SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11760-2017

BETWEEN:

AURANGZEB IQBAL Applicant

and

SOLICITORS REGULATION AUTHORITY Respondent

Before:

Mr S. Tinkler (in the chair)
Mr B. Forde
Mr S. Marquez

Date of Hearing: 6 December 2018

Appearances

Nicholas Mason, Counsel of New Park Court Chambers, 16 Park Place, Leeds, LS1 2SJ for the Applicant.

Philip Ahlquist, Counsel of Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DH for the Respondent.

APPLICATION FOR RESTORATION TO THE ROLL

Application

1. On 4 December 2017 the Applicant applied for his name to be restored to the Roll of Solicitors. The Application was supported by a statement also dated 4 December 2017. The Applicant appeared before the Tribunal on 24 September 1998 (Case No. 7652-1998). Matters of misconduct were found proved and he was suspended from practice for a period of 6 months. He subsequently appeared before the Tribunal on 15 and 16 September 2004 (Case No. 8963-2013). On that occasion the Tribunal struck the Applicant off the Roll of Solicitors. The Tribunal found the following allegations proved:

    (i) The Applicant had been involved in running a solicitors practice in a manner designed to circumvent conditions imposed upon his practising certificate;

    (ii) The Applicant failed to ensure the exercise of proper supervision in a solicitors practice;

    (iii) The Applicant failed to keep accounts properly written up;

    (iv) The Applicant had withdrawn monies from client account other than as permitted;

    (v) The Applicant failed to give full costs and other relevant information to clients at the outset of acting;

    (vi) The Applicant made use of notepaper which was confusing and misleading;

    (vii) The Applicant failed to account to HM Customs and Excise for Value Added Tax;

    (viii) The Applicant failed to provide material information to the firm's Professional Indemnity Insurers.

2. The Applicant made an application for restoration to the Roll which was considered and refused by the Tribunal on 26 July 2012. The Applicant made a further application for restoration to the Roll which was considered and refused by the Tribunal on 31 March 2014.

3. The Tribunal was satisfied that the Applicant had advertised the application on 25 October 2018 in the Yorkshire Post and in the Law Society Gazette on 22 October 2018.

Documents

4. The Tribunal reviewed all the documents submitted by the parties, which included:

    - Applicant's application and supporting documents
    - Respondent's response and supporting documents
    - Applicant's Statements
    - Applicant's Further Response and Exhibits

Applicant's Case

5. Mr Mason submitted that the cardinal principle for the Tribunal to consider on an application of this kind was to determine whether there would be any detriment to public confidence and the reputation of the profession if the Applicant was restored to the Roll.

6. In considering that issue, the Tribunal should note that no dishonesty had been alleged against the Applicant. There was a distinction to be drawn between those who had been struck off the Roll for allegations involving dishonesty and those who had not. Mr Mason did not seek to trivialise the Applicant's conduct but did seek to differentiate from those more serious matters involving dishonesty.

7. To put his conduct into context, the matters considered by the Tribunal in 1998 concerned accounting irregularities and failings in management and supervision. The matters considered by the Tribunal in 2004, whilst there were serious and significant failings on his behalf, were not matters where it was alleged that the Applicant's conduct had been dishonest.

8. Mr Mason conceded that the Applicant had a substantial obstacle to climb in persuading the Tribunal to restore him to the Roll, but that obstacle was not of the Himalayan proportions identified by Sir Thomas Bingham MR, as he then was, in Bolton v Law Society [1994] 2 All ER 486.

9. The Tribunal must have regard for the period of time that the Applicant had already been off the Roll; 14 years had elapsed since the Tribunal's decision to remove the Applicant from practise. 14 years was a significant amount of time within which rehabilitation could occur and public confidence could be restored.

10. Mr Mason submitted that the restoration of public confidence in the Applicant was clear from the documents submitted on his behalf. There were numerous references from a wide variety of sources both from within and without the profession. They demonstrated that within his local community, and notwithstanding awareness of his previous conduct, the writers had positive views about the Applicant personally and his restoration to the Roll. They did not consider that to restore the Applicant to the Roll would damage the reputation of the profession.

11. Mr Mason submitted that the Tribunal would be concerned as to whether the Applicant's subsequent conduct indicated that there were still concerns regarding his conduct that would have implications as regards his reputation and the reputation of the profession. The Tribunal had seen the findings of the Claims Management Services Regulator ("CMR") and the First Tier Tribunal ("FTT") regarding irregularities as to how he conducted his Claims Management Company ("CMC"). Those findings, it was submitted, had certain familiarities with the Tribunal's previous findings – the Applicant had transgressed. Mr Mason submitted that the transgressions related to the commercial aspects of his business as opposed to the law itself. It was clear that the Applicant's irregularities related to how he ran a Firm and not to him as a lawyer in practice and his ethical standards.

12. Mr Mason submitted that it was appropriate for the Tribunal to approach the application on the basis that the Applicant was suitable to be restored to the Roll with appropriate conditions in place. In April 2012, the Respondent approved an application for him to be employed in a firm as a legal clerk subject to stringent conditions which included:

- He be supervised by the Principal of the firm;
- He was not to attend the firm in the Principal's absence;
- He was to have no access to the firm's office or client accounts;
- He was not to be a signatory to any accounts;
- He was not to be provided with authority to authorise any transfers from the firm's accounts;
- He was not to hold himself out as a solicitor;
- He must make his status known to clients.

13. In granting him permission to work, the Respondent considered that it was appropriate for the Applicant to be employed as a legal clerk subject to the defined safeguards being adhered to. Restoring the Applicant to the Roll would be an extension of that permission. Whilst it was accepted that there was a difference in public interest considerations for a solicitor and a legal clerk, the granting of the permission was, it was submitted, recognition that the Applicant could be employed not just as a legal clerk but as a solicitor without damaging the public interest. Unfortunately, the Applicant had not been available to avail himself of the permission to work as the Principal fell ill shortly after permission was granted and was not able to attend the office.

14. Mr Mason referred the Tribunal to a letter dated 21 January 2018, in which the Applicant had been offered a position as an in-house solicitor. The Tribunal was also referred to an email dated 6 December 2018 which confirmed that that job opportunity was still available to the Applicant subject to his obtaining a valid practising certificate. This demonstrated that a company within the confines of professional regulation was prepared to employ the Applicant. The company was aware of the irregularities and transgressions of the past, including those relating to the CMC. It was submitted that as an in-house solicitor, it was less likely that the Applicant would have the responsibilities or opportunities that created the problems in the past, as he would not have the widespread duties to the public at large as one had as a solicitor in private practice. As an in-house solicitor, the matters that had afflicted him in the past would not arise, and the Tribunal's concerns as regards allowing him to return to private practice would not arise.

15. The Remuneration for the position was subject to agreement. The primary concern of the Applicant was the opportunity to redeem himself and return to the profession, and not how much he would be paid; the salary was not determinative of his acceptance. The position provided him with the ability to practice without falling into the traps that he had fallen into in the past. The concern as regards repetition of seeking to circumvent conditions imposed could not arise in the situation where he was an in-house solicitor.

16. Mr Mason submitted that the Tribunal could safely allow the Applicant to return to practice with extremely restrictive conditions preventing him from returning to private practice or having any dealings with lay clients. If such conditions were imposed, he would be able to accept the offer of employment.

17. Mr Mason acknowledged that there were still sums outstanding from the previous matters that had arisen as a result of his misconduct. That operated against the Applicant. Those losses were not caused by dishonesty, and had personal implications for the Applicant who had been adjudged bankrupt.

18. Mr Mason confirmed the costs awarded to the Respondent as a result of the previous applications for restoration remained outstanding.

19. In summary, it was submitted that:

    - The Applicant had a substantial obstacle to negotiate in convincing the Tribunal to restore him to the Roll;

    - It had been 14 years since he was struck off the Roll;

    - He had rebuilt his reputation within his community as was apparent from the sworn testimonials;

    - There would be no lack of confidence in him or in the reputation of the profession;

    - The matters in relation to the CMC were all in the public domain;

    - Were he allowed to return on the basis of an in-house solicitor, many of the concerns would be allayed as repetition of his previous conduct was unlikely in those circumstances;

    - If he were able to take up the position offered, he would be a solicitor but within a limited sphere with extremely limited duties and responsibilities.

20. Mr Mason invited the Tribunal to restore the Applicant to the Roll with restrictive conditions.

Respondent's Case

21. The Respondent opposed the application. Mr Ahlquist noted that the Applicant had sought to address public interest issues with the production of testimonials, and by placing weight on the endorsements of the Applicant contained therein. The Tribunal was referred to the decision in Bolton which stated:

    > "It often happens that a solicitor appearing before the Tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he had learned his lesson and will not offend again. On applying for restoration after

> striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness."

22. The testimonials, mitigation and personal circumstances of the Applicant were not relevant to the objective test to be considered, namely whether the public would have less confidence in the profession if, given his previous conduct, the Applicant was restored to the Roll. This was not limited to the public in his local community, or any particular community. Further, whilst it was the Applicant's position that the writers of the testimonials were aware of the findings of the FTT and CMR, it was striking that none of the writers addressed those findings. Mr Ahlquist submitted that there was no evidence that any of the writers were aware of those proceedings or findings.

23. The submissions on the Applicant's behalf were that his previous misconduct related to management, supervision and accounting irregularities rather than ethical standards. Such a characterisation was a drastic oversimplification of the misconduct found by the Tribunal. It was accepted that there had been no findings of dishonesty against the Applicant, however the Tribunal in the 2004 matter found:

> "...the arrangements were put in place for the purpose of circumventing the conditions placed on [the Applicant's] Practising Certificate. This was a deliberate flouting of the Law Society's requirements and a deliberate flouting of conditions which had been imposed to protect the public ... even though [the Applicant] questions the correctness of the imposition of those conditions, all the time they are in force his options are either to comply with them or to take the courses open to him to have them overturned or varied. It is not open to him either to act flagrantly in their breach or to seek to circumvent them. The Tribunal takes a most serious view of the "sham" arrangements at the firm ... which were designed to deceive both the public and the Law Society, and resulted in the public being deprived of the protection of proper regulation. The Tribunal concludes that to protect the public and the proper reputation of the solicitors' profession ... its proper course is to impose the ultimate sanction ..."

24. Mr Ahlquist accepted that the hearing of the application was not a re-hearing of the original matters, however the findings of the Tribunal showed that the Applicant's misconduct was viewed as extremely serious by the Tribunal; the more serious the misconduct the higher the threshold for restoration must be. Where there was a finding that the misconduct was at the gravest end of the spectrum short of dishonesty, the more difficult it would be for the Applicant to be successful in any application for restoration to the Roll.

25. The Tribunal also found that "the way in which the practice was set up and run drove a coach and horses through any attempt by the Law Society to regulate the solicitors' profession and thereby protect the public". That finding was singularly serious. It was not open to a solicitor to set up a sham practice so as to circumvent conditions.

Any solicitor acting with probity would have challenged the conditions using the proper means.

26. Mr Ahlquist submitted that it was those findings that the Applicant needed to address as it was those findings that were at the heart of the Tribunal's decision to strike him off the Roll. It was in this context that the findings of the FTT were relevant. The Applicant ran a CMC. As a result of complaints from the public and data received from OFCOM, the CMR audited his business on 20 September 2014. Following the audit the Applicant was informed in a letter dated 7 November 2014 that he did not have over-riding consent to make unsolicited calls to numbers registered against the Telephone Preference Service ("TPS"). On 12 February 2015, the CMR again wrote to the Applicant stating that complaints had continued to be received from consumers who were being called by the Applicant's company despite being registered with TPS. That letter also stated that due to the seriousness of the matter, a formal investigation had been commenced. On 4 August 2015, the CMR imposed a financial penalty in the sum of £220,000. The Applicant appealed against that decision.

27. Mr Ahlquist referred the Tribunal to the FTT's findings. In particular the FTT found:

> "It is clear ... that the [Applicant's] response to the concerns articulated by the [CMR] was both belated and wholly inadequate ... the [Applicant] was set upon expanding his business – and exploiting the financial rewards that it could bring – as rapidly as possible and chose to take a cavalier approach to the responsibilities which his status as an authorised person entailed."

28. As regards the Applicant's acceptance of advice, the FTT found that he "blithely accepted the alleged advice" which the FTT considered to be "a further instance of what can at best be described as recklessness". Mr Ahlquist submitted that the findings of the FTT were difficult to reconcile with submissions that his character had changed such that public confidence in him could be restored. The findings of the FTT were dated 2016, and were evidence that the public could not have confidence in him.

29. Also of concern was that the FTT's finding that "the evidence plainly shows that any referrals made by the [Applicant] to solicitors are more likely than not to have placed those solicitors in breach of the SRA's Code of Conduct". Mr Ahlquist submitted that the Applicant's CMC work ended in circumstances where the Applicant was still acing inconsistently with the SRA Code – such a finding was remarkable. Even more remarkable was the Applicant's reliance on his CMC work in support of his application for restoration.

30. The Respondent accepted that the job offer was still open to acceptance. However, it was important not to place undue weight on a specific offer. The fact that a specific company was willing to employ him was not sufficient to show that there were no public safety concerns. Once restored, the Applicant would be able to hold himself out as a solicitor. It should not be necessary for a client or a counterpart to seek out the record of a solicitor when deciding whether or not to instruct him. Any party should be able to trust a solicitor.

31. As regards the Respondent having granted the Applicant permission to work as a legal clerk, that permission was exactly that, it was not, as has been submitted, recognition that the Respondent that the Applicant could be employed as a solicitor without damaging the public interest. The granting of permission was a way for a struck off solicitor to gain practical experience of working within the profession and demonstrating that he was rehabilitated.

32. The Applicant suggested that he could be restored to the Roll with stringent conditions. The Tribunal was reminded that his strike off was as a result of his decision to circumvent conditions that had been placed on his practice. The Applicant had provided no evidence that he would comply with any conditions imposed, in fact the findings of the FTT provided evidence to the contrary.

33. It had been said on his behalf, that if the Applicant were allowed to return to practice and accept the job offer, he would not have the same opportunities to repeat his misconduct. This was not the correct test. The Applicant had failed to demonstrate that he had changed his character such that he was suitable for readmission.

34. It was of concern that he had not paid the costs ordered by the Tribunal of his previous two applications for restoration. In addition, whilst the Statute of Limitations prevented the Respondent from pursuing monies owed to it by the Applicant, the Applicant had not paid the costs of Intervention in the sum of £94,574.32, nor had he paid the costs of the Tribunal's hearing in 2004. Further, the Compensation Fund had made payments of £2,088.45 and £551,914.35 in respect of the Applicant's firms. Finally, the fine imposed by the CMR of £220,000 also remained outstanding.

35. In summary it was submitted that the Applicant's conduct demonstrated a serious abdication of his duties as a solicitor. The Tribunal was required to consider whether he had demonstrated that he was now a person of unquestionable integrity such that his readmission to the Roll would not diminish public confidence in the profession. Not only had he failed to demonstrate this, but the findings of the FTT was evidence pointing in the opposite direction. Those elements of his character that caused the Tribunal to remove him from practice were still evident in his character. The application for restoration to the Roll ought to be refused.

The Tribunal's Findings

36. The Tribunal had regard to its Guidance Note on Other Powers of the Tribunal (1st Edition – December 2016). The Tribunal considered that the following provisions from the Guidance Note were relevant to this application:

- The guidance provided by Bolton:

  "the most fundamental [purpose of sanction] of all: to maintain the reputation of the solicitors' profession as on in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission."

- In relation to cases where strike off was imposed for disciplinary offences not involving dishonesty, the guidance provided by Lord Donaldson in Case No.11 of 1990 (unreported) that the Tribunal should ask:

  > "If this was the sort of case where, even if the back history was known (that is whatever explanation and mitigation was available to explain why the solicitor committed the original offence), and without the explanation as to what has happened subsequently, the members of the public would say 'that does not shake my faith in solicitors as a whole'."

- The period which has elapsed since the order for strike off/removal was made. Save in the most exceptional circumstances an application for restoration within six years of the original strike off/removal is likely to be regarded by the Tribunal as premature.

- Evidence of rehabilitation. This will usually require detailed evidence of substantial and satisfactory employment within the legal profession in the period since strike off.

- The Applicant's future employment intentions and whether another solicitor would be willing to employ the applicant within a practice in the event that the Applicant's name is restored.

- The extent to which the Applicant has repaid any losses sustained by others as a result of the Applicant's original misconduct, including any fines and cost orders made by the Tribunal. The Applicant must be in a position to demonstrate that they have made a sustained effort to meet any such liability.

37. The Tribunal noted that the Applicant had appeared at the Tribunal on two previous occasions where allegations of misconduct were found proved. It was the latter of those two appearances that resulted in the Applicant being struck from the Roll of Solicitors. Since that time he had not worked in the profession. He had been granted permission so to do, but for reasons beyond his control, he was unable to take up the role. The Tribunal considered that the Applicant, having not worked in the profession since being struck off the Roll, was unable to evidence "detailed evidence of substantial and satisfactory employment within the legal profession in the period since strike off". Accordingly, the Applicant failed to satisfy that requirement.

38. The Applicant had worked in a related field; he had set up and run a CMC. That company was found to have acted in breach of the regulations applying to it. The breaches involved unsolicited calls to significant numbers of individuals. The Applicant was adjudged to have been negligent and reckless. He was also found to have taken "a cavalier approach to the responsibilities which his status as an authorised person entailed". He caused solicitors for whom he made calls to be in breach of the SRA Code of Conduct. The Tribunal found that such conduct, rather than instilling faith in the Applicant, would cause members of the public to have fundamental concerns about the appropriateness of the Applicant being a member of the profession. The Tribunal noted that the Applicant had failed to pay the financial penalty imposed by the CMR and upheld by the FTT.

39. The Tribunal did not consider that the offer of employment from one organisation as an in-house solicitor, or the numerous testimonials provided in support of the application equated to evidence that the public at large would consider that it was appropriate that he be re-admitted to the profession. The Tribunal noted with concern that none of the testimonials provided made reference to the FTT proceedings.

40. The Tribunal was extremely concerned that the Applicant sought to rely on his work at the CMC in support of his application for restoration, but had not mentioned in his application the findings of the FTT, namely that his conduct had been reckless, negligent and in flagrant breach of the regulations. Not only did the conduct itself demonstrate that the Applicant was not an appropriate person to be re-admitted, but his failure to mention that conduct whilst seeking to rely on the CMC work gave further serious concern as to his attitude to his transparency and integrity.

41. The application for restoration was predicated, in part, on the imposition of conditions that would ensure that the public and the reputation of the profession would be protected if the Applicant were to be re-admitted. The Tribunal noted the circumstances in which the Applicant had been struck from the Roll; he had sought to circumvent conditions imposed on his practice. That conduct had taken place in 2001/2. The FTT found his attitude to regulation to be reckless, negligent and cavalier. That conduct had taken place in in 2014/15, 10 years after he had been struck off the Roll. The Tribunal did not find that the Applicant had demonstrated that he would comply with any condition that was placed on him.

42. Mr Mason had submitted that the Applicant's irregularities related to how he ran a Firm and not to him as a lawyer in practice and his ethical standards. The Tribunal fundamentally disagreed with that submission. When he was in situations where he did not agree with regulatory controls, whether in practice or otherwise, the Applicant had shown, by his own actions, that he would disregard those regulations so as to conduct himself in any way he saw fit.

43. The Applicant had displayed no insight into the seriousness of his previous misconduct, or the importance of abiding by rules and regulations set up for the protection of the public.

44. The Tribunal did not consider that there was any condition, or combination of conditions that if imposed, would protect the public and the reputation of the profession. He had failed to demonstrate any rehabilitation in the 14 years since he had been struck from the Roll, and had failed completely to show that he was now a person of the utmost integrity, probity and trustworthiness. Indeed, his conduct tended to show the opposite. The Tribunal considered that the Applicant's application fell short of the required standard to justify restoration to the Roll by a considerable margin. Accordingly, the application for restoration to the Roll was refused.

45. It was troubling to the Tribunal that the Applicant thought it appropriate to make this application in the knowledge that the costs for the previous two applications were still outstanding, and were being borne by the profession. The Tribunal ordered that the Applicant may not make any further applications for restoration without the leave of the Tribunal until the costs of this application, and the previous applications were paid or settled in full.

Costs

46. Mr Ahlquist applied for costs in the sum of £5,243.00. He submitted that Counsel's fees were the vast majority of costs incurred. A further part of the costs were internal costs of the SRA. The matter had been taken over by Mr Horton as the previous solicitor with conduct was no longer in the employ of the SRA. Mr Horton had not charged for his time reading in, nor had he charged for his attendance at the hearing. The brief fee reflected the anticipation that the matter was going to last for a full day and that a witness would give evidence (as indicated in the Applicant's certificate of readiness). Whilst the matter had not been complex, it had a complex procedural history with four Tribunal Judgments, and the FTT Judgment.

47. Mr Mason had no submissions as regards the principle that the Applicant was responsible for the costs. As regards quantum he submitted that four hours to instruct Counsel was excessive and should be reduced to one hour. Further, Counsel's fees were high given that it was always clear from the issues that the matter would not take a full day, there were no complexities of law and it was not a document heavy case. Counsel's fee ought to be reduced by a third.

48. The Tribunal agreed that the time claimed for briefing Counsel was not reasonable and reduced that time from four hours to two hours. The Tribunal did not find that the fee charged by Counsel was unreasonable and disproportionate. He had prepared the case on the basis of the Applicant's statement that cross-examination of a witness would be required. The Tribunal did not consider that there were any other items on the costs schedule that ought to be reduced, and it ordered that the Applicant pay the costs of and incidental to the application in the sum of £4,983.00.

Statement of Full Order

49. The Tribunal Ordered that the application of Aurangzeb Iqbal, for restoration to the Roll of Solicitors be **REFUSED** and it further Ordered that he do pay the costs of the response of the Law Society to this application fixed in the sum of £4,983.00

The Tribunal further Ordered that the said Aurangzeb Iqbal may not, without leave of the Tribunal, make any further applications for restoration to the Roll of Solicitors until the costs of this application and the previous applications dated 26 July 2012 and 31 March 2014 have been paid or settled in full.

Dated this 19th day of December 2018
On behalf of the Tribunal

S. Tinkler
Chairman

Judgment filed
with the Law Society
on 19 DEC 2018