

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12240-2021

BETWEEN:

HARJIT SINGH KANG

Applicant

and

SOLICITORS REGULATION AUTHORITY LTD

Respondent

Before:

Mr G Sydenham (in the chair)

Mr P Jones

Mrs S Gordon

Date of Hearing: 4 October 2021

Appearances

The Applicant appeared and represented himself

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

**JUDGMENT ON APPLICATION
TO TERMINATE/VARY CONDITIONS**

Documents considered by the Tribunal

Applicant:

- Application dated 22 July 2021
- Statement dated 28 July 2021
- Response to Answer dated 28 September 2021
- Schedule of training undertaken
- Character references x 6

Respondent:

- Answer dated 13 September 2021 & Exhibits
- Statement of Costs dated 27 September 2021

Application

1. This matter came before the Tribunal on 4 October 2021 on the Applicant's application dated 22 July 2021 to terminate and/or vary conditions on his practise imposed following a hearing on 22 August 2017 before another Division of the Tribunal.
2. At that hearing the Tribunal granted the Applicant's application for the determination of his indefinite suspension and further ordered that he be subject to the following conditions that he may not:
 - (i) Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body;
 - (ii) Be a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body;
 - (iii) Be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration;
 - (iv) Hold client money;
 - (v) Be a signatory on any client account;
 - (vi) Work as a solicitor other than in employment approved by the Solicitors Regulation Authority.

The Applicant was also ordered to pay costs of £2,704.00.

Background

3. The Applicant was born on 29 January 1960. He was admitted to the roll as a solicitor on 4 May 1993. From 1 March 1997 to 31 October 2011 the Applicant was either a partner or sole practitioner of H S Kang & Co.

4. He currently works as an associate solicitor at Lillywhite Williams & Co.
5. The Applicant first appeared before the Tribunal on 9 April 2009 alongside his former partner in HS Kang & Co, X, on 10 allegations which included breaches of the Principles relating failing to ensure that his Tottenham and Southall branches were supervised and managed in accordance with Rule 13 of the Solicitors Practice Rules 1990, and breaches of the Solicitors Accounts Rules 1998.
6. The Applicant admitted the facts and all the allegations against him. The Tribunal found all of the allegations to have been substantiated and he was ordered to pay a fine of £5,000 and three-quarters of the costs in the sum of £6,750.00.
7. On 22 December 2011 the Applicant was made bankrupt, and his practising certificate was automatically suspended. His bankruptcy was later discharged on 31 October 2014.

Indefinite Suspension from Practice

8. On 16 February 2012 the Applicant appeared before the Tribunal for the second time. The Tribunal found that the Applicant had failed to pay the premium due for indemnity insurance for the indemnity years 2009/2010 and 2010/11 within the prescribed period for payment and was in policy default in breach of Rule 16.2 of the Solicitors Indemnity Insurance Rules 2009 and 2010.
9. The Tribunal on that occasion “*considered it essential that the integrity of the insurance system for solicitors was preserved as this had an impact on the public’s confidence in the profession. The Respondent could not be allowed to practice regardless of his regulatory obligations*” and the Tribunal ordered that the Applicant be suspended from practice as a solicitor for an indefinite period and that he pay the costs of in the sum of £2,972.13
10. On 22 March 2012 the SRA intervened into the Applicant’s firm.

Employment Post Suspension

11. On 5 February 2013 the SRA approved BG Lawyers LLP’s application made under section 41 of the Solicitors Act 1974 to employ the Applicant, a suspended solicitor, as a Legal Assistant subject to conditions.
12. On 7 May 2015 the SRA granted Andrew Williams recognised sole practitioner trading as A R Williams Solicitors (now known as Lillywhite Williams & Co) approval to employ the Applicant subject to the following conditions:
 - His work would be directly supervised by Andrew Williams [109024] and in his absence, by APG [2418];
 - In the event of the absence of Mr Williams and APG, he would not have access to the office or conduct any work;
 - His work would be conducted solely from the offices of AR Williams

- His name did not appear on the firm's headed notepaper, publicity material, web-site or external nameplates;
- He should not have responsibility for, or be involved in, the training, supervision or support of any other employee;
- He should not hold, receive or have any responsibility for client monies;
- He was not to be an authorised signatory to any client or office account cheque and did not have the power to authorise electronic payments or transfers from any client or office account;
- All post, faxes, emails - both received and sent - would be checked by Andrew Williams;
- All clients would be informed, in the firm's client care letter, that he was a "Legal Assistant" under Andrew Williams' supervision. In addition, clients would be informed of the firm's complaints procedures;
- A requirement to keep full written records on the files of all his work;
- Regular monthly written file reviews of 5 files and where necessary weekly and daily, oral file reviews of complex cases;
- Quarterly appraisals of his work and performance and corrective action taken if necessary;
- He would continue to receive appropriate and suitable training to ensure that he was up to date with legal developments as well as professional skills.
- The SRA was to be immediately informed of any proposed variation in his duties or his supervision arrangements prior to variation;
- All work to be conducted solely from the offices of A R Williams although he could attend upon clients remotely from the office, such as at a Detention Centre, or undertake private hearings, where he had a right of audience and subject to appropriate supervision undertaken by Andrew Williams and/or APG.

Application to lift Indefinite Suspension from Practice

13. On 5 May 2017, the Applicant applied to the Tribunal to lift his indefinite suspension from practice. This application was heard by the Tribunal on 22 August 2017.
14. In making its decision, the Tribunal took into account that:
 - the SRA had informed the Tribunal that there had been claims on the Compensation Fund arising out of the problems at H S Kang & Co; *"This occurred in April 2016 and was in the amount of £98,224,79" ... which "related to a fraudulent*

conveyancing matter and [the SRA] submitted that the Applicant did not deal with the conveyancing”;

- he had been suspended for a considerable period of time, more than five years, and had continued to work within the profession adhering to the stringent conditions imposed by the Respondent;
 - he had worked in approved employment for much of the period of suspension for very modest remuneration and had an excellent reference from his current employer and the Tribunal now had a written assurance that he would be offered employment as an assistant solicitor if his application was successful;
 - he had clearly been attending court and had worked to the considerable satisfaction of his clients. One of the barristers had given a particularly impressive reference about the Applicant’s work in a very challenging case involving a vulnerable child with good results. The testimonials commended the Applicant’s dedication to clients particularly in care proceedings and referred to his willingness to work for the benefit of clients in circumstances where he would not be fully remunerated;
 - When giving sworn evidence the Applicant had stated without any hesitation that he had no intention of running a firm in the future.
15. The Tribunal was satisfied that if the indefinite suspension was lifted, there was no evidence that the public would be at risk, provided that conditions were placed upon the Applicant’s practice, considering the difficulties which he had experienced in the past in managing a firm.
16. The Tribunal ordered that the Applicant’s indefinite suspension be lifted subject to the six conditions set out at paragraph 2 above
17. On 28 February 2018 the SRA approved the Applicant’s employment as an Assistant Solicitor at Lillywhite Williams & Co subject to conditions:
- Supervision by Andrew Williams or DK in his absence
 - He would work on defined pieces of work
 - He would have no responsibility for, or be involved in, the training or supervision of any other employee at the Firm
 - He should not hold, receive or have any responsibility for client monies
 - He was not to be an authorised signatory to any client or office account and did not have the power to authorise electronic payments or transfers from any client or office account.

Relevant practising certificate history

18. On 28 February 2018 the SRA granted the Applicant his practising certificate for the year 2017/2018, his first practising certificate since the lifting of his indefinite suspension, subject to conditions reflecting those imposed by the Tribunal.
19. On 5 February 2019 the SRA granted the Applicant a practising certificate for 2018/2019 subject to the same conditions imposed on his 2017/2018 practising certificate.
20. The SRA informed the Applicant by way of letter dated 5 February 2019 that although the SRA was not bound by the conditions imposed by the Tribunal on 22 August 2017, it remained of the view that the risks previously identified still pertained and the SRA did not consider the Applicant suitable to be the manager or owner of an authorised body and compliance officer
21. The grounds for this assessment were that there was a *“potential risk to clients and the public interest were Mr Kang to be in a managerial role where he would be responsible for a firm achieving the mandatory outcomes.”*
22. On 28 October 2019, the Applicant applied to renew his practising certificate for 2019/2020. Within his application, the Applicant stated:

“I have had those conditions imposed on me for about 7 years. There has been no breach of those conditions.

The conditions restrict me in the type of work and who I work for. It prevents me from working as locum/consultant for multiple law firms. This indeed limits my earning capacity.

I have not been dishonest nor has there been any suggestion of dishonesty on my part. I therefore believe that the conditions are no longer necessary and are a major hinderance.”
23. On 5 June 2020, the Applicant provided a reference from his employer Andrew Williams in support of his application. Within the reference, Mr Williams stated that the Applicant had fully complied with the conditions imposed upon him and had conducted himself in a professional and dignified manner undertaking immigration, family and probate work.
24. Furthermore, that the Applicant had represented clients at court hearings and Home Office interviews with Mr Williams’ permission. The Applicant had never been given any managerial responsibilities nor held himself out to have such a role.
25. Mr Williams had been more than satisfied with the standard of the Applicant’s work and conduct. He suggested there was no further need to continue with the conditions.

26. On 11 July 2020 the SRA granted the Applicant's application for a practising certificate for the practice year 2019/2020 subject to one condition, namely that he could not be a manager or owner of an authorised body as he *"is unsuitable at present to discharge the roles and responsibilities expected of a manager or owner of an authorised body"*.

The Applicant's Submissions

27. The Applicant acknowledged his past errors and informed the Tribunal that he had learned and moved forward from his mistakes. The Applicant said that he had always recognised his duties to the profession and to his clients.
28. The Applicant accepted that his reputation had been affected by the intervention into his practice and his suspension. However, he had made strident efforts to rehabilitate himself and this had been recognised by the Tribunal when it had lifted the suspension and imposed the conditions upon him. That was now some time ago and the rehabilitation process had progressed, and he now wished to complete that process by having the conditions removed.
29. Following his suspension he was fortunate to be given an opportunity to redeem himself by remaining within the profession as a Legal Assistant and for the past 9 years he had worked with professionalism and integrity, first for BG Lawyers, and, subsequently for Lillywhite Williams and Co.
30. The Respondent had undertaken family work including public and private law proceedings, non-molestation applications, divorces, ancillary relief proceedings. He was also instructed and assisted with referrals from the Latin American Women's Aid ("LAWA"), and he would make himself available for referrals no matter where they were located and in doing so he travelled to London, Essex, Kent and Dorset.
31. Since 2017 he had had conditions on his practising certificate and had practised without any complaints: in that time his honesty and integrity as a solicitor has not been in question. He had not breached any condition under which he had been placed whether it was a condition imposed upon his practise by the Tribunal or upon his Practising Certificate by the Regulator.
32. He was known to conduct himself with professionalism and legal skill. His services were in demand and his practice growing. He had been complimented by members of the judiciary and he presented to the Tribunal a number of character references which attested to his qualities as a lawyer and more generally as a member of the community.
33. The Applicant said that he had kept up to date with current law and procedure and he referred the Tribunal to his training record for years up to and including 2020/2021.
34. Due to his growing practice the Respondent now wished to have the option of running his own practice to expand further. The potential for further expansion with Lillywhite Williams & Co was extremely limited as it lacked the necessary resources.
35. Whilst he was grateful for the support Mr Williams had given to him, he had now reached the point that in order to service his clients and improve his earnings he needed more space, and his own staff.

36. The Applicant said that he would never again practise in the field of conveyancing which had been the cause of his problems. The Applicant told the Tribunal that he had worked very hard to set up and run a successful solicitors practice and he had had no difficulties until April 2008 when he became aware of problems created by X, his then partner, in which a number of claims were made against the firm relating to conveyancing matters being dealt with by X.
37. The Applicant had suspected that X had been dishonest and in recent months it had come to his attention that latterly, X had been suspended indefinitely by the Tribunal as a consequence of a number of complaints with regard to his integrity and it was now apparent to the Applicant that X had in fact been dishonest in 2008.
38. The Applicant said that he had made an error of judgment in trusting X and that he would not make similar mistake in the future.
39. Whilst it was not currently the Applicant's intention to set up on his own, he wished to have the choice as to whether to do so and he considered that the preventative conditions were now disproportionate and unnecessary and stopped him from taking up opportunities which may arise in the future.
40. He assured the Tribunal that lessons had been learned by him and the question the Applicant raised was how could now complete his rehabilitation if he had no opportunities to demonstrate he could manage a firm and supervise staff?
41. In response to a question from the Tribunal the Applicant said that as he had no immediate plan to set up his own practice he had not taken or completed any courses in relation to practice management or solicitors' accounts: he had been busy but would undertake to do so if the conditions preventing him from doing so were removed. The Applicant said that he supervised his son who was not legally trained but assisted him in discrete tasks.
42. Finally, if the conditions were removed and he was permitted to set up on his own he was aware of professional colleagues who would carry out the role of Compliance Officer for Financial Administration (COFA) in his firm. The Respondent said that the Tribunal could have confidence that he would not set up without first being fully prepared.

The Respondent's Submissions

43. Ms Neale 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, and, having given the application such consideration, the Respondent held a neutral position on the application subject to some observations.
44. The Tribunal which heard the case against the Applicant in 2012, considered that the seriousness of the Applicant's conduct justified an indefinite suspension. This suspension was lifted by the Tribunal in 2017, but it imposed conditions restricting the

Applicant's ability to practise in order to protect the public in light of the serious misconduct on the part of the Applicant.

45. The conditions imposed by the Tribunal were within its normal range of conditions and were not intended to be punitive or oppressive. The conditions had been imposed to protect the public and the profession.
46. The Applicant's regulatory history gave rise to concerns regarding the Applicant's ability to be a manager, partner or owner of a firm, and this was why at present this was the one condition the Respondent had continued to impose on the Applicant's practising certificate for the protection of the public.
47. However, it was acknowledged that until the Applicant was afforded an opportunity to manage, become a partner or own a firm, he would be unable to demonstrate that he is now capable of this additional responsibility.
48. The Applicant had stated in his witness statement that he had undertaken continuing professional development ('CPD') courses by attending seminars and reading law journals and case reports.
49. Ms Neale said that the SRA had informed the Applicant in its decision to grant him a practising certificate for 2019/2020 that if he wished for the final condition to be removed from his practising certificate, the Applicant "*may also wish to undertake courses in relation to managing and owning a law firm*". The Applicant had confirmed to the Tribunal that he had not undertaken specific training in relation to managing and owning a firm.
50. With respect to the Applicant's level of insight Ms Neale said that the SRA had been satisfied with the progress made by the Applicant since the suspension was lifted. However, Ms Neale observed that the Applicant had stated that the problems at his former firm, HS Kang & Co, were due to the conduct of his former partner X who he described as '*dishonest*'.
51. This explanation conflicted with the Applicant's evidence to the Tribunal in 2017 that:

"His predicament had arisen because he had been supervising staff members and relied on their integrity and professionalism. His practice was so busy that he had not had time to supervise them properly and that was his fault".
52. Ms Neale said there had been no allegation of dishonesty against either the Applicant or X when they appeared before the Tribunal in 2009. The Applicant's seniority as compared with X and higher level of culpability was reflected in the Tribunal ordering the Applicant to pay a higher fine of £5,000 and three-quarters of the costs. The Applicant's present position with respect to X gave rise to a question as to the level of his insight into the nature and effects of his misconduct, and the level of accountability he had for his actions.
53. Four years had passed since the conditions were imposed in August 2017 and the only regulatory action taken against the Applicant during this time was a Letter of Advice dated 17 September 2021.

54. This isolated setback aside, the SRA has been content to reduce the conditions imposed on the Applicant's practising certificate based on the Applicant's evidence that he had been practising successfully and the written references adduced by his employer, fellow solicitors and a barrister commending the Applicant's character and capabilities as a solicitor. This evidence had increased the Respondent's confidence that the likelihood of the Applicant repeating his previous misconduct was low.
55. In her written submission Ms Neale drew the Tribunal's attention to the applicable caselaw and the Tribunal's own guidance.

The Tribunal's Decision

56. 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.
57. 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.
58. The Tribunal noted the neutral position adopted by the Respondent with respect to the application and bore in mind the circumstances which had culminated in the findings of misconduct made against the Applicant.
59. 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 2017 and that since then the Applicant had had no further disciplinary or regulatory issues recorded against him.
60. The Tribunal also noted the character references presented to it, one of which was from his current employer. The references spoke well of the Applicant and the Tribunal accepted the positive advances he had made in reflecting upon his conduct and improving the standard of his practice.
61. However, 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.
62. The Tribunal noted that in his submissions the Applicant had focussed heavily on his work; what he may wish to do with respect to setting up his own firm and the opportunities he may be prevented from taking up if the conditions were not removed, however, the Tribunal considered that the Applicant had not addressed the fundamental issue as to whether he would be a risk to the public by managing and running his own firm, as he indicated he wished to do sometime in the unspecified future.

63. The Tribunal was not satisfied that the Applicant had done anything which would have assuaged the fear that he still presented a risk in this regard. The evidence which the Applicant had presented to the Tribunal of his training and continuing competence related solely to his legal knowledge and nothing with respect to an understanding of up to date practice management skills and solicitors accounts.
64. It may well be that the Applicant is a diligent and competent solicitor, but there was a difference and distinction between being a good solicitor and a competent manager and head of a legal practice. The conditions imposed upon the Applicant by the Tribunal had been to protect the public and the reputation of the profession with respect to the risks associated with the Applicant running his own firm.
65. In his submissions before the Tribunal the Applicant had said that he had been too busy to enrol and complete the courses in relation to managing and owning a law firm as he had been advised to do by the SRA.
66. The Tribunal considered that the Applicant's promise to complete such courses in the event the Tribunal removed the conditions was the not the same as actually having done the courses and then presenting this evidence to the Tribunal to satisfy it that he had the requisite skills and competence to run a firm and supervise staff.
67. By not having this evidence his application was premature and by making the application in the way he had the Applicant had 'put the cart before the horse'.
68. As an aside, the Tribunal observed that the Applicant's comments regarding X had not assisted him in providing the Tribunal with the necessary confidence that he had insight into those matters which had caused his suspension from practice.
69. The Tribunal considered that unless and until the Applicant could demonstrate with evidence that he had the competence to manage and run his own firm then the conditions on his practise remained necessary to protect the public from future risk and avoid damage to the reputation of the profession.
70. Accordingly, the Tribunal refused the Applicant's application to remove the restrictions on his practice.

Costs

71. Ms Neale requested an Order for the Respondent's costs and she referred the Tribunal to the Statement of Costs dated 27 September 2021 which claimed costs in the sum of £1,456.00 (no VAT claimed).
72. The schedule was as follows:

“Description of fee earner:

Rebecca Neale, Legal Adviser in the employment of the SRA Ltd, hourly rate £130.

Communications with the Tribunal

12 minutes (2 emails sent) £26

Communications with the Applicant

(emails, telephone calls and attendances) 48 minutes (6 emails sent; 2 telephone attendances) £104

Communications with the Authorisation Officer

12 minutes (meeting) £26

Perusal and preparation of documents including drafting Answer/Submissions, and statement of costs

4 hours £520

Estimated preparation for hearing 3.5 hours £455

Estimated attendance at hearing (listed for half a day)

Advocacy 2 hours £260

Waiting 30 minutes £65”

73. The Applicant submitted that the Applicant’s costs were too high, given that the issues were very narrow and the application a straightforward one. The Applicant asked the Tribunal to reduce the costs.

The Tribunal’s Decision on Costs

74. The Respondent had been a necessary party to the application and it should accordingly be allowed its costs. The Respondent had had no choice in being involved and it had had to prepare thoroughly for the hearing.
75. Having considered the Respondent’s costs schedule and the parties’ submissions the Tribunal concluded that amount claimed by the Respondent was in all the circumstances proportionate and reasonable.
76. The Tribunal ordered the Applicant to pay the Respondent’s costs as claimed.

Statement of Full Order

77. The Tribunal Ordered that the application of HARJIT SINGH KANG for the removal of the conditions imposed by the Tribunal on 22/08/2017 be REFUSED and it further Orders that the Applicant do pay the costs of the response of the Solicitors Regulation Authority Ltd to this application fixed in the sum of £1,456.00.

The Tribunal further Ordered that there be liberty to apply.

Dated this 20th day of October 2021

On behalf of the Tribunal



G Sydenham
Chair

JUDGMENT FILED WITH THE LAW SOCIETY

20 OCT 2021