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Snubbed Da Vinci Code judge must stand aside, appeal court decides

Frances Gibb, Legal Editor

A high-profile judge was defiant last night after he was criticised severely by appeal judges for refusing to stand aside in a case in which he had “undoubted animosity” towards one of the parties.

Mr Justice Peter Smith, who hit the headlines when he tried The Da Vinci Code case and inserted his own code in the judgment, was described as “intemperate” in the way he handled an application for him to stand down.

Yesterday Sir Anthony Clarke, Master of the Rolls, and two other appeal judges ruled that the judge had got “carried away” and indulged in “extraordinary” exchanges in court.

They said that the application for him to stand aside was “entirely justified” and allowed the appeal against his refusal to do so. But in an extraordinary response, the judge issued a defiant statement saying that he would not be standing down as he had not been told the decision.

He said: “As no one in the Court of Appeal or anyone else in the Ministry of Justice has yet actually told me I have been removed (although I discerned this when I prepared to sit on Tuesday but nobody turned up) and no one has given me any reasons for my removal I am unable to comment, save to say that I will not be resigning.”

The case arose after the judge had been in discussion with a law firm over a possible job – and been turned down to his “extreme” disappointment. An acrimonious exchange of e-mails between the judge and the law firm, Addleshaw Goddard, ensued, the Appeal Court was told. The judge described the e-mails as “insulting” and “condescending”.

The judge then found himself due to try a case last month involving trustees, one of whom – Paul Howell – was a partner with Addleshaw Goddard. Mr Howell then applied for the judge to stand down.

Yesterday the appeal judges said that Mr Justice Peter Smith had got “somewhat carried away” in his treatment of the barrister, Peter Crampin, QC, who made the application to the judge. Mr Justice Peter Smith had told Mr Crampin that his remarks to the judge “could have professional consequences”.

It had also been “wholly inappropriate” for Mr Justice Peter Smith to cross-examine a witness from the solicitors and he “demonstrated animosity” towards the firm and its partners, the appeal judges said. Mr Crampin had behaved responsibly throughout and was completely justified in making the application, they added.

Giving judgment, Sir Anthony said that the case was “most unusual”. The claimants had said it was a case of “apparent bias” where a judge had displayed personal animosity towards one of the parties, he said. The guide to judicial conduct issued by the Judges’ Council indicated that a current or recent business association with a party usually meant that a judge should not sit on a case, he said.

He then referred to the exchange of e-mails over unsuccessful negotiations for Mr Justice Peter Smith to join the firm. In one e-mail, the judge pressed a partner, Simon Twigden, for a decision. Mr Twigden replied, citing “financial reasons” for not “taking matters any further”.

The judge responded, citing “the considerable advantages of being associated with someone like

himself and his “considerable disappointment” at not being offered a job.

Sir Anthony said that the exchanges “clearly show the judge was upset” and also “animosity” towards Mr Twigden and the firm of solicitors. “I can understand their real concern when they learnt that the judge was to hear their own application.”

Yesterday Addleshaw Goddard welcomed the appeal court decision and “the fact that this matter is now able to proceed.”