

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11440-2015  
11859/2018

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

CLARE TAMAN First Respondent

KATHERINE FRASER-MACNAMARA Second Respondent

MICHAEL DAVIES Third Respondent

CHARLES FRASER-MACNAMARA Fourth Respondent

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Before:

Mr B. Forde (in the chair)

Ms A. Horne

Mr M. R. Hallam

Date of Hearing: 21 July 2021

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## **Appearances**

There were no appearances as the matter was considered on the papers

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**MEMORANDUM OF  
APPLICATION FOR NON-PARTY  
DISCLOSURE**

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## Background

1. A Panel of the Tribunal met on 20 and 30 April 2021 to consider an application for non-party disclosure made by Transparency Task Force Ltd (“TTF”) dated 15 March 2021. The Panel’s decision is set out in the memorandum dated 22 June 2021. The Tribunal made directions which provided for the disclosure of various documents subject to redactions.
2. In accordance with the Tribunal’s Policy on the Supply of Documents to a Non-Party from Tribunal Records, dated June 2020 (“the Policy”), copies of documents containing the proposed redactions were provided to the parties for them to comment upon the redactions. The Tribunal stressed in its memorandum of 22 June 2021 that:

*“this was not an opportunity to renew representations against disclosure - but to comment on the proposed redactions.”*

## Representations received from the parties

3. The Tribunal received representations from the SRA and on behalf of the First and Second Respondents.

### *Representations from the SRA*

4. On behalf of the SRA, Mr Johal suggested that for consistency with the general approach taken by the Tribunal there was one further name in one paragraph of one of the documents to be disclosed which should also be redacted. The Tribunal was grateful for this observation. More generally Mr Johal stated that:

*“Having reviewed the documents we do not have any specific comments on the proposed redactions, they appear to be appropriate to preserve personal, confidential and privileged information.”*

### *Representations on behalf of the First and Second Respondents*

5. Written representations were submitted on behalf of the First and Second Respondents dated 10 July 2021 and 17 July 2021.

### *10 July 2021*

- 6.1 The point was made that one of the documents which was provided to the parties did not correspond to the commentary on the Tribunal’s decision in the memorandum. The Tribunal had directed that the second witness statement of the First Respondent should be disclosed, subject to redactions, but this was not the document which was provided to the parties. The Tribunal was grateful for this observation.
- 6.2 Concerns about financial information included within three specific paragraphs of documents to be disclosed were also raised. It was stated that:

*“We are concerned that inclusion of the aforementioned paragraphs (in a vacuum), without accompanying context, leave any non-party reader with*

*factually incorrect information and/or create a misleading impression, which absent knowledge of the intentions of TTF could cause harm to the First and Second Respondents. For example (paragraph 22) absent context reads as though the SRA were engaged in a formal investigation against the First and Second Respondents, when it is the position that the SRA were invited to health check accounts upon the First and Second Respondents taking over the practice from a former partner, them having themselves discovered an anomaly in the accounts. The matter was resolved without any adverse finding or action being taken against either the First or Second Respondent following the SRA's investigation that they themselves had instigated."*

- 6.3 Further, similar, points were raised in relation to a further document. It was stated that a paragraph within the Third Respondent's witness statement "*reads as though Sanders's & Co [sic] records failed to account for a substantial amount of monies which we understand is not the case*". In summary it was stated that:

*"As matters stand, the information above presented in a factual void and un-redacted is prejudicial, potentially defamatory and misleading. In the circumstances we seek the Tribunals guidance on approaching this information generally."*

17 July 2021

7. A schedule of redactions including additional proposed redactions (described as "initial proposed redactions") was provided. The Tribunal had directed that redactions be made to ten documents. The First and Second Respondents indicated that the proposed redactions to four of these documents were agreed. Their additional proposed redactions are summarised below.
- 7.1 It was proposed that a paragraph from the First and Second Respondents' own Answer be redacted on the basis that it responded to what were described as "self-serving" allegations made by the Third Respondent which were not raised by the SRA and about which the Tribunal made no findings. It was submitted that inclusion of the paragraph without accompanying context would "*leave any non-party reader with factually incorrect information and/or create a misleading impression, which absent knowledge of the intentions of TTF could cause harm to the First and Second Respondents.*"
- 7.2 Additional redactions were proposed to the witness statement of the Second Respondent. These were the name of a third-party company and other named third-parties and were proposed for consistency with other redactions made by the Tribunal. Again, the Tribunal was grateful for these observations.
- 7.3 Redactions were proposed to two paragraphs within the Third Respondent's first witness statement and one in his second statement for the reasons set out above in paragraphs 6.2 and 6.3.
- 7.4 Redactions were proposed to the Rule 5 Statement dated 16 August 2018 (in case 11859/2018) for the reasons set out above in paragraph 6.2.

7.5 Despite the Tribunal's invitation for the parties to provide only comments on the proposed redactions and not to renew representations against disclosure there were also more general points made about disclosure and the Tribunal's decision raised. It was stated that:

*"1. We are concerned that it would appear the SDT has still not clarified in its ruling the following issues:*

*a. What the SDT understand the TFF intend to do with the information ordered to be disclosed by the tribunal? Are the SDT in possession of an explanation and/or ever enquired as to why the TFF wanted this information?*

*b. The precise basis of the public interest found to be relevant in allowing the tribunal to disclose this material. We believe the arguments advanced by TFF are somewhat circuitous in nature and we are having difficulty in understanding the actual identified public interest that is relied upon by the SDT in ordering disclosure save for a generic reliance upon the concept of open justice.*

*2. The evidence given to the tribunal by the first and second respondents was given in 2016 and thus was given in a different climate than is presently reflected in the subsequent policy changes by the tribunal in 2017 and 2020. An expectation of confidentiality arose at that time when they gave evidence. Indeed we understand that previous applications for Non-Party disclosure in this case were rejected by the Tribunal when applying the relevant policy in place at the material time.*

*Furthermore, after a suspension has been served we understand that the policy is to remove the findings/judgment against respondents from the Tribunal website. In fact, the decision in this case has been removed in relation to the substantive hearing both in the Tribunal and in the Administrative Court as their 3 year suspension has now been served. At this stage in proceedings, the First and Second Respondent's had a legitimate expectation that this matter was now at a close and could not have anticipated a change in policy (which we understand may have come about as a result of pressure and input received specifically from Non-Parties impacted by this case), which now in essence acts retrospectively upon receipt of new applications from non-parties.*

*In that context, can it be clarified by the Tribunal that the above issues were considered by the Tribunal when reaching their decision.*

*We appreciate and note that any submissions are invited to be limited to the nature and extent of the redactions but we are concerned that the above issues do not appear to have been made clear and/or specifically addressed by the Tribunal in the first instance."*

## The Tribunal's Decision

8. The Tribunal was grateful for the comments about the small number of additional redactions required to the names of individuals (and one company) for consistency. The Tribunal accepted these proposed further redactions for the same reasons as set out in the original memorandum of 22 June 2021. The Tribunal also directed that, in accordance with the earlier memorandum, the first witness statement of the First Respondent should not be disclosed (for the reasons already set out). In accordance with the earlier memorandum the Tribunal reiterated that the second witness statement of the First Respondent (dated 6 October 2016) should, subject to redactions to protect any legally privileged or sensitive personal data, be disclosed. As per the Policy, this document should be provided to the parties for them to comment on the proposed redactions.
9. The Tribunal considered that the reasons for its decisions on disclosure were clear from the memorandum of 22 June 2021. The purpose, in general terms, of the disclosure application had been summarised in that memorandum. The applicant wished to understand as fully as possible how the Tribunal's decisions had been reached, and described a purpose involving helping regulators to improve their processes. The Tribunal did not consider that it was necessary or helpful to seek to establish any detailed purpose behind the application. Any collateral purpose did not operate as a bar to disclosure. The Policy sets out the Tribunal's approach to disclosures to the public. The principles set out in the Policy, and the principle of open justice, are balanced against any specific factors weighing against disclosure. The Tribunal had directed that the majority of the documents sought should not be disclosed (for the reasons set out in the memorandum of 22 June 2021).
10. Similarly, the Tribunal considered that the rationale for its conclusion that the open justice principle was advanced by disclosure had been set out in the previous memorandum. In essence, the Tribunal considered that a member of the public would inevitably have a fuller understanding of the Tribunal's decision and the reasons for it if access to the documents before the Tribunal were granted. As set out in the memorandum the Tribunal considered that redactions could be made to protect legally privileged and sensitive personal information such that disclosure was appropriate in the circumstances.
11. As set out in the memorandum of 22 June 2021, the Tribunal did not accept the suggestion that there was any reasonable expectation of privacy in witness evidence deployed by a Respondent in a public regulatory hearing. As set out in the earlier memorandum, certain redactions of sensitive personal information included in the Second Respondent's witness statement had been directed by the Tribunal. The memorandum described the detailed balancing exercise carried out by the Tribunal and the reasons for the conclusion that disclosure was appropriate. These reasons are not repeated in full here. Whilst previous applications for non-party disclosure may have been refused, the Tribunal carefully applied the Policy to the application and representations before it, and did not consider that the outcomes of factually distinct earlier applications changed the decision set out in the memorandum of 22 June 2021.

12. In response to the query raised on behalf of the First and Second Respondents, the Tribunal confirmed that, unless there is a direction to the contrary, all Judgments remain available to the public even after they have been removed from the SDT's website.
13. The Tribunal carefully considered the schedule of further proposed redactions provided on behalf of the First and Second Respondents. The Tribunal again applied the principles and approach set out in the policy and summarised in the earlier memorandum.

*Answer of the First and Second Respondents*

- 13.1 The Tribunal rejected the proposed further redactions. The relevant paragraph included an outline of points of contention between the First and Second Respondents and the Third Respondent. The paragraph in question included the First and Second Respondents' riposte to the comments made by the Third Respondent to which they took exception. In any event, the Tribunal considered that it was inevitable and would be understood by any observer, whether of the hearing or of documents disclosed pursuant to the Policy, that there would be claim and counter-claim by those closely involved. In the context of other available material the Tribunal did not consider this created a misleading impression. The Tribunal did not accept that there was justification for not disclosing the paragraph, and made no direction for further redaction.

*First witness statement of the Third Respondent*

- 13.2 Redactions were proposed to two paragraphs on the basis that they were "self-serving" statements made in a vacuum which would leave any non-party reader with factually incorrect information or create a misleading impression. The Tribunal did not consider that the paragraphs appeared in a vacuum. They appeared in the witness statement of a Respondent to regulatory pleadings in respect of which a detailed Judgment was publicly available and other documents were also to be disclosed. The statements made by the Third Respondent as part of his response to the allegations were before the Tribunal, and the open justice reasons for disclosure outlined in the original memorandum applied. The Tribunal had taken this document and these paragraphs into account. The Tribunal did not accept that there was justification for redacting the paragraph, and made no direction for further redaction. With regards to the figure for fees, which it was suggested should be redacted, the Tribunal noted that this figure also appeared in the Judgment. In any event, the Tribunal did not consider that there was any compelling reason why this figure should be redacted.

*The Rule 5 Statement in case 11859/2018*

- 13.3 Redactions were proposed to a paragraph containing allegations made by the SRA about payments made by EDL to Sanders. This was on the basis that the First and Second Respondents were not parties to the second proceedings, and it was submitted that the paragraph read (misleadingly) as though they had failed to account for a substantial amount of money. The Tribunal did not consider that the paragraph in question was in fact impugning Sanders' records. In any event, the information was available in the context of a detailed Judgment and the rest of the Rule 5 Statement

which set out the totality of the SRA's case. Having carefully considered the paragraph again, and applied the principles set out in the Policy, the Tribunal again concluded that the balance favoured disclosure without redaction of this paragraph. The Tribunal did not accept that there was justification for redacting the paragraph, and made no direction for further redaction.

14. The First and Second Respondents' representative described their submissions as interim. However, the Tribunal had set out its decision on disclosure in some detail in the memorandum of 22 June 2021. The Tribunal had invited comments on the proposed redactions and had carefully considered the representations and suggestions made, again applying the Policy to the material before it. The Tribunal did not consider that further submissions were required on the proposed redactions (save for the one document mentioned in paragraph 8 above which had not been circulated to the parties as intended following the previous decision of the Tribunal).
15. **The Tribunal Directed:**
  - 15.1 The parties should be given 7 days from the date of this memorandum to comment on the redactions proposed to the First Respondent's second witness statement.
  - 15.2 Upon the expiry of the 7 days mentioned in paragraph 15, and the Tribunal's consideration of any representations received, the further redactions set out in this memorandum should be made to the relevant documents following which the documents listed in paragraph 40 of the original memorandum should be disclosed.
  - 15.3 The Tribunal made no order as to costs.

Dated this 13<sup>th</sup> day of September 2021

On behalf of the Tribunal



B. Forde  
Chair