

On 18 July 2012, Mr Iqbal appealed against the Tribunal's decision on sanction. The appeal was dismissed with no order for costs by the President of the Queen's Bench Division (Sir John Thomas) and Mr Justice Silber. Muhammed Iqbal v Solicitors Regulation Authority [2012] EWHC 3251 (Admin.)

IN THE MATTER OF MUHAMMAD IQBAL, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Miss T Cullen (in the chair)
Mr K W Duncan
Lady Bonham Carter

Date of Hearing: 25th June 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Regulation Authority ("SRA") by Peter Harland Cadman a partner in the firm of Russell-Cooke LLP of 8 Bedford Row, London WC1R 4BX on 6th October 2008 that Muhammad Iqbal, solicitor, of c/o MI Solicitors, 4 Milkstone Road, Rochdale, Lancashire, OL11 1ED might be required to answer the allegations contained in the statement which accompanied the application and that such order might be made as the Tribunal should think fit.

On 21st April 2009 the Applicant made a supplementary statement containing further allegations.

The allegations set out below are those contained in the original and supplementary statements.

The allegations against the Respondent were:-

- (a) That he improperly held out Q Hussain as a partner of MI Solicitors.

- (b) That he improperly held out S Iqbal as a partner of MI Solicitors.
- (c) That he provided information to mortgage lenders that was misleading.
- (d) That he provided information to the Law Society that was misleading.
- (e) That he forwarded an application to a mortgage lender purportedly signed by Q Hussain when it had not been so signed.
- (f) That he withdrew money from client account contrary to Solicitors Accounts Rules.
- (g) That he improperly withheld money in office account in respect of unpaid professional disbursements and client damages contrary to Rule 21 Solicitors Accounts Rules.

At paragraph 10.4 of the Applicant's originating statement he stated that the case was presented as a matter of serious professional misconduct throughout and in addition allegation (e) was presented as a matter involving dishonestly on the part of the Respondent.

The application was heard at the Court Room, Third Floor, Gate House, 1 Farringdon Street, London EC4M 7NS. Peter Harland Cadman appeared for the Applicant and the Respondent was represented by Gregory Treverton-Jones of Queen's Counsel instructed by Crangle Edwards Solicitors.

The Evidence before the Tribunal

The evidence before the Tribunal included the admissions of the Respondent both as to the facts and the allegations save that he denied that he had been dishonest. Mr Q Hussain and Dr S Chaudry, the Respondent's wife, gave oral evidence. Saydia Iqbal (no relation to the Respondent) had made a statement dated 17th March 2009. This written evidence was before the Tribunal. The Respondent's General Practitioner had set out the Respondent's medical history in a letter dated 16th June 2009. Where the evidence of the Respondent's wife and Mr Q Hussain were in conflict the Respondent relied on his wife's evidence. The Respondent denied that he had been dishonest in connection with the matters supporting allegation (e).

At the conclusion of the hearing the Tribunal made the following Order:-

The Tribunal Orders that the Respondent, Muhammad Iqbal of MI Solicitors, 4 Milkstone Road, Rochdale, Lancashire, OL11 1ED, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £9,000.00 plus VAT together with the costs of the SRA's inspection and investigation.

The evidence

1. The Respondent, born in 1970, was admitted as a solicitor in 1998. His name remained on the Roll of Solicitors. At the material times the Respondent carried on practice under the style of MI Solicitors at Rochdale, having worked as an employed solicitor for a number of firms until on 3rd January 2006 he established MI Solicitors.

At the time of the hearing the Respondent continued to practise at MI Solicitors in partnership with one other solicitor.

2. The Respondent and Mr Q Hussain had met when they worked at the same solicitors' firm. They had since kept in touch.
3. Mr Hussain had been an assistant solicitor employed by a firm of solicitors in Bradford from November 2003 until 19th January 2007. He was a full time employee of that firm and had been paid exclusively by that firm. Mr Hussain had resigned from the Bradford firm by letter of 12th December 2006. He became a salaried partner with MI Solicitors where he commenced work on 22nd January 2007. Following his letter to the Respondent dated 13th March 2007 Mr Hussain ceased to be a salaried partner at MI Solicitors.

4. The Respondent in due course signed an undertaking in the following terms:

“I confirm that Mr Hussain is no longer a salaried solicitor any more. He started work on 22nd January 2007.”

5. The Respondent held out that Mr Hussain was a partner of MI Solicitors in the period from May 2006 until 19th January 2007. In a communication to the Law Society of 2nd May 2006 the Respondent said:

“Further to our telephone call today please note that Mr Qadier Hussain, Law Society reference number 300826, has joined MI Solicitors as a partner”

To mortgage lenders during the months of May and June he lodged a panel application form dated 23rd May 2006 purportedly signed by Q Hussain. Mr Hussain had not signed such document, being out of the country at the time. There was no evidence before the Tribunal to establish who had signed this document.

6. In reply to communications from the SRA the Respondent, through his solicitors, had asserted that the Respondent and Mr Hussain had met for lunch on 27th April 2006 and at that lunch they had agreed that Mr Hussain should become a salaried partner. Later Mr Hussain had sought advice from the Law Society. The Respondent had conceded that Mr Hussain did not attend the offices of MI Solicitors, undertake any client work for MI Solicitors or receive any remuneration and that Mr Hussain remained in full time employment at the Bradford firm.
7. It was Mr Hussain's evidence that he had not entered into an immediate agreement to enter into partnership. Although the lunch on 27th April 2006 had taken place, Mr Hussain said he had rung and spoken to the Respondent's wife on the evening of 27th April 2006 to confirm that he had changed his mind and would not accept the role of salaried partner. It was the Respondent's wife's evidence that she had spoken with Mr Hussain on the telephone as he stated but she had no recollection of his saying that he did not wish to be a partner with the Respondent. She pointed out that she would have considered this to be a matter which required direct contact with her husband.
8. Mr Hussain said that subsequently in June 2006 he had visited the Respondent and his wife at their home when he had apologised for not agreeing to become the Respondent's partner. The Respondent's wife had no recollection of his saying this.

9. In reply to the Practice Standard Unit the Respondent on 10th July 2007 wrote on notepaper showing that the Respondent was a sole practitioner. When that was queried his letters of 9th August and 15th August were written on notepaper that showed Mr Hussain to be a partner. Mr Hussain had on 26th September 2006 confirmed that he was not a partner at MI Solicitors. In October 2006 Mr Hussain's practising certificate was renewed and paid for by the Bradford firm. In October 2006 when MI Solicitors applied for practising certificates Mr Hussain's name had been crossed out and a practising certificate fee for Mr Hussain had not been paid.
10. The Respondent signed an undertaking dated 22nd November 2006 that he would,

“forthwith delete Mr Qadier Hussain's name from my firm's letterheads and elsewhere where again his name appears....I will notify ALL professional bodies forthwith that Mr Qadier Hussain was and is not a partner at MI Solicitors including Law Society etc.”
11. On 2nd February 2007 the Respondent emailed the SRA confirming that Mr Hussain joined MI Solicitors on 12 December 2006.
12. The Accountant's Report for MI Solicitors for the year ending 31st December 2006 showed that the only partner in the practice was the Respondent.
13. At the time when Mr Hussain terminated his salaried partnership in March 2007 the Respondent signed an undertaking confirming that Mr Hussain started work as a salaried partner on 22nd January 2007.
14. MI Solicitors had paid Mr Hussain for the period January to March 2007.
15. At all material times Ms Iqbal (no relation to the Respondent) was an employed solicitor at a firm at Leigh.
16. On 6th October 2006 the Respondent wrote to the Law Society,

“Please as a matter of urgency record Ms Saydia Iqbal Law Society reference number 316675 as a partner”.
17. On 16th October 2006 the Leigh firm applied for and paid for a practising certificate for Ms Iqbal.
18. Ms Iqbal had written to the Law Society on 9th November 2006 saying,

“It has come to my attention yesterday that according to the Law Society records I am a partner at MI Solicitors practising at 4 Milkstone Road, Rochdale, Greater Manchester ... For the purposes of your records please note that I am currently working at [the Leigh firm]. I am not working for any other firm of solicitors including MI Solicitors at the above address or anywhere else nor am I a partner at this or any other firm.”
19. On 14th December 2006 the Respondent wrote to the Law Society,

“We are pleased to invite your good selves to reinstate Mr Q Hussain as a partner Law Society reference number 300826, and delete Ms Saydia Iqbal Law Society reference number 316675.”

20. In response to enquiry by the SRA the Respondent, through his solicitor, asserted that Ms Iqbal had agreed to become a salaried partner and that she would remain “a silent partner” until such time as she wished to leave the Leigh firm and start working full time in MI Solicitors. When this assertion was drawn to Ms Iqbal’s attention she said,
- “I reiterate once again that I have not agreed to be a partner nor was I ever a partner at MI Solicitors or indeed at any other firm of solicitors.”
21. Following the commencement of proceedings by Ms Iqbal against the Respondent in the Manchester Crown Court Ms Iqbal and the Respondent entered into a compromise agreement which included the following,
- “a. Muhammad Iqbal of MI Solicitors of 4 Milkstone Road, Rochdale, Greater Manchester OL11 1ED has falsely represented, on his letterhead and otherwise, that Ms Saydia Iqbal of [the Leigh firm] and the said Muhammad Iqbal are together joint partners and have been for the period October 2006 to 2007.
- b. The said representation is false.”
22. In her written statement, Ms Iqbal said she had become aware that the Respondent had used a photocopy of her practising certificate to advise the Law Society that she was a partner at his firm. He had done so without her knowledge or consent. Ms Iqbal had provided the Respondent with a photocopy of her practising certificate at his request when he informed her that he needed it so that he would be able to get an estimate of premiums for the following year’s professional indemnity for his business to assist him in projecting cash flow. He had explained that he did not have any qualified staff at the time and needed a certificate to allow him to have an accurate estimate of the indemnity insurance premiums he was likely to have to pay if he employed qualified staff in the future.
23. Miss Iqbal said that she had had discussions with the Respondent about the possibility of referrals of clients from her area of work to his firm. The Respondent had offered her a partnership verbally. She never took it as a serious suggestion as the Respondent had only just set himself up as a sole practitioner; she was content with her job as an employed solicitor having recently been promoted and she had not then been qualified for 3 years.
24. A Forensic Investigation Officer of the SRA (the FIO) began an inspection of the Respondent’s books of account on 8th April 2008. The FIO prepared a report dated 5th August 2008 that was before the Tribunal.
25. The FIO’s report recorded that the Respondent’s books of account were not compliant with the Solicitors Accounts Rules and that at the inspection date there was a cash shortage on client account of £9,019.68. This shortfall was rectified by 21st April

2008. The cash shortage had been caused when on 18th February 2008 the sum of £114 was debited to a client ledger for search fees when there were no funds held by the Respondent on behalf of that client, creating a debit balance on the client ledger and client moneys totalling £8905.68 in respect of fifteen client matters in amounts ranging from £116.80 to £1815.38 held in office account. The majority of these related to unpaid professional disbursements.

26. In the matter of client P the firm received damages due to the client in the sum of £2,000.00. This money was received on 25th February 2008 and paid into client account. The firm then issued a bill to the client and from the client damages transferred from client account to office account the sum of £1,815.38 on the same day. On 29th February 2008 the insurers paid the firm's costs of £1,815.38 and this sum was also credited to office account. That money remained in office account from 29th February 2008 to 25th March 2008.
27. In his response to enquiry by the SRA dated 17th October 2008 the Respondent accepted the FIO's findings, pointing out that only a minor part of his firm's books did not comply with the Solicitors Accounts Rules and explaining that none of the breaches had been deliberate, but had been the result of mistakes. Steps had been taken to remedy the position and improve the firm's systems.

The Submissions of the Applicant

28. The Respondent had improperly held out that Mr Hussain and Ms Iqbal were partners in his firm. He had provided information about the fact that they were partners to mortgage lenders and to the Law Society that was misleading. Even if the Respondent had believed that Mr Q Hussain had become a partner after they had discussed the subject at lunch in April 2006 it would have been improper for the Respondent to hold out Mr Hussain as a partner in MI Solicitors until he actually joined the firm and worked for the firm. It would have been improper to hold Mr Hussain out as a partner in the practice to the public, to mortgage lenders or to his professional regulatory body. The Respondent himself had accepted that Mr Hussain did not attend his offices or undertake any client work or receive any remuneration until he formally started work as a salaried partner on 22nd January 2007. He remained only until March 2007, the period for which he was paid by the Respondent.
29. It was Ms Iqbal's position that she had never agreed to become a salaried partner. The concept of "a silent partner" was not one that could be countenanced within the solicitors' profession. If a solicitor is a partner then he or she assumes the liabilities and obligations that fall upon the shoulders of a partner. The Tribunal would note that Ms Iqbal had to commence legal proceedings against the Respondent in which he had entered into a compromise agreement confirming that he had falsely represented on his letterhead that Ms Iqbal had been his partner.
30. A number of mortgage lenders would not instruct sole practitioners to act on their behalf in connection with mortgage business. It was to the Respondent's advantage to convince mortgage lenders, who were, of course, prospective clients, that he was not a sole practitioner. Not only would this mean that he would receive instructions from such mortgage lenders but that would serve to remove the possibility that purchasing and selling conveyancing clients would not choose to instruct him where another

solicitor had to be instructed to deal with their mortgage business at an additional cost.

31. The Applicant did put allegation (e) on the basis that the Respondent had been dishonest when he sent an application to a mortgage lender to be placed on its panel of solicitors apparently signed by Mr Hussain when Mr Hussain had not signed it.

The Submissions of the Respondent

32. The breaches of the Solicitors Accounts Rules found by the FIO leading to allegations (f) and (g) were not the most serious allegations of their type and it was unlikely, had they stood alone, the matter would have been referred to the Tribunal.
33. Allegations (a) to (e) were, however, serious. Allegation (e) (but not the other allegations) was put as an allegation of dishonesty. That was the principal matter that the Tribunal would have to decide.
34. It was not alleged that the Respondent himself forged Mr Hussain's signature on the application form, nor was it asserted that the Respondent knew that the signature was forged. The basis for the allegation of dishonesty had not been spelt out. It was a most unsatisfactory formulation of such a serious allegation.
35. If the basis for the allegation of dishonesty was that the Respondent must have known that the signature was forged, it was to be expected that the facts and matters from which such an inference could be drawn be set out. In these circumstances, it would be very difficult for the SRA to satisfy the Tribunal, to the criminal standard, that the Respondent had been dishonest.
36. The correct test for dishonesty to be applied in disciplinary cases was unclear until the decision of the Divisional Court in December 2007 in Bryant and Bench v Law Society [2007] EWHC 3043 (Admin) which eliminated uncertainty and confirmed that the correct test was:

“first, whether Mr Bryant acted dishonestly by the ordinary standards of reasonable and honest people; and, secondly, whether he was aware that by those standards he was acting dishonestly.”

37. The second issue that would have to be resolved by evidence was whether Mr Hussain spoke to the Respondent's wife, Dr Choudry, and communicated a change of mind about becoming a salaried partner in MI Solicitors.
38. The Respondent accepted that both Mr Hussain and Ms Iqbal were held out as partners in MI Solicitors when, in law, they were not, and that misleading communications to that effect were sent to mortgage lenders and the Law Society. It was clear that there was at the time considerable uncertainty about their status.

The Tribunal's Findings

39. The Tribunal found all of the allegations to have been substantiated, indeed they were not contested save for the allegation of dishonesty dealt with below. With regard to the conflicting evidence of Mr Hussain and the Respondent's wife, the Tribunal

preferred the evidence of Mr Hussain. He was very clear in his evidence as to what he had said on the telephone and the Respondent's wife, who was not a solicitor, could not have been expected to realise the full and important implications of what had been said. It was her view that Mr Hussain should have communicated his position direct to the Respondent and the Tribunal agreed that she was right in this. For the reasons which the Tribunal sets out later in these Findings the Tribunal did not consider that this conflict of evidence or their finding of fact in this regard had a great bearing on the overall picture that had emerged.

40. With regard to the question of dishonesty on the part of the Respondent in relation to allegation (e), the Respondent had accepted that the document sent to a mortgage lender on its face appearing to have been signed by Mr Hussain had not in fact been signed by Mr Hussain. There had been no suggestion that the Respondent himself had written the signature. The Respondent had sent the form to Mr Hussain's house and it appeared to have been returned to the Respondent's firm. There remained the possibility that the document had been signed either while it was outside the Respondent's office or when it had been returned to the office. No evidence had been placed before the Tribunal that could render it sure that the Respondent had known when he sent the form to the mortgage lender that it had not in fact been signed by Mr Hussain. Bearing in mind the required high standard of proof required to establish dishonesty against a solicitor the Tribunal concluded that the Applicant had not discharged the burden of proof that fell upon him to meet such high standard and the Tribunal did not make a finding of dishonesty against the Respondent.

The Respondent's Mitigation

41. The Respondent and his wife married in December 1998. They had three children born in 2003, 2005 and 2007.
42. The Respondent's wife had had concerns about her husband's general health ever since their marriage. When they first met in 1998 the Respondent was a jovial forward thinking character in whose company it was a pleasure to be. There had been a noticeable change in his behaviour which the Respondent's wife believed to be due to undiagnosed depression. He had been subjected to the strain of supporting his wife. Her father had passed away unexpectedly and at about the same time the Respondent had changed employment from a city centre firm to a more provincial firm. He began to behave a lot more seriously and would often describe his life as "miserable". He had sought advice from his GP and attended a primary care counsellor on only one occasion as his work hours would not permit further consultations.
43. The Respondent's wife was diagnosed with severe post-natal depression after the birth of their first child. Again at this time she thought her husband was suffering from a similar illness but he was adamant that he did not have a problem.
44. The Respondent set up MI Solicitors at about the same time as their second child was born, so the Respondent did not involve his wife in his venture so as not to overburden her. The Respondent's wife believed that the Respondent himself was suffering from stress related issues compounded by factors such as protecting his wife, dealing with their first child's hospital visits and two operations, as well as

- having a new born son who needed attention. Their wider families had not been available to provide help.
45. The Respondent's first child had been sickly and had undergone unsuccessful surgery and then further surgery in 2006. When this took place, the Respondent had to attend and deal with the hospital visits alone as his wife was ill, and was recovering at home from the birth of their second child.
 46. The Respondent's wife was again pregnant in 2006. She had then suggested to her husband that he needed help with stress issues arising out of his practice. His wife had been preoccupied with two small children whilst carrying a third and she had frequently had to ask the Respondent for help around the home. The Respondent at that time worked extremely long hours.
 47. The Respondent's wife's third pregnancy did not proceed without complication and she had been advised that the baby's kidneys were not functioning and that he might not survive for more than 24 hours. She had been alone because the Respondent was at work and had to be called to the hospital as a matter of urgency. They had to make emergency plans for childcare, attend with the baby at a children's hospital, and wait with increasing anguish whilst the baby was stabilised overnight and eventually underwent surgery. The first three weeks of life of the Respondent's third child were the most awful and stressful of his and his wife's lives.
 48. The Respondent's wife had not been aware of his professional problems at the time. She had come to recognise that he would not have been thinking clearly which served to explain the mistakes he made during that period with Mr Hussain and Ms Iqbal. Such mistakes were symptomatic of the appalling stress he was under.
 49. In his letter of 16th June 2009 the Respondent's GP said that in January 2005 the Respondent was seen by a doctor for problems with managing his anger and he was referred for anger management. In July 2005 his own GP saw the Respondent, again the problems were of anger management and the GP referred him for a psychology appointment. On 8th April 2009 the Respondent presented with anxiety and depression. He scored 16.5 on a patient health questionnaire putting him into the moderate depression category. He declined medication at that time but came back for a review two weeks later when he accepted treatment with Citalopram. Since taking his medication he had seemed calmer, he was smiling more readily, looked more relaxed and it was the GP's opinion the medication was having a positive affect on him. The GP had met the Respondent on three or four occasions over the years and he assumed that his depression had probably been longstanding, judging by the improvement in his mood and the fact that he was also a lot more relaxed. The GP aimed to continue with the medication for at least another six months.
 50. The Respondent's wife did not consider him to be a dishonest man but perhaps too easy going in a business environment and perhaps impulsive in the sense that he did not prioritise dealing with problems as well as others might. Many of his business decisions during 2007 would have been taken when he was not thinking clearly. He was a proud man who felt it was his duty to provide for and protect his family. He found it hard to recognise when he needed help. At worst he had been foolish in the face of difficulties.

The Tribunal's sanction and its reasons

51. The allegations found to have been substantiated against the Respondent represented a wide range of unprofessional behaviour. A solicitor before stating to anybody that another solicitor is his partner must be absolutely sure that this is the case. A solicitor is a person who is fully aware of the serious implications of partnership and in particular that a person who becomes a partner takes on a great burden of professional and regulatory responsibilities and liabilities. The Respondent had given information to third parties, including The Law Society and mortgage lenders about his partnership status which was wrong. In particular in making such statements he had sought to mislead mortgage lenders as to the structure of his firm so that the lenders would instruct the firm in connection with mortgage business which they would not have done had that lender been aware that the Respondent was a sole practitioner. The Respondent had not achieved a punctilious compliance with the Solicitors' Accounts Rules.
52. The Tribunal has taken into account the references written in support of the Respondent. In behaving as he did, even though the Tribunal has taken into account the fact that he had difficulties in his personal life and might have been suffering from depression, the Respondent had not acted with the high standards of probity, integrity and trustworthiness required of a member of the solicitors' profession. It was the Tribunal's view that the public required protection from a solicitor who was prepared to act as the Respondent did. It must also have due regard to its second important duty which was to maintain the good reputation of the solicitors' profession.
53. The Tribunal recognised that the sanction which it had decided to impose upon the Respondent was hard upon the individual but it recognised that the good reputation of the solicitors' profession was more important than the fortunes of an individual member.
54. The Tribunal had considered the range of sanctions available to it and had reached the conclusion that none would enable it to fulfil its duties to the public and to the profession other than an order that the Respondent be struck off the Roll.
55. The Tribunal was invited by the Applicant to make an order that the Respondent pay the Applicant's costs in connection with the application and enquiry. The Applicant had supplied a schedule setting out the quantum of costs sought. The Tribunal had considered that schedule and had decided that it would be both reasonable and proportionate to make a fixed order for costs against the Respondent.

Application for postponement of the filing of the Tribunal's order

56. On behalf of the Respondent the Tribunal was invited to order that it postpone the filing of its order with the Law Society pending the outcome of an appeal against its decision. In response the Applicant said that the Tribunal had made an order in order to protect the public and the profession's good reputation and a stay of the filing of the Tribunal's order would not be appropriate as the protection afforded by a striking off order would not be in place.

57. The Tribunal concluded that even though it had not made a finding that the Respondent had been dishonest it had made a finding that the Respondent was not fit to practise as a solicitor and in fulfilment of its duties to protect the public and the good reputation of the solicitors' profession it would be neither appropriate nor proportionate to order that the filing of its order with the Law Society be delayed. The Tribunal ruled that the order be filed with the Law Society as soon as may be possible after the conclusion of the hearing.

Dated this 14th day of August 2009

On behalf of the Tribunal

T Cullen
Chairman