



[2022] UKFTT 178 (GRC)
Appeal number: CA/2021/0026

FIRST-TIER TRIBUNAL (CHARITY)
GENERAL REGULATORY CHAMBER

Dr. ALAN BLACKER

Appellant

- and -

**THE CHARITY COMMISSION FOR
ENGLAND AND WALES**

Respondent

Before: Judge Alison McKenna

Sitting in private on the Cloud Video Platform on 8 April 2022

Appearances:

The Appellant, in person

For the Respondent Felix Rechtman, in-house lawyer

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CORRECTED DECISION

The appeal is dismissed.

REASONS

A: Background

1. The Appellant was a founding trustee of The Joint Armed Forces Legal Advocacy Service (“JAFLAS”), registered charity number 1142202. Its objects are “*The relief of financial hardship by the provision of free legal advice/assistance to persons who, through lack of means, would otherwise be unable to obtain such advice*”. The Appellant has also undertaken an executive role for the charity, described in the papers variously as its ‘Director’, ‘Director General’, ‘Executive Director’ or ‘Chief Executive’. He appears to work alone and to undertake work for the charity from his home address. He is currently unable to serve as a trustee or senior manager, and states that he is working as a volunteer adviser for JAFLAS and a voluntary secretary to its Board of Trustees.
2. In January 2020, the Appellant was convicted of an offence contrary to s. 111A of the Social Security and Administration Act 1992¹ (‘making a false statement or representation to obtain benefits’). It was common ground between the parties that this was an offence involving dishonesty or deception so that the conviction made him subject to an automatic disqualification from acting as a charity trustee under s. 178 (1) case A (b) of the Charities Act 2011 (“the 2011 Act”)². He was sentenced to a term of imprisonment of 9 months, **suspended for 2 years**, so that it will be spent (and the automatic disqualification will expire) in October 2024.
3. The Appellant was contacted by the Charity Commission (“the Commission”) and informed of his disqualification. In September 2020 he applied for a waiver under s. 181 of the Charities Act 2011³, wishing to serve as a charity trustee for JAFLAS and generally for other charities. On 27 April 2021, the Commission refused to grant either waiver. Following an internal Decision Review, the Commission again refused to grant the waivers sought on 9 September 2021. This is an appeal against that decision.

B: Appeal to the Tribunal

4. A Notice of Appeal dated 20 September 2021 was submitted to the Tribunal. This relied on grounds that the Commission’s decision failed to take sufficient account of the evidence submitted, did not properly assess risk, is materially flawed, contained errors of fact, was unfair, logically poor, disproportionate and put the public at risk. Appended to the Notice of Appeal was a set of client instruction documents and a Client Handbook, each headed “*Dr Alan Blacker & Co. In House Lawyers of the Joint Armed Forces Legal Advocacy Service. Chambers of The Rt. Hon. The Lord Harley, Senior*

¹ [Social Security Administration Act 1992 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1992/111/section/111A)

² [Charities Act 2011 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2011/178/section/178)

³ [Charities Act 2011 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2011/178/section/181)

Counsel". These, and their associated documents concerning membership of JAFLAS, a policy manual, a complaints procedure, financial assessment forms and gift aid forms together run to over 280 pages but there is no accompanying explanation of their relationship to the Grounds of Appeal.

5. The Commission's Response dated 10 November 2021 resisted the appeal on the basis that it had considered all relevant information but reasonably concluded that the benefits of granting a waiver did not outweigh the associated risks so that it was in the best interests of the charity and the wider sector for the automatic disqualification to remain in force. It exhibited its Decision Logs recording all the factors taken into consideration in the application of the relevant balancing exercise.
6. The Commission further submitted that the grant of a waiver to the Appellant would damage public trust and confidence in JAFLAS and in charities generally because the conduct which led to the automatic disqualification was serious and the conviction was serious, recent and unspent.
7. The Appellant filed a Reply (undated), which submitted that the Commission had not considered the best interests of the charity or the interests of the general public because it had failed to acknowledge the long work history of the Appellant and enormous benefit of his work to the public. It is also stated that the Commission had failed to appreciate the confusion caused to the public by the fact that the Appellant was permitted to serve as a company director but not a charity trustee. Further it was submitted that the trustees of JAFLAS appreciated the risks, were all seasoned professionals and able to form their own judgement on how best to manage the risks. The Appellant points out that the Commission has made no finding of misconduct or mismanagement at JAFLAS and submits that the 'risks' to which it refers are merely speculative.
8. It is stated in the Reply that *"To be a director of the company which is the trading subsidiary of the charity places the Appellant in a significant role of leadership and management, and this is singularly dismissed by the Respondent"*.

C: Mode of Hearing

9. The Tribunal had before it a Hearing Bundle (712 pages); an Authorities Bundle (68 pages); and a Witness Evidence and Skeletons Bundle (70 pages).
10. An oral hearing lasting one day was held remotely on the Cloud Video Platform at which the Appellant, being unable to connect his video camera, attended by telephone. He played a full role in the proceedings notwithstanding that difficulty, and I am satisfied that he was not disadvantaged in the presentation of his case.
11. The Appellant informed the Tribunal in advance that he was not well, so the Tribunal took regular breaks to ensure that he could participate fully in the hearing. He made an opening statement, gave evidence, and made a closing statement in a hearing which lasted from 10 am to 4 pm. I am satisfied that his illness did not adversely affect the presentation of his case.

12. Regrettably, the hearing was interrupted by an observer in the virtual public gallery, who posted disrespectful messages to the Appellant and to the Tribunal in the chat room. The Tribunal excluded that person from the hearing. The Appellant was understandably shaken by this incident and, following a break for him to collect his thoughts, I directed under rule 35 of the Tribunal's Rules⁴ that the remainder of the hearing would be conducted in private, to prevent any repetition and allow him to give his best evidence. This meant that no one was allowed into the virtual public gallery, but the hearing was recorded, so access to the recording may be applied for in the usual way. I am very sorry this disruption occurred and am grateful to the Appellant for overcoming this difficulty and proceeding with presenting his appeal notwithstanding the unwarranted interruption. I am grateful also to Mr Rechtman for his forbearance with the disruption and his helpful submissions.

D: The Law

13. Section 178 of the 2011 Act provides (where relevant) as follows:

(1) A person ("P") is disqualified from being a charity trustee or trustee for a charity in the following cases—

Case A

P has been convicted of—

(a) an offence specified in section 178A;

(b) an offence, not specified in section 178A, that involves dishonesty or deception.

...

(3) While a person is disqualified under this section in relation to a charity, the person is also disqualified from holding an office or employment in the charity with senior management functions.

14. Section 181 of the 2011 Act provides (where relevant) as follows:

(1) This section applies where a person ("P") is disqualified under section 178(1).

(2) The Commission may, if P makes an application under this subsection, waive P's disqualification —

(a) generally, or

(b) in relation to a particular charity or a particular class of charities.

(2A) A waiver under subsection (2)—

(a) may relate to the whole of P's disqualification or only to disqualification under section 178(3);

⁴ [General Regulatory Chamber tribunal procedure rules - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

(b) in relation to disqualification under section 178(3) may relate to a particular office or employment or to any office or employment of a particular description.

15. This is the first time this Tribunal has heard an appeal against the refusal of a waiver. It follows that there are no decisions of the Upper Tribunal or Higher Courts which bind me in making my Decision. There exist a number of rights of appeal to the First-tier (and Upper) Tribunal where the Tribunal hears an appeal against the decision of a regulator that a person is not “fit and proper” for a particular role. That is in essence the case where the Commission makes a discretionary disqualification.
16. However, the “automatic disqualification and discretionary waiver” regime is different to the “fit and proper” regime in a number of respects. It is perhaps most closely analogous to the statutory regime whereby disqualified company directors may apply to the Court for permission to act as a director under s. 17 of the Company Directors Disqualification Act 1986⁵. There is a mature body of case law in relation to such applications and, in considering this first appeal to the Tribunal, I have found it helpful to have regard to the courts’ settled approach.
17. In *Rwamba v Secretary of State for Business, Energy and Industrial Strategy* [2020] EWHC 2778 (Ch)⁶, Mr Justice Miles helpfully summarised the relevant principles as follows:

[34] I was referred to a number of authorities including Re Tech Textiles Ltd [1998] 1 BCLC 259; Re Dawes & Henderson (Agencies) (No 2) [1999] 2 BCLC 317; Re TTL Realisations Ltd [2000] 2 BCLC 223; Re Barings plc (No 3) [2000] 1 WLR 634; Re Morija Plc [2007] EWHC 3055 (Ch); Haughey v Secretary of State for Business, Energy and Industrial Strategy [2018] EWHC 3566 (Ch). I draw the following general guidance from these cases and section 17 itself:

- i) The court has a discretion under section 17 to allow a person who has been disqualified to be a director of a company or be concerned or take part in the promotion, formation, or management of a company.*
- ii) The onus is on an applicant under the section to persuade the court to grant permission. The starting point when approaching the jurisdiction is that the applicant has been held unfit to be a director for the period of the order (or has accepted the equivalent when giving an undertaking). Nonetheless leave may be given in a proper case.*
- iii) It is for the court (and not for the Secretary of State) to be satisfied that it is appropriate to give leave for the applicant to be a director etc.*

⁵ [Company Directors Disqualification Act 1986 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1986/17)

⁶ [Rwamba v The Secretary of State for Business, Energy And Industrial Strategy \[2020\] EWHC 2778 \(Ch\) \(20 October 2020\) \(bailii.org\)](https://www.bailii.org/uk/ew/cas/oct2020/rwamba.html)

iv) The discretion under section 17 to give leave is unfettered. It is wrong to seek to add glosses or preconditions. The question for the court is whether in all the circumstances it is appropriate to give leave; and in approaching this question the court balances all the relevant factors.

v) Though it is usual to establish that the Company has a "need" for the applicant to be a director or involved in the management, this is not a precondition. For instance, the appointment may be made to allow the director to obtain a tax advantage.

vi) The court should, among other things, have regard to the nature and seriousness of the conduct that led to the disqualification order or undertaking and the length of the disqualification. Where that conduct was dishonest a court may be reluctant to give leave.

vii) The court should, when deciding whether to give leave for a director to act as a director have regard to the purposes of a disqualification order. These include (i) protecting the public directly by prohibiting the disqualified person from acting and (ii) deterring both the particular director and others from the kind of conduct that has led to the order.

viii) Leave should not be too freely given as this would tend to undermine the protective and deterrent purposes of a disqualification order. The court would not wish anyone dealing with a director to be misled as to the gravity of a disqualification order.

ix) On the other hand, the power of the court to grant leave under section 17 is inherent in the disqualification regime and in an appropriate case it may serve the public interest to allow a disqualified person to be a director of a specific company.

x) Moreover, the fact that the applicant for leave has agreed to the imposition of conditions designed to ensure high standards of corporate conduct may itself be seen as promoting the policy of deterring misconduct.

xi) Where a judge has decided to give or decline leave under section 17 an appellate court will only allow an appeal where the judge has taken into account irrelevant factors or failed to take into account relevant ones or acted outside the generous ambit of his or her discretion or has come to a conclusion which is plainly wrong.

18. I find this a useful summary of the caselaw, although I note that I am not bound by it and there are some important differences between the company directors' and charity trustees' regimes. First, I note that the court has power to allow a disqualified person to act as a director subject to conditions, whereas this Tribunal has no power to impose conditions in relation to a waiver. Secondly, I note that there are discrete public policy issues relevant to the 'deterrent and protective factors' when considering charities rather than commercial entities. Thirdly, I note that a s.17 application is made in relation to a particular company and not companies in general, so it is more closely analogous to a specific waiver than a general waiver. Nevertheless, there is an

important similarity between the two regimes in that the 2011 Act provision, like the 1986 Act, has no statutory criteria for the exercise of the waiver. Thus, both types of decision involve the exercise of discretion by the judicial decision-maker on a fact-sensitive basis. The conduct of a balancing exercise, in which the “pros” and “cons” of granting a waiver are transparently listed before a judgment is reached, is the practice of the courts and one which I endorse in the context of this Tribunal. I note here (because it is relevant to what follows) that disputed facts must be proven by the relevant party and to the relevant standard before they can be allocated to the “pro” or “con” side of the scales and finally weighed into the balance by a judicial decision-maker.

19. The Commission has published guidance about the factors it will take into account when deciding whether to grant a waiver⁷. This guidance adopts a similar approach to the courts in setting out the factors relevant for inclusion in a balancing exercise. The Commission also takes into account charity-sector-specific considerations, such as the Commission’s statutory objective, under s. 14 of the 2011 Act, to promote public trust and confidence in charities.⁸
20. An appeal against the Commission’s decision to refuse a waiver requires the Tribunal to “*consider afresh*” the Commission’s decision under s.319 (4) (a) of the 2011 Act⁹. In so doing, the Tribunal can consider evidence which has become available subsequent to the Commission’s Order - see s.319 (4) (b) of the 2011 Act. This approach avoids the Tribunal conducting a review of the procedure adopted by the Commission in making its own decision, as the ability for an independent judicial body (such as this Tribunal) to take a fresh decision on appeal is curative of any procedural shortcomings by the administrative decision-maker. It follows that the Tribunal must ask itself whether, on the basis of all the information before it, it would itself grant the waiver. Thus, the appeal is a re-hearing rather than a procedural review.
21. The Tribunal’s approach to an appeal by way of re-hearing must take account of the Court of Appeal’s judgment in *R (Hope and Glory Public House Limited) v City of Westminster Magistrates’ Court* [2011] EWCA Civ 31¹⁰, which was in turn approved by the Supreme Court in *Hesham Ali (Iraq) v Secretary of State for the Home Department* [2016] UKSC 60 at [45]¹¹. Such an approach requires the Tribunal to ask itself what weight to attach to the Respondent’s reasons for making the decision under appeal, rather than merely substituting its own judgement. In *Begum v Secretary of State for the Home Department* [2021] UKSC 7¹², the Supreme Court also cautioned judicial decision makers against substituting their own judgement for that of the statutory decision maker, holding at [70] that “*the Secretary of State’s assessment*

⁷ [How the Charity Commission assesses waiver applications and makes a decision - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/how-the-charity-commission-assesses-waiver-applications-and-makes-a-decision)

⁸ [Charities Act 2011 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2011/25/section/14)

⁹ [Charities Act 2011 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2011/25/section/319)

¹⁰ <http://www.bailii.org/ew/cases/EWCA/Civ/2011/31.html>

¹¹ <https://www.supremecourt.uk/cases/docs/uksc-2015-0126-judgment.pdf>.

¹² [R \(on the application of Begum\) \(Appellant/Respondent\) v SIAC and SSHD \(Respondent/Appellant\) \(supremecourt.uk\)](https://www.supremecourt.uk/cases/docs/uksc-2021-0007-judgment.pdf)

should be accorded appropriate respect, for reasons both of institutional capacity (notwithstanding the experience of members of SIAC) and democratic accountability”.

22. The burden of proof in the appeal rests with the Appellant as the person seeking to disturb the status quo. I note that in the company directors’ disqualification caselaw, this is described as a “*heavy burden*” because the starting point is one of the Applicant having been adjudged unfit¹³. The applicable standard of proof is the balance of probabilities.

23. If the appeal is allowed, the Tribunal may exercise the powers set out in the relevant part of column 3 in Schedule 6 to the 2011 Act¹⁴. In the case of an appeal against the refusal of a waiver, the available powers are:

(a) quash the decision and (if appropriate) remit the matter to the Commission;

(b) substitute for the decision any other decision of a kind which could have been made by the Commission.

E: Evidence

24. The Commission prepared the Hearing Bundle in consultation with the Appellant. This included documentary evidence of the Appellant’s conviction and sentence; the transcript of his Solicitors Disciplinary Tribunal hearing; and his correspondence with the Commission itself. The application for the waiver, the reasoned decisions not to grant the waiver and the associated paper trail were also included in the Bundle.

25. The Tribunal directed that witness statements should stand as evidence in chief but that any witnesses should attend for cross examination, if requested. The Appellant and the Chairman of Trustees of JAFLAS, Mr. Paul Bohill, had both made a witness statement and attended the hearing to answer questions at the request of the Commission. The Commission’s witness Ms. Joanne Maguire (who had conducted the decision review) made a witness statement but was not required by the Appellant to attend for cross examination. This was surprising given the terms of the Grounds of Appeal.

26. The Appellant and Mr Bohill filed an unusual form of witness statement in that both of their evidence was contained in one document. It contained a Statement of Truth which was signed by them both. The Appellant explained that he had adopted this unconventional approach in order that the Tribunal should be aware that Mr Bohill had read the Appellant’s witness evidence and so the Tribunal would understand that nothing had been hidden between them. The composite witness statement was filed considerably after the deadline set and considerably after the Commission had filed its evidence. Notwithstanding these concerns, I considered it fair and just to admit the statement into evidence.

27. The sum of evidence in relation to the key issues before me was as follows:

¹³ See, for example, at [17] [Hobson v Secretary of State for Business, Energy and Industrial Strategy \[2021\] EWHC 1317 \(Ch\) \(20 May 2021\) \(bailii.org\)](#)

¹⁴ [Charities Act 2011 \(legislation.gov.uk\)](#)

(i) *The Conviction*

28. The Commission relied on the undisputed fact of the Appellant's conviction for an offence of dishonesty and produced for the Tribunal a press report of the Judge's sentencing remarks. These recorded that although the Appellant's original disability benefits claim was genuine, when he submitted a review form in 2011, he had failed to give an accurate description of his disability at that time.
29. In correspondence with the Commission, the Appellant had described this as a "*bad faith prosecution*" and criticised the Judge as "*unfit through bias*". The application for waiver made by the Appellant states that he had been "*poorly represented at trial and proceedings are now extant against my barrister for negligence*".
30. The Appellant's witness statement for the Tribunal states that he accepts responsibility for his poor conduct of the benefit claim, but also asserts that he has subsequently been found to be entitled to the benefits he was convicted of wrongfully claiming, and at a higher rate. No documentary evidence was produced to support this statement.
31. The Appellant's witness statement states that he is now "*a different man*". In his opening submission, the Appellant told the Tribunal that he now understood that the Commission had legitimate concerns about his past conduct but that he regarded its refusal to grant the waiver as disproportionate given that there are no causes for concern about JAFLAS and that he has considerable skills and experience to offer the charity.
32. Cross examined by Mr Rechtman, the Appellant stated that he had been contacted by the Commission about his conviction and resulting disqualification before he had had the chance to report it himself. He said he could not have made a Serious Incident Report earlier in any event, as the Court had initially issued inaccurate documents about his conviction, which he had to ask to be corrected. The Appellant said he still took the view that it had been a bad faith prosecution as the DWP staff had seem him weekly in the Social Entitlement Tribunal and were aware of his fluctuating physical condition.
33. Asked by the Tribunal whether he had appealed his conviction, he said that he had instructed a barrister to do so but this had not happened. He had complained to the barristers' Head of Chambers but by then it was too late.

(ii) *The Solicitors Disciplinary Proceedings*

34. The Commission produced for the Tribunal the official transcript of the Solicitor's Disciplinary Tribunal proceedings in which the Appellant was struck off the Roll of Solicitors in 2016, having been found to have breached the Solicitors Accounts Rules; also to have dishonestly caused or allowed false statements to be made about his qualifications, membership of certain organisations, appointments and awards he had received; also that he had failed to co-operate with the SRA's investigation into his conduct.
35. In correspondence with the Commission the Appellant described the Solicitors Disciplinary Tribunal as having "*predetermined*" his appeal. He described the "*mala-*

fides” of the striking-off, including a statement that “*My college lied to the tribunal saying I had no rights to practice criminal law as an advocate, I successfully sued them and received damages and costs*”. No documentary evidence was produced to support this statement.

36. The Appellant accepted in his witness statement that he had behaved in a manner which fell short of the required standards in relation to the Solicitors Regulation Authority and that he had “*failed in some of my duties to be open and frank with my regulator*” but explained that he had been unwell at the time and that the Solicitors Disciplinary Tribunal had refused to move the hearing to Manchester to accommodate his disability, so he had not attended the hearing. He states that he subsequently brought defamation proceedings against the Solicitors Regulation Authority for its wrongful statements about him and that he was awarded damages. No documentary evidence was produced to support this statement.
37. Cross examined, the Appellant told the Tribunal that he now accepted that the Solicitors Regulation Authority had presented its case to the Solicitors Disciplinary Tribunal in a fair manner and that the Tribunal was entitled to make the findings it did as he had not attended, but that he still did not accept that he had been dishonest in his practice.
38. The Tribunal asked the Appellant why he had not produced evidence to support his case that the Solicitors Regulation Authority had retracted some of its allegations against him. He replied that he could not do so as he had signed a Non-Disclosure Agreement (“NDA”).

(iii) *CILEX*

39. Joanne Maguire is the Commission’s senior officer who reviewed the waiver decision in September 2021. Her witness statement described the history of the Commission’s regulatory involvement with JAFLAS and its continuing concerns. Ms Maguire introduced into evidence a matter which post-dated the Commission’s decision to refuse the waiver. This was that the Chartered Institute of Legal Executives (“CILEX”) had in October 2021 made an “indefinite exclusion” of the Appellant from its membership on the basis that he had failed to inform CILEX as required of his striking off by the Solicitors Regulation Authority in 2016; his bankruptcy in 2018; and his conviction. She exhibited to her witness statement a print-out of the Appellant’s CILEX Disciplinary Record.
40. Despite having been served with Joanne Maguire’s witness statement containing the new evidence before he made his own witness statement, the Appellant did not there comment on it at all. The Tribunal therefore gave him an opportunity to address this new evidence in chief, before Mr. Rechtman commenced his cross examination. The Appellant’s oral evidence on this point was that he had initially become a member of CILEX when a law student, then a graduate member, then a Chartered Fellow. As he was by then a solicitor, he did not need the CILEX accreditation but later he had thought it might be useful for the charity to renew his practicing certificate, so he did so, ticking the box to say that he had nothing further to declare. CILEX had then contacted him to say he had not told them he had been struck off as a solicitor, but he had responded that they already knew this, as it was on the internet. He said he had also sent CILEX ‘round robins’ keeping them up to date, which other people had received, so CILEX had found

him dishonest on the basis that it had been unable to find its own records. When asked by the Tribunal whether he had appealed, he said there is no right of appeal, and a judicial review would have been too expensive.

(iv) *The importance of the Appellant to JAFLAS*

41. The Commission received and considered statements of support from JAFLAS' trustees, who stressed the importance that the Appellant's work has to the continued operation of JAFLAS. However, the Commission noted that the trustees had not provided any evidence to show they had adopted robust risk assessment procedures, which would be necessary were the waiver to be granted, and which they had been invited by the Commission to consider.
42. As noted above, the Appellant included with his Notice of Appeal documents relating to the legal practice of 'Dr. Alan Blacker & Co.' These documents clearly refer to the Appellant as a solicitor regulated by the Solicitor's Regulation Authority (see for example page 163 of the Bundle), whereas at the time that this evidence was submitted to the Tribunal in September 2021, that had not been the case for some years. The Tribunal asked the Appellant why the 'JAFLAS/Dr Alan Blacker & Co.' client documents that he had presented to the Tribunal along with his Notice of Appeal were inaccurate as to his status as a solicitor. He replied that these were out of date. Asked why he had provided out of date information to the Tribunal, he stated that he had never needed to update these documents as they were no longer in use.
43. The Appellant's oral evidence was that, as he has no professional indemnity insurance, he can now only help clients prepare their own documents. Litigation is then passed to other solicitors or barristers. He accepted that he must work within narrow confines but maintained that he nevertheless made a valuable contribution to JAFLAS' work in assisting people who had no one else to help them. The Appellant stated that all client money is received by the 'trading subsidiary' and transferred to JAFLAS. He declined to say which other legal services providers were assisting JAFLAS at present, saying it was privileged information. He stated that he had stood down from his position as trustee and Chief Executive following the Commission's advice. He denied that he was operating as a *de facto* trustee.
44. Mr Rechtman asked the Appellant to explain where 'Dr Alan Blacker & Co.' ended and JAFLAS began. He answered that 'Dr Alan Backer & Co.' is the trading subsidiary of JAFLAS and that this arrangement protects the charity from problems in litigation, for example, wasted costs orders. He described 'Dr Alan Blacker & Co.' as being "*wholly owned and controlled by JAFLAS*". He said that 'Dr Alan Blacker & Co.' is not incorporated (contrary to what was said in his Reply – see paragraph 8 above). He said that it is recognised by the Commission, the Court Service and the Law Society as a trading subsidiary. The Tribunal asked the Appellant to explain the legal mechanism on which he relies in stating that 'Dr Alan Blacker & Co.' is the trading subsidiary of JAFLAS, given that 'Dr Alan Blacker & Co.' is not a company so there is no shareholding, nor apparently is there any other constitutional relationship between the two entities. He was unable to point to any legal document which established the trading subsidiary status but said he thought there might have been a board minute on the point.

45. The Bundle includes the letters of support for the Appellant sent to the Commission by JAFLAS' trustees, although only Mr Bohill made a witness statement for the Tribunal. Paul Bohill's witness statement states that he is a business restructuring consultant and former police officer, now a High Court Enforcement Officer. He states that he has come to trust and rely on the Appellant, whom he met only after the Appellant had been struck off the Roll of Solicitors. He describes the Appellant as an "*unwaged but sponsored non-executive director*" who advises large commercial companies as well as JAFLAS' clients, and that he has his own professional reputation to safeguard, so he is confident that his association with the Appellant is not a risk for JAFLAS. Mr Bohill's evidence to the Tribunal was that he has "*personally overseen the validation of Alan's bona fides and especially his peerage, knighthood, doctorate and his qualifications and fellowships. I have personally verified these examinations and satisfied myself along with counsel that they are entirely valid and without error or obfuscation*".
46. In cross examination, Mr Bohill was reminded by Mr Rechtman that he had written to the Commission describing the Appellant's conviction as a "*complete sham*". He said he still stood by that statement. He told the Tribunal that he did not speak on behalf of the other charity trustees. Asked why the other charity trustees had not made witness statements, Mr Bohill described them as "*little people*", unused to involvement in litigation. He stated that the Appellant does not have control of the charity and makes no decisions that have not been referred to himself as the Chair of Trustees. Re-examined by the Appellant, Mr Bohill told the Tribunal that he had never received a complaint about the Appellant's work and that he was appalled that the Appellant has had to "*descend to this*".
- (v) *The Appellant's Professional Competence and the High Regard in which he is held by others*
47. In his submission for the internal decision review, the Appellant made his case for the general waiver on the basis that other charities often invite him to assist them in relation to acquisitions and mergers and other high-level negotiations, after which he is asked to become a trustee for a year or two to ensure the efficient running of the charity. The Appellant also states that he has provided 30 years of service in the voluntary sector and has received a knighthood in addition to his peerage for his service to the third sector. No corroborative evidence was produced to support either statement.
48. The Appellant's witness statement includes testimony that the Appellant "*sits as an upper-tier judge of the education and professional education tribunal (STORM) and sit as an ombudsman for the Independent Ombudsman Service...*". No documentary evidence has been produced to support this statement, nor the many other assertions of good character and high standing made in the witness statement. The only exhibit to the Appellant's witness statement is a list of the symptoms of three psychiatric disorders (Borderline Personality Disorder, Major Depressive Disorder; Imposter Syndrome), which he had composed himself. I understand this to support his testimony that he suffers from low self-esteem and depression which lead him constantly to gain new qualifications and accreditations to prove to himself his own worth. No medical evidence was provided to the Tribunal in support of this testimony.
49. The Commission had considered 'character references' submitted by the Appellant, although regarded these as having limited value in view of the fact they had been

prepared six months before the waiver application was made, presented in a tick-box format created by the Appellant himself and had been made in connection with an entirely different matter. These were produced in evidence for the Tribunal.

F: Submissions

50. The Charity Commission provided a written skeleton argument for the Tribunal hearing, which may be summarised as follows:

- (i) There is no dispute that the Appellant is disqualified under s. 178(1) of the 2011 Act;
- (ii) This is an appeal by way of re-hearing; the Grounds of Appeal inappropriately invite a review of the Commission's decision;
- (iii) The power under s. 181 of the 2011 Act to grant a waiver is discretionary;
- (iv) The exercise of that discretion properly involves a balancing exercise of the risks and benefits which would arise from the applicant for the waiver acting as a charity trustee, taking into account all the relevant evidence. A waiver should be refused if the risks outweigh the benefits;
- (v) The Commission undertook the relevant balancing exercise and reached an appropriate conclusion in this case;
- (vi) In relation to the specific waiver sought in relation to JAFLAS, the Commission's conclusion was that it was not in the best interests of JAFLAS for the Appellant to continue in his dominant role despite his disqualification, especially in view of the trustees' apparent lack of understanding of the risks;
- (vii) In relation to the general waiver sought, the seriousness of the Appellant's conduct leads the Commission to conclude that there would be a serious risk to public confidence and trust in charities generally were he permitted to act as a trustee;
- (viii) The Appellant's evidence demonstrates that the Appellant lacks insight and seeks to blame others for his misfortunes;
- (ix) It is relevant to take into account not only the disqualifying conviction, but also the striking off by the SRA and CILEX, which demonstrate similar patterns of dishonest behaviour. These instances relate directly to the Appellant's work for the charity, whilst the conviction does not;
- (x) The refusal of the waiver is a proportionate measure because nothing less can protect the public and the charity sector from the level of risk which the Appellant represents.
- (xi) The Commission is concerned that the Appellant continues to play a dominant role in JAFLAS and that he may be acting as a *de facto* trustee notwithstanding his disqualification.

51. The Appellant did not file a written statement of case for the Tribunal but made an oral closing submission as follows:

- (i) He accepts that his behaviour towards the SRA was below the standard expected of a solicitor. He was ashamed of his past conduct but is a different man today;
- (ii) He has never done anything deliberate to endanger clients. Other organisations approach him to assist in helping the most vulnerable people in society;
- (iii) The people he assists do not care about his qualifications, they just want someone on their side and who knows what they are talking about;

- (iv) The public supports him, it does not need protection from him. There have been no complaints about his work and there is no evidence of risk;
- (v) The Solicitors Disciplinary Tribunal findings were wrong. The SDT should hang its head in shame for trying to make him come to London when he was a risk of death if he did so;
- (vi) The Commission's refusal to grant the waiver is unfair to JAFLAS' trustees. He cannot now share with them the responsibility for running the charity;
- (vii) The Commission's investigation has been prejudiced, but even they found the charity is being run properly;
- (viii) He works hard to help those in need of his help and takes pride in the work of the charity.

52. Later, the Appellant interjected to call Mr Rechtman's closing submissions "*drivel*". In a spirited outburst, he referred to his serious mental health difficulties and suicidal thoughts. He said he has accepted that he has done wrong, but that it was not the wrong shown on the paperwork. It was clear that he suffers a great deal of upset when his case is reported in the media, and he described receiving abusive messages from strangers who know nothing about his struggles. I left the hearing concerned for his welfare and express the hope that my Decision in this appeal, whilst having serious implications for him, is not used by others as an opportunity to engage in the abuse of a vulnerable man.

G: Conclusion

53. By the date of the hearing, the Appellant no longer argued that the Commission's decision had been reached by a flawed process, merely that it was disproportionate. This appeal is against the Commission's decision, not the reasons given for it. However, I observe that the decisions to refuse the waivers, both in April and September 2021, followed the Commission's published guidance in identifying the relevant factors clearly, weighing them into a balancing exercise, and explaining why the factors against granting a waiver outweighed the factors in support of it. The Appellant had ample opportunity to present his evidence and argument for the Commission's consideration during that process.

54. My findings of fact are as follows:

(i) The Conviction

I accept the evidence of the Appellant's conviction for an offence of dishonesty. I conclude that the offence was serious enough to warrant a sentence of imprisonment, albeit a suspended one. I am satisfied that the conviction occurred in January 2020 so is as yet unspent. I find that the sentence has not yet been completed as the period of suspension lasts until 2024.

I do not accept the Appellant's bare assertions that his was a bad faith prosecution, that he was poorly represented, or that the judge was biased against him. I do not accept Mr Bohill's description of the proceedings as a sham.

I am unable to make a finding of fact about the reinstatement of the benefits to which the conviction relates in the absence of any documentary evidence to corroborate the Appellant's testimony. I conclude that such evidence would be readily available to him but that he chose not to present it to the Tribunal.

(ii) *The Solicitors Disciplinary Proceedings*

I accept the findings of the Solicitors Disciplinary Tribunal and the reasons for those findings which are set out fully in the transcript. I do not accept the Appellant's bare assertions that the proceedings were biased or unfairly conducted.

In the absence of corroborative evidence, I do not accept that the Solicitors Regulation Authority later retracted its allegations against the Appellant or paid him damages for defamation. It is counter-intuitive that a person who exonerates himself in defamation proceedings would sign an NDA so that nobody else would know of his exoneration. Nevertheless, if the Appellant's evidence about the NDA is correct, he could have applied to present it to the Tribunal subject to a direction as to its confidentiality, but he did not make any such application.

(iii) *CILEX*

I accept the evidence of the Appellant's CILEX disciplinary record. I note that CILEX made its determination that he had failed to declare relevant matters to it on a date after the Appellant had applied to the Commission for the waivers.

I do not accept that the Appellant had in fact provided the relevant information to CILEX but that it had not kept accurate records.

I conclude that the evidence from CILEX, which post-dates the Charity Commission's decision, shows that following the Appellant's dishonest dealings with the SRA in 2016 and the finding of dishonesty by the criminal court in 2020, he repeated a pattern of dishonest conduct towards a regulatory body in 2021, even after making his waiver application.

(iv) *The importance of the Appellant to JAFLAS/Other Charities*

I accept that JAFLAS provides support to needy beneficiaries facing legal problems and that the Appellant has played a key role in delivering this service.

I also accept the evidence that the Appellant's work as its senior manager is important to JAFLAS. This is especially the case given that he created its *modus operandi* himself and the trustees clearly depend upon his knowledge and skills to further the charity's objects.

The Appellant clearly has the unwavering support of Mr Bohill, but I am not persuaded that the other trustees fully supported the waiver application in the absence of any statement from them to the Tribunal.

I find it difficult to assess the benefit of the Appellant returning to the trustee board of JAFLAS without understanding the relationship between ‘Dr Alan Blacker & Co.’ and JAFLAS. It does not seem to me that ‘Dr Alan Blacker & Co.’ is a charity trading subsidiary in the usual sense, and I have not seen any evidence that JAFLAS has any formal mechanism of control over ‘Dr Alan Blacker & Co.’. This relationship will need to be further investigated and properly understood. On the evidence before me I am not persuaded that it is in the best interests of JAFLAS for the Appellant to be permitted to return to the trustee board so long as this uncertainty remains.

In the absence of any independent evidence to support his statements about offering assistance to other charities and receiving requests to serve on other charity boards, I conclude that the Appellant has not presented sufficient evidence for me to identify a positive factual case in support of his application for a general waiver.

(v) *The Appellant’s Professional Competence and the High Regard in which he is held by others*

I find that the notion of professional competence includes an appropriate attitude towards Rules, Codes of Conduct, and co-operation with regulatory requirements and investigations. The SRA and CILEX have both made adverse findings against the Appellant in this regard and I find that the Appellant’s professional standards remain an issue in view of the recent finding by CILEX.

I accept the evidence of the Appellant and Mr Bohill that no complaints have been made about the Appellant’s work for JAFLAS, and I also accept that the Commission has not made any finding of misconduct or mismanagement against the trustees of JAFLAS. Nevertheless, this evidence is insufficient on its own to support the case for a waiver.

I conclude that the Appellant and Mr Bohill have in their evidence asked this Tribunal to go behind the findings of the Solicitors Disciplinary Tribunal in asserting that he is entitled to use all the professional and academic qualifications which he claims, when the Solicitors Disciplinary Tribunal found that this was an element of his dishonesty. In the absence of any documentary evidence to support their assertions, I am unable to accept their evidence on this point. I conclude that such evidence would have been readily available to the Appellant if what he says is correct, but that he has chosen not to present it.

I am not persuaded that I can rely on the ‘character references’ for the same reason that the Commission did not accord them weight. It would have been open to the Appellant to present to this Tribunal meaningful character evidence, demonstrating the high regard in which he says he is held by others. However, he chose not to do so, and I find his case on this point unproven.

55. In conducting my own balancing exercise, I find that the proven factors which support the case for granting a waiver are: firstly, JAFLAS’ heavy reliance upon the Appellant

in providing services to its beneficiaries. That point is weakened by the fact that he can provide advice as a volunteer. Secondly, in the Appellant's favour is the confidence of his Chair of Trustees Mr Bohill, although the absence of the other trustees from these proceedings and Mr Bohill's explanation for that absence raises concerns about the dynamics of the trustee board. I have also expressed concerns about the relationship between JAFLAS and 'Dr Alan Blacker & Co' which require further consideration before a positive case for his return to the board and to the role of senior manager at JAFLAS could be established. This uncertainty weakens the impact of the second factor. Thirdly, I weigh into the positive side of the scales some early indications of contrition and insight from the Appellant. I appreciated his oral evidence on this point; however, his claim to be a changed man was easily disturbed when he became agitated, and he quickly reverted to casting blame on others. I conclude that it is as yet premature for his change of approach to be given much weight, but I hope that in time he may demonstrate the insight which would assist his case.

56. The proven factors which I find weigh against the grant of a waiver are as follows: firstly, the nature of the conviction, which Parliament has decided is serious enough to warrant an automatic disqualification from charity trusteeship. Thus, the Appellant's starting point is one of having been found unfit to serve as a charity trustee as a result of his dishonest conduct, and he bears the "*heavy burden*" of establishing the case for a waiver. As the Commission's guidance explains, that burden is even heavier in the case of an application for a general waiver, where the specific impact on any named charity cannot be assessed. Secondly, I add the recent date of the conviction. I conclude that it would be difficult for any disqualified trustee to establish that they have changed completely within only two years of their conviction and whilst their suspended sentence of imprisonment is still being served. Unsurprisingly, there was insufficient evidence of the complete rehabilitation claimed by the Appellant. Thirdly, as I have found, there is here a pattern of dishonest conduct towards his regulators which both precedes and post-dates the conviction, and for which the Appellant has consistently blamed others. I note that, while the conviction related to matters in the Appellant's private life, the findings of dishonesty by the SRA and CILEX impact directly on the nature of his work for and proposed trusteeship of JAFLAS because they inevitably impact on its relationship with its regulators. Fourthly, I am not satisfied that the Appellant has the support of the entire trustee board of JAFLAS, as I have not heard from all of them. It does not inspire confidence to think that if he were to be granted a waiver there could be a disagreement about him re-joining the board of trustees. The support of all a charity's trustees is a crucial factor in granting a waiver and requires a robust evidential case which was not made.
57. Fifthly, I place particular weight on the Commission's specialist knowledge of the charity sector and its view that public trust and confidence in charities would be harmed by the granting of waivers in this case. The Appellant's assertion that the public has confidence in him personally misses the point about the public's trust and confidence in the sector as a whole. Charity trusteeship and the holding of a senior role in any charity is a position of trust in relation to vulnerable beneficiaries and donated money. The Commission is better placed than the Appellant or the Tribunal to assess the sector-wide risks and I accept its assessment of the damaging impact that granting waivers would have in this case.

58. Having weighed all the evidence before me, I conclude that there are limited factors in favour of granting a waiver, but that these fail to outweigh the substantial factors in favour of refusing a waiver. I conclude that refusing the waivers is a proportionate response to the outcome of that balancing exercise. In all the circumstances, the Appellant's appeal against the Commission's refusal of a waiver is dismissed, both in relation to JAFLAS and generally.
59. The Appellant told the Tribunal that he had not conducted himself in these proceedings to the same standard that he would usually adopt in representing a client. It is entirely understandable that the huge personal significance of these proceedings caused him to lose focus at times and I do not hold that against him. However, I also observe that in many respects he simply failed to provide evidence of the facts on which he relied. I found it surprising that a man of his professional experience should have thought that this Tribunal would not require evidence to support his case.
60. As matters stand, the Appellant will be eligible to serve as a charity trustee and executive officer again in October 2024, when his suspended sentence expires. If he intends to apply for a waiver again before that time, he would be well-advised to provide the Commission with plentiful independent evidence that supports the assertion that he is a changed man. Such evidence would need to be collated over a reasonable period of time, demonstrating the consistency of his changed attitude and behaviour.
61. In the meantime, it will be open to the Appellant to continue to volunteer for JAFLAS, provided that he does not overstep the necessarily limited role he must play while he has no professional regulator. I accept that his long experience of legal practice could be valuable to those seeking the charity's advice and assistance and that he is motivated by a desire to help those in need. However, as I do not recognise 'Alan Blacker & Co.' to be a trading subsidiary of JAFLAS in any formal sense, it seems to me imperative that a clear and transparent legal relationship between the two entities should be established, as this will provide the framework within which the Appellant must work as a volunteer. I express the hope that the Commission will assist in signposting any needy beneficiaries to other services if necessary whilst this work is undertaken.

(Signed)

Judge Alison McKenna

Dated: 15 April 2022

Paragraph 2 corrected under rule 40 on 27 May 2022

Corrected Decision re-issued on: 31 May 2022