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6 May 2015

His Honour Judge Gregory
Coventry Combined Court
Much Park Street
Coventry
CV1 2SN

By email only to HHJudge.Gregory@judiciary.gsi.gov.uk

Dear Judge

Case number A00CV560: The Lawrence Sheriff School Trust v Amit Matalia

I write, with great regret, with a request to you to recuse yourself from sitting on my case. Alternatively, please ask a fellow judge to consider my request that you cease to sit on my case and that the case be reheard.

The reasons why I am asking for your recusal are as follows.

1 You have exhibited signs of bias and/or acted in ways which I believe have precluded you from hearing the case fairly. I state my concerns in that regard below. Before I do so, I state my understanding of the applicable legal principles. I apologise for not writing to you before now, but after the hearing of 30-31 March 2015, I took advice from lawyers other than Mr Hyams, and approached him about the possibility of asking you to recuse yourself only on Saturday of last week (i.e. 2 May 2015). My understanding of the applicable law, which I now state, has been gained from advice given by lawyers other than Mr Hyams, and supplemented by Mr Hyams' subsequent researches.

The applicable law

2 The applicable principles have been summarised in a number of places, but the process was described by Ward LJ in paragraph 32 of his judgment in *El-Farargy v El-Farargy & Ors* [2007] EWCA Civ 1149, with which Mummery and Wilson LJJ agreed:

> "It is an embarrassment to our administration of justice that recusal applications, once almost unheard of, are now so frequently coming to this Court in ways that do none of us any good. It is, however, right that they should. The procedure for doing so is, however, concerning. It is invidious for a judge to sit in judgment on his own conduct in a case like this but in many cases there will be no option but that the trial judge deal with it himself or

herself. If circumstances permit it, I would urge that first an informal approach be made to the judge, for example by letter, making the complaint and inviting recusal. Whilst judges must heed the exhortation in *Locabail* not to yield to a tenuous or frivolous objections, one can with honour totally deny the complaint but still pass the case to a colleague. If a judge does not feel able to do so, then it may be preferable, if it is possible to arrange it, to have another judge take the decision, hard though it is to sit in judgment of one's colleague, for where the appearance of justice is at stake, it is better that justice be done independently by another rather than require the judge to sit in judgment of his own behaviour."

3 In paragraph 50 of her judgment in *Endowment Fund for the Rehabilitation of Tigray v Rylatt Chubb* [2013] EWCA Civ 1003, [2014] PNLR 4, Arden LJ said that "If the relevant conditions for recusal are satisfied, the judge does not have a discretion whether to recuse himself or not." She also stated the applicable test for bias in a helpful and succinct way in paragraphs 2-4 of her judgment:

> '2 Judicial recusal occurs when a judge decides that it is not appropriate for him to hear a case listed to be heard by him. A judge may recuse himself when a party applies to him to do so. A judge must step down in circumstances where there appears to be bias, or, as it is put, "apparent bias". Judicial recusal is not then a matter of discretion.
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> 3 The doctrine of judicial recusal is a subject of wide importance: see *Judicial Recusal—Principles, Process and Problems*, Grant Hammond J (Hart, 2009). An independent judiciary is an essential requirement if the rule of law is to be maintained. Courts need to be vigilant not only that the judiciary remains independent but also that it is seen to be independent of any influence that might reasonably be perceived as compromising its ability to judge cases fairly and impartially. Judges who have a financial interest in a case are automatically disqualified. Depending on the circumstances, judges can also be disqualified by other matters, such as an involvement with one of the parties in the past. The ability of the judge to deal with the matter uninfluenced by such matters is not the issue: it is a question that, to maintain society's trust and confidence, justice must not only be done but be seen to be done. Hence it is common ground in this case that a judge should recuse himself from hearing an application if there appears to be bias.
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> 4 The test for determining apparent bias is now established to be this: if a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the judge was biased, the judge must recuse himself: see *Porter v Magill* [2002] 2 A.C. 357 at [102]. That test is to be applied having regard to all the circumstances of the case.'

4 The applicable principles to be applied when considering a recusal application were helpfully set out by the Employment Appeal Tribunal in *Ansar v Lloyds TSB Bank plc* [2007] IRLR 211. For convenience, I enclose with this letter a copy of the report of that case and of the cases to which I refer above.

Signs of bias

5 I now turn to the factors which I believe show that you should recuse yourself from hearing the rest of this case.

5.1 Half a day was allocated for the reading of the documents. However, It is clear you did not read my witness statement properly, or at least that you did not read the documents to which it referred, as it referred to exhibits in the bundle that had had page numbers removed by the Claimant's legal team, and you did not notice that fact. It would have been impossible to cross-reference my statement properly without the documents to which it referred having page numbers. Mr Hyams, my barrister, pointed out to you that the page numbers were missing and later provided you with numbered pages.

5.2 You began by acceding to the request of the Claimant to read the judgment of Newey J in an unrelated case in which I was also the defendant, and then made what I (and, in fact, Mr Hyams) perceived to be aggressive comments relating to the possibility of perjury on my part in that case. However, you were (necessarily) unaware of the manner in which that case had proceeded. The judgment in that case which you read in fact contained redactions, so you could not see the whole picture. That is rather less important than the fact that I had asked in that case that there be expert witness evidence to determine the authenticity of the relevant documents, and the claimant County Council had objected. Then, at the last minute the County Council claimed that the documents (individual documents in a series of documents which were screen-shots of my websites) had been created at a later date than the dates which they bore on their face. The documents were not in fact determinative of that case and were of little assistance to the Council as the Council had objected to the entire content of my websites that discussed the 11+ tests. Newey J did not have conclusive evidence that the documents not genuine. He determined that issue on the balance of probabilities alone, and did not apply the criminal standard of proof.

5.3 You then were highly critical of Mr Hyams for not recognising immediately (without having had any warning that you might ask him or that the question might arise) that there was the possibility of the crime of perverting the course of justice and for merely referring (when you asked him about the possibility of criminal proceedings) to the possibility of perjury. In fact, you only asked him about the crime which might have been committed because he (apparently) looked puzzled when you asked whether there were criminal proceedings arising out of the judgment of Newey J. You said to him words to this effect: "You look puzzled, Mr Hyams?" Mr Hyams then said something like this: "Your Honour, I had not given any thought to the question of whether or not there might have been a crime. I suppose there is the possibility of perjury." You then indicated something like scorn for his apparent ignorance of the criminal law, saying words to the effect that the crime was obviously perverting the course of justice.

5.4 The next day, before the hearing resumed, Mr Hyams stated to me, in writing: "I found the judge's approach yesterday literally a bit of a shock. He seemed to have attacked me personally." He was clearly disturbed by your conduct, as was I.

5.5 You made what I perceived to be insulting comments to me when, during Mr Thomas' cross-examination, I shook my head in disbelief at some of his responses, which I perceived to be evasive and aloof.

5.6 You had friendly conversations with the Claimant's witnesses, including Ms Harborne. In one conversation, it may have been with Mr Thomas, you commented in a very friendly manner that a Governor of the Claimant was the Headteacher of a school your son had attended a number of years ago.

5.7 You made a sarcastic and insulting remark by way of a joke when Dr Kent said in cross-examination that he did not know by whom an application for a place at the Claimant's school had been made when it was made by me and it later became clear that it was made by me. You then said: "I bet you were happy when you found out the parent was the Defendant." I felt deeply insulted.

5.8 When Dr Kent was cross-examined by Mr Hyams, you answered on Dr Kent's behalf in relation to a critical part of the evidence on at least one occasion. That part related to the conduct of the Claimant in refusing to send my son a year 7 information pack and refusing to allow him to attend an induction day even though he had been offered a place at the school. You then said to Dr Kent when he was being cross-examined about that refusal: "You did not allow Mr Matalia's son to attend induction so as not to give him false hopes; perfectly understandable". At the time of that refusal, however, my son's offer of a place at the school had not been withdrawn and the legal position was (the County Council told me at the time, and I certainly believed) that he could not lawfully be denied attendance at the induction day and should have received an information pack. Refusing to send him such a pack amounted to pre-empting any decision whether or not to withdraw the offer of a place which had been made on the Claimant's behalf by the County Council. The County Council in fact persistently refused to withdraw the place and it was withdrawn only when the Claimant told the County Council that it was going to make the decision to withdraw that place, and then did withdraw it, on the basis that my application for a place had been made fraudulently. There had (as I had stated in my witness statement evidence, which you either had not read properly, or had read and were ignoring) subsequently been an appeal to an independent appeal panel under the applicable legislation, and the appeal panel had (1) found no evidence of fraud, and (2) decided that the place was unlawfully withdrawn. In addition, the Local Government Ombudsman ("LGO") had originally recommended that the Claimant offered my son a place at the school.

5.9 In fact, I did not know until some time after the LGO made that recommendation that it had been made. The Claimant had then, it seemed, protested and the LGO's final report stated that it had limited powers and that it was for the independent appeal panel to rule whether the application was fraudulent or not. I repeat that the appeal panel did not find that my application had been fraudulent.

5.10 You commented on past complaints about your own conduct and referred to how you felt when you received complaints in brown envelopes. The impression I gained was that you understood how people felt when they received what were later decided to be baseless complaints. In fact, my own complaints against Dr Kent and the Claimant had been found by independent persons, namely the Department for Education, the independent appeal panel and the LGO, to be well-founded. Assuming that you had read my witness statement properly, you must have known that.

5.11 When I said in oral evidence that a document which had purported to be written by Mr Hickling, the Claimant's first witness, was not written in the manner claimed by Mr Hickling, you were (I perceived) extremely irritated and (I felt) rude towards me. I explained why I believed that Mr Hickling had not written that document (as he had said in oral evidence) directly after the meeting which it described, and I said that he was attempting to pervert the course of justice. I stated that no copy of the document had been revealed in disclosure and that page numbers for that document were not included in the hearing bundle index (indicating that the document was not available at the time of the preparation of that bundle). I said also that the document had been only provided to Mr Hyams only ten minutes before start of the trial, on the day before. You apparently saw nothing of any concern in those circumstances, and continued to exhibit signs of being extremely irritated towards me. You refused to engage in any detailed analysis of the document.

5.12 However, you had in fact prevented Mr Hyams for cross-examining Mr Hickling about the provenance of that document. Mr Hickling was the Claimant's first witness. Mr Hyams started to cross-examine Mr Hickling about that document and you exhibited extreme irritation with the fact that he was doing so, and in effect shut down his cross-examination on the document. Mr Hyams protested to you that the document had been disclosed only some ten minutes before the hearing had started, and you dismissed his protest. However, a careful analysis of the document which Mr Hickling said he prepared immediately after the meeting which it described would have shown that the document could not have been written immediately after the meeting, and could have been written only after I had, later that day, sent to Dr Kent a complaint about the manner in which the meeting had been conducted by Mr Hickling. If one adds to this factor the fact that the document which Mr Hickling said in oral evidence he wrote immediately after the meeting was not mentioned by anyone for over two years and was produced to me only just before the hearing before you, then one can see that failing to permit Mr Hyams to cross-examine Mr Hickling on the document was unfair and

exhibited bias on your part.

5.13 You also said to Mr Hyams that it was "lazy" to ask question of a witness in cross-examination by asking the witness to look at a note of a meeting and asking questions about that note, instead of framing a question without reference to that note. He was then forced to proceed by paraphrasing the note, and after a while you simply permitted him to ask questions by reference to the note, probably because it was by then evident that it was fairest to the witness to ask questions by reference to the document instead of paraphrased parts of the document.

5.14 You were, it seemed to me, extremely abrupt on a number of occasions. On a number of occasions it seemed to me that you were not interested in the evidence, and instead were concentrating on your fingernails. It seemed to me that your thoughts were elsewhere.

5.15 You ended the hearing on both days abruptly, without asking whether it was a convenient moment for the cross-examination to be adjourned and you did so apparently because of annoyance with or about me and/or my case.

6 I request that you, or Her Majesty's Courts Service, seek a transcript of the hearings of 30 and 31 March 2015 as soon as possible so that my understanding of the factual situation, as described above, can be corroborated. I have done my best to recall the situation, with Mr Hyams' help, and I make this request for your recusal with absolutely no pleasure at all. I am truly sorry that I have had to make it. Mr Hyams wishes me to state that if my application for recusal is refused then he will put it out of his mind completely. He wishes me also to confirm, as I do now, that he and I have not discussed my evidence at all since the hearing.

Yours faithfully

Amit Matalia
Defendant