

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12152-2020

BETWEEN:

BILAL KHAWAJA

Applicant

and

SOLICITORS REGULATION AUTHORITY

Respondent

Before:

Mrs J Martineau (in the chair)

Mr P Booth

Mr M R Hallam

Date of Hearing: 9 February 2021

Appearances

The Applicant appeared and represented himself

Grace Hansen barrister of Capsticks Solicitors LLP of 1 St George's Road, London, SW19 4DR, for the Respondent.

JUDGMENT ON APPLICATION TO TERMINATE/VARY CONDITIONS

Application

1. This matter came before the Tribunal on 9 February 2021 on the Applicant's application dated 1 December 2020 to terminate and/or vary conditions on his practising certificate following a hearing on 3 May 2013 before another Division of the Tribunal. At that hearing the Tribunal ordered that the Applicant be suspended from practice for a period of one year and upon expiry of his suspension, be subject to conditions that he:
 - (i) May not practise as a sole practitioner, partner in a firm or member or manager of a Limited Liability Partnership ("LLP"), Legal Disciplinary Practice ("LDP") or Alternative Business Structure ("ABS"); and
 - (ii) May only work as a solicitor in employment approved by the Solicitors Regulation Authority ("SRA").
2. The conditions were imposed for an indefinite period and both parties were granted liberty to apply to the Tribunal in order to vary the conditions.
3. The Applicant was also ordered to pay costs of £53,127.09.
4. The allegations found proved beyond reasonable doubt by the Tribunal on 3 May 2013 were that he had:
 - “1.1 caused or permitted non-solicitor third parties to have an inappropriate degree of control and influence over the activities of Wolstenholmes LLP (“the Firm”) contrary to Rules 1.03 and 1.04 of the Solicitors Code of Conduct 2007 (“the Code”);
 - 1.2 failed to act in the best interests of his clients contrary to Rule 1.04 of the Code and behaved in a way that was likely to diminish the trust placed in him or the legal profession contrary to Rule 1.06 of the Code;
 - 1.3 failed to act in accordance with his management responsibilities in relation to the conduct of the business of the Firm contrary to Rules 1.04, 1.06 and 5 of the Code;
 - 1.4 failed to maintain proper books of accounts contrary to Rule 32 of the Solicitors Accounts Rules 1998; 1.5 breached Rules 1, 19 and 22 of the Solicitors Accounts Rules 1998.”
5. The Applicant submitted an application dated 30 November 2020 (“The Application”) requesting that the Tribunal remove the conditions in their entirety; in the alternative, remove the conditions, save for the restriction on practising as a sole practitioner.

Background

6. The Applicant was born in 1979 and was admitted to the Roll of Solicitors in 2008. He was a trainee solicitor at the Firm from May 2006 until December 2007; an associate from 1 February 2006 to 4 June 2009 and a Member from 5 June until 5 October 2009.

7. The SRA intervened in the Firm, a conveyancing practice, on Christmas Eve 2009. The Applicant was immediately suspended and the SRA took disciplinary action against the five solicitor Members of the firm who faced a number of allegations at the Tribunal ranging from dishonesty to behaving in a way likely to diminish trust in the profession. Three of the Members were later struck off the Roll.
8. At the hearing which took place between the 22 April and 3 May 2013 the Tribunal made the following findings with respect to the Applicant:
 - The Tribunal was satisfied that the Applicant had not been involved in the large scale wrong doing of the firm and he had not acted dishonestly.
 - However, he had confined himself to his own work and department and, contrary to his obligations, he had not tried to get involved in wider issues of management and that his conduct as a member of the firm had been wholly unacceptable.
9. As a result of the collapse of the Firm a figure in the region of £13m has been paid from the Compensation Fund to thousands of former clients of the firm.

Documents

10. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Applicant's Application dated 30 November 2021
- Applicant's Exhibits:
 - Schedule of training undertaken
 - Character references x 2

Respondent:

- Respondent's Answer dated 8 January 2021
- Statement of Costs dated 26 March 2019 and 12 June 2019

Witnesses

11. There was no witness evidence.

The Applicant's Submissions

12. The Applicant referred closely to his application and said that subsequent to the Firm being intervened the suspension to which he had been made immediately subject was lifted by the adjudicator on 3 March 2010 and he was permitted to continue practising subject to conditions.

13. The SRA approved his employment at MWG Solicitors on the 3 June 2010 where he worked until 20 July 2010 and he then moved to the firm of CS which offered him further opportunities to progress. On the 10 September 2010, his employment was approved at CS by the SRA.
14. The Applicant worked at CS as an Assistant Solicitor for over 2½ years from 24 September 2010 to 3 May 2013. However, his employment at CS was terminated due to the 12 month suspension imposed by the Tribunal in May 2013.
15. The Applicant joined his current employer, IS as an Associate Solicitor within the corporate department around February 2016, shortly after his 12 months suspension ended.
16. In requesting the Tribunal to remove and/or vary his conditions on his practicing certificate the Applicant asked the Tribunal to take the following factors into account:
 - The misconduct giving rise to the breaches occurred over 10 years ago and a considerable period of time had elapsed.
 - The Applicant has been in employment for a significant period of time without being subject to any further allegations, breaches or complaints.
 - The breaches at the Firm took place at a very early stage of his career and the circumstances in which he found himself were unique and complex and due to his lack of relevant experience he had not been fully equipped to deal with the issues which arose.
 - At the time he had had very limited management and compliance experience owing to the fact that he had been a Member at the Firm for only a period of 4 months.
 - Since the initial intervention and the subsequent suspension, he had been employed for a period of around 7-8 years (*taking into account the 1 year gap due to his 12 month suspension*).
17. In the Applicant's submission he no longer posed any risk to the public and had taken on board the Tribunal's findings when it had suspended him for 12 months and imposed conditions upon his practice in 2013.
18. To this end the Applicant said that he had significantly improved and developed his practice to ensure that he did not pose a risk to clients and the public and as part of his rehabilitation he had undertaken work and training to remedy the failings identified by the Tribunal and he presented to the Tribunal a lengthy schedule of the training he had completed.
19. The Applicant said that the suspension had given him an opportunity to reflect and to gain insight on the serious implications of his misconduct and he considered that the level of his rehabilitation was demonstrated by the positions he had held since the intervention, for example, his employment as an Assistant Solicitor at CS for approximately 2 ½ years. At CS his work was supervised by the two partners of the firm both of whom had had many years of experience at leading Law firms.

20. The Applicant said that the environment at CS was the start of a 'learning curve' for him and it had given him a real insight into how a firm should be properly managed and maintain compliance with its regulatory responsibilities.
21. The Applicant presented to the Tribunal a testimonial from YA, a partner at CS who confirmed that the Applicant had been employed at CS and that having had his work closely observed and supervised the Applicant was considered to be *'highly competent, well organised and always diligent in all tasks undertaken'* and that *'he was always professional with colleagues and clients with no issues or complaints relating to his practice during the term of his employment'*.
22. YA said that the Applicant had acknowledged that there had been failings in his practice and *'had showed a genuine willingness to improve his understanding of Rules and Regulations to better his practice'* and that he had taken a number of courses to facilitate this improvement. YA had no concerns regarding the Applicant's practise as a solicitor and supported the Applicant's application for removal of the restrictions.
23. The Applicant said that, since February 2016, he had been employed by IS as an Associate Solicitor and worked closely with the Managing Director which had given him a further opportunity to rehabilitate and build upon his experience at CS and continue to improve his professional conduct, compliance and management skills to negate potential risk to clients and the general public.
24. The Applicant explained that IS is a small firm with a tight and controlled management structure and that this had been beneficial for him. The Managing Director at IS had previously worked at a 'magic circle' firm and had a stringent approach to rules and regulations and this had allowed the Applicant to experience day to day management and learn how to identify and deal with risk factors, manage files effectively and comply with rules and regulations to prevent any breaches before they occurred.
25. The Applicant presented the Tribunal with a testimonial from MA, the managing director of IS. MA fully supported the Applicant's application and explained that he was aware of the circumstances surrounding the Applicant's suspension and the restrictions placed upon him. MA said that the Applicant took seriously his professional conduct and had taken further training in this regard.
26. MA said that the Applicant had worked at IS for five years and had been closely supervised by him and that he had found the Applicant to be *'extremely honest, professional and hardworking'*.
27. The Applicant presented to the Tribunal a schedule of the numerous training events he had attended in 2019-2020 including SRA Code of Conduct 2019; SRA Accounts Rules 2019; Compliance Update (2019), Criminal Finances Act, Conflicts of Interest, and GDPR.
28. IS also subscribed to a number of online legal resources which ensured that he was kept updated with current law and procedure. IS also had a number of in-house procedures to manage risk, identify and prevent breaches. This included all post being opened and checked by a senior manager, maintaining copies of all cheques (incoming and outgoing), monthly file reviews, monthly reconciliations, timely delivery of 'Accounts

Report' and LASPO compliance to eliminate any degree of control/influence by a third party and regular team meetings to discuss any issues arising.

29. The Applicant said that as of 3 July 2019 he was no longer disqualified from becoming a director of a company and he was making payments to discharge the Tribunal's costs order made against him which he was paying at a rate of £500.00 per month.
30. The Applicant said that he took full responsibility for his previous failings as a Member at the Firm and accepted that his 'tunnel vision' approach to work was wholly unacceptable given the managerial role he had taken on. However, this role had come far too early in his career as he was not fully equipped to deal with the responsibilities and he had been completely out of his depth.
31. The Applicant said that his application should be considered in a similar manner to an application for the restoration to the Roll or an application to determine an indefinite suspension and the conditions were limiting his employment prospects and career progression.
32. The Applicant referred the Tribunal to the decisions in Bolton v The Law Society [1994] 1WLR 512; Ebhogiaye v SRA [2013] EWHC 2445 (admin) and Camacho v Law Society [2004] EWHC 1675 (Admin) and submitted that these cases made it clear that the conditions and restrictions on practice were for the protection of the public and to maintain public trust in the profession.
33. The Applicant submitted that, in the last 10 years, he had matured and refined his working practices to ensure a high level of service to his clients and to avoid the risk of breaching his professional obligations and he had had ample time to reflect on his past failings and had learnt through practice and training how to achieve and maintain the highest professional standards and not repeat the misconduct, which he regretted, that had brought him before the Tribunal in 2013. Fundamentally, the Tribunal could now be satisfied that he was no longer a risk to the public.
34. The Tribunal observed that the Applicant's area of professional activity was in property and that this involved one of the biggest risk areas of money laundering. The Applicant was asked about the last Anti-Money Laundering ("AML") course he had attended or undertaken. In response the Applicant said that the last AML course was an update course of 30 minutes on 25 June 2020 and he referred the Tribunal to his schedule of training. He said that this was one of regular shorter training sessions every month but that he had attended longer yearly courses on the subject. The Applicant said that the senior partner in IS was the AML officer for the firm.

The Respondent's Submissions

35. Ms Hansen said that the Respondent had carefully considered the application and supporting documentation particularly with respect as to whether the Applicant posed a future risk to the public and the reputation of the profession in the absence of the conditions imposed upon him by the Tribunal.
36. Having given the application such consideration Ms Hansen said the Respondent held a neutral position.

37. In adopting this position, Ms Hansen said that the Respondent noted the following facts that it considered were relevant to the application:
- The Tribunal found there to be very serious failings at the Firm, including a significant loss of client money. The Firm had had a catastrophic collapse and at the date of the hearing in 2013 over £7 million had been paid from the Compensation Fund. This amount was representative of the difference between the claims received and the amount recovered from the Firm's client account.
 - The Applicant was found to have breached his core duties of failing to act in the best interests of his clients and in a way that that diminished the public would place in him or the legal profession.
 - The Applicant's misconduct stemmed from his inaction whilst he was a Member/Principal of the Firm, rather than any direct involvement in the large- scale wrongdoing of the Firm.
 - The Applicant was a relatively junior solicitor at the time of the misconduct having qualified at the Firm in February 2008 and was a Member/Principal of the Firm for a short period of about 4 months between 5 June and 5 October 2009.
 - There were no adverse disciplinary findings against the Applicant before the misconduct for which the present conditions were imposed.
 - Seven years had passed since the conditions were imposed by the Tribunal relating to misconduct occurring in 2009 and Ms Hansen confirmed that no adverse disciplinary findings had been made by the SRA or the Tribunal against the Applicant during this period.
38. Ms Hansen invited the Tribunal to consider the application in light of the above information and to make a decision which it considered to be proportionate and appropriate in all the circumstances.
39. Ms Hansen said that, if the Tribunal was minded to lift the conditions to which the Applicant was subject, he would still be under a duty to inform any prospective employer of his previous disciplinary and regulatory history.
40. With respect to paying the costs from the 2013 matter Ms Hansen confirmed that the Applicant was paying at a rate of £500.00 per month and to date he had paid £18,000.00 leaving a balance of £35,000.00 remaining.

The Tribunal's Decision

41. The Tribunal had due regard to the Applicant's rights to a fair hearing and respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and to this end the Tribunal gave very careful consideration to all the material it had read and the submissions made by the Applicant and the Respondent during the course of the hearing.

42. The Tribunal considered that its primary function in an application of this nature was to protect the public and to maintain public confidence in the reputation of the legal profession and it observed that the purpose of sanction was not intended to be punitive but to protect the public, the reputation of the profession and the Respondent.
43. The Tribunal noted the neutral position adopted by the Respondent with respect to the application and bore in mind the very serious circumstances which had culminated in the findings of misconduct made against the Applicant and the other Members of the Firm. The repercussions upon the many clients of the Firm who had been compelled to make a claim on the Compensation Fund following the '*catastrophic collapse*' of the Firm had been significant and the public would expect to be protected from future harm of a similar and serious nature.
44. Balanced against this background the Tribunal accepted that there was no evidence that the Applicant had not complied with the conditions imposed upon him in 2013 and that since then the Applicant had had no further disciplinary or regulatory issues recorded against him. A substantial amount of time had elapsed since the actual misconduct in 2009 and the findings made by the Tribunal in 2013.
45. The Tribunal observed that in 2013 the constitution of the Tribunal which had dealt with the matter, after hearing all the evidence, had not found the Applicant to have been dishonest but that his misconduct had largely stemmed from his inaction whilst he was a Member of the Firm, rather than any direct involvement in the large scale wrongdoing of the Firm, and at that time he was a relatively junior solicitor with very limited management experience and only 4 months as being a Member of the Firm.
46. The Tribunal also noted the character references presented to it, one of which was from his current employer and one was from a previous employer. Both references spoke highly of the Applicant and the positive advances he had made in reflecting upon his conduct and improving the standard of his practice. Save for the one year in which he had been suspended the Applicant had been in regular employment as a solicitor and that he had taken the opportunities provided to him to observe good practice in operation, learn from his observations and build upon his experience of working in two well run firms.
47. The question to which the Tribunal addressed its mind was whether the Applicant had demonstrated sufficiently that he had rehabilitated himself and that if the conditions were to be removed in whole or in part the public would be protected from risk. This was a high bar to cross.
48. The Tribunal noted that in his submissions the Applicant had focused very heavily on his work and what he wanted to do in the future in terms of career progression and the opportunities he may be prevented taking up if the conditions were not removed. However, the Tribunal considered that the Applicant could be thinking a bit more widely: he could present courses; carry out pro bono work and use his experience to educate others more widely about the pitfalls into which he fell.
49. That said, the Tribunal was satisfied on balance that the Applicant had demonstrated genuine insight and good motivation to improve his rehabilitation still further. The Applicant was very fortunate to have found work in well managed and protective

environments since the conditions were imposed and the Tribunal was satisfied that it was unlikely his misconduct would be repeated. The Tribunal accepted the Applicant was sincere in his assertions that he would not make the same mistakes again.

50. The Tribunal noted that the Applicant was making regular and substantial payments towards the costs of the 2013 case and this too went some way to demonstrate that he was adopting a mature approach to his rehabilitation.
51. Having balanced the submissions from both parties, and reflecting the Tribunal's public duty, the Tribunal concluded that given the particular circumstances presented by the Applicant it would be appropriate to lift the restrictions in part namely there appeared no reason to continue with the restrictions preventing the Applicant from being a partner in a firm or Member or manager of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or that he may only work as a solicitor in employment approved by the SRA.
52. The Tribunal considered that the Applicant was on a journey of rehabilitation and that whilst this continued and to protect the public from future risk and avoid damage to the reputation of the profession it was appropriate and proportionate to retain a restriction on the Applicant precluding him from practising as a sole practitioner.
53. Accordingly, the Tribunal granted the Applicant's application to remove the restrictions on his practice subject to the retention of the condition that he must not practice as a sole practitioner.

Costs

54. Ms Hansen requested an Order for the Respondent's costs and she referred the Tribunal to the Statement of Costs dated 2 February 2021 which claimed costs in the sum of £2,500.00 (+VAT). This was a fixed fee which had been determined on the level of complexity and anticipated work required by the Respondent.
55. Ms Hansen said that the Respondent had been a necessary party to the application and should accordingly be allowed its costs which were appropriate and proportionate. The Respondent had had no choice in being involved and it had had to prepare thoroughly for the hearing. This had involved reading the lengthy and detailed judgment given by the Tribunal in 2013; reviewing the material from that case and considering the application and the supporting material presented by the Applicant, and then drafting its Answer. The Respondent had also spent time assisting the Applicant in uploading material to CaseLines.
56. In total, the number of hours of preparation including preparing for the hearing and the hearing itself had come to 25 hours. This equated to a notional hourly rate of £100.00 per hour. Whilst this was considered by the Respondent to be reasonable and proportionate the Tribunal was invited to summarily assess the costs.
57. Ms Hansen said that the costs ordered by the Tribunal would be added to the payment plan already in place in which the Applicant was paying £500.00 per month.

58. In a brief submission to the Tribunal the Applicant stated that he would pay the reasonable costs of the Respondent but that the costs claimed by the Respondent were too high and he asked the Tribunal to reduce this amount given that he was already paying a large monthly sum to the Respondent.
59. Having considered the Respondent's costs schedule and the parties' submissions the Tribunal concluded that the 25 hours preparation claimed by the Respondent was marginally too high for a case of this nature. Whilst it was recognised that the original judgment of the Tribunal was detailed and had required reading in depth the present application made by the Applicant had been of limited complexity and it had not been supported by voluminous material and very little for the Respondent to do in terms of any investigatory work.
60. The Tribunal assessed the costs and reduced the amount to £2,000.00 (+VAT) which it was satisfied was appropriate and proportionate given its observations set out above, and the Tribunal ordered the Applicant to pay the Respondent's costs in this amount.
61. **Statement of Full Order**
 1. The Tribunal Ordered that the application of BILAL KHAWAJA, solicitor, for the variation of conditions imposed by the Tribunal on 3 May 2013 be **GRANTED**.
 2. The Tribunal Orders the conditions be hereby varied as follows:
 - 2.1 The Respondent may not:
 - 2.1.1 Practise as a sole practitioner
 3. The Tribunal further Orders that he do pay the costs of the response of the Solicitors Regulation Authority to this application fixed in the sum of £2,400.00.

Dated this 2nd day of March 2021
On behalf of the Tribunal

Jane Martineau

J. Martineau
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
02 MAR 2021