

**THE DISCIPLINARY TRIBUNAL OF
THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES**

**HEARING OF THE DISCIPLINARY TRIBUNAL
IN THE MATTER OF AN APPLICATION MADE BY
CILEx REGULATION AGAINST
MR RAYMOND SPENCER GEORGE CLARKE,
A GRADUATE MEMBER OF CILEx**

DATE OF HEARING: 26TH NOVEMBER 2019

**HEARD BY:
MS DEBRA KEMP FCILEx
MS JUDITH WEBB MBE
MR PETER WRENCH**

ORDER

59587

PREAMBLE

1. This application was considered by the Disciplinary Tribunal (“the Tribunal”) of the Chartered Institute of Legal Executives (CILEx) on 26th November 2019. The designated hearing location was Council Chambers, Kempston Manor, Kempston, Bedford MK42 7AB. The allocated hearing time was 10:00am.
2. The Tribunal comprised Ms Debra Kemp FCILEx (professional member and Chair), Ms Judith Webb MBE (lay member) and Mr Peter Wrench (lay member).
3. The Clerk to the Tribunal, Mr Timothy Akers, was present but did not take part in the decision-making process.
4. Mr Thomas Bodkin represented CILEx Regulation (“the Applicant”).
5. Mr Raymond Spencer George Clarke (“the Respondent”) was present and represented himself.
6. The Tribunal had before it one bundle from CILEx Regulation comprising documents establishing service of the case upon the Respondent, the relevant Disciplinary Tribunal forms, the witness statement of Ms Adamah, together with accompanying exhibits, relevant correspondence between the Applicant and the Respondent and a number of documents provided by the Respondent.

BACKGROUND TO THE APPLICATION

7. On 29th July 2019, CILEx Regulation informed the Respondent that this matter was being referred directly to the Disciplinary Tribunal, in accordance with Rule 16(3)(a) of the Enforcement Rules 2018.

THE CHARGES

8. The Respondent faced the following charges:
9. **Charge 1:** Raymond Spencer George Clarke failed to uphold the rule of law and the impartial administration of justice by knowingly or recklessly allowing the court to be misled.
Contrary to: Principle 1 outcome 1.2 of the CILEx Code of Conduct 2015
Further or alternatively: Failed to maintain high standards of professional and personal conduct and justify public trust in himself, his profession and the provision of legal services by engaging in conduct that

could undermine or affect adversely the confidence and trust placed in him and his profession by his client, professional colleagues, the public and others.

Contrary to: Principle 2 Outcome 2.2 of the CILEx Code of Conduct.

Further or alternatively: Failed to behave with honesty and/or integrity by holding himself out as having a qualification or professional status that he did not possess.

Contrary to: Principle 3 Outcome 3.5 of the CILEx Code of Conduct.

Particulars of Charge:

1. Raymond Spencer George Clarke, a Graduate member of CILEx, unlawfully engaged in the reserved activity of conducting litigation whilst he was neither an authorised nor exempt person within the meaning of the Legal Services Act 2007 in that:-

1.1 On or about 22 August 2016 he filed and served a Notice of Change of Legal Representative when acting for the Defendant (Mr GM) in proceedings in the County Court Money Claims Centre, Claim Number C22YM791; further or alternatively

1.2 On a day unknown after 22 August 2016 filed at Court in the said proceedings a Defence and Counterclaim prepared and/or signed by him as legal representative on behalf of the Defendant.

2. In consequence of all or any of the conduct alleged in paragraph 1 the said Raymond Spencer George Clarke: -

(a) undermined or affected adversely the confidence and trust placed in him and his profession by his client, professional colleagues, the public and others; and/or

(b) held himself out as having a qualification or professional status that he did not possess.

10. **Charge 2:** Raymond Spencer George Clarke failed to maintain high standards of professional and personal conduct and justify public trust in himself, his profession and the provision of legal services by engaging in conduct that could undermine or affect adversely the confidence and trust placed in him and his profession by his client, professional colleagues, the public and others.

Contrary to: Principle 2 Outcome 2.2 of the CILEx Code of Conduct 2015;

Further or alternatively: Failed to behave with honesty and/or integrity by holding himself out as having a qualification or professional status that he did not possess.

Contrary to: Principle 3 Outcome 3.5 of the CILEx Code of Conduct 2015;

Further or alternatively: Failed to comply with his legal and regulatory obligations by understanding and complying with the law applicable to him.

Contrary to: Principle 4 Outcome 4.1 of the CILEx Code of Conduct 2015.

Particulars of Charge:

On or about 19 August 2016 in the course of a Terms of Business letter to his client Mr GM, a Defendant in court proceedings in the County Court Money Claims Centre, Claim Number C22YM791, Raymond Spencer George Clarke misrepresented to his said client that he was qualified, or had the professional status to conduct litigation, when in fact he was neither an authorised nor exempt person within the meaning of the Legal Services Act 2007 entitling him to do so.

11. **Charge 3:** Raymond Spencer George Clarke failed to act competently in the best interests of his client by acting in a matter in which he did not have the right or authority to act.

Contrary to: Principle 5 Outcome 5.6 of the CILEx Code of Conduct.

Particulars of Charge:

From and after August 2016 Raymond Spencer George Clarke, then a Graduate member of CILEx acted for a client (Mr GM) in the matter of his Defence and Counterclaim to court proceedings in the County Court Money Claims Centre, Claim Number C22YM791, whereby such conduct:-

- (a) constituted the unlawful conduct of litigation, a reserved activity under the Legal Services Act 2007; and/or
- (b) was outside his professional competence.

THE HEARING

12. The Clerk to the Tribunal read the Charges to the Respondent and each Charge was denied.
13. Mr Bodkin opened the case for the Applicant. Mr Bodkin then called Ms Adamah to give evidence and Ms Adamah adopted the contents of her statement as her evidence-in-chief. Mr Bodkin then cross-referenced relevant sections of Ms Adamah's statement to the exhibits.
14. During the course of Ms Adamah's evidence, it was apparent that there had been a delay in CILEx Regulation serving the Tribunal bundle upon the Respondent, the effect of which was that the Respondent had 4 days less to consider the Tribunal bundle than he would have had if CILEx Regulation had acted in accordance with the twenty eight-day period for service that is prescribed by the CILEx Regulation Enforcement Rules 2018. Ms Adamah emphasised, in her evidence, that the Respondent, in reality, had only received three documents (the statement of Ms Adamah, a response from the County Court and a complaint form written by Mr Richard Reid) from the hearing bundle late, as all other documents had been separately served at an earlier time upon the Respondent.
15. In receipt of the above information, the Respondent applied for an adjournment of the hearing, citing the grounds that he should have had until 30th November 2019 to obtain legal representation, that he had been discriminated against, and that "*every other member [of the Chartered Institute] would be given an ample amount of time*".
16. The Tribunal retired to consider the Respondent's application for an adjournment. The Tribunal returned, having carefully considered matters, and announced that it had decided to refuse the Respondent's application. In arriving at its decision, the Tribunal considered the CILEx Regulation Policy on the Adjournment of Disciplinary Hearings and undertook a balancing exercise, weighing the competing interests of the parties. Ultimately, the Tribunal took the view that the factors in favour of granting an adjournment were outweighed by those against granting an adjournment, namely:
 - previously, the Respondent had indicated that he had prepared for the hearing in corresponding with CILEx Regulation, and that an adjournment had not previously been requested;
 - the interests of the public in hearing the case and bringing it to an expeditious conclusion;
 - the age of the case (pertaining to alleged breaches of the Code of Conduct that occurred in 2016);
 - the fact that another hearing of this matter would not be able to be accommodated until 9th April 2020; and

- that an adjournment would not enable further evidence to become available.
17. The hearing therefore continued with the Respondent cross-examining Ms Adamah.
 18. After Ms Adamah had given evidence, Mr Bodkin closed the case for the Applicant.
 19. The Respondent then gave evidence in his defence and asserted that:
 - he was misled by the Institute of Legal Executives (ILEx) into believing he was a “Legal Executive” who was authorised to conduct litigation when, in 2010, he attended an ILEx conference and was given a plastic conference name badge with the words “*Raymond Clarke Legal Executive*” on it; further or alternatively
 - Deputy District Judge Wootton, in the specific legal proceedings referred to within the Charges, had granted the Respondent the right to conduct litigation in those same proceedings; further or alternatively
 - the Defence document referred to at paragraph 1.2 of charge 1 had subsequently been withdrawn; further or alternatively
 - CILEx Regulation had maliciously brought the case against him due to his ethnicity (alleging racial discrimination) and/or because CILEx Regulation was “*annoyed*” that DDJ Wootton had granted him permission to conduct litigation in the specific proceedings referred to in the charges.
 20. Closing speeches were then made by Mr Bodkin and the Respondent.

DECISION

21. The Tribunal carefully considered the evidence and found all three charges proven on the balance of probabilities. In arriving at this decision, the Tribunal found that the Respondent conducted litigation whilst he was neither an authorised nor exempt person and that, in doing so, the Respondent breached Principles 1, 2, 3, 4 and 5 of the CILEx Code of Conduct 2015.
22. Whilst the Tribunal did not make a specific finding of dishonesty against the Respondent, it did find that the Respondent failed to behave with integrity by holding himself out as having a professional status that he did not possess and that, as a member of CILEx, he had a duty to be aware of the relevant requirements for authorisation to conduct litigation.

23. In considering the evidence, the Tribunal found no credible grounds to believe that DDJ Wootton had conferred any rights of audience (or any other practising rights) upon the Respondent, nor did it find any credible grounds to believe that the Respondent had been a victim of racial discrimination inflicted by the staff of CILEx or CILEx Regulation.
24. The Respondent was given the opportunity to make further submissions on sanction and his means. In response, the Respondent asked to pay any costs in instalments, informing the Tribunal that he was not currently in paid employment.

SANCTION

25. The Tribunal considered each potential sanction in ascending order of seriousness, together with the CILEx Regulation Sanctions Guidance. The Tribunal was mindful of the need to impose a sanction that was both proportionate and effective.
26. In terms of aggravating factors, the Tribunal found:
 - the misconduct was not admitted;
 - there was a foreseeable future risk posed to the public and consumer interest;
 - there was recklessness;
 - there was personal gain;
 - there was a pattern of behaviour;
 - no insight had been demonstrated;
 - remorse had not been expressed.
27. The Tribunal found the following mitigating factors:
 - the Respondent had no prior conduct matters recorded against him;
 - it was an isolated incident.
28. Given the serious nature of the charges and the numerous aggravating factors, together with the need to uphold the integrity and reputation of the Chartered Institute and protect members of the public, the Tribunal was of the view that only an exclusion from membership of CILEx could be imposed (albeit an exclusion at the lower end of the scale).

29. The Tribunal therefore ordered that the Respondent be excluded from the Chartered Institute for a period of 6 months, to take effect after the appeal period has expired. The Respondent will not automatically be re-admitted to the Chartered Institute and will have to re-apply for membership of CILEx.
30. In relation to costs, Mr Bodkin made an application for costs in the total sum of £3,972 (comprising £2,250 costs incurred by CILEx Regulation in investigating and litigating the matters, and £1,722 costs incurred in the form of external advice and advocacy services).
31. In assessing costs, The Tribunal took account of:
 - (i) the Respondent's limited means;
 - (ii) The fact that the complaint against the Respondent was inadvertently finalised in 2017 and had to be reinstated the following year. In such circumstances, the Tribunal took the view that it would not be fair for Mr Clarke to bear the financial cost of the duplication of work that reinstating the case inevitably necessitated.
32. The Tribunal therefore made a total order for costs in the sum of £3,222 (comprising £1,500 in relation to the costs incurred by CILEx Regulation and the full amount of £1,722 applied for in relation to advice and advocacy services provided externally). While the Tribunal noted the Respondent's request to pay any costs in instalments, the Tribunal informed the Respondent that this would be a matter that would have to be discussed between the Respondent and CILEx Regulation, such matters not being within the remit of the Tribunal.
33. The costs awarded shall become immediately payable by the Respondent after the expiry of the appeal period. Failure to pay may result in legal action to recover the costs as a debt and may lead to further disciplinary action being taken.
34. Regarding the matter of publication, the Tribunal saw no reason to depart from the general rule of publication and ordered that this decision be published on the CILEx Regulation website and in the CILEx journal, and that the publication include the name of the Respondent.



Ms Debra Kemp
Chair

Date: 11th December 2019