

Applicant: Y

Respondent: Secretary for Justice

Date of Minute: 17 May 2023

MINUTE NO 1 BY REVIEW AUTHORITY

[1] I have considered the Applicant's email dated 24 April 2023. The Applicant effectively asks me to re-open my decision dated 12 April 2023. While the Authority has a broad discretion to decide its own procedures, section 86(3) of the Legal Services Act 2011 expressly provides that decisions of the Review Authority are binding on the parties. In those circumstances, I do not believe that I have any power to re-open the decision.

[2] In case I am wrong in that, I am not persuaded in any event that anything raised in the Applicant's email provides any basis for re-opening the decision given on 12 April 2023.

[3] The Applicant submits that the Secretary's late decision to concede that the Applicant met the requirements of clause 5(b) of the Schedule was a "game changer", and that the Secretary should have been invited to make further submissions following that concession. I see nothing in this submission. A party's concession on one of a number of issues in a case will not often require a further round of submissions, and that is particularly so in a summary proceeding such as this, where the parties are expected to have addressed all of the live issues in their submissions. In this case, the Secretary made no application for leave to file further submissions, and neither the decision in *Z v Secretary for Justice* nor the Secretary's subsequent concession materially affected the competence and experience issues on which the decision was based.¹

¹ It appears from the Applicant's 24 April email that, although the existence of my decision in *Z v Secretary for Justice* was made known to him on 3 April, 2023, he was not immediately sent a copy of the decision, notwithstanding my direction given on 4 April, 2023 that that should be done. That

[4] As I observed in *Z v Secretary for Justice*, the Schedule provisions do no more than set basic minimum standards for each area of law. Accepting that the Applicant had met the requirements of clause 5(b) was not enough to satisfy the knowledge, skill, experience and competence requirements of Regulations 6(1) and 6(2), and the Secretary's concession email made it clear that the Secretary's opposition on those issues (as set out in Mr Hurd's submissions for the Secretary made on 14 February 2023) was not affected by the concession. The Applicant had ample opportunity to address these issues in his submissions in reply filed on 8 March 2023.

[5] In his submissions, Mr Hurd addressed both of the PAL 4 cases on which the Applicant relied, and he then submitted that the Applicant needed further in-trial experience at the PAL 4 level "before the Secretary can be satisfied that he has the appropriate level of knowledge and skill to provide services at that level". The parties' submissions on the PAL 4 cases relied upon by the Applicant were taken into account in the decision on the review application, including on the issues arising under Regulation 6(2)(b) and (c), and 6(1). The decision dealt explicitly with the issue of the Applicant's compliance with Regulation 6 on the basis that he had met the requirements of clause 5(b).

[6] I do not consider that the Secretary's concession materially affected the Applicant on the question of references. The Applicant submitted three references in support of his application to the Secretary, and although they were not all provided with the application for review, they were subsequently provided by the Applicant, and they were all considered. Although the Applicant was aware of the Secretary's recommendation (made in the 28 November 2022 decision) that he provide another reference from a PAL 4 (or equivalent) counsel, he did not provide that further reference with his review application, or with his reply submissions (notwithstanding that the issue of his competence to operate at PAL 4 remained in issue²).

[7] The Applicant made detailed submissions in response to the Secretary's submissions, on 8 March 2023. He therefore had approximately three weeks from the date of the Secretary's submissions to address the two PAL 4 cases and to

may be unfortunate, but in my view nothing in the decision could have materially assisted the Applicant.

² Under Regulation 9B(4), references are primarily concerned with the issue of an applicant's level of skill in the relevant area of law. Mr Hurd's submission of 14 February 2023 made it clear that the issue of the Applicant's level of skill was still in play, and an applicant's skill level is clearly relevant to any assessment of his or her competence under Regulation 6(1).

make any further submissions he might have wished to make on the issues of knowledge, skill, experience, and overall competence to operate at PAL 4 level.

[8] In the end, I am not satisfied that the Secretary's concession on clause 5(b) put the Applicant at a disadvantage in any material respect.

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W A Smith
Review Authority