The Tribunal's decision dated 14 December 2021 is subject to appeal to the High Court (Administrative Court) by the Respondent. The Order remains in force pending the High Court's decision on the appeal.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12235-2021

BETWEEN:

FARID EL DIWANY Applicant

and

SOLICITORS REGULATION AUTHORITY LTD Respondent

Before:

Mr S. Tinkler (in the chair)
Ms C. Evans
Mrs N. Chavda

Date of Hearing: 18 November 2021

Appearances

The Applicant represented himself.

Nathan Cook, solicitor, of the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Respondent.

JUDGMENT

Application

1. On 5 August 2021 the Applicant, Farid El Diwany, applied for his name to be restored to the Roll of Solicitors. The Application was supported by statements dated 12 and 13 August 2021, with exhibits.

2. The Applicant had been struck off the Roll by Order of the Tribunal made on 11 December 2019. The Tribunal's Judgment (case number 10727/2011) was dated 17 January 2020. The matters for which the Applicant had struck off the Roll were as follows:

> "1.1 On 2 November 2001 and 17 October 2003 he was convicted of harassment offences in Norway in contravention of Section 390(a) of the Norwegian Penal Code. Consequently, he acted in breach of Rule 1.08(1) of the Solicitors Practice Rules 1990 ("SPR90");
>
> 1.2 He failed to notify his regulator about the convictions referred to in allegation 1.1 in breach of the following:
>
> 1.2.1 From the date of convictions until 1 July 2007: Rule 1.08(1) of the SPR 90;
>
> 1.2.2 From 1 July 2007 until 5 November 2011: All or alternatively any of Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007 ("CC07");
>
> 1.2.3 From 5 November 2011: All or any of Principles 2, 6 and 7 of the SRA Principles 2011 ("the Principles") and Outcome 10.3 of the SRA Code of Conduct 2011 ("CC11")."

3. With respect to the present application for restoration the Tribunal issued directions on 9 August 2021 which, amongst other matters, required the Respondent, the Solicitors Regulation Authority Ltd, ("SRA") to respond to the Application by 2 September 2021 and listed the Application for hearing on 18 and 19 November 2021.

4. The Respondent filed and served its Response, with supporting documents as directed and the Applicant filed and served a third witness statement dated 30 September 2021.

Documents

5. The Tribunal considered all of the documents in the case, which were contained within an agreed electronic hearing bundle including the following core documents:

Applicant

- Application dated 5 August 2021Applicant's statements dated 12 August 2021; 13 August 2021 and 30 September 2021 with exhibits

Respondent

- Response to the Application, dated 2 September 2021 with supporting documents including:
  - SRA v Farid El Diwany - Tribunal Judgment 17 January 2020
  - Farid El Diwany v SRA - High Court Appeal Judgment 11 February 2021
  - Farid El Diwany v SRA - Court of Appeal Judgment 29 March 2021
  - Bolton v The Law Society [1994] 1 WLR 512 and 2 All ER 486
  - Thobani v The Solicitors Regulation Authority [2011] EWHC (Admin)
  - SRA v Simon Kaberry [2012] EWHC 3883 (Admin)
  - Ellis-Carr v Solicitors Regulation Authority [2014] EWHC 2411 (Admin)
  - Solicitors Disciplinary Tribunal Guidance Note on Other Powers of the Tribunal December 2020 - 4th Edition
  - Respondent's Statement of Costs dated 10 November 2021

Preliminary Matters

6. Attempted contact with Tribunal Chairman by the Respondent

6.1 As a preliminary matter, the Chair stated that he had received two unsolicited emails and a telephone message from Mr El Diwany in the interim period between the case management hearing and the hearing. The sending of such communications to a judicial decision maker was highly irregular and any communication should have been through the correct official channels with the Tribunal. The Chair confirmed that he had put the contents of those communications to one side (as they were not relevant to the substantive application) but that he wanted to make the Respondent aware that this had happened. The Applicant was already aware of the communication being made as he had sent the emails and left the telephone message. Neither the Respondent nor the Applicant raised any objection or further questions in relation to this attempted contact by the Applicant.

7. Recusal

Applicant's Submissions

7.1 Mr El Diwany applied for all members of the Tribunal to recuse themselves on the basis that he required an all-Muslim Panel to determine his substantive application for restoration. Mr El Diwany submitted that anything other than an all–Muslim Panel would demonstrate actual and apparent bias on the part of the Tribunal, and that such bias against him had been also held by the Panel which struck him off the Roll of Solicitors in December 2019.

7.2 Mr El Diwany demanded from the Tribunal, as part of his application, an apology for the *'flawed and misconceived'* decision made by the constitution of the Tribunal which had struck him off the Roll. The Applicant stated his view that the earlier Panel had contained no Muslim members and this omission was evidence of Islamophobia.

7.3 Mr El Diwany submitted that the Division of the Tribunal selected to hear his present application would be similarly *'bigoted and Islamophobic'* by the fact that they were

not Muslim and that in such circumstances he could not expect a fair hearing if the Panel, as constituted, considered his case.

Respondent's Submissions

7.4 The Respondent opposed the application.

7.5 Mr Cook said that the legal test for the Tribunal to apply when considering an application of this nature is laid down in Porter v Magill [2001] UKHL 67 and is namely: "*whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."*

7.6 Mr Cook said that Mr El Diwany had presented no information to explain why the present Division of the Tribunal was not able to appropriately consider his application for restoration to the Roll. He submitted that Mr El Diwany's Application Notice raised *'baseless and wholly irrelevant assumptions'* about the perceived religious beliefs of the current division as well as assertions of Islamophobia by the Division of the Tribunal that made the original decision to strike him from the Roll, the Solicitors Disciplinary Tribunal generally and the Respondent.

7.7 Mr Cook noted that none of the members of the Division of the Tribunal, presently constituted, made the original decision to strike Mr El Diwany from the Roll and that the Applicant's submission that the current division would be biased was based solely on the Applicant's assumptions about their personal religious beliefs.

7.8 In Mr Cook's submission *'a fair minded and informed observer, having considered the facts'* could not properly conclude that there was a real possibility of bias solely due to the perceived religious beliefs of the judicial decision maker.

7.9 The personal religious beliefs of the individual members of the Division were irrelevant to the matter the Panel was tasked to undertake, namely whether Mr El Diwany was now a fit and proper person to have his name restored to the Roll. Without clear evidence to the contrary, *'a fair- minded observer'* would assume that a professional Tribunal would be able to put aside their personal religious beliefs (if any) when making judicial decisions.

7.10 Mr Cook also drew the Tribunal's attention to the decision in Locabail v Bayfield Properties [2000] 1 All ER 65, which provides at paragraph 25:

> *"It would be dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. Everything will depend on the facts, which may include the nature of the issue to be decided. We cannot, however, conceive of circumstances in which an objection could be soundly based on the religion, ethnic or national origin, gender, age, class, means or sexual orientation of the judge."*

7.11 Mr El Diwany had raised no other objection to the current Division apart from their assumed religious beliefs and on this basis there was no reason for a fair-minded observer to conclude that there was a real possibility that the current Division of the Tribunal would be biased. Therefore, there was no proper basis for the application.

The Tribunal's Decision

7.12 The Tribunal listened with care to the application and the response.

7.13 The Tribunal observed that during his application Mr El Diwany had made references to his perceived view of the religious adherences of Panel members and of other judicial decision makers in different jurisdictions. It was his central contention that no one, other than an adherent of Islam, would be competent to deal fairly with his application.

7.14 The Tribunal noted first that it was a professional and experienced Tribunal, the members of which had all received training in matters relating to *'unconscious bias,'* and individual members were acquainted in detail with the important guidance set out in the 'Equal Treatment Bench Book 2021' and the chapters relating to Islamophobia. The Tribunal fully understood the importance of not thinking in terms of stereotypes based on perceived characteristics associated with a particular ethnic or religious group and indeed these were matters which were irrelevant to an application for restoration to the Roll.

7.15 It was not open to Mr El Diwany to pick and choose his Panel, and particularly not on a perception of each member's religious observances or his belief that they would be biased against him because of his religion. This was not an argument which could form a legitimate basis for recusal and was one which had been roundly rejected in Locabail v Bayfield Properties *(supra.)*

7.16 The Tribunal applied the test in Porter and Magill (set out above) and it concluded that the Applicant had presented no evidence to show that it would not be able to deal with the Applicant's case fairly. There was no reasonable basis to consider that *"the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Tribunal was biased."*

7.17 The Tribunal assured Mr El Diwany that it would be scrupulously fair and that it would decide the substantive application on its merits alone and not upon the extraneous matters which Mr El Diwany had based his recusal application.

7.18 The Tribunal dismissed the application and refused to recuse itself.

8. Advertisement of Application

8.1 Rule 17(6) of The Solicitors (Disciplinary Proceedings) Rules 2019 (the Rules) stipulates:

> *"Every application to which this Rule applies must be advertised by the applicant in the Law Society's Gazette and in a newspaper circulating in the area of the applicant's former practice (if available) and must also be advertised by the Tribunal on its website."*

8.2 The Tribunal observed that advertising the place, date and time was an important part of an application for restoration to the Roll as it provided members of the public information regarding the existence of the application and an opportunity to object to or support the granting of the application.

8.3 The Tribunal noted that Mr El Diwany had complied with the Rule to the extent that he had advertised on the Tribunal's website and in the Law Society Gazette: no objections had been lodged by members of the public, nor any indications of support received.

8.4 Mr El Diwany informed the Tribunal that he had not advertised in a newspaper circulating in the area of his former practice. He said that he had attempted to place an advertisement in the East London Advertiser in September 2021, however he was informed that this publication did not accept such advertisements.

8.5 Whilst it was regrettable that Mr El Diwany had not been able to advertise in a local newspaper the Tribunal construed the refusal of the newspaper to take the advert as meaning that the local newspaper was not *'available'* to him for this purpose. It appeared to the Tribunal that the Applicant had made reasonable efforts to comply with the Rule, and on balance, it was satisfied that the Applicant had advertised in accordance with Rule 17 (6) of the Rules and that it should go on to hear the substantive application for restoration to the Roll.

8.6 Mr Cook indicated his agreement with the approach taken by the Tribunal.

Background

9. Mr El Diwany was admitted to the Roll of Solicitors on 9 January 1987. He practised as a consultant at Scott & Co from 23 May 2005 until 15 May 2008. He subsequently practised at Nasir & Co from 8 February 2010 until 31 July 2014. He last practised as a solicitor at Gawor & Co. He was employed at that firm from 23 February 2015 until 1 February 2017.

10. In February 2017 the Respondent received a report from a partner at Gawor & Co to the effect that the Applicant had recently stated that he had a criminal record in Norway for harassment and that he had failed to disclose that fact at his interview or in the subsequent two years that he had been employed by the firm. Mr El Diwany was dismissed following the disclosure of his conviction.

The Norwegian convictions

11. He was first convicted in his absence in 2001, and fined the equivalent of about £900, for harassing a Norwegian woman (HS) over a period of years.

12. Two years later, he was convicted again over sending faxes to various people and organisations in Norway with highly personal information about HS and encouraging them to find out more about her on a website he set up.

13. Mr El Diwany was sentenced to eight months in jail, suspended for two years, subject to him removing the website and not contacting HS. The website was still live by the date of the hearing before the Tribunal in December 2019.

Strike off

14. At his hearing in December 2019 Mr El Diwany argued that he had been provoked by HS into acting the way he had because she had made false accusations against him

which included that he had attempted to rape her and that he had threatened to kill her son. Mr El Diwany claimed that HS was behind a number of seriously damaging and false newspaper articles about him. *(The articles were presented in evidence by Mr El Diwany at the December 2019 hearing and at the application for restoration.)*

15. After the stories in Norwegian press, he received letters which the Tribunal on the last occasion accepted had been *"vile and Islamophobic"*. However, whilst the Tribunal had considered it understandable that he would want to respond to what had been published about him, the way in which he had responded went beyond an understandable and acceptable response and that he must have known that he had *"crossed the line"* in sending HS *"profoundly unpleasant"* correspondence. Further, the Tribunal found that if what Mr El Diwany said about HS's vulnerability and personal difficulties was true, *"this made such an aggressive, personal and public campaign against her worse"*.

16. The Tribunal ruled there were no exceptional circumstances based on provocation that justified going behind the convictions especially as the Norwegian courts had considered and rejected similar submissions.

The Applicant's Submissions

The central submission

17. Mr El Diwany commenced by asking the Tribunal to act with 'integrity' when hearing his submissions and deciding upon his application.

18. He then returned to the submission made as part of the application for recusal by demanding from the Tribunal an apology for the decision made by the constitution of the Tribunal which had struck him off the Roll. The Applicant said that this had been a flawed decision based on religious bias and prejudice and he urged the Tribunal to return him Roll without further delay.

19. The Applicant re-stated his view that the earlier Panel had contained no Muslim members and this apparent Islamophobia had rendered its decision unfair and unreliable.

20. In this part of his application Mr El Diwany referred back to decisions made in the High Court by particular members of the Judiciary (Sharp and Warby LJs and Saini J) to whom he levelled the same accusation of Islamophobia and asserted that these Judges had condoned the use of extreme and derogatory language against central parts of his religion.

21. Mr El Diwany said that he had not received a fair hearing in any of his previous cases because the Judges had not read all the documents he had lodged and/or they had misread the documents.

22. Mr El Diwany demanded that the Tribunal condemn, as being bigoted, the previous Panel and also all the Judges he had named as being Islamophobic. He further demanded that the Tribunal apologise for the decisions those Judges had made in the

High Court and he characterised any refusal on the Tribunal's part to do so as being indicative of its own hostile Islamophobia.

23. Mr El Diwany took issue with any suggestion in previous proceedings or in the Respondent's submissions that he lacked insight into his conduct and said that due to the actions of HS, the Norwegian police and press, and later judicial decisions made in this jurisdiction, including his striking off from the Roll, he had been subjected to *'25 years of hell'* during which he had been accused of wanting to abduct and kill HS's child; of being a 'sex-terrorist' and being detained in a hospital (due to his mental health), none of which was true.

24. With respect to his Norwegian convictions Mr El Diwany said that they had been obtained by way of duress and were for matters which would not have been regarded as criminal offences in England and Wales. As a consequence of all that had happened to him, Mr El Diwany said that he had been ostracized by former friends and colleagues and that the stress of these events had contributed to the ill health of a close family member and to their untimely death.

Timing of the present application

25. Mr El Diwany said that his application for restoration to the Roll was not premature, having been made less than two years following the strike off order, and that the Tribunal should find that there were exceptional circumstances for lodging such an application less than six years after being struck off.

26. Mr El Diwany said that the exceptional circumstances related solely to the fact that his conviction in Norway had been unsafe and that he had been the victim of endemic Islamophobia in Norway and in the United Kingdom. Mr El Diwany said that if the Tribunal did not recognise the exceptional nature of his case, then this, in itself, would be an endorsement of Islamophobia.

Rehabilitation and future intentions

27. Mr El Diwany said that he had not been working in the legal sector or in any form of employment and that he had been concentrating his efforts on clearing his name as he did not believe that he would be again employed in the law, in any capacity, until he had done so.

28. Once he was re-admitted to the Roll Mr El Diwany said that he hoped he would be able to re-join his previous firm where he had been well regarded and his work had been recognised as being of a high standard.

Respondent's Submissions

29. Mr Cook's overarching submission was that Mr El Diwany had failed to address adequately or at all the key matters which an application for restoration to the Roll should address and that Mr El Diwany's application should be dismissed by the Tribunal as being totally without merit.

30. Mr Cook reminded the Tribunal that an application for restoration is not an appeal against the original decision to strike off/remove. The Tribunal's function when considering an application for restoration is to determine whether the applicant has established that they are now a fit and proper person to have their name restored to the Roll and that the principles, which the Tribunal should consider in an application for restoration to the Roll are set out in the leading authority of Bolton v The Law Society [1994] 1 WLR 512 and 2 All ER 486. In the course of his Judgment, Sir Thomas Bingham, the then Master of the Rolls, stated at paragraph 13:

> *"It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness ... Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees...*
>
> *In most cases the order of the Tribunal will be primarily directed to one or other or both of two other purposes...The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one 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. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires...*
>
> *The reputation of the profession is more important than the fortunes of any individual member. Membership of the profession brings many benefits, but that is part of the price."*

31. Mr Cook referred the Tribunal to decisions which provided guidance as to the Tribunal's exercise of its discretion under s.47(2) of the Solicitors Act 1974:

- SRA v Kaberry [2012] EWHC 3883 (Admin) in which Elias J recited the test to be applied as set out in Bolton;

- Thobani v SRA [2011] EWHC 3783 (Admin) in which Burnett J *(as he then was)* said:

  > *"What is being considered is the past conduct of an applicant, an evaluation of risk for the future should someone be restored to the Roll, and importantly, public confidence in the solicitors' profession."*

- Re A Solicitor No 5 of 1983, where Lord Donaldson said:

> "*I cannot see how the Disciplinary Tribunal would have agreed to his being restored without having...been given positive evidence of his active good character and his trustworthiness in some other context; either by employment with a solicitor with leave of the Law Society or by employment in some other position which involved trust."*

- Ellis-Carr v Solicitors Regulation Authority [2014] EWHC 2411 (Admin), Mr Justice Collins stated at paragraph 57:

> *"...what matters is his present position and future....Accordingly, he should be judged on the basis of what he now is and whether there is any real prospect that.....he can be regarded as someone who is fitted to be on the roll of solicitors."*

32. And 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) indicated 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'".*

33. With the case law and procedural framework in mind Mr Cook set out the Respondent's reasons for opposing the application as follows:

- The application was premature being made less than two years since Mr El Diwany was struck off the Roll. The Applicant had not identified any exceptional circumstances that would justify restoring his name to the Roll after such a short period of time;

- The application did not address any of the matters to be taken into account by the Tribunal in considering the application identified in the Guidance Note, and was therefore bound to fail; and

- Mr El Diwany had not demonstrated any insight upon the conduct which resulted in his strike off and on this basis there was not a real prospect that the Applicant could be regarded as someone who is a fit and proper person to be on the Roll of Solicitors

34. With respect to the timing of the application, it had been made approximately 21 months after the Applicant was struck off the Roll. The Tribunal's Guidance Note sets out that the Applicant should demonstrate exceptional circumstances to show why the application is not premature. In this case Mr El Diwany had not put forward any argument which would amount to exceptional circumstances to explain why an application after such a short time period should not be treated as premature. His only argument was that the Division of the Tribunal which had struck him off the Roll had

been biased against him and that they had made a flawed decision for which they and the present Division should apologise.

35. Mr El Diwany had produced no evidence of rehabilitation or employment/future employment and he had not addressed any of the issues identified in Paragraph 6 of the Guidance Note.

36. Mr El Diwany had not addressed why he was now a fit and proper person to have his name restored to the Roll. He had not provided any testimonials or any evidence that there is anyone who would consider him a fit and proper person to be restored to the Roll.

37. The Guidance Note states that an Applicant needs to provide evidence of employment in the meantime, however, this was absent from the Mr El Diwany's application and he had not provided the Tribunal with any evidence regarding this in his oral submissions.

38. With respect to the reputation of the profession and public confidence in the provision of legal services Mr El Diwany had not provided any evidence which demonstrated that he had rehabilitated himself and he did not provide evidence of supervision and support from a prospective employer. In all of the circumstances, it was submitted by Mr Cook that Mr El Diwany was not a suitable person to be admitted to the Roll.

39. Further, Mr Cook observed that in his application Mr El Diwany claimed that the Division of the Tribunal which had struck him off made *"fundamental errors of judgment resulting in perverse conclusions"* and *"serious factual errors"*. Mr Cook argued that in an application for restoration it was not appropriate to re-open issues about the reliability of his convictions, particularly in circumstances where the original Tribunal placed reliance on the convictions.

40. These issues were also raised by Mr El Diwany and explored at length by the Tribunal in its original decision, and the High Court in his appeal of the Tribunal's decision, and before the Court of Appeal when it refused him leave to appeal. Consideration of the present application should not therefore be tantamount to an appeal of the order striking him off the Roll.

41. Furthermore, the application demonstrated Mr El Diwany's complete lack of insight into the impact of the conduct which led to his convictions and the reasons he was struck off the Roll. He described senior members of the judiciary in crude terms and despite stating that HS had serious mental health difficulties and has attempted suicide, he made the following comments:

- *"[The victim] is "NOT the 'vulnerable' victim that I allegedly took advantage of, as deceitfully described by the SRA and SDT."*

- *……"[the victim's] 'personal issues' were in truth vastly outweighed by her intent to pervert the course of justice in the most despicable way."* . "Total b******t. *A vulnerable woman with mental health difficulties eh? Deserving of sympathy and understanding? Yes, according to the unqualified psychiatrists at the SRA and SDT." 29.2.4. "[the victim] can go burn in hell for what she has alleged*."

42. Mr El Diwany also stated that *"under no circumstances was I going to tell the SRA of these two trumped-up Islamophobic Norweigan convictions. Just as well after the living hell the SRA and SDT put me through after they did find out about the convictions"*.

43. Mr Cook said that Mr El Diwany continued to disregard his duty to be open and honest with his regulator and that, given the comments he had made with respect to HS, the victim, Mr El Diwany had not demonstrated any insight or understanding of the impact of the conduct which led to his convictions on either the victim or the wider public trust and confidence in the legal profession and him as a solicitor and the public would not consider the Applicant to be a fit person to be on the Roll.

44. In answer to a question from the Tribunal Mr Cook confirmed that the Applicant had not paid the costs relating to the hearing in which he was struck from the Roll.

45. The Applicant confirmed this to be the case. He had not paid the costs as ordered because he had no money. Mr El Diwany said that he was in negotiations with the Respondent to have a voluntary charge placed on his property.

The Tribunal's Decision

46. The Tribunal was aware of its powers set out in its own Guidance Note on Other Powers of the Tribunal (December 2019) ("the Guidance"). The Tribunal had the power to restore to the Roll the name of a former solicitor whose name has been struck off and that an application in such a case had to be supported by a statement setting out:

- details of the original order of the Tribunal leading to strike off;
- details of the Applicant's employment and training history since the Tribunal's order of strike off;
- details of the Applicant's intentions as to and any offers of employment within the legal profession in the event that the application is successful.

47. Notwithstanding a consideration of the factors set out above the Tribunal understood its core function was to determine whether the Applicant had shown that he was a fit and proper person to be restored to the Roll of Solicitors and that restoring the Applicant to the Roll would not damage the reputation of the legal profession.

48. The Tribunal took as its central guidance the matters set out in Bolton v Law Society that any solicitor to whom the public turns for help must be of unquestionable integrity, probity and trustworthiness.

49. The Tribunal reminded itself that this was not a dishonesty case and, in a case, where strike off was imposed for disciplinary matters not involving dishonesty, the prevailing advice from the higher courts was that provided by Lord Donaldson in Case No. 11 of 1990 (unreported) in which 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."

50. The Tribunal carefully considered the oral representations made by Mr El Diwany and on the Respondent's behalf, and all the documents submitted by both parties, this included the three statements submitted by the Applicant and the supporting material and press articles.

51. The Tribunal noted that much if, not all the material submitted by the Applicant, related principally to the matters for which he had been struck off the Roll and did not address the critical issues which an application for restoration would be expected to address as set out above.

52. Mr El Diwany's oral submissions had in large measure been an attack upon the findings and integrity of the Division of the Tribunal which made the order for strike off and upon also other Judges who, over the years, had not found in the Applicant's favour.

53. The Tribunal concluded that Mr El Diwany's application for restoration was a device to go behind his conviction and an attempt to re-litigate matters already decided upon and appealed, unsuccessfully by him: his failure to grasp this point was found by the Tribunal to be indicative of Mr El Diwany's absolute lack of insight on the conduct which had resulted in strike off. His combative language had illustrated his ongoing anger in relation to the events that had led to his striking off. However he had not addressed at all this essential issue, namely his lack of insight into the offences of which he had been convicted (whatever the provocation may have been), and his need to comply with all laws and regulations relevant to him as a solicitor, not just those he judged to be relevant. The content and tone of his comments had instead highlighted his continuing absence of insight.

54. On appeal to the High Court, Mr El Diwany's major point, as here, was that he had been subjected to extreme provocation, and he had said the striking-off was a disproportionate response to the offences.

55. Saini J said he *"needed no persuading that these publications were very upsetting to him and that they plainly included racist and anti-Muslim content".* However, Sainj J had agreed that the provocation did not excuse his behaviour, *"There was no error in this conclusion and indeed any other conclusion would have been unjustified."*

56. The judge also upheld the sanction:

> *"The Tribunal was entitled to regard the misconduct as extremely serious and to find that Mr El Diwany's 'complete lack of insight' heightened the ongoing risk to the public. They were not in error in describing the misconduct as being 'at the highest level'….."It clearly was. They also directed themselves expressly in accordance with the material case law……*
>
> *It is fair to observe that before me Mr El Diwany showed a bit more insight than he had before the tribunal. But, in my view, he still did not in reality accept the seriousness of what he had done."*

57. The Tribunal found that this was still the position. The Tribunal had to be satisfied in an application of restoration that the Applicant had had a *"total change of heart …and a change of character"* as per Lord Donaldson in Re a Solicitor No8 of 1995 (unreported). A '*total change of heart'* required insight and this aspect of rehabilitation was notably absent in the present application.

58. Mr El Diwany had presented no evidence of any employment within the profession in the period since he was struck off the roll, nor any evidence of any substantial and satisfactory employment outside the profession. He had not provided any evidence that anyone was willing to employ him in the role of a solicitor should his name be restored to the Roll other that to say he hoped to return to his previous firm. This had not been backed up by a statement or letter from his prospective employer regarding supervision and support if his name were to be restored to the Roll, or any protections which might be put in place to address the risks identified by the conviction, and the Applicant indicated that he had not even discussed this possible return to employment with his previous employer.

59. In the absence of any details of an adequate training plan, or any other prospective employer, the Tribunal could not be satisfied that there would be adequate supervision and support put in place by a prospective employer and stringent oversight of the Applicant's work as there needed to be. Indeed, Mr El Diwany had informed the Tribunal that he was actively spending his time in attempts to clear his name and that he did not consider that anyone would employ him whilst the conviction was still extant.

60. The Tribunal's experience was that whilst the path back to the profession following strike off was, necessarily, a very difficult one others had achieved it by gaining experience in different areas of work; by carrying out charitable and voluntary work; by seeking positions of trust and eventually by finding openings in the legal sector, sometimes as a 'para-legal' in order keep up to date with practice, procedure and the law. The rebuilding of reputation and trust was a long process which often took many years and in which evidence was required to demonstrate that the Applicant had taken credible and real steps to rehabilitate.

61. Mr El Diwany's application was made a little under two years from the date of strike off. The only exceptional circumstances Mr El Diwany put forward to justify such a short period from his original striking off were, in essence, that the original decision was wrong. That could not, in the Tribunal's view, count as exceptional circumstances. and there were no other exceptional circumstances which would have allowed the Tribunal to reach any other conclusion on this point.

62. The Tribunal concluded that there was no evidence before it to show any rehabilitation on the part of the Applicant since his strike off, nor any evidence of previous or prospective employment to support the application. There was no evidence of insight on the part of the Applicant as to the need to comply with law and regulation if he wished to return as a solicitor. There were no exceptional circumstances which justified him being considered for a return to the roll less than 6 years after his strike off. The Tribunal also concluded on the evidence before it that public confidence in the profession would, given the Applicant's ongoing failure to accept previous findings against him and the applicability of regulations and law to him, be damaged if the

Applicant was readmitted to the profession. The application was almost in its entirety an attempt to re-open the previously concluded, and unsuccessfully appealed, decision of the Tribunal and was bound to fail.

63. Accordingly, Mr El Diwany's application for restoration to the Roll was refused.

Costs

64. After the Tribunal announced its decision on substantive application the Applicant absented himself from the hearing and he therefore made no submissions on costs, notwithstanding that he was on notice that the Respondent would be seeking costs from him.

65. Mr Cook made an application that the Mr El Diwany should pay the Respondent's costs of the case, and he referred to a costs schedule dated 10 November 2021.

66. That schedule put the total costs claimed at £4,680.00. Mr Cook submitted that the costs claimed were reasonable and were commensurate with the complexity of the case which had contained its own inherent difficulties.

67. This was an application which had been brought by the Applicant and the Tribunal would have expected the Respondent to engage with the proceedings. However, Mr Cook said that that there could rightly be some reduction in the costs on the basis that the hearing had been expected to take two days but was in fact concluded in one day.

68. Mr Cook therefore revised the costs claimed to £3,640.00.

The Tribunal's Decision

69. The Tribunal carefully considered the costs claimed by the Respondent.

70. There had been a clear public interest in the Respondent responding to, and critically examining, the Applicant's application for restoration to the Roll. The public would expect the Regulator to engage fully in such a case and deal with it with requisite seriousness and to this end it had quite properly discharged its duty to the public and the Tribunal.

71. The Tribunal considered that the Respondent had made a reasonable reduction in the costs claimed and in all the circumstances the figure of £3,640.00 was reasonable and proportionate and it ordered Mr El Diwany to pay the Respondent's costs in this revised amount.

Statement of Full Order

72. The Tribunal Ordered that the application of FARID EL DIWANY for restoration to the Roll of Solicitors be **REFUSED** and it further Ordered that he do pay the costs of the response of the Solicitors Regulation Authority Ltd to this application fixed in the sum of £3,640.00.

Dated this 14th day of December 2021
On behalf of the Tribunal

S Tinkler
Chair