by payments from practitioners. There can accordingly be no "chilling effect" of the making of an adverse costs order against him as a result.
2. Mr. Hubble also points out that the SRA expressly declined itself to pursue a referral to the SDT against Mr Greene and chose not to take over Mr. Davies' complaint. In consequence the SDT which certified Mr Davies' Lay Application expressly warned Mr Davies, at paragraph 11 of their Memorandum of Consideration of Lay Application that: "*whoever is successful at the final hearing is likely to receive their costs if they win and have to pay the other side's costs if they lose …*".

3. However, although it is of course correct that Mr. Davies is not himself a regulator and is obviously not generally entrusted with disciplinary responsibilities for the profession, on 21 June 2019 the SDT certified that there was a case for Mr Greene to answer and allowed Mr Davies' Lay Application to proceed. I consider that he effectively stood in the shoes of the SRA in determining whether Mr Greene had properly discharged his professional obligations and I approach the question of costs against that background.

4. This approach is supported by the observations of the Court of Appeal in *Greene v Davies* [2022] EWCA Civ 414:

> *"[a]lthough Mr Davies was both the lay applicant in the SDT proceedings and a party in the civil action, the case before the SDT is a disciplinary complaint in which there is a public interest irrespective of the identity of the prosecutor": paragraph 56. "[O]nce a case to answer has been certified, the application and allegations cannot be withdrawn without the consent of the SDT" (at [39], reciting the judgment of the Divisional Court below);* and

> *iv) Disciplinary proceedings have a different function from civil litigation and have a public interest element which a civil claim lacks. It is true that, in the present case, the complaint has been brought by Mr Davies rather than the SRA, and it could be that (however mistakenly) Mr Davies hopes that success with the complaint would enable him to reopen Edwin Coe's judgment against him. However, a lay complaint cannot proceed unless (as happened here) the SDT certifies that there is a case to answer and, once so certified, a complaint cannot be withdrawn without the consent of the SDT (at 54(iv)] and*
>
> *vi) Supposing the complaint against Mr Greene to raise an arguable case on the merits, there is a public interest in allowing disciplinary proceedings to continue [at 58(vi)]*

5. Although this is an appeal (and not the original hearing before the SDT), I consider that in principle the same approach should apply. In the circumstances, the reasoning in my recent judgment in *Owusu-Yianoma v Bar Standards Board* [2023] EWHC 3112 (Admin) [2023] EWHC 3112 (Admin) is of relevance with regard to the disposal of the costs of this appeal. As I mention in paragraph 4 of that judgment, Lady Rose explained in *Owusu*, in *Competition and Markets Authority v. Flynn Pharma and Pfizer Inc.* [2022] UKSC 14 at [60] that:

> *"The "no order as to costs" principle applied in proceedings before the first instance professional tribunal does not apply to any appeal from that decision. In Walker v Royal College of Veterinary Surgeons [2008] UKPC 20 the Privy Council had allowed Dr Walker's appeal against the order of the Disciplinary Committee of the Royal College of Veterinary Surgeons ordering his removal from the register. The Board substituted an order suspending him for six months. Dr Walker applied for an order that the Royal College pay the costs of his appeal to the Board. The Royal College resisted the order citing Booth, Gorlov and Baxendale-Walker. The Board stated that that principle was not relevant to appellate proceedings; the principle applied only to costs before disciplinary tribunals or before a court upon a first appeal against an administrative decision by a body such as a police or regulatory authority[1]. The Disciplinary Committee had made no order as to costs of the proceedings before it and no one had challenged that. The Royal College was ordered to pay Mr Walker his costs of the appeal to the Board." (emphasis added)*

[1] See *Walker v Royal College of Veterinary Surgeons* at paragraph [3].

6. I consider that these proceedings, including this appeal, were reasonably brought by Mr Davies and were in the public interest. A case to answer was rightly certified by the SDT and the application and allegations could not be withdrawn without the consent of the SDT. There was merit in bringing this appeal (albeit that Mr Davies ultimately lost) and the dispute arose out of Mr Greene's own conduct in making inaccurate statements in his witness statement in 2012.

7. Furthermore, as the SDT itself stated, the original proceedings arose out of Mr Greene's "wholly [un]satisfactory" conduct in failing to make it expressly clear to Mr Davies that a new retainer imposed personal liability and his "wholly [un]satisfactory" conduct in failing to make it explicitly clear that as a result of non-payment, Edwin Coe was terminating Eco-Power's retainer. Indeed, the intended meaning of the email exchanges between November 2008 and November 2009 concerning the "closing of the file" was an important part of the subject-matter of the lies complaint before the Tribunal.

8. Before the SDT, whilst Mr. Davies' complaint failed, the SDT nonetheless made no order as to costs at the conclusion of the proceedings before it. It held that the proceedings had been properly brought and Mr. Greene did not make an application for his costs. It seems to me that that was a fair disposal of the costs of the hearing before the SDT. The dispute arose out of Mr Greene's own conduct in making admittedly inaccurate statements in his witness statement in 2012 (which is what led to the SDT certifying the bringing of the Lay Application). The SDT itself considered that Mr. Greene had a case to answer and sanctioned the bringing of the proceedings. In the circumstances it was fair not to penalise Mr. Davies in costs.

9. I consider that the same factors apply in the case of Mr. Davies' appeal, and exercising my discretion as to costs in the light of all of the circumstances referred to above, I consider that the fair order is that each party should bear their own costs of the appeal.