

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12265-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

GLADSTONES SOLICITORS LIMITED Respondent

Before:

Ms A E Banks (in the chair)

Mr G Sydenham

Dr P Iyer

Date of Decision: 9 June 2022

Appearances

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

MEMORANDUM OF CONSIDERATION OF AN APPLICATION FOR NON-PARTY DISCLOSURE

Background

1. This matter had concluded on 8 December 2021. The Tribunal's findings, decisions and reasons were set out in its Judgment dated 14 December 2021. The matter had been resolved by way of the Tribunal approving a Statement of Agreed Facts and Outcome. This document was appended to the Tribunal's published Judgment.
2. The Tribunal received, by way of an application notice dated 7 April 2022, an application for non-party disclosure from Mr WT, ("WT"). This application was supplemented with document setting out the reasons for making the request.

The Application

3. WT's application requested the "85 page document dated 18 September 2020 as referred to at paragraph 62 of the SDT's decision in Case No 12265-2021 dated 14 December 2021"
4. Paragraph 62 was contained in the Statement of Agreed Facts and Outcome appended to the Judgment. The relevant sub-paragraph stated as follows, under the heading 'Mitigation':

"The Firm has been co-operative, open, and transparent with the SRA throughout the investigation as evidenced inter alia by the 85-page report dated 18 September 2020 which contained a significant amount of information about the Firm's processes and procedures as well as financial information;"
5. This was mitigation advanced by the Respondent which was not endorsed by the SRA.
6. The document referred to in that paragraph, and the subject of the application by WT, was a report prepared by the Respondent for the SRA in the course of the SRA investigation into the firm.
7. WT stated that disclosure of this document "would therefore be in the public interest to understand the basis on which the Decision was made and the submissions made by the Respondent (including the document requested)." He further stated; "The document therefore appears highly relevant to ensuring (i) society's confidence in this law firm and (ii) confidence in the SDT's findings."
8. In accordance with the procedure set out in the Policy on the Supply of Documents from Tribunal Records to a Non-party (June 2020), the Tribunal sought the views of the former parties to the proceedings in respect of WT's application. The SRA opposed the application on the basis that there was confidential material contained in the document, that disclosure would not promote open justice and that the Tribunal's decision could be fully understood from the published Judgment together with the Statement of Agreed Facts and Outcome. Gladstones also opposed the application on the grounds of relevance and confidentiality.

The Tribunal's Decision

9. In considering the application, the Tribunal applied the Policy on the Supply of

Documents from Tribunal Records to a Non-party (June 2020). The Tribunal's starting point was that members of the public should have access to documents and that this was important in order to advance the principle of open justice. This was consistent with Cape Intermediate Holdings Ltd v Dring [2019] UKSC 38. The Tribunal's policy set out a non-exhaustive list factors that would be taken into account in determining any application as follows:

- The reasons for the request;
 - The nature of the document(s) requested;
 - The stage of the proceedings at which the request is made;
 - Whether an application for the proceedings to be heard in private has been or is likely to be made;
 - The potential value of the material in advancing the purpose of open justice;
 - Any risk of harm which access to the documents may cause to the legitimate interests of others;
 - Whether the information is confidential
 - Whether the information includes medical, financial or other sensitive personal information;
 - Whether the information relates to a person with a particular vulnerability;
 - Whether disclosure might impede any judicial process or the information includes legally privileged material;
 - Whether the information concerns allegations against other persons which have not been explored and could be potentially damaging to them;
 - Whether the information is of such peripheral, if any, relevance to the judicial process that it would be disproportionate to require its disclosure;
 - The likely costs of complying with the application; and
 - Whether the information is so voluminous and/or requires such editing or redaction before it could lawfully be disclosed that the compliance with the request is not practicable or proportionate given the size and administrative resources of the Tribunal.
10. The document sought by WT was a report prepared by the firm during the course of the investigation and contained detailed information about the business operations of the firm. The report contained personal information relating to staff, names of members of the public that the firm was interacting with and mobile phone numbers belonging to members of the public.
11. The Tribunal did not consider that WT had explained how the principle of open justice could be advanced by disclosure of this document. The Tribunal had set out its detailed reasons in its written Judgment and it had appended the 18-page Statement of Agreed Facts and Outcome to that Judgment. The details of the allegations against the Respondent and the circumstances behind them had been set out in considerable detail. WT had not explained what more there was to understand that was not already contained in those documents.
12. It did not advance the principle of open justice to conduct a speculative trawl through peripheral documents that contained personal and sensitive information about members of staff who had not been before the Tribunal and members of the public. The report also contained commercially sensitive information about the firm. The Tribunal did not

consider that the potential harm caused to the firm and its employees by disclosure of this material would advance the principle of open justice.

13. The Tribunal considered that it would be necessary to redact very large sections of the document in order to protect the privacy of individuals whose data was contained in it and the firm's commercial interests. This would not be a reasonable or proportionate exercise as it would result in a document being disclosed to WT that was completely meaningless.
14. The Tribunal therefore refused WT's application. WT is reminded that any challenge to this decision is to the High Court by way of judicial review.

Dated this 14th day of June 2022
On behalf of the Tribunal

A handwritten signature in black ink, appearing to read 'A E Banks', written in a cursive style.

A E Banks
Chair