Neutral Citation Number: [2022] EWHC 2684 (Admin)

Case No: CO/2134/2022

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

24th October 2022

Before:
MR JUSTICE FORDHAM

- -

Between:

REHAN MALIK	**Applicant**
- and -	
GOVERNOR OF HM PRISON HINDLEY (No.2)	**Respondent**

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The **Applicant** in person
(assisted by Michael Shrimpton and Nevazish Mirza of Harper Law Ltd Solicitors)
Will Hays (instructed by Government Legal Department) for the **Respondent**
Fenella Morris KC for the **Law Society**
Heather Emmerson for the **Bar Standards Board**

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Written submissions: 17, 19, 20.10.22
Judgment (approved subject to typos) issued 24.10.22
Formal hand-down of judgment 25.10.22

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

MR JUSTICE FORDHAM:

Introduction

1. The principal issue which I have to determine in this judgment is whether to exercise the statutory power conferred on me by Schedule 3 §1(2)(b) to the Legal Services Act 2007, to allow Michael Shrimpton rights of audience in these habeas corpus proceedings. There is a second area of concern which I will address at the end of this judgment. The circumstances in which the two concerns arose are described in my judgment dated 14 October 2022: see [2022] EWHC 2599 (Admin) (the "First Judgment"). The context, as I have explained (First Judgment §2), is that Mr Shrimpton was disbarred in September 2018 in disciplinary proceedings arising out of two criminal convictions (see Shrimpton v BSB [2019] EWHC 677 (Admin)) and was the subject of a Solicitors Act 1974 s.43 order in September 2019 (as to which, see Shrimpton v SRA [2021] EWHC 945 (Admin)). The Order which I made (First Judgment §16) elicited further written observations and materials from Mr Shrimpton and Mr Mirza; the Law Society and Bar Standards Board ("BSB"); the Respondent; and reply observations from Mr Shrimpton. The Court is always grateful for assistance which it receives. But I want to express particular gratitude to the Law Society and BSB who, having chosen to take up the opportunity which I gave, provided full observations and materials at high speed. This is a determination without a further hearing, with the consent of the parties (First Judgment §16). It warrants a judgment to explain what I decided and why.

2. So far as commentary on rights of audience is concerned, reference has been made to the White Book Vol. II §§13-13 to 13-20; and the Practice Guidance (McKenzie Friends: Civil and Family Courts) [2010] 1 WLR 1881. The authorities which have been cited and provided include in particular: D v S (Rights of Audience) [1997] 1 FLR 724 (CA 18.12.96); Clarkson v Gilbert [2000] 2 FLR 839 (CA 14.6.00); Paragon Finance Plc v Noueiri [2001] EWCA Civ 1402 [2001] 1 WLR 2357 (CA 19.9.01); In Re N (A Child) [2008] EWHC 2042 (Fam) [2008] 1 WLR 2743 (Munby J 20.8.08); Francis v Barton Bridging Capital Ltd [2010] EWHC 1525 (Ch) (Morgan J 30.4.10); Graham v Eltham Conservative & Unionist Club [2013] EWHC 979 (QB) (Hickinbottom J 12.4.13); and Azumi Ltd v Vanderbilt [2017] EWHC 45 (PET) (Recorder Douglas Campbell QC 16.1.17)

3. Mr Shrimpton recognises and emphasises the distinction between a "McKenzie Friend" on the one hand, and a "lay representative" with "rights of audience" on the other. This case is about the latter. What the Applicant is seeking in these proceedings is the conferral on Mr Shrimpton of rights of audience in the proceedings, so that Mr Shrimpton can act as an advocate. As the Practice Guidance explains at §§2-4:

> ***Litigants have the right to have reasonable assistance from a lay person, sometimes called a McKenzie friend ("MF"). Litigants assisted by MFs remain litigants in person. MFs have no independent right to provide assistance. They have no right to act as advocates or to carry out the conduct of litigation. MFs may: (i) provide moral support for litigants; (ii) take notes; (iii) help with case papers; (iii) quietly give advice on any aspect of the conduct of the case. MFs may not: (i) act as the litigant's agent in relation to the proceedings; (ii) manage litigants' cases outside court, for example by signing court documents; or (iii) address the court, make oral submissions or examine witnesses.***

The distinction between a McKenzie Friend and the conferral of rights of audience is emphasised in N at §39 (citing Clarkson), where Munby J explained the "starting point

… that a McKenzie Friend does not, as such, have a right of audience", and that the Court must exercise its statutory discretion to grant "rights of audience" in accordance with the statute and the principles governing the exercise of the power.

Granting Rights of Audience: a Summary

4. A good place for me to start is with this invaluable overview, taken from the judgment of Hickinbottom J in Graham at §§27-38:

> ***27. Historically, at common law, the right to act as an advocate was governed entirely by the inherent power of the court to regulate its own procedure. That discretion was absolute, save that, by ancient usage in the superior courts, barristers and others similarly qualified could not be prevented from acting as advocates (Collier v Hicks (1831) 2 B & Ad 663 , 668, 672 cited by Lord Pearson in O'Toole v Scott [1965] AC 939 , 952C-F).***
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> ***28. Rights of audience have been the subject of legislation since Part II of the Courts and Legal Services Act 1990 , as subsequently amended by Part III of the Access to Justice Act 1999 . Those provisions allowed solicitors to have rights of audience in the higher courts, and permitted other professional bodies, once themselves authorised by statutory instrument, to authorise rights of advocacy. Professional bodies which have taken advantage of that provision include the Institute of Legal Executives (SI 1999 No 1077), the Chartered Institute of Patent Agents (SI 1999 No 3137), the Institute of Trade Mark Attorneys (SI 2005 No 240), and the Association of Costs Draftsmen (SI 2006 No 3333). The provision of legal services is now governed by the Legal Services Act 2007, which set up the Legal Services Board to regulate the now various regulators approved to authorise rights of audience. The regulation of advocates, through the statutory scheme, is therefore highly detailed and sophisticated, and subject to rigorous procedures and discipline.***
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> ***29. Under the 2007 Act, the right to conduct litigation and the right to act as an advocate are limited to persons authorised under the statutory scheme; but it is recognised by section 19 of, and paragraphs 1 and 2 of Schedule 3 to, the Act that a litigant in person has the right to represent himself in proceedings to which he is a party, which carries with it the right to conduct the litigation (paragraph 2(4) of Schedule 3) and the right to act as his own advocate (paragraph 1(6)). Furthermore, CPR Rule 39.6 and CPR PD 39A paragraph 5 allow a company or other corporation to be represented at trial by an employee duly authorised by the corporation. Although this formally only applies to trials, in practice courts generally allow such employees to appear at any hearing involving a corporate party, to enable that party, in effect, to represent itself as a litigant in person.***
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> ***30. Additionally, paragraph 1(2) of Schedule 3 (which replicates section 27(2)(c) of the 1990 Act) effectively reserves the inherent power of the superior courts to allow an individual other than a litigant himself to act as advocate before it, by exempting from the detailed procedural requirements "a person who has a right of audience granted by that court in relation to those proceedings". This statutory provision recognises that at least the superior courts continue to have the power to grant a special right of audience to any advocate to act for a litigant (ALI Finance Ltd v Havelet Leasing Ltd [1992] 1 WLR 455 , and D v S (Rights of Audience) [1997] 1 FLR 724). Whilst an inferior court has no inherent jurisdiction, no doubt for such courts a similar power can properly be implied as part of their general powers in respect of their own procedure.***
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> ***31. In exercising the discretion to grant a lay person the right of audience, the authorities stress the need for the courts to respect the will of Parliament, which is that, ordinarily, leaving aside litigants in person who have a right to represent themselves, advocates will be restricted to those who are subject to the statutory scheme of regulation (Clarkson v Gilbert [2000] 2 FLR 839, D v S especially at page 728F per Lord Woolf MR, and Paragon Finance plc v Noueri [2001] EWCA Civ 1402; [2001] 1 WLR 2357 at [53] and following per Brooke LJ). The intention of Parliament is firm and clear. Section 1(1) of the 2007 Act sets out a series of "statutory objectives" which includes ensuring that those conducting advocacy adhere to various "professional principles", maintained by the rigours of the regulatory***

scheme for which the Act provides, and without which it is considered lay individuals should not ordinarily be allowed to be advocates for others, a point also emphasised by the Practice Guidance (at paragraph 19). The strength of this interest and will is enforced by (i) specific legislative provisions allowing lay representation in types of claim in which such representation is considered appropriate, e.g. in small claims in the county court (section 11 of the 1990 Act which is unaffected by the 2007 Act, and the Lay Representatives (Rights of Audience) Order 1999 (SI 1999 No 1225), and (ii) the fact that to do any act in purported exercise of a right of audience when none has been conferred is both a contempt of court and a criminal offence (see sections 14-17 of the 2007 Act).

32. Consequently, it has been said by the higher courts that "the discretion to grant rights of audience to individuals who did not meet the stringent requirements of the Act should only be exercised in exceptional circumstances", and, in particular, "the courts should pause long before granting rights to individuals who [make] a practice of seeking to represent otherwise unrepresented litigants" (Paragon Finance at [54] per Brooke LJ, paraphrasing comments of Lord Woolf in D v S). In D v S, Lord Woolf indicated (at page 728F) that it would be "monstrously inappropriate" and totally out of accord with the spirit of the legislation habitually to allow lay advocates. The Practice Guidance, in more measured terms, at paragraph 19, states that: "Courts should be slow to grant an application from a litigant for a right of audience… to any lay person… Any application… should… be considered very carefully… Such grants should not be extended to lay persons automatically or without due consideration. They should not be granted for mere convenience."

33. Of course, in line with the overriding objective of dealing with cases justly (CPR Rule 1.1), the court will be more open to exercising its discretion and granting a right of audience in a particular case when it is persuaded it will be of assistance to the case as a whole if a litigant in person were to have someone who is not an authorised advocate to speak for him or her. That will especially be so if the litigant in person is vulnerable, unacquainted with legal proceedings or suffering from particular anxiety about the case he or she is conducting. As a result, courts have in practice become more flexible about allowing litigants in person to have assistance at a hearing. In particular, they do not infrequently allow a relative or friend to speak on a party's behalf. Often, that relative or friend is well-attuned to the party's case and wishes, and puts the matter more articulately and coherently than the party could himself or herself. As a result, the hearing can become more focused, more efficient and shorter. Such flexibility has become more important as the result of legal aid reforms (including those in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 , effective from 1 April 2013), which have resulted in a very substantial reduction in those entitled to public assistance and hence a substantial increase in litigants in person who now appear before the courts.

34. However, even though the legal world has in many ways moved on since the time of the authorities to which I have referred, in my view, as those authorities and the Practice Guidance stress, due deference to the will of Parliament, and general caution, are still required.

35. Therefore, as required by the Practice Guidance (paragraph 24), without undue formality, when a litigant in person wishes to be heard by way of a lay advocate, he should make an appropriate application to the court at the first inter partes hearing. The application should be made by the litigant in person, and not by the person who he or she wishes to be the advocate: although, often, in practice that other person may in fact be heard on the application. The application should be inter partes, to enable any opponent who may have objections to raise them. Generally, once the right to appear as an advocate has been given to lay person, that right will extend to all hearings in that claim, unless specifically directed otherwise or the right is revoked. The court may always revoke the right, any decision to revoke being informed by the same principles that apply to the grant of the right. It may, for example, be appropriate to revoke the right if, contrary to hopes and expectations, the lay advocate proves unhelpful or even positively disruptive.

> ***36. The authorities and Practice Guidance provide little assistance with regard to how the court's discretion should be exercised; and this is an area in respect of which the Head of Civil Justice may wish to consider giving further guidance in due course.***
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> ***37. However, in the meantime, it seems to me that at any application, to put the court into a position to make an informed decision, the court will wish to [be] provided with information as to (i) the relationship, if any, between the litigant in person and the proposed advocate, including whether the relationship is a commercial one; (ii) the reasons why the litigant wishes the proposed advocate to speak on his behalf, including any particular difficulties the litigant in person might have in presenting his own case; (iii) the experience, if any, the proposed advocate has had in presenting cases to a court; and (iv) any court orders that might be relevant to the appropriateness of the proposed advocate (e.g. orders made against him or her acting in person or as an advocate in previous proceedings, including any orders restraining him or her from conducting litigation or from acting as an advocate). Given the importance of the role of advocate, there is a duty of frankness on both the litigant in person and the proposed advocate in relation to these issues. Often it will be appropriate to deal with such enquiries quite informally, and they will usually take only a short time; but they are essential to ensure that proper respect is given to the principle that, ordinarily, advocates should be restricted to regulated advocates and litigants in person.***
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> ***38. As with the exercise of any power, whether a lay person is given the right to be an advocate in a particular case or for a particular hearing will depend upon all of the circumstances. However, as I have indicated, given the overriding objective, the court will take particular account of the extent to which allowing the individual to speak will assist the fair and just disposal of the case. The Practice Guidance stresses, at paragraph 22, that the burden of showing that it is in the interests of justice for a lay person to be granted the right to be an advocate at a hearing lies upon the litigant who wishes him to do so. It will only be granted in "special circumstances". Paragraph 21 of the Practice Guidance gives examples of the type of special circumstances which in the past have been held to justify the grant of a right of audience to a lay person, as follows: (i) that person is a close relative of the litigant; (ii) health problems which preclude the litigant from addressing the court or from conducting litigation, and the litigant cannot afford to lay for professional representation, and (iii) the litigant is relatively inarticulate and prompting by that person may unnecessarily prolong the proceedings. Those examples are helpful in indicating the sort of circumstances in which a grant will be made. The Guidance makes clear that those who represent litigants professionally or regularly will only be granted the right in "exceptional circumstances" (paragraph 23).***

The Case for Granting Rights of Audience

5. The Applicant is acting as a litigant in person. This is his application. I have needed to think carefully about his interests; about the contours of these proceedings; viewed against the relevant legal landscape. In this section of the judgment I will seek to encapsulate the 'case' in favour of a grant of rights of audience, so that Mr Shrimpton can act as advocate for the Applicant on the hearing of his application for habeas corpus and – in the meantime – his application for bail. In doing so, I will naturally be seeking to weave in the key points made to me by Mr Shrimpton as the putative advocate.

6. Parliament has conferred on the Court the power to grant rights of audience. That discretionary power is wide and 'at large'. It is sometimes described as "unfettered" (see eg. N §40). This power is itself a key part of the statutory scheme. There is no operative exclusion or restriction. Parliament intended that the power can properly be exercised. Parliament could have restricted the power and prohibited its use, for example, in the case of a former barrister who has been disbarred. It did not do so. The Court should not introduce restrictions or exclusions where Parliament has chosen not to do so. The ultimate test is – and must always be – whether it is in the "interests of justice" for the rights of audience to be granted (see eg. Graham §38; Practice Guidance

§22). The focus moreover is and must be on the particular circumstances of the individual case.

7. In the particular circumstances of the present case, it is certainly in the interests of justice for rights of audience to be conferred. Doing so would allow valuable assistance for the Applicant, who would otherwise be left to fend for himself as a litigant in person. As the Court has heard and recorded (First Judgment §9), the Applicant has expressed his complete reliance on Mr Mirza and Mr Shrimpton. He cannot be expected to present the substantive applications for habeas corpus, or bail, himself. He is, moreover, in custody and appears at hearings on a video link. It is not practicable for him even to have a McKenzie Friend sitting next to him in the prison, to give him support and assistance. Conferring rights of audience will also greatly assist the Court, which will have the benefit of oral advocacy on the Applicant's behalf, and therefore on both sides. Oral advocacy brings engagement, persuasion, responsiveness (to counter-argument and to queries from the Court). These virtues are key reasons why we have oral hearings. Written submissions are no substitute. There is good reason why High Court Judges do not decide cases simply by reading written representations. In addition, it would be artificial if Mr Shrimpton is left to assist the Applicant by writing down in a document points which the Applicant can adopt, but not to deliver them in an engaging way and environment. Exercising the statutory power will promote the "overriding objective" (Graham §33), of dealing with this case "justly". It will secure "equality of arms". It will do so in a way which is practical and effective. It will demonstrate that the Court is tuned in to the practical realities, including those relating to legal fees, legal aid and pro bono advocacy. The need for flexibility (described nearly ten years ago in Graham at §33) is all the more important now, given the further ways in which the realities in all these areas of litigation have "moved on" (§34). There is no alternative advocacy avenue realistically open to the Applicant, on the materials before the Court. The issues on the habeas corpus application (First Judgment §1) engage questions of law, of complexity. The application for bail also warrants presentation by an advocate. There is a clear contrast and deficit between the assistance which Mr Shrimpton would be able to provide the Court and that which the Applicant would be able to provide if left to fend for himself, as rightly recognised by the Respondent (First Judgment §15).

8. This is not the situation described in the authorities (see White Book Vol. II §13-17) where "a person… has set themselves up as an unqualified advocate and holds themselves out as providing advocacy services, whether for reward or not". That is a situation in which it is said that the Court will only make an order conferring rights of audience in "exceptional circumstances" (see eg. Clarkson §§19-20). Mr Shrimpton is not "unqualified". He is a former member of the Bar. He achieved the relevant qualifications. He acted as an advocate for many years. True, he was disbarred. But that had nothing to do with competence as an advocate or lawyer; nor was it a consequence of any conduct relating to any legal proceedings. It arose out of criminal convictions. These, moreover, are "spent" for the purposes of the Rehabilitation of Offenders Act 1974. Mr Shrimpton – who maintains his innocence – is pursuing the avenues of the Criminal Cases Review Commission and a pardon. He may yet be vindicated. There has been no concealment. The Court is, and will continue to be, able to observe Mr Shrimpton's conduct. Mr Shrimpton has stated his understanding and recognition of the applicable duties owed by an advocate.

The practical position is stark. The habeas corpus claim was commenced in June and is well advanced. The case has a considerable momentum, after two directions hearings and with a third directions hearing scheduled for 27 October 2022. Mr Shrimpton has had very considerable involvement. That involvement goes back to October 2021 when Mr Shrimpton first advised the Applicant as a "legal consultant" in relation to habeas corpus. Mr Shrimpton has subsequently assisted the Applicant, in the drafting of the various iterations of detailed grounds in support of habeas corpus (dated 13 June 2022, 30 June 2022 and 2 September 2022), as well as assisting on the grounds for bail (dated 5 September 2022). If a precedent is needed, it has been set. Mr Shrimpton has twice appeared before judges in these habeas corpus proceedings, at directions hearings, where those judges were satisfied and recorded that Mr Shrimpton appeared with the Court's permission as a "lay representative" (albeit limited to those hearings). It is extremely late in the day for the Applicant to lose the assistance of his putative advocate. And, as a liberty of the individual case, every day – every week – matters. Cases involving the liberty of the individual are, moreover, special. As the BSB rightly recognises in its submissions, the case for permitting a lay representative may be more meritorious where proceedings concern the liberty of the litigant in question.

9. The Court can be reassured that Mr Shrimpton has previously been given permission to act as an advocate in a number of earlier proceedings, including in the High Court in October 2016, in the Court of Appeal in June 2017, and in county court proceedings on several occasions from 2017 onwards in the present case. Mr Shrimpton has established a "practice" in the last 6 years. It works well. It promotes the interests of justice. He is able to assist litigants in person who cannot afford legal fees, and assist the Court. That practice – especially in the present climate – should be embraced.

10. Finally, the careful and considered position taken on the application for rights of audience in this case – by the BSB, the Law Society and the Respondent – is not to oppose the application. Rather, it is one of neutrality. That means the application is unopposed, by the other party and by the relevant regulator. That is highly material.

11. That, as I see it, is the essential case which is, and can be, made for the grant of rights of audience in this case. I will need to explain later what I made of these contentions. But first I will set out what I see as key points made by the BSB and the Respondent, who provided detailed observations on this part of the case.

Rights of Audience: The Responses

12. Many of the points made by the BSB and the Respondent reflect points in the summary in Graham, which I have already set out and will try to avoid repeating.

13. The BSB has submitted as follows. The Court has a discretion. Since the BSB is not in possession of the full facts and circumstances, it adopts a neutral position on the appropriateness of the exercise of that discretion in this case. There is an "issue of principle" which is "of importance": "in what circumstances will it be appropriate for the Court to grant rights of audience to a person who has been found to have breached the professional rules which apply to members of the Bar to such a serious extent that they have been disbarred". The discretion should only be exercised for good reason, taking into account all the relevant circumstances of the case and the overriding objectives and purpose of the 2007 Act. The Applicant must persuade the Court that it is in the interests of justice for rights of audience to be conferred on a lay representative.

Ordinarily, advocates should be restricted to regulated advocates and litigants in person. The Court should be slow to grant an application because a person exercising such rights must ordinarily be properly trained, be the subject of professional disciplinary rules and obligations. These include an obligation to have insurance against liability for negligence and other obligations which protect and promote the interests of consumers (a statutory regulatory objective), including a duty to provide a competent standard of work and service (Core Duty 7). Breach of the rules may result in disciplinary action. All of this protects all parties to litigation and is essential to the proper administration of justice. In the context of those seeking to hold themselves out as providing professional advocacy services to otherwise unrepresented litigants, the Courts have applied a higher "exceptional circumstances" threshold. The BSB's Handbook and regulatory jurisdiction do not apply to a disbarred former barrister. Under the regulatory scheme, a barrister's rights of audience as an authorised person depend on holding a current practising certificate, meeting prescribed eligibility requirements (including not being "suspended from practice" or "disbarred"); and being bound by Core Duties and Conduct Rules; all in a setting where the BSB has a statutory duty to act compatibly with regulatory objectives which include promoting adherence to "professional principles" including that those who exercise a right of audience before any court by virtue of being authorised should comply with their duty to the court to act with independence in the interests of justice (Core Duties 1 and 4). In relation to that, section 188 of the 2007 Act provides that a person who exercises a right of audience "by virtue of being an authorised person" has "a duty to the court to act with independence in the interests of justice" which duty overrides any obligations which the person may have (otherwise than under the criminal law); but it is not clear that this would apply to a person exercising a right of audience granted by a Court pursuant to Schedule 3 §1(2)(b), nor that there is any equivalent applicable common law duty. Mr Shrimpton is a former practising barrister who has been disbarred. He has therefore been found not to be an appropriate person to provide reserved legal activities, including the rights of audience, in accordance with the regime created under the 2007 Act.

14. The BSB suggests these as key relevant points:

> ***The circumstances which may be relevant to the exercise of the Court's discretion include the following.***
>
> ***Firstly, the relationship, if any, between the litigant in person and the proposed advocate, including whether the relationship is a commercial one. In relation to this factor, the Courts have drawn a distinction between persons seeking to act for close family or friends in particular in circumstances whereby reason of ill health or other matters they are unable to effectively represent themselves, and persons who have set themselves up and hold themselves out as providing professional advocacy services. The BSB submits that where a disbarred barrister is holding themselves out as providing professional advocacy services and otherwise has no particular relationship to the litigant in person, the case law suggests that the Court will be slow to grant an application for rights of audience, these rights being granted only in exceptional circumstances.***
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> ***Secondly, the reasons why the litigant wishes the proposed advocate to speak on his behalf, including any particular difficulties the litigant in person might have in presenting his own case. In considering the interests of justice, and the rights to a fair hearing pursuant to Article 6 of the European Convention on Human Rights, the Court will need to have regard to the reasons why the litigant is unable to conduct the proceedings himself and the difficulties that may arise if the proposed advocate is not given granted rights of audience. This may include, for example, the litigant's knowledge and understanding of relevant legal issues in the proceedings, the litigant's ability to follow the proceedings (including any potential***

> ***communications issues) and the ability of the litigant to secure legal representations from an authorised person. It will also be relevant to consider the issues raised in the proceedings in order to understand what difficulties the litigant may face in presenting his case but also the consequences for the litigant which arise from the proceedings. The BSB recognises that, for example, the case for permitting a lay representative may be more meritorious where proceedings concern the liberty of the litigant rather than, for example, a claim for a small sum of damages.***
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> ***Thirdly, the experience, if any, the proposed advocate has had in presenting cases to a Court. In this regard the Court may take account of the qualifications and experience of the proposed advocate with a view to determining the extent to which the advocate is likely to provide material assistance to the Court and assist with the fair determination of the proceedings.***
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> ***Fourthly, any court orders that might be relevant to the appropriateness of the proposed advocate (e.g. orders made against him or her acting in person or as an advocate in previous proceedings, including any orders restraining him or her from conducting litigation or from acting as an advocate). The BSB submits that in circumstances where a Disciplinary Tribunal has found a former barrister's misconduct to be sufficiently serious that it was not appropriate for him to continue to hold the professional qualification of barrister nor to have the right to hold a practising certificate, the Court should be very slow to confer rights of audience on such a person. By definition, such a person has been found not to be an appropriate person to provide reserved legal activities, including the rights of audience, in accordance with the regime created under the LSA 2007.***
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> ***Fifthly, the consequences of granting the application on the legal and regulatory regime, including public confidence in that regime. The BSB respectfully submits that Parliament has established a strict framework for the regulation of those who are authorised to provide reserved legal activities, which includes (under the BSB's own Handbook and the LSA 2007) the requirement of authorised persons with a right of audience to comply with their duty to the court to act with independence in the interests of justice. In considering an application the Court will need to be astute to the risk that granting such an application would run contrary to the stringent system of regulation and control over those who exercise rights of audience, as established by Parliament, and in particular whether the grant of rights of audience to those who have been disbarred or are currently suspended would undermine the legal regime or public confidence in that regime, in particular circumstances where a barrister has been found to have acted in a way that is inconsistent with the standards expected of the barrister in such a serious way that they have been disbarred. As was observed in Azumi Ltd v Zuma's Choice Pet Products Ltd [2017] EWHC 45 (IPEC) (in the context of an application for an unqualified advocate who had been suspended indefinitely from practice by the Solicitors Disciplinary Tribunal), it would be wrong in principle to grant rights of audience as it would undermine the role of the SDT (see paragraphs 19, 24, 28 and 30). This observation applies equally to the position of a disbarred barrister and the role of the Disciplinary Tribunal.***
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> ***Sixthly, the regulatory consequences of granting such an application. The BSB has no regulatory jurisdiction over individuals who were previously barristers but have been disbarred, such as Mr Shrimpton. We respectfully bring to the Court's attention that, should the Court grant Mr Shrimpton rights of audience in this case, any conduct issues associated with Mr Shrimpton that may arise as part of the proceedings (that may otherwise have been a potential breach of the BSB Handbook) cannot be addressed by the BSB.***
>
> ***Seventhly, the BSB submits that taking into account these factors, the Court will need to balance on the one hand the need to preserve the integrity of the statutory scheme (and other arrangements for granting rights of audience), and on the other, the need to do justice in individual cases to parties acting in person, and to provide the court in such cases with at least some of the assistance that it might normally expect to receive from a qualified advocate.***

15. The Respondent's submissions, like those of the BSB, address points which can be found in the summary from Graham. That includes points about the statutory

framework, the historical position, and the authorities. Maintaining a neutral position, the Respondent "makes no submissions on whether Mr Shrimpton should be heard". It "draws attention to the following points":

> ***(i) Civil legal aid is in principle available for an application for habeas corpus: see section 9 of, and paragraph 20 of schedule 1 to, the Legal Aid, Punishment of Offenders Act 2012. Mr Shrimpton has asserted … that this option is not "viable" but the reason for that view is not stated (ie. whether the reason concerns the Applicant's means or the likely view of the Legal Aid Agency on the prospects of the application for habeas corpus, or something else). The fact that the Applicant is paying privately means that he does not have the benefit of protection from an adverse costs order that is available to parties who are legally aided.***
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> ***(ii) There have apparently been "attempts… to instruct solicitors and counsel in the usual way" (Mr Shrimpton's submissions §3). The Applicant has chosen to instruct Mr Shrimpton, who is receiving remuneration, although the amount is not known. It appears he is being paid by the Applicant's brother, Adnan Malik. The fact of remuneration is relevant to the question of whether Mr Shrimpton should be heard: Francis [2010] EWHC 1525 (Ch).***
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> ***(iii) Mr Shrimpton is a struck-off barrister. He has set himself up as a professional advisor who offers his services in the hope (if not expectation) that, if necessary, the relevant court will grant permission for him to be heard. These facts are also relevant in light of Azumi [2017] EWHC 45.***
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> ***(iv) The Court is likely to get more assistance in this matter from Mr Shrimpton than from the Applicant himself (as the latter acknowledged). However, this is likely to be the case whenever a trained (albeit unregulated) lawyer identifies an argument on behalf of his lay client, especially complicated ones of the kind advanced in the present case.***
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> ***(v) The Respondent has not identified any clear support for Mr Shrimpton's position that the duties of a person who is granted ad hoc rights of audience are the same as a regulated lawyer. If anything, the authorities, such as Francis, are against that proposition. Those authorities refer to the existence of the regime for regulating advocates as a reason for not exercising the Schedule [3] power in a manner which has the potential to allow the creation of a de facto cadre of unregulated persons able to provide advocacy services to the general public.***

Discussion

16. I have decided not to grant rights of audience in these proceedings for Mr Shrimpton to act as advocate for the Applicant at the substantive hearings of the applications for habeas corpus or for bail. I have decided that it is not in the interests of justice to do so. I will explain why.

17. I recognise that the application is not opposed. That is relevant, but it is not of itself an answer. The Respondent and BSB do not support the application. They are neutral. They identify points for the Court to consider. In any event, as Lord Woolf explained in D v S at p.728, the discretion to confer advocacy rights is not a matter for consent of the parties; it is and remains the responsibility of the Court.

18. I accept that Mr Shrimpton is not a person who is an "unqualified" advocate, setting themselves up and who holds themselves out as providing advocacy services. He was a barrister and advocate, with considerable experience. But he is a disbarred former barrister. He has set himself up and does hold himself out as providing advocacy services, subject to the Courts granting him permission in individual cases, for remuneration. This is the 'practice' which he describes as having been successful over the last 6 years. In my judgment, there are obvious policy concerns regarding the prospect that a disbarred barrister or suspended/struck-off solicitor advocate from

setting themselves up and holding themselves out as providing advocacy services, especially for remunerative reward. Although I can see that those policy concerns will be yet stronger if the basis of the disbarring, suspension or striking-off is linked to recent conduct, or is linked to conduct in legal proceedings as an advocate, the fact of a barrister being disbarred – or a solicitor suspended or struck off – after due process is, of itself, a strong basis for the policy concerns which arise. On that aspect, I have been assisted by two cases. First, Azumi. In that case, the individual in respect of whom rights of audience were being sought was a solicitor who had been suspended indefinitely from practice (see §20). The Learned Recorder expressed the view (at §28) that "this is, or is at least equivalent to, a case where the proposed advocate is a person who has set himself up as an unqualified advocate and holds himself out as providing advocacy services, whether for reward or not". I agree. The same sorts of weighty policy concerns that arise about the stringent way in which advocates are regulated and the imperative in not permitting those regulatory safeguarding regimes to be subverted or bypassed apply, in my judgment, at least as strongly in the case of someone who has been disciplined to the point of being disbarred, as they do to someone who has not gone through the processes of becoming qualified, accredited and entitled to act as an advocate in the higher courts in the first place. Secondly, I am assisted by the reference in N at §34, where Munby J discussed In re D (A Child) [2005] EWCA Civ 3479. The feature of that case emphasised in Munby J's description of it is that the rights of audience were sought for a solicitor who had been struck off by the Solicitors Disciplinary Tribunal. In refusing the application, Thorpe LJ (with whom Hooper LJ agreed) had considered the submission that the former solicitor could put the applicant's case better than the applicant. Thorpe LJ observed, in D at §4 (as quoted by Munby J in N at §34):

> ***I do not think there can be much doubt of that because he is an experienced lawyer and one who had advocacy skills as well. But the circumstances in which he finds himself professionally" – Mr Francis was a struck off solicitor – "militates strongly against the application. I am in no doubt at all that, as a matter of principle and as a matter of fairness, the application should be refused.***

19. Having said that, and like the Learned Recorder in Azumi (see §30), I do not consider that anything turns on whether the test is "exceptional circumstances" (applicable in cases of unqualified advocates who set themselves up as providing advocacy services) or the more general Clarkson test of justification in all the circumstances. Applying the less stringent Clarkson test it would, in my judgment, still be wrong – and indeed wrong in principle – to grant rights of audience in the present case. It is true that in Azumi one of the factual features was non-disclosure of the suspension (see §§21, 31) and there is no similar non-disclosure here. But that does not, in my judgment, make a difference to the overall evaluative judgment of the interests of justice in all the circumstances. The concerns identified in Azumi and in D are obvious and serious.

20. I would accept that every case must ultimately turn on its individual facts and circumstances. I accept that it is inappropriate to identify blanket conclusions. I also acknowledge, as facts and circumstances, that the present case concerns an imminent hearing, on questions of law, in a case concerning the liberty of the individual. But I remain concerned about the present case, at the level of principle and policy. I identified this as one key question which was concerning me (First Judgment §13):

> ***I … want to be able to consider and reflect on this question: if an 'ad hoc' right of audience were to be granted, pragmatically, for the substantive applications in the present case, then logically why would it not be granted in <u>any</u> case, and therefore in <u>every</u> case?***

If Mr Shrimpton were to secure ad hoc rights of audience in the present case – on the basis of the interests of justice – I do really struggle to see by what logic similar rights of audience would then stand to be denied (by me, at least) in <u>any</u> case and <u>every</u> case where he has acted as a legal consultant, and has had an involvement, all with a view to his doing the advocacy in Court, with the Court's permission when the time comes. I also think the grant of rights of audience by this Court in this case would inevitably be portrayed as a conscious and reasoned endorsement by the High Court of the arrangements which Mr Shrimpton has set up and which he operates. Especially when that is the picture which he presents for endorsement. He emphasises as a virtue that he has acted as a consultant since February 2016. He presents the assistance which he provides as a positive contribution to the legal system and to litigation in the courts, especially in the context of what he says are unavailable legal aid and unaffordable legal fees. He characterises his as a valuable service for those who would otherwise be acting in person. He says that for a "fraction" (whatever that "fraction" is) of the rates that would be charged by a barrister in independent private practice, he is able to advise, and help with research and drafting, and then ultimately appear by asking for ad hoc permission from the Courts, in proceedings and for hearings which come before them. His system is that of putative advocate. This is a system. It seems to me to call for a systemic answer. It raises issues of principle for consideration at a policy level. The existence of a 'bigger picture' is unmistakeable.

21. The present case is a good illustration of this 'system' in action. Mr Shrimpton tells me that he has been assisting the Applicant since first advising as a legal consultant in October 2021, the same month that the Applicant returned to the UK to serve his sentence. Mr Shrimpton has clearly been assisting in the drafting of the court documents ever since. Then, when there were directions hearings, he appeared in order to seek to assist the Court by making oral representations at three hearings and seeks to be able to do so at upcoming hearings on substantive applications. To have him attending Court hearings with a view to being heard was, and must have been, the plan. It links to what he says in his online Legal CV about acting as an advocate. In parallel, there is an arrangement with an individual (Mr Mirza) as "Administrative Assistant" at a firm of solicitors, acting as a "post-box". Remuneration was arranged and Mr Shrimpton's fees have been paid, throughout, by the Applicant's brother. Mr Mirza is aware of all this. He wrote reassuring the Court that fees are always properly invoiced by Mr Shrimpton. There is no getting away from it. If the Courts are to embrace granting 'ad hoc' advocacy rights to an individual who has been disbarred as a barrister (or suspended or struck off as a solicitor advocate), there is a real and substantial risk of a systemic bypass of the regulatory regime and the regulatory protections emphasised in the authorities. The consequence would be that a disbarred barrister or suspended/struck-off solicitor advocate would, in effect, be able to operate (by offering lower rates), without regulatory underpinning, and without insurance, by pointing to the constituency of litigants who can be assisted in that way.

22. I can see the 'system'. I can also see the 'momentum' that can be invoked. It arises through the prior 'involvement' of the putative advocate – here, Mr Shrimpton – in advisory assistance, and in drafting assistance. This is particularly important because – by the time a Court comes to consider the question of 'pragmatic', 'ad hoc' rights of

audience – there are likely to be hearings on the horizon, possibly imminent, possibly happening. It is always possible to say "we are where we are", and urge a focus on practical reality. But the model cannot be allowed to become "self-fulfilling" by reason of this momentum.

23. I also see real difficulties as regards the duties owed to the Court and the opposing party. The duties described in section 188 of the 2007 Act is not, on its face, one said to be applicable to a person granted Schedule 3 rights of audience. Even assuming that the Court could impose it as a condition of a grant of those rights of audience, what about all the other regulatory duties and their policy underpinning? Is the Court supposed to step in and become a regulator? Is the Court supposed to interrogate what the litigant's understanding is? What duties are appropriate? How are they enforceable? What happens if things go wrong? These waters run deep. Mr Shrimpton maintains that either "implicitly" or by virtue of section 188, the familiar advocate's duties would be owed by him if rights of audience were conferred under the court's statutory power. On this, which is just one, feature of the case I have not been persuaded as to the correctness of this nor as to the comprehensiveness of its reach. None of that is fatal, because Parliament intended the Court to be able to grant ad hoc rights of audience. But these are considerations brought into sharp focus in a case like the present.

24. The case for granting rights of audience in the present case is at its strongest, in my judgment, not so much when viewed in terms of the system of legal assistance which Mr Shrimpton has set up and wishes to provide for a cohort of litigants. It is at its strongest when viewed in terms of the individual case before the Court and the position of the Applicant in these habeas corpus proceedings. This involves the Court in a 'zoom in', to look at the contours of the precise locality of the case, and to 'freeze the frame' of the current picture. Here, the Court encounters the position of the individual litigant; the imminent hearing; the factual reality of past momentum and involvement; the tug of pragmatism; the strong desire to 'get on with it'; the wish for maximum practical immediate assistance; the prospect of the litigant bereft without the putative advocate's help; the ability to say "yes, but only because of the particular circumstances".

25. There are two answers to this. The first is that there is much more to the legal landscape than this. The Court needs also to be able to 'zoom out' and see the 'bigger picture'. The interests of justice includes the bigger, overall picture. So does the public interest. The authorities reflect the bigger picture, which informs decisions as to the interests of justice, and ultimately which reflects the wider public interest in the interests of litigants as a whole. Part of that wider picture concerns the position when legal consultants, who have no regulated rights of audience and no regulatory underpinning, seek to act as advocates, with commercial arrangements to provide informal assistance, and all with a view to the prospect of seeking permission to address the court as advocate. It is when the court 'zooms out' and looks at the bigger picture that the relevant landscape, so far as the interests of justice and the public interest are concerned, comes fully into the picture. That engages the points of principle to which I have referred.

26. The second answer is this. I have not, in any event, been persuaded that a decision not to confer rights of audience on Mr Shrimpton would leave the Applicant without the ability to secure an advocate to put his case. There is an obvious question of means, affordability and alternatives. But I have regrettably not been given anything approaching proper visibility on this. This, in circumstances where I had made clear (First Judgment §13) that:

> ***I would… like to be clear whether, and what, attempts have been made to use any solicitor or barrister with rights of audience.***

I have not been provided with this clarity. Mr Mirza said, in his response of 17 October 2022, that the Applicant's has "resources" but these are "limited whilst in prison". Mr Mirza had told me in his original email of 13 October 2022 that the Applicant's "funds" are "limited". Reference had been made to Mr Shrimpton's fees being "a fraction of what counsel might charge". I have been told that Mr Shrimpton has been levying invoices for fees, and the Applicant's brother has been paying them. Mr Mirza describes solicitors' fees which the Applicant "would possibly struggle to pay" if Harper Law UK were to come "on the record". The word "possibly" is striking. I wonder whether there has even been an enquiry as to means. I wonder how Mr Shrimpton's ongoing fees compare with what a Manchester-based junior member of the Bar, or solicitor advocate, might charge for a one-day habeas corpus hearing. I find myself still asking what attempts have been made, in the past, the recent past and even now. I wonder whether fee quotes have been obtained, whether these are all said to be unaffordable, and if so why. I sought clarity. But I did not receive it. There is no description at all of any enquiry or investigation as to a barrister or solicitor advocate, to provide advocacy, whether in relation to bail in relation to the substantive hearing of the habeas corpus application. Mr Shrimpton has said in his own response of 17 October 2022: "I understand that attempts were made to instruct solicitors and counsel in the usual way after the Applicant's return to England in 2021, but it proved to be impracticable". That description is vague: as to what, and when, and with what consequence. There is nothing current or recent. I do not have a feel for the fee level or the "fraction" which it is said to represent, in respect of whose private fees. I am also told that Mr Shrimpton is based nearly 200 miles from Manchester and that he travels to Manchester for each hearing. There have now been several opportunities to provide greater visibility for this Court. The application for bail refers to two sureties. The brother is paying the fees. I have no detail, no documents, no clarity. I have no witness statement evidence with a statement of truth. I have no information as to what the "attempts" were that Mr Shrimpton has described. I have no evidence as to what avenues if any have been explored in order to elicit what fee a barrister or solicitor advocate with rights of audience would charge for the substantive habeas corpus hearing or the application for bail. The fact that the proceedings are so well advanced and there have been so many (three) iterations of detailed grounds in support of habeas corpus is a point which in fact substantially serves to reduce the industry that would be required of an advocate stepping in to address the court. Junior members of the Bar – and there are very many of them based locally in Manchester – are, in principle, well able to step into a case for the purposes of delivering the advocacy. That is true of applications for bail which are made at short notice in many courts. It is also true of presentation on the questions of law which arise as to the correct approach to bail in the present context and as to the substantive habeas corpus application itself. Although it is late in the day it has been known throughout that rights of audience would need to be sought, and that they may not be granted, for any substantive hearing. There has also been ample opportunity to make attempts and enquiries. Indeed, Mr Shrimpton has known (since 30 April 2021) that the High Court (Michael Green J) in another case refused to grant temporary rights of audience. Mr Shrimpton's submissions to this Court make several references to developments in the context of legal aid. The level of legal aid rates which junior barristers command will not have escaped him.

27. In these circumstances, I cannot and do not accept, on the evidence and materials that have been provided to this Court, that the Applicant lacks access to the means and resources which would be necessary to instruct a junior member of the Bar (or solicitor advocate) to take up the advocacy for this very well documented case and present the habeas corpus application; still less the application for bail. I cannot accept, on the evidence and materials that have been provided to this Court, that any substantial attempt has been made – still less recently – and found impossible. Insofar as eligible in terms of means and merits, there is then the fact that – in principle – civil legal aid is available for habeas corpus proceedings.

28. Mr Shrimpton has told me that he envisages making oral submissions on habeas corpus which would take half a day (First Judgment §3). I focus on practical reality and pragmatism. Mr Shrimpton would be able to download into writing, for the Applicant, the substance of those submissions (he would not need to repeat the three sets of detailed written representations already made). I previously made clear (First Judgment §3) that it ought to be possible in this case to 'grasp the nettle' and deal with habeas corpus at a single hearing on its substantive merits. That is still my view. If bail is pursued in the meantime then there is absolutely no reason why the (short) bail application should not be made by a junior barrister or a solicitor advocate. Advocates – like courts – frequently have to take up cases and sets of papers and get 'on top of them' at speed. When they do so, they inherit the work previously done in the papers. It is a matter for Mr Shrimpton and the Applicant, but if Mr Shrimpton wishes to put into a document for the Applicant the points he is envisaging that he would make, the Applicant would be able to adopt it, I would be able to accept it as the Applicant's skeleton argument. It would be produced knowing what the Respondent's written response to the application for habeas corpus is. I would be able to read and consider it. Alternatively, such a resource could be provided to assist any advocate now instructed to appear. In the circumstances of the present case, and given that I have been asked to focus pragmatically on practicality and the Applicant's position, these options stand in my judgment as substantial mitigation of any perceived disadvantage.

29. I will turn now to deal with the examples which have been given of previous occasions on which it has been said that Courts, including the High Court and the Court of Appeal, had given permission for Mr Shrimpton to appear as an "advocate" and "lay representative" in the six years since he began assisting people as a "legal consultant" in February 2016. I set out in detail (First Judgment §14) the various descriptions that I had seen from Mr Mirza (13 October 2022), Mr Shrimpton (13 October 2022) and in Mr Shrimpton's legal CV (available online and produced to me). I made clear (First Judgment §14) how important I considered it that this court should be provided with chapter and verse, based on contemporaneous documents:

> ***I want to see the materials which show me: all occasions where permission to address a Court as advocate has been sought by Mr Shrimpton; whether it was granted or refused; what representations were made; and what reasons were given.***

30. Only one set of "representations" to a Court has been produced. This was an email dated 3 July 2019 in proceedings in the Southampton family court. That was the case where a District Judge granted Mr Shrimpton permission, but in fact a Circuit Judge (HHJ Williams) had already refused. I can see that the representations made on 3 July 2019 told the District Judge that Mr Shrimpton had been asked to represent a party in those proceedings "as a McKenzie friend" and "pro bono, save the payment of travel

expenses". The absence of any remuneration for legal assistance ("pro bono") is a highly relevant feature. But so is the clear reference to acting "as a McKenzie friend". Indeed, the District Judge's decision was framed as permission "to act as a McKenzie friend". I understand that a "McKenzie Friend" can be permitted to speak, and can be granted rights of audience; but, as I explained at the beginning of this judgment, there is an important distinction. It matters. The reference to "McKenzie Friend" links to what was said in the submissions to the Southampton court, about Mr Shrimpton appearing regularly in court "as a litigation assistant", about appearing as a "legal representative" but only "in tribunal hearings, for example immigration appeals and the Employment Tribunal", and about otherwise acting as a "McKenzie friend". None of this is a description of advocacy with conferred rights of audience. There is another point. The submissions made in the email of 3 July 2019 said this: "My current professional status is that I remain a member of the Bar, under interim suspension, imposed in November 2014, with an appeal against disbarment pending in the Court of Appeal". By an email to my clerk on the evening of 20 October 2022 Mr Shrimpton told me that "on rereading" his email submissions to the Southampton family court, he needed to explain that in fact he had not been "a member of the Bar". He tells me he "thought I was still a member of the Bar, subject of course to a suspension and the outcome of my appeal" but that he accepts that he had "actually been disbarred", which he says he discovered "several months after my email to the family court".

31. So far as the Court of Appeal is concerned, Mr Shrimpton's position has told me that he "appeared as a lay representative with leave before the Court of Appeal, in 2017". That is a reference to Tiuta International plc v Wawman, where Gloster LJ granted leave. I have not been provided with any representations that were made, nor Gloster LJ's decision or any reasons. I do not have clarity as to what was being said and done. One document has been produced. It is a Replacement Grounds of Appeal document dated 22 April 2017, filed by Dr Wawman in support of his application for permission to appeal. The opening paragraph states that these had been "prepared with the assistance of the Appellant's McKenzie Friend, pursuant to the gracious leave with respect of Gloster LJ dated 4 April". Again, the reference is to leave to appear as a "McKenzie Friend". As I have recorded (First Judgment §14) the "advocacy experience" section of Mr Shrimpton's online legal CV describes him as having "appeared as a McKenzie Friend in the Court of Appeal … with the leave of the court". Again, I note: "McKenzie Friend". This is the case in which Mr Shrimpton says "in the Court of Appeal I acted … as a lay representative, not as a McKenzie friend, addressing the court (David Richards LJ) from the solicitor's row, not counsel's". I note the phrase "not as a McKenzie Friend". I struggle to see how that can have been pursuant to Gloster LJ's permission, as described in the Replacement Grounds. I cannot resolve any of this. I simply record that I do not have the clarity which I sought. It is impossible, in the circumstances, to make much of this.

32. So far as the High Court is concerned, again there is reference in the Legal CV to Mr Shrimpton having appeared "as a McKenzie friend". Reference is made to the case of Yanar QB/2016/0129. Again, I have not been provided with any documentation. I have been able to find, online, the transcript of the ex tempore judgment of Ouseley J in Yanar v Akis [2016] EWHC 3739 (QB). It records that Mr Shrimpton appeared on behalf of the claimants at the hearing on 25 October 2016. It refers (at §10) to the skeleton argument of "Mr Shrimpton who, with some hesitation, I have permitted to act as a paid McKenzie Friend, though subject to an interim suspension". I do not know

what application was made, what representations were advanced, or what authorities or commentaries were shown. I note, as with the Southampton case, there was a clear emphasis on Mr Shrimpton's "interim suspension".

33. Remaining in the High Court, and although not a case referenced in Mr Mirza's email of 13 October 2022, Mr Shrimpton's email later that day referred to the High Court's refusal to grant rights of audience in Clewer v Higgs (30 April 2021), Mr Shrimpton's email (later on 13 October 2022) said this:

> ***The majority of applications for me to appear as a lay representative have been granted. Michael Green J refused leave in a short PTA hearing in the Chancery Division in multi-million pound professional negligence litigation in 2021 but was not taken to the Agassi case [[2005] EWCA Civ 1507] and I suspect was unaware that the Court of Appeal had granted me leave in 2017.***

I do not understand "suspect was unaware": Mr Shrimpton will have made representations at the hearing before Michael Green J, to which I will shortly come. As to the Court of Appeal in 2017, I have dealt with that already. I have been able to consider Clewer v Higgs. Because, and only because, I adjourned for further information, the Order of Michael Green J has now been produced to me. It is good that it has. That was a hearing in the High Court at which the judge heard Mr Shrimpton in relation to the application that he be appointed as "McKenzie Friend" and that he be "granted temporary rights of audience under paragraph 1(2)(b) of Schedule 3 to the 2007 Act", which the Judge called the "temporary rights application". That application was dismissed and the Order recorded that Mr Shrimpton "does not have rights of audience in respect of this hearing". The reference to Agassi is in support of Mr Shrimpton's contention that he should not have been regarded as conducting the litigation. I do not need to get into that question. If Michael Green J was not taken to Agassi it was presumably because Mr Shrimpton did not do so. In any event, and more to the point, the Order of Michael Green J makes clear that was not the basis on which the temporary rights application was refused. The observation that was made at the end of the Judge's reasons said:

> ***The appellants should not be using Mr Shrimpton to conduct this litigation on their behalf. If he is conducting this litigation within the meaning of paragraph 4 of Schedule 2 to the Legal Services Act 2007 it would be unlawful.***

The word "if" shows that no conclusion was being reached, but rather a warning was being given. The Judge's reasons for refusing the temporary rights application had already been given. They appear, above the warning, on the face of the Order which Michael Green J made. They are as follows:

> ***The temporary rights application was refused because Mr Shrimpton has been disbarred by a Bar Disciplinary Tribunal and he has been made subject to a s.43 Order under the Solicitors Act 1974. Both his disbarment and the s.43 Order have been upheld by Judges of the High Court (Jefford and Murray JJ). This Court applied para 23 of the Practice Guidance (McKenzie Friends: Civil and Family Courts) [2010] 1 WLR 1881 and considered that even temporary rights of audience granted to Mr Shrimpton would subvert the will of Parliament.***

I interpose that §23 of the Practice Guidance is the paragraph that states:

> ***The grant of a right of audience or a right to conduct litigation to lay persons who hold themselves out as professional advocates or professional MFs or who seek to exercise such***

> ***rights on a regular basis, whether for reward or not, will however only be granted in exceptional circumstances. To do otherwise would tend to subvert the will of Parliament.***

34. The reasoning of Michael Green J is powerful and principled. I agree with it. It is in step with the authorities and commentaries. It stands as a highly weighty consideration militating in the balance against the grant of rights of audience.

35. I made clear in the First Judgment that I wanted to be able to interrogate the previous examples, on which Mr Shrimpton so strongly relied. I have been able to do so, albeit to a limited extent. All of which illustrates the dangers of seeking to establish and then rely on a body of previous practice and decision-making, to lend support to a later application. Courts are naturally influenced by what other Courts do. This is another example of a 'momentum'. In my judgment, the picture when interrogated poses far more questions than it answers and illustrates several points which in fact militate against the idea that there is a practice of granting Mr Shrimpton, as a disbarred former member of the Bar, rights of access to provide advocacy for remuneration.

36. In light of all the circumstances, all of the arguments, and all of the commentary and legal principles, I have considered what it is that the interests of justice (and the public interest) require. I have addressed the question of rights of audience in the present case by focusing on the present case in the light of the principles identified in the authorities and commentaries and having regard to all aspects of the interests of justice including the purposes of the regulatory regime, the safeguards and protections which are applicable to regulated advocates, the practical realities in the present case on the evidence before the Court and the public interest. I have been left entirely unpersuaded that it is in the interests of justice to grant rights of audience in the present case. On the contrary, having regard to the narrower and the bigger picture points, I am quite satisfied that it would be contrary to the interests of justice to do so.

37. I appreciate that the proceedings have been underway for a significant period of time, and the next hearing is imminent. But the Applicant and those who are assisting him had the opportunity to see the prospect of this outcome coming. Steps could have been taken to precipitate a far earlier, informed resolution, by reference to authority and commentary, by a Judge to whom relevant materials (such as Michael Green J's order) had been provided. As I have explained, Mr Shrimpton can impart his ideas as to what should be said by way of oral advocacy in relation to habeas corpus or in relation to bail if pursued. He can also put into writing. I already have his three waves of detailed written submissions on habeas corpus and written submissions in relation to bail. If no solicitor advocate or member of the Bar is engaged, the Court will be able to take steps to ensure that it has the relevant points. If the Applicant is in person, the professional and ethical duty owed to a litigant in person will arise on the part of the Respondent's Counsel including drawing my attention to a point which is against the Respondent and in favour of the Applicant.

38. The Applicant will not have the oral advocacy of Mr Shrimpton addressing the Court on either of the substantive applications in this case. That is intended to be a robust response. In my judgment, one is called for. The law needs to be astute to avoid, in a case such as the present, encouraging the self-fulfilling prospect of 'momentum' and 'involvement' ("we are where we are") as part of a plan to secure ad hoc rights of audience borne out of pragmatism and without reference to the bigger picture. The case-law recognises that the regulation of advocates through the statutory scheme matters,

with its detailed and sophisticated nature, and its rigorous procedures and discipline. So do the statutory objectives including ensuring that those conducting advocacy adhere to various professional principles, maintained by the rigours of the regulatory scheme. As it was put in Francis at §15, regulation by a professional body is a matter of the greatest public importance, whereas "someone acting as an advocate, charging for his services and free from regulation [is], in general terms, a matter of grave concern". All the more so, where they are a former barrister who has been disbarred after due process. If and insofar as systemic solutions are needed to practical realities relating to legal fees, legal aid and pro bono assistance, they need very careful consideration and design. In the present case, and ultimately focusing on the circumstances of the present case and the implications of granting or refusing rights of audience, the interests of justice do not in my judgment support the grant of rights of audience. On the contrary, the balance comes down decisively against doing so.

Solicitors 'off the record'

39. I turn to the other concern which had arisen which I described in the First Judgment at §§10-11. It related to the assistance being afforded to the Applicant by Harper Law UK through an Administrative Assistant (Mr Mirza), and the question of whether or not Harper Law were "on the record", and if not why not, and with what implications. Mr Mirza's response confirms that he and Harper Law UK are, and had only been, assisting in receiving and forwarding any information or documents as and when required upon request either by the Applicant to the Respondent's solicitors and the Court or vice versa; that from their perspective they have made no applications other than to assist the Applicant as a post-box in forwarding paperwork due to the fact of the Applicant's resources being limited while in prison; that Harper Law UK and Mr Mirza have never made any demands of any kind or remuneration; that they have not been involved in paying bills or costs for any services on behalf of the Applicant; that all payments having been directly honoured by the Applicant's brother; and that they have purely been assisting the applicant on a pro bono basis in the interests of justice. Mr Mirza also tells me:

> ***As a firm we have no objection to officially going on the record, however it is not an area of specialism within the firm, which means the firm would need to resolve this at a cost, and due to [the Applicant's] financial services circumstances he would possibly struggle to pay these fees …***

40. On this aspect of the case I have benefited from helpful submissions on behalf of the Law Society and the Respondent. Each invites my attention to the Law Society's Practice Note on "Unbundling civil legal services" dated 12 April 2022. That Practice Note states that when providing "unbundled" services the firm of solicitors "should not go on the court record as acting solicitor", "even if they are providing advocacy". A solicitor can act as solicitor advocate, undertaking "discrete acts of advocacy", without going "on the record", providing that that role is not combined with litigation conducted on the client's behalf. CPR 42.2(1)(b) also makes clear that a solicitor advocate can be appointed solely to act as advocate for a hearing. The Law Society further recognises that, in theory at least, a solicitor might properly provide a service of acting "merely as a post-box" in receiving and forwarding correspondence between the parties and between the parties and the court, on a "discrete and unbundled" basis. The Law Society's position is that in the circumstances of the present case, absent a copy of the retainer between Harper Law UK and the Applicant, there are "reasons to be concerned

that the arrangements made for the assistance and representation of the Applicant in these proceedings are not consistent with the standards to which the SRA holds solicitors". The Law Society identifies three questions as arising on the facts of this case, each of which it addresses, as follows:

> ***As to acting as a "post box" but not going on the record, the Society is concerned that acting as a "post box" but not using the same address for service and not going on the record is a potentially confusing arrangement that contributes to uncertainty in legal proceedings contrary to the rule of law. It might also be said to contribute to a risk of Mr Malik not being put on notice of some material development in the litigation, which would be contrary to his best interests. Finally, if a solicitor is not on the record, the defendant may not be on notice that he is at risk on costs.***
>
> ***As to acting in an area in which the firm has no expertise, this is potentially contrary to the SRA's Principles and Code… However, it may also be said that no particular expertise is required to act as a "post box". The resolution of this issue may depend on the terms of the retainer, but a question may nevertheless arise as to whether the firm may properly exclude so many of its duties to Mr Malik, for example, to alert him to the significance of any particular piece of correspondence that it receives, the need to respond to it within a particular period of time or the sanction for not doing so, by a very tightly circumscribed retainer.***
>
> ***As to the relationship between Harper Law and Mr Shrimpton, it appears that there is no employment or remuneration of Mr Shrimpton in breach of the s.43 order. In that case, viewed narrowly, it could be suggested that the Society has no further reason to concern itself with Mr Shrimpton's position in this case. However, the Society and the courts put a high value on professional integrity, and the upholding of public confidence in the legal profession … From this perspective, concerns may arise as to the arrangements for the assistance and representation of Mr Malik by Harper Law and Mr Shrimpton. They must be working together, with Harper Law making a real contribution, otherwise Mr Shrimpton would act alone. In that case, it may be said that the arrangement is not sufficiently materially different from that of instructing solicitor and counsel or solicitor and in-house advocate for Harper Law and Mr Shrimpton to avoid the charge that it is a sham arrangement designed to avoid the regulation of the solicitors' and barristers' professions imposed to protect the public, uphold public confidence in the two professions, and the rule of law. By working together with Mr Shrimpton, Harper Law could be said to be condoning Mr Malik instructing someone who has been prevented from practising as a barrister or being employed as a solicitor, and in accordance with an arrangement that removes from Mr Malik the protections that he would enjoy if Harper Law had instructed a barrister or someone employed by Harper Law was representing him. At the heart of this point is the issue of whether Harper Law and Mr Shrimpton have put in a place an arrangement which so reduces the impact of the schemes of regulation of solicitors and barristers as to render them vestigial contrary to the interests of Mr Malik, the public and the rule of law.***

41. The Respondent raises three concerns of its own, and says this:

> ***[T]he position appears to the Respondent to be as follows: (i) The address given for service in the application for bail is the address of Harper Law Limited (albeit qualified by the use of "c/o"). Unless the "c/o" qualification makes any difference, that firm is arguably "on the record": CPR 42.1. (ii) Harper Law Limited are conducting litigation on behalf of the Applicant, including by filing documents. As the Applicant's appointed representative they are entitled to verify any statement of truth that may be required. (iii) If, in fact the true position is not as set out in (i) and (ii), the following matters arise: (a) an issue as to the identity of the person who has been conducting litigation on behalf of the Applicant, if not Harper Law Limited; (b) the absence of any verified statement of truth in the application notice for bail, which is not signed by either the Applicant himself or his representative.***

42. Having raised the concern that I did, these points have now been raised. I think it right to record them. I also think it right to say that I do not read the Law Society, or the

Respondent, as having for their part arrived at any informed adverse conclusion. So far as my own position is concerned – as the Judge in this case – it does not seem to me that any party or person has identified any power or step which it is being suggested that the Court should now exercise or consider exercising. I can see that it may be that a course which is open to a Court, in appropriate circumstances, would be to make a direction that the Court will no longer communicate with a solicitors firm or a solicitor or employee unless the firm is prepared to come "on the record". Even assuming that such a course is open in an appropriate case, I do not consider that it is necessary, appropriate or proportionate in the present case. As I see it, it is a matter for Harper Law UK to consider whether they are, and wish to be, "on the record". That may depend on what is to happen next in this case and what other arrangements are contemplated. There is already in this case a direction of the Court that service on the Applicant's brother constitutes good service. Moreover, since these are habeas corpus proceedings the Respondent is necessarily the custodian of the institution where the Applicant is held. That means there is an active party to the proceedings before the Court, to whom the Court can in principle look to secure practical and effective arrangements so far as concerns the provision of documents and appearance by video link from prison and other relevant matters. From what I have seen, it appears that Mr Mirza is acting – so far as this Court is concerned – as the "post-box" which he describes. Beyond that, I cannot say. I am, moreover, satisfied that the giving of a "c/o" (care of) the firm's address in the bail application was not of itself an act intended to come "on the record". I will make no order on this aspect of the case.

24.10.22