

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12241-2021

BETWEEN:

BRYAN HOWARD LEWIS

Applicant

and

SOLICITORS REGULATION AUTHORITY LTD

Respondent

Before:

Mr P Lewis (in the chair)

Ms B Patel

Mr R Slack

Date of Hearing:

5 November 2021

Appearances

Peter Cadman, solicitor, of Russell Cooke LLP, 2 Putney Hill, London, SW15 6AB, for the Applicant.

Victoria Sheppard-Jones, barrister, of Capsticks LLP, 1 St Georges Road, London, SW19 4DR, for the Respondent.

JUDGMENT ON AN APPLICATION FOR RESTORATION TO THE ROLL

The Application

1. The Applicant was admitted to the Roll in 1978. He previously appeared before the Tribunal on three occasions and ultimately sought removal from the Roll voluntarily in 1992 on grounds of ill-health.
2. By way of an application dated 10 August 2021 the Applicant sought restoration to the Roll. The Tribunal was satisfied that, in accordance with Rule 17 of Solicitors (Disciplinary Proceedings) Rules 2019, the Applicant had advertised his application on 10 September 2021 in the “South London Press” and in the Law Society Gazette on 20 September.
3. An objection to the application was filed at the Tribunal and notified to the parties on September 2021.

Documents

4. The Tribunal considered all of the documents in the case which included:
 - Applicant’s witness statement dated 3 August 2021 and Exhibit BHL1.
 - Applicant’s application form dated 10 August 2021.
 - Character references:
 - Mohammed Ahmed.
 - John Gordon.
 - John Stephenson.
 - Harender Branch.
 - Steven Eckett.
 - Geoff Karikhar.
 - Dagmara Selwyn-Kuczera.
 - Respondent’s Answer to the application dated 14 September 2021 and supporting bundle.
 - Objection to application of Graham Balchin dated 28 September 2021.

Relevant Background

First Tribunal Proceedings (“SDT1”)

5. On 8 July 1981, the Applicant was a Respondent in substantive proceedings before the Tribunal. The allegations found proved were essentially (a) breaches of the Solicitors Accounts Rules (“SAR’s”), (b) conduct unbefitting of a solicitor and (c) misuse of the Client Account which caused a shortfall of £13,245.00.
6. The Applicant admitted the allegations and the Tribunal sanctioned him to a Reprimand.

Second Tribunal Proceedings (“SDT2”)

7. On 20 December 1988, the Applicant was the First Respondent, alongside two others, in substantive proceedings before the Tribunal. The allegations found proved were essentially (a) failure to respond to correspondence from a client, the Law Society and

the Solicitors Complaints Bureau, (b) failure to transfer client files to newly instructed solicitors, (c) failure to account for client monies, (d) failure to comply with a Law Society direction, (e) delay in progressing client matters, (f) breaches of the SAR's and (g) misuse of the Client Account.

8. The Applicant admitted the allegations and the Tribunal sanctioned him to a financial penalty of £2,000.00.

Third Tribunal Proceedings (“SDT3”)

9. On 18 May 1993, the Applicant appeared before the Tribunal in substantive proceedings concerning allegations of (a) breaches of the SAR's which caused a shortfall of £567,357.74, conduct unbecoming of a solicitor by failing to discharge counsel's fees and (c) failure to comply with professional undertakings.
10. The Applicant did not attend SDT3 and was not represented. He filed written submissions which stated that he (a) did not challenge the allegations, (b) had voluntarily removed himself from the Roll (in 1992) and (c) faced bankruptcy proceedings.
11. The Tribunal found the allegations proved and Ordered that the Applicant should not be restored to the Roll without permission from the Tribunal.

The Criminal Conviction

12. On 22 January 1993, in the Crown Court sitting at Nottingham, the Applicant pleaded guilty to one count of “making a false instrument” in that he falsely stated on a passport application that he had known the individual for two years when in fact he had not.
13. He was subject to a two-year conditional discharge and Ordered to pay the prosecution costs. The Applicant did not bring it to the attention of the Tribunal in SDT3 which was heard four months later.

First Application for Restoration (“SDT4”)

14. On 24 July 1997, the Applicant applied for restoration to the Roll and in so doing disclosed his criminal conviction. His application was predicated on having worked as a solicitor's clerk between 1995 – 1997 and medical evidence attesting to his fitness to practice. The Law Society opposed his application. The Tribunal refused his application for the reason set out fully in that decision. In summary the Tribunal refused it because:
 - It was premature.
 - The Applicant had faced allegations of misconduct before the Tribunal on three previous occasions and sanctioned in respect of the same.
 - Had the Applicant not voluntarily removed himself from the Roll in 1992, he was likely to have been struck off the Roll in respect of SDT3 given the significant shortage he caused on the Client Account.

- His criminal conviction.
- If restored to the Roll, the reputation of the profession would be damaged.

The Applicant's Case

Mohamed Ahmed

15. Mr Ahmed, Chief Executive Officer of Ackroyd Legal (London) LLP ("the Firm"), gave evidence on the Applicant's behalf. He stated that the Applicant disclosed his full disciplinary background when they first met with a view to appointing him to a position within the Firm. The Firm undertook steps to mitigate any risk in appointing the Applicant given that track record. Mr Ahmed appointed the Applicant in April 2015 to "bring in work as opposed to doing it". Mr Ahmed made plain that he did not regret that decision and described the Applicant as "fantastic and very competent". Mr Ahmed further stated that the Applicant complied with "SRA and Firm rules" at all times. The Applicant's files were routinely reviewed by solicitors within the Firm with no issues having arisen.
16. Mr Cadman asked Mr Ahmed why the Firm's website advertised the Applicant as a "Senior Solicitor" when in fact he was not. Mr Ahmed stated that on 4 October 2021 the Firm "reorganised the 'Our Family' page on the website and that the software deployed to do so erroneously coded the Applicant as a solicitor. The error was brought to Mr Ahmed's attention by the SRA on 19 October 2021 and he immediately ensured that the Applicant's job title was amended to "Senior Business Consultant as it always [had] been". Mr Ahmed confirmed that it was an IT error as opposed to human error and sincerely apologised to the Tribunal for the error which persisted for 4 – 6 weeks prior to it being brought to his attention. Mr Ahmed confirmed that the Applicant's proper title appeared on all letterheads, business cards and the like.
17. In cross examination by Miss Sheppard-Jones, Mr Ahmed asserted that (a) clients were told that the Applicant was once a solicitor but was no longer, (b) the senior partner with conduct of the matter was made plain to "most if not all" clients, (c) the Applicant "brings in work and doesn't advise clients".
18. In response to questions posed by the Tribunal Mr Ahmed accepted that the Firm's website referred to the Applicant as a "Senior Consultant" as opposed to a "Business Consultant". Mr Ahmed further asserted that if the Applicant was restored to the Roll the Firm would employ him as a solicitor and that "his role wouldn't change significantly as [the Applicant] did not want a high caseload. [Mr Ahmed] would want him to have more of a handle on files regarding exchange, completion, reports etc rather than the senior partners with the blessing of the SRA". Mr Ahmed stated that the Applicant attended "Thursday training" within the Firm and if restored would treat him "as newly qualified for at least 12 months therefore his work would be reviewed".

The Applicant

19. Mr Lewis gave evidence which set out, in private session, his state of health which led to the closure of his Firm following SDT3.

20. Mr Lewis provided the following chronology of event post voluntary removal from the Roll:
- | | |
|------------------|--|
| 1993 | Made bankrupt. |
| 1995–1997 | Employed as a Clerk to Preuveneers & Co with the consent of the Law Society. |
| 1996 | Bankruptcy Order discharged. |
| 1997 | Application for restoration to the Roll refused by the Tribunal. |
| 1997–1999 | Employed as a Senior Conveyancer with Chanas Solicitors. |
| 1999–2001 | Director of and Legal Counsel to “an internet-based company”. |
| 2001–2003 | Employed as a Conveyancing Clerk to Rich Garcia & Co with the consent of the Law Society. |
| August 2003 | Application to the SRA for employment as a Clerk to Leon Kaye & Co refused. |
| 2003 – 2005 | Employed as a Conveyancing Lawyer at Beesley Burgess Williams Solicitors. |
| 2004–present | Director of Plantation Legal Services Limited. |
| 2005–2009 | Employed by Anderson Cooke (licensed conveyancers). |
| 2009–2012 | Assisting his brother with his estate agency business. |
| 2013–2014 | Consultant for Gramdan Solicitors. |
| 2014–2016 | Consultant for Bloomsbury Law Solicitors. |
| May 2016–Present | Employed as a Business Development Consultant at Ackroyd Legal (London) LLP with the consent of the Law Society. |
21. With regards to his criminal conviction Mr Lewis stated that he “accepted reluctantly that [he] had to plead guilty to signing the passport form” and asserted that it was “plea bargaining [as he] didn’t want to put [his wife] through a trial and the Crown Prosecution Service offered no evidence to a more serious charge”.
22. In responding to the objection raised by Mr Balchin, Mr Lewis stated that he did not check the Firm’s website and simply “thought that he was employed as a consultant”.
23. As to whether he had obtained permission from the SRA prior to securing employment (as he was required to do so following SDT3) the Applicant asserted that he “gave them the information and left it to them to apply as the onus was on them to apply”.
24. With regards to Plantation Legal Services, Mr Lewis stated that it was for the provision of legal services and made no mention of him being a solicitor. Mr Lewis stated that he had “been keeping up to date as its good to do” and he had “certificates from June 2020”. He further asserted that he attended online educational learning to “keep [his] hand in”.
25. In cross examination by Miss Sheppard-Jones, the Applicant asserted that he was not aware at the material time that neither Chanas Solicitors, Gramdam Solicitors nor Bloomsbury Law obtained permission to employ him when they did. Mr Lewis did not accept that he should have ensured that his employers obtained permission asserting that “liability [fell] not on me per se it was on the employer, it wasn’t joint and several liability”.

26. In cross examination by Miss Sheppard-Jones, the Applicant stated that he never held himself out as a solicitor with regards to Plantation Legal Services business cards or letterhead. Miss Sheppard-Jones put to him that the Companies House Register (which was public facing) referred to him as a solicitor. Mr Lewis asserted that the company (and therefore the descriptors given) was formed by his accountant and that with hindsight he should have checked the details. However, members of the public could have called or written in to ascertain whether it was a firm of solicitors but “they never did”.
27. Miss Sheppard-Jones enquired of the Applicant the frequency of training he had undertaken in the last 25 years. Mr Lewis stated that he had, since 2014, attended “lectures of interest”, had tried to keep up “as best he [could]”.
28. In cross examination by Miss Sheppard-Jones, the Applicant accepted that (a) SDT1 occurred 2.5 years post admission to the Roll, (b) SDT2 resulted in a shortfall on the Client Account of around £75,000.00, (c) the Tribunal made plain to him at SDT2 that he was being given “one last chance”, (d) SDT3 resulted in a shortfall on the Client Account of around £500,000.00, (e) the Solicitors Compensation Fund replaced the shortfall to clients (because he had been made bankrupt), (f) he didn’t mention the fact of his conviction at SDT3 (but he never hid it as he asserted having disclosed it to the Law Society)

Applicant’s Submissions

29. Mr Cadman emphasised that in all of the previous matters (SDT 1,2 and 3) found proved, none involved any allegations of dishonesty.
30. With regards to the criminal conviction, which contained an element of dishonesty, Mr Cadman reminded the Tribunal that the Applicant “wasn’t well at that time”. Mr Cadman submitted that whilst the Applicant failed to mention the fact that he had been conditionally discharged in respect of the conviction at SDT3, he had advised the SRA of the same when closing his firm.
31. With regards to working without permission, Mr Cadman contended that no complaint had been brought against the Applicant in that regard by the SRA.
32. Mr Cadman referred the Tribunal to the character references filed on the Applicant’s behalf. The author of each reference had been provided with the SDT1, SDT2 and SDT3 judgments yet still spoke to the Applicant’s competence and ability in glowing terms.
33. Mr Cadman submitted that exceptional circumstances existed as at the time of SDT3 and the criminal conviction in terms of the Applicant’s serious health issues which no longer persisted.
34. Mr Cadman contended that restoring the Applicant to the Roll posed “no protection of the public issue” but that if the Tribunal considered that there was a risk, that risk could be addressed by the imposition of conditions on his employment. Mr Cadman concluded that, given the 28 years since the Applicant’s voluntary removal from the

Roll, it was unrealistic to determine that the reputation of the profession would be undermined if the Applicant were restored to the Roll.

Respondent's Submissions

35. Miss Sheppard-Jones opposed the application. She submitted that the previous findings of the Tribunal demonstrated increased levels of seriousness in the failings of the Applicant in that;
- At SDT1 it was accepted that the Applicant had low culpability for the misconduct hence him having been issued with a Reprimand, Miss Sheppard-Jones submitted that should have served as a “stark warning” to the Applicant.
 - At SDT2, following a rapid expansion of his firm, the Applicant was held to be highly culpable for the significant shortfall on the Client Account of around £75,000.00 caused by a “muddle of mismanagement” on his part. He was issued with a financial penalty and told by the Tribunal that he was being “given one last chance”.
 - At SDT3, the Applicant was solely culpable for the serious and substantial shortfall on the Client Account in the region of £500,000.00 which was ultimately paid out by the Solicitors Compensation Fund and which the Applicant made no effort to repay following his discharge from bankruptcy.
36. Miss Sheppard-Jones submitted that in the midst of the previous Tribunal proceedings the Applicant had been convicted by the criminal courts for an offence of dishonesty carried out in a professional capacity by making a false statement on a passport application form.
37. Miss Sheppard-Jones contended that the Applicant faced a huge hurdle which his application failed to overcome simply by the lapse of time since his voluntary removal from the Roll. Miss Sheppard-Jones reminded the Tribunal that all of the mitigation advanced by and on behalf of the Applicant were considered by the Tribunal in his first application for restoration to the Roll which was refused.
38. With regards to whether the Applicant had provided evidence of his remediation and rehabilitation, Miss Sheppard-Jones submitted that there was none. Conversely, he had obtained employment within three solicitors’ firms without ensuring that permission had been obtained from the SRA. Given his disciplinary record, Miss Sheppard-Jones contended that one would have expected him to make absolutely sure that he was working within the terms of the Order imposed upon him at SDT3. His failure to check the position and his assertions that it was the employer’s responsibility to do so demonstrated a lack of insight on his part.
39. Miss Sheppard-Jones noted that the Applicant advanced his position within Plantation Legal Services as evidence of his rehabilitation. She submitted that the opposite was true in that the firm described its services as “solicitors” on the public facing Companies House information. Miss Sheppard-Jones submitted that the Applicant’s assertion that his accountant set up the firm and that he did not check the manner in which that was done similarly demonstrated a lack of insight on the part of the Applicant.

40. Miss Sheppard-Jones submitted that the Tribunal required “evidence of significant rehabilitation” in order to grant the application. Whilst she accepted that the character references adduced were “not insignificant” they had to be weighed against the contextual background to the application in conjunction with the objection of Mr Balchin. The training that the Applicant gave some oral evidence in relation to was raised for the first time at the hearing and was not supported by any documentary evidence having been filed at the Tribunal or served on the Applicant.

The Tribunal’s Decision

41. The Tribunal considered the application pursuant to section 47(2) of the Solicitors Act 1974 which enabled it to “make such order as it sees fit”. In making such order the Tribunal considered the factors set out at section B of its ‘Guidance Note on Other Powers of the Tribunal (Fourth Edition, December 2020).
42. The Tribunal took account of the oral evidence of the Applicant and Mr Mohammed as well as the character references filed. The Tribunal considered the oral submissions of Mr Cadman and Miss Sheppard-Jones as well as all of the documentary evidence filed by the parties.
43. The Tribunal applied the principles promulgated in Bolton v Law Society 1 WLR 512, namely:
- “...Only infrequently, particularly in recent years, has [the Tribunal] been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation...
- ... the most fundamental [purpose of sanction] 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...”
44. The Tribunal considered the totality of the conduct of the Applicant. In doing so, the Tribunal found that the Applicant had suffered some deterioration in his health at or before the time that led to the misconduct underlying SDT3 as well as his voluntary removal from the Roll. However, on the evidence before the Tribunal it could not (nor did it need to) determine the precise extent to which the Applicant’s conduct leading to SDT 3 was attributable to his health.
45. It was agreed, and the Tribunal found, that the health of the Applicant was not a relevant feature of the Applicant’s appearances before the Tribunal in respect of SDT1 and SDT2 nor his criminal conviction for an offence involving dishonesty all of which occurred between 1981 and 1993.
46. The Tribunal found that a substantial period of time had elapsed since SRA 3 and the Applicant’s removal from the roll.

47. The Applicant relied upon his experience within a legal setting as evidence of remediation together with the evidence of Mr Ahmed. This, together with character references in support of the Applicant, provided some evidence of the Applicant's rehabilitation and of the Applicant's future employment intentions.
48. However the weight attached to such rehabilitation was reduced because the Tribunal found that the evidence of rehabilitation relied upon took place in during employment obtained without the permission of the SRA. This disregarded the Order imposed by the Tribunal in 1993.
49. The Tribunal rejected the Applicant's assertions in that it was incumbent upon those employers to secure permission. Conversely, the Tribunal found that the failure of the Applicant to ensure his compliance with that Order at all times undermined his assertion of rehabilitation and was demonstrative of further regulatory non-compliance.
50. Further, no documentary evidence of courses or training undertaken by the Applicant had been filed at the Tribunal or served on the Respondent. No evidence of learning undertaken by the Applicant that was tested by examination had been filed at the Tribunal or served on the Respondent.
51. The Applicant, in his oral evidence, sought to blame his personal circumstances and the legal advice received for the guilty plea he entered of his own volition to a criminal offence of dishonesty. That, in conjunction with the failure to remediate, failure to comply with the SDT3 Order and ambiguous information provided to Companies House with regards to Plantation Legal Services, led the Tribunal to conclude that the Applicant had little insight into his previous failings, was unable to accept responsibility for the same, demonstrated no remorse and held no contrition.
52. The Tribunal took into account and attached significant weight to the objection of Mr Balchin dated 28 September 2021. In that objection Mr Balchin set out his previous experience of the Applicant and concluded:

“...In my view the Tribunal should regard any former solicitor who has previously been convicted of fraud, who appears regardless of the Tribunal's order of 30 July 1993, to still be holding himself out as a solicitor and/or Legal Executive when he is not ... a person who is wholly unsuitable to be re-admitted to the Roll, or for that matter to be employed in connection with the practice of a solicitor...”
53. The Applicant had been subject to three sets of regulatory proceedings resulting in shortfalls in client accounts of many hundreds of thousands of pounds. The Applicant had admitted dishonesty at the crown court. The Tribunal noted, with some concern, that the Applicant had made no efforts to make good the shortfalls in client accounts despite having been discharged from bankruptcy in 1996.
54. In context, it was plain to the Tribunal that all matters set out in the application, the documentary evidence filed and the oral evidence received, were not such as to enable them to restore the Applicant to the roll.
55. The application was therefore REFUSED.

Costs

56. Miss Sheppard-Jones applied for the costs incurred by the Respondent in responding to the application for restoration. The amount claimed was a fixed fee in the sum of £3,000.00.
57. Mr Cadman did not oppose the application and the Tribunal granted the same.

Statement of Full Order

58. The Tribunal Ordered that the application of BRYAN HOWARD LEWIS, for restoration to the Roll of Solicitors be REFUSED and it further Ordered that the Applicant do pay the costs of and incidental to the response to this application fixed in the sum of £3,000.00.

Dated this 17th day of December 2021

On behalf of the Tribunal



P Lewis
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
17 DEC 2021