

IN THE COUNTY COURT AT YORK  
SITTING AT LEEDS

Neutral Citation [2024] EWCC 3

Case No. 5 of 2024

Courtroom No. 15

The Courthouse  
1 Oxford Row  
Leeds  
LS1 3BG

Wednesday, 3<sup>rd</sup> July 2024

Before:  
DISTRICT JUDGE ROYLE

B E T W E E N:

IN THE MATTER OF DARREN BURLEY  
AND IN THE MATTER OF SECTION 64 OF THE TRIBUNALS, COURTS AND  
ENFORCEMENT ACT 2007  
AND IN THE MATTER OF THE CERTIFICATION OF ENFORCEMENT AGENTS  
REGULATIONS 2014

THE COMPLAINANT appeared In Person  
NO APPEARANCE by or on behalf of the Certificated Person

APPROVED JUDGMENT

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DJ ROYLE:

1. This is my judgment in complaint number 5 of 2024 against a certificated person namely, Darren Burley. Mr Burley is a person who has been certificated under the Certification of Enforcement Regulations 2014 (“the Certification Regulations”) to be an enforcement agent within section 62 of the Tribunals, Courts and Enforcement Act 2007. Mr Burley has not attended today. I shall refer to that again later. Mr Richardson, the Complainant, has attended today.
2. The hearing before me is as a complaint as to the fitness of Mr Burley to hold a certificate under reg. 9 of the 2014 regulations.
3. On 1 February 2024, Mr Burley attended the home address of Mr Richardson. Mr Richardson, in his complaint dated a week after the visit, makes a number of allegations. In summarising them, I do not intend any injustice to the words he used in his complaint but the following is broadly what is being said.
4. Firstly, though it is not the major substance of the complaint, Mr Burley is said to have posted a letter through Mr Richardson’s letterbox without knocking or identifying himself. The enforcement agent’s response to the complaint which, among other things, prompted me to direct the hearing today, asserts that he did knock but he says his visit to the front door was brief because of heavy rain.
5. Mr Richardson then left his house because he was, in fact, in at the time. He confronted Mr Burley at his car. He says the enforcement agent became aggressive. In evidence today, he has expanded on that to include use of foul language. It is to be noted that, consistently with video evidence to which I will shortly refer from the agent’s body-worn camera, it appears to be common ground that at the car, there was nothing except a verbal altercation.
6. Mr Richardson was aggrieved at the way he had been treated by the enforcement agent, in particular by the language used by, and what he says were threats made by, the enforcement agent at the vehicle. Mr Richardson’s reaction, for good or ill, was to remove the enforcement agent’s car keys from the ignition and start walking back to his house. The complaint goes on then to say that what followed was a serious and sustained assault against himself, occasioned by Mr Richardson, resulting in serious facial and throat injuries, and breaking his left leg.

7. I have read the enforcement agent's response to the complaint. I have heard Mr Richardson give evidence on oath. In Court, I saw three clips provided to the Court and to the enforcement agent by Mr Richardson. They are:
  - a. Firstly, of the enforcement agent's approach in his vehicle.
  - b. Secondly, the enforcement agent approaching Mr Richardson's front door on foot in order to post the document through the letterbox.
  - c. Lastly, and it is no understatement to say, footage of a serious physical altercation between the two of men.
8. Following the directions I have made in the run-up to this hearing, I have also seen, in Court, body worn video from the enforcement agent's camera which ultimately, I think, has been provided by the agency who provided him with the work on that day.
9. Although it does not change the outcome, I will record at this stage that Mr Richardson is no stranger to the rules and regulations and the law which apply to enforcement agents. That is because, for some years, he had initially trained as an enforcement agent, possibly at the time as a certificated bailiff as they were before 2014. However, he did not obtain a certificate. The circumstances of why he did not obtain a certificate I do not know and probably do not matter. The consequence was that for years he worked as what the industry has colloquially referred to as "a porter". That is somebody who does not hold a certificate either as a bailiff, as they were before 2014, or enforcement agent as they are now, and who works under the direction and in the presence of somebody who does hold a certificate. There is nothing wrong with that. That happens routinely as I understand it, but it means that as a consequence of his training and his work (which is now completed; he does not work in the industry anymore). Accordingly, he has an appreciation of what is and is not appropriate in terms of behaviour by enforcement agents.

*The question to be answered*

10. Today's hearing was listed for a hearing of the complaint. The question I have to ask myself is the question which appears at Regulation 9(8) of the Certification of Enforcement Agents Regulations 2014: namely, does Mr Burley remain a fit and proper person to hold a certificate?
11. Taking a step back, in order to obtain a certificate, an enforcement agent must apply for a certificate and, to put it shortly, satisfy the Court that he is fit and proper. Post-2014, that

has involved at least the production of an NVQ level 2 certificate, a criminal records check and various other things. Accordingly, a hearing having been listed, regulation 9(8), says:

“If after a hearing, the judge is satisfied that the certificated person remains a fit and proper person to hold a certificate, the complaint must be dismissed”.

12. That is a change from the previous regulations, the Distress for Rent Rules 1988. However, also, that sub-regulation makes it clear that a complaint can be dismissed, though presumably in quite limited circumstances, if the Court was satisfied that the certificated person was *not* a fit and proper person to hold a certificate. In other words, it does not mandate the upholding of a complaint if the certificated person is not fit and proper. The logic is approached in the regulation the other way around.
13. In my judgment what that means is that, having previously had to satisfy the Court that he *is* a fit and proper person, the assessment of whether he remains a fit and proper person should be primarily by reference to the requirements that he had earlier satisfied in order to get the certificate in the first place.
14. Those requirements are set out at Regulation 3 of the same regulations. However, that is not the total ambit of the enquiry or the consideration because those factors at Regulation 3 are plainly not an exhaustive list. For example, not only the enforcement agent’s conduct whilst undertaking work but also *outside* their professional life can give rise to a finding of unfitness. For example, though it is not this case, if an enforcement agent, whilst certificated, was convicted of a dishonesty offence, that may well impact the Court’s consideration under Regulation 9(8). Accordingly, when I consider the evidence and material that I have before me today, the question is whether Mr Burley remains fit and proper by those standards as I see them.

*The burden and standard of proof*

15. In terms of the standard of proof, I see no reason why that is not the ordinary civil standard; that is “what is more likely than not” or “on the balance of probabilities”. As to the burden of proof, the position is a little more esoteric. In the 1988 Distress for Rent rules, there was an express requirement for the certificated person to ‘show cause why his certificate should not be cancelled’. It seems plain to me that that was imposing a legal burden on the enforcement agent to re-prove their fitness, though it seems obvious to me that there must have been an evidential burden on the complainant to set out and prove some facts which would give rise to a finding of unfitness. However, the wording changed from the old 1988

rules when they were re-cast into the Certification of Enforcement Agents Regulations 2014. Those modern rules now require the Court to be satisfied that the enforcement agent *remains* fit and proper.

16. That departure in wording appears to me to be significant. In my judgment, these are (as they were under the 1988 Rules) effectively inquisitorial proceedings where there is no specific burden of proof. That is not a new concept because it has existed in the context of the Employment Rights Act 1996, for example section 98, for many years. I say that because the enforcement agent, by virtue of a pre-existing certification, has previously been considered to be fit and proper. The requirement, then, is to decide whether he *remains* fit and proper. Thus the Court appears to be being invited by the statute to start from a position of fitness and determine on the evidence before it whether that is no longer the case but to the civil standard of proof. That, it seems to me, is a departure from the 1988 rules.
17. Furthermore, in circumstances where under the same regulations of 2014 (as indeed was the case in the 1988 Rules), the Complainant is neither required to attend nor is obliged to give any evidence either in writing or orally, it would be odd indeed if a Complainant had any form of at least legal burden upon them.
18. If the starting point is that the enforcement agent is fit by virtue of his certificate, there must still, in my judgment, be an evidential burden on the complainant to satisfy the Court that there are matters which may dislodge that starting position on the balance of probabilities. However, I take the legal burden as neutral. That is the way I approach this complaint.
19. All of that said, the legal burden of proof only becomes relevant if, having striven to do so, I cannot decide the relevant facts: see, for example, *Stephens & another v Cannon & another* [2005] C.P. Rep. 31 at paragraph 46(c).

*The expired certificate*

20. The next observation is a matter of law. I am told and accept (and from what I have seen in the file, it is true) that Mr Burley's existing certificate has expired. There was a recertification hearing listed some months ago but it was adjourned because this complaint had been brought and could not be determined at that hearing. In my judgment, that may have been a misstep if it is what happened, because it would have been to stop Mr Burley undertaking work whilst a complaint was pending whose facts were, at that stage, unadjudicated upon.

21. I am now bound to determine those relevant facts, however, and I am told that there is a hearing for his present application to renew his certificate on 19 July which is just over two weeks away.
22. The fact that Mr Burley's certificate has expired gives rise to another short point that needs to be dealt with. Regulation 9 about complaints refers, at sub-regulation 1 to:

“any person who considers that a certificated person is by reason of the certificated person's conduct in acting as an enforcement agent, or for any other reason, not a fit person to hold a certificate”.
23. It may be thought that the fact that Mr Burley's certificate has expired means that there is no jurisdiction for a complaint to be heard. In my judgment that would be wrong. The answer to that point lies in Regulation 2 of the 2014 Certification Regulations. That regulation defines a certificated person as someone “to whom a certificate has been issued”. What it does not say is that it is a person *who holds a current certificate that is still in force*. There is no doubt that Mr Burley qualifies in these proceedings as a “certificated person”. The complaint was brought before the expiry of his certificate in any event, for what that is worth. Accordingly, there is clearly jurisdiction to deal with the case.
24. That also was effectively the conclusion on appeal in a decision of Saini J in *Binding v Patterson* [2019] EWHC 2665 (QB), which binds me. The reasoning argued before Saini J is not quite the reason I have just given, which may unfortunately not have been put to the Judge in that case. However, the ratio of Saini J's decision is clear, and applies to this case in my judgment. Accordingly, there is clearly jurisdiction to deal with the matter today.

*Mr Burley's non-attendance today*

25. Mr Burley has not attended today. I have caused both physical checks in the building before the hearing started, not just in the District Judges' waiting area, but on other floors of the building to be done. At least one, possibly two or more tannoys were done throughout the building, known as “all courts tannoys” to which he did not respond. The Court Office, at my request, attempted to telephone Mr Burley on the mobile phone number appearing on the draft certificate which he seeks to obtain on 19 July. The call went straight to voicemail. Since this is a York case, I also caused the Court Office to ring the York County Court and to search their building to see if he was there. That was in case Mr Burley had for whatever reason and despite the clear words of the order on 26 April directing him to attend here, had gone to York County Court by mistake. He was not there either.

26. No communication that I am aware of has been received suggesting that he was, for some reason, unable to attend today. It appears that he has simply not attended.
27. That non-attendance is an issue. Regulation 9(7)(a) of the 2014 Certification Regulations makes it clear that the certificated person must attend for examination and may make representations. In my order of 26 April, I reiterated the positive requirement in the regulations to attend by way of paragraph 9 of that order. I did not deal with his right or otherwise to make representations. I also directed that he was to attend for examination and that he must bring the certificate to the hearing. That provision was made in case the certificate was to be suspended or cancelled because the requirement would be for him to surrender it to me today.
28. However, he is not here and there is no reason given why he is not here. He surely has the ability to communicate with the Court if there was some problem. He has engaged with the process earlier on by providing a response to the complaint. It seems to me likely, on the balance of probabilities, that he has simply decided not to come. That, in and of itself, as a matter of conduct and related to the question of fitness is, in my view, a significant default. He was required to be here for examination by law and by order. He did not come.
29. I considered briefly whether to adjourn today, but the hearing has been listed since 26 April 2024. That is just over two months ago. It seems to me that the matters which are in issue are serious matters and so the complaint needs to be dealt with in light of any indication (or otherwise) from Mr Burley as to why he is not here. I could see no justification for adjourning the proceedings and I did not. I will decide the complaint, therefore, to the burden and the standard that I have described on the material that I have got.

*The production of identification and failure to knock on the door*

30. Logically the first complaint is that Mr Burley did not knock on the door of the premises. Mr Burley's response to the complaint says:

“Due to heavy rain, I quickly knocked on the door and there was no response so I posted the appropriate letter in a sealed envelope with his name on it and returned to my vehicle”.
31. In my judgment, that is a plainly false response. The body-worn video to which I have referred shows no knocking at all and shows not even the briefest pause to wait for any kind of response to the letter going through the letterbox. It is consistent with the Complainant's evidence that he happened to be standing behind his front door when the paper come through it, but heard no knock. The Complainant's evidence is that the letter was not in an

envelope as suggested. In that regard, it is not clear precisely what the letter was. Mr Richardson says that it was some kind of enforcement notice. I do not know. Whatever it was, however, it would have been sensible had it been in an envelope, but given the balance of the complaint, it seems to me to make no difference to the outcome of this matter as to whether it was or it was not.

32. As to the allegation that Mr Burley did not produce his identification, paragraph 26 of Schedule 12 to the Certification of Enforcement Regulations says this:

“The enforcement agent must, on request, show the debtor and any person who appears to him to be in charge of the premises, evidence of his identity and his authority to enter the premises”.

33. There is no suggestion that, whilst on the premises, Mr Burley was asked to show evidence of either matter. That, at least, arises because perhaps, had he knocked on the door, he might have been asked. However, at the time when he was, in fact, on the premises, Mr Richardson had no opportunity to ask him for that information. The fact that he did not, therefore, provide it is no surprise. However, that pales into insignificance compared to the other matters to which I now turn.

*The altercation in the street*

34. The third complaint is of assault, the summary of which Mr Richardson gave in his original complaint document. As I indicated to Mr Richardson before he gave evidence, the primary evidential material here is the CCTV. As I indicated to Mr Richardson during the hearing, by reference to the regulations he does not even have to attend. I take it from that that he cannot be required to give evidence. Indeed, even the claimant in an ordinary civil claim could not be so required absent a summons. I therefore gave him the choice as to whether to give evidence and he took me up on that suggestion and he gave evidence on oath.
35. Insofar as he told me of the facts, I accept his evidence and it is worked into my findings as follows.
36. What is on the third piece of CCTV, in my judgment, shows the following. After what I take to be the verbal altercation at the enforcement agent’s vehicle, the CCTV plainly shows the Complainant, presumably in possession of the enforcement agent’s keys, walking away towards the front door of his house down the pavement next to a red car. I have already accepted that the previous altercation was in no way physical but it did involve some choice language, in my judgment, probably on both sides.

37. I also accept the Complainant's candid evidence that while that previous altercation was in progress, he was quite angry. That probably stems from two things: first his own awareness of proper conduct of an enforcement agent. Secondly, his evidence about the enforcement agent's foul language and denials of what the Complainant knew to be true which at least, in part, was that the enforcement agent had not, in fact, knocked on his door.
38. I earlier accepted the Complainant's evidence that he happened to be standing behind his front door at the time and would have heard it but did not. I take that candid acceptance that Mr Richardson was angry during the verbal altercation fully into account when I consider what, in all likelihood, happened next and, perhaps, to an extent, why it happened.
39. The third piece of video from Mr Richardson's CCTV shows Mr Burley approaching Mr Richardson from behind while Mr Richardson is walking away. Mr Burley grabs him and pulls Mr Richardson's ponytail several times. In some cases, those pulls appear to be quite hard.
40. At one stage, Mr Burley bends Mr Richardson over double, forwards. In my judgment, he then violently pushes him backwards against a "wheelie" bin which happens to be outside Mr Richardson's house. Then, from behind, grabs at the top of Mr Richardson's face. His fingers are either in or perilously close to Mr Richardson's eyes. Eventually, that scuffle stops and the Complainant goes back to his front door and presumably into the premises or maybe waits outside it; it does not matter.
41. The body-worn video is consistent with all of that – though it shows Mr Richardson has a bloody nose. It is not clear to me how that happened given the common ground that the altercation at the vehicle was not physical.
42. I interpose on approving this judgment to add that Mr Burley called the Police from his motor car after the incident and described being attacked by the Complainant. On the body-worn video footage, he also described to someone on the phone, whom I take to be at his office, that he was "jumped", possibly (though it does not make any difference) "by two men".

#### *Discussion*

43. This is a professional who is certificated by the Court to enforce court and other debts. The important circumstances, in my judgment, are that first, this was a violent physical altercation which appears to have been begun by the enforcement agent while the Complainant was walking away. The Complainant, at that stage, was in no way, in my

judgment, being aggressive. The assault was serious. I interpose on approving this judgment to observe that what Mr Burley told the Police and the person at his office whilst on the telephone was simply untrue. It is unclear to me how he could have genuinely believed it to be otherwise.

44. Whilst I accept the Complainant's candid evidence that he had taken the Mr Burley's keys in order to stop him moving away from the area whilst the Police were called, and that may or may not have been wise, he was at the time of the assault with which I am concerned, walking away.
45. I also accept that, to an extent, the enforcement agent is entitled to feel slightly aggrieved about the fact that his keys had been taken. Taking those keys may have been an unwise overreaction on Mr Richardson's part.
46. However aggrieved the enforcement agent may have felt about what had happened or what had been said, it did not, and cannot, in my judgment, have justified the assault which followed. That is aggravated by passages on the body-worn video in which, effectively, the enforcement agent seeks to blame the complainant for the whole assault. The video is clear; that assault was begun by the enforcement agent. If had wanted to suggest otherwise or that there was something more to it, he should have attended today and been examined as required both by order and by the Certification Regulations.
47. On the evidence I have seen, it is overwhelmingly likely that the enforcement agent was the aggressor in relation to all of the physical violence which occurred on the day in question.
48. Given those conclusions, in my judgement this is not, absolutely not, the conduct of a person who is fit and proper to hold an enforcement agent's certificate.

#### *Disposition*

49. Mr Burley, had he wished to deal with whatever sanction might arise today, again, should and could, presumably, have been here. I have a number of options. They arise from Regulation 10 of the 2014 regulations. I can make a deduction from the £10,000 security that Mr Burley has had to put up (though it may, by now, have been repaid). In addition, or instead of that, I can suspend or cancel his certificate. I can make requirements upon the lifting of the suspension of the certificate or any future application for a new certificate if I were to cancel it. For example, training requirements.
50. I have considered carefully what the proportionate response to the facts I have concluded occurred is. I interpose on approving this judgment that Mr Burley's failed to attend today

is relevant to sanction and acts to increase the severity of the sanction to be applied. I consider that this is a sufficiently serious matter that, had the certificate not expired, I would have decided to cancel it and direct that no further application be made before a particular date and require that on that application, the Court be satisfied that no conduct of this nature will possibly occur again.

51. The certificate has, however, expired. In my judgment, it is appropriate though to make comparable directions and impose comparable requirements.
52. I will direct that there may be no further application for a certificate under the Certification of Enforcement Regulations 2014 before 1 January 2025. Upon any such application, the Court must be satisfied that there is no risk of a repeat of the kind of conduct I have seen in the CCTV today. In light of those directions, the application which is presently listed on 19 July to consider recertificating Mr Burley will be dismissed and the hearing vacated.
53. I now turn to consideration of what, if anything, to do in relation to the enforcement agent's security. There should be £10,000 security, insofar as it still exists. The jurisdiction to make deductions from that security arises from reg. 11 of the Certification Regulations, which speaks of 'compensation for failure in due performance of the certificate person's duties as an enforcement agent' and the 'complainant's costs or expenses in attending and making representations'.
54. I have accepted Mr Richardson's evidence that his leg was broken. He tells me that the effect of that, though this delay was not in sworn evidence, but the fact of breaking his leg the day after he had come off crutches from previous surgery, delayed his return to work by three months or thereabouts.
55. Looking at section 7(j) of the 2017 Judicial College Guidelines for General Damages for Personal Injury, the awards can be quite high. However, where these modest injuries are fully resolved within a few months but it does not say how many months, it says an award of less than £2,990 is likely to be justified. In a recent case, damages under paragraph 66 of Schedule 12 were awarded for injury to feelings by reference to the *Vento* Guidelines. Whilst this is not a damages exercise, the material in the statutory instrument does refer to compensation for failure to carry out the enforcement agent's duties. It seems to me that that opens the door to an assessment of this nature. However, I have no medical evidence to support what Mr Richardson is saying. I think that probably would be required in order for me to reach a finding that compensation for personal injury was due and I therefore decline to do so.

56. However, I emphasise that that does not preclude proceedings in another forum or under another provision if Mr Richardson either was advised to or for whatever reason, chose to do that. I am emphatically not dismissing any such claim and nothing I say should be taken to bar any such claim. However, he must not hear that as any encouragement to do one thing or another.
57. I am going to make a deduction of £240 off the security to reflect Mr Richardson's lost earnings and travel in attending today under reg. 11(1)(a) of the Certification Regulations and the balance, if any, of the security is to be repaid. I do not consider that a further deduction from the security is appropriate in circumstances where a certificate is cancelled for quite a long minimum period of time.

**End of Judgment.**

Transcript of a recording by Acolad UK Ltd  
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