

**SOLICITORS DISCIPLINARY TRIBUNAL**

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12355-2022

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY LTD

Applicant

and

OLIVER EDWARD BRETHERTON

Respondent

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Before:

Mr G Sydenham (in the chair)

Mrs L Boyce

Dr S Bown

Date of Consideration: 12 April 2023

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**Appearances**

None, the matter was considered on the papers.

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**MEMORANDUM OF FINAL DECISION:  
NON-PARTY APPLICATIONS FOR DISCLOSURE**

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## **Relevant Background**

1. The extensive background to and bases of the Non-Party Disclosure applications (“the applications”) is fully set out in the previous Memorandum dated 27 March 2023.
2. In short, the substantive hearing (“the hearing”) commenced on 27 February 2023 and adjourned part heard, due to insufficient time, on 10 March 2023 when it adjourned part heard due to insufficient time. During the course of the hearing, a number the applications were received in respect of which the views of the parties were sought in accordance with the Policy on the Supply of Documents from Records to a Non-Party (June 2020) (“the Policy”).
3. On 10 March 2023, the Tribunal commenced its consideration of the applications and, in accordance with the Policy, sought the views of Persons A, B and C as well as Mrs Bretherton. Persons A and B responded and their views were taken into account by the Panel. The Panel concluded its consideration of the applications on 20 March 2023. It determined that redacted versions of the Amended Rule 12 Statement and Schedules, Answer and Counter Schedules be disclosed to non-parties. The Tribunal concluded that witness statements should not be disclosed.
4. On 23 March 2023, it transpired that Mrs Bretherton had not received her enquiry letter from the Tribunal regarding her response to the applications. The Parties were in agreement that additional time be afforded such that the Tribunal could take into account her views. In circumstances where the Tribunal had (i) already considered the applications and (ii) concluded that no witness statements be disclosed, they did not find it necessary to revisit their decision.
5. On 27 March 2023, the Memorandum of Decision on the applications was served on the witnesses and the Non-Party Applicants. The Parties were also served with the Memorandum in conjunction with the redacted documents for their review. In accordance with the Policy, the views of the Parties was sought regarding the extent of the redactions and whether they retained the view that further redactions were required. Their submissions in that regard are set out below.
6. On 11 April 2023, Mrs Bretherton emailed the Tribunal in terms that she strongly resisted the disclosure of “...any material at all publicly (noting of course that the substantive hearing took place in public and has now all-but concluded), therefore why disclosure would be necessary is not apparent to me, open justice having been served...” Mrs Bretherton relied upon her Article 8 rights in support of her position.

## **Applicant’s Submissions**

7. The Applicant made written submissions by way of emails dated 31 March 2023. In essence, they identified dates, initials, the job title of an individual and the location of a holiday. The Applicant broadly contended that those redactions were required so as to avoid jigsaw identification of Persons A, B and C. The Respondent did not oppose the same.

### Respondent's Submissions

8. The Respondent made written submissions by way of emails similarly dated 31 March 2023. In essence, they identified the Respondent's date of birth and dates surrounding his son. The Respondent broadly contended that those redactions were required in order to preserve the Article 8 rights of the Respondent and his family. The Applicant did not oppose the same.
9. The Respondent sought further redactions "...of any quotations from the witness statements of Persons A, B, C, the Respondent or Mrs Bretherton in the Amended Rule 12 Statement and Schedules and in the Answer and Counter-Schedules..." on the grounds that:
  - 9.1 Article 8 required it as the quoted material concerns private and / or sexual matters.
  - 9.2 It would be consistent with the Tribunal's decision not to disclose witness statements which would serve only to advance salacious reporting with the purpose of satisfying the prurient public interest as opposed to open justice.
  - 9.3 It would also be consistent with the expressed wishes of Persons A and B that their statements not be disclosed to non-parties. It was further contended that "...This is particularly relevant as Persons A and B are also unaware that their witness statements have been directly quoted in the Amended Rule 12 Statement and Schedules and in the Answer and Counter-Schedules..."
  - 9.4 Disclosure of large parts of each of the witness statements of Person A, B, C, the Respondent or Mrs Bretherton was tantamount to disclosing the witness statement itself which could not be reconciled with the Tribunal's decision of 27 March 2023 not to do so.
10. The Applicant, by way of an email dated 4 April 2023, opposed the further redactions set out above at §9 in terms that to do so "...would negatively impact upon the ability of the Press to understand and report accurately on the proceedings. The proposed redactions effectively negate the Tribunal's decision to disclose the documents, the schedules and counter-schedules in particular..."
11. The Respondent, by way of an email dated 5 April 2023, contended that:
 

"... the Tribunal has already found (at paragraph 56.3 of the Memorandum) that open justice has been served in that the entire hearing was heard in public. Indeed, the Rule 12 Statement was read by Ms Bruce in her opening submissions and Witnesses A, B, C and Mr Bretherton were cross examined on its content, and the content of the schedule and Mr Bretherton on the content of the Answer and counter schedule. The Tribunal has therefore determined that open justice has been achieved in respect the Rule 12 Statement and its schedule and Answer and counter schedule.

The Tribunal has also already determined (at paragraph 57 of the Memorandum) that the witness statements of Person A, B and C should not be disclosed, on the

basis of the witnesses' Article 8 rights. This, is a position shared by the witnesses themselves. Equally, under paragraph 57 of the Memorandum, the Tribunal concluded that the disclosure of the witness statements would only advance salacious reporting with the purpose of satisfying the prurient public interest as opposed to open justice. Whilst we acknowledge that the Tribunal have not read any of the press coverage on this matter, it is apparent from the article headlines set out at paragraph 22 of the Memorandum, that this concern is a very valid one and would equally apply to the disclosure of the Rule 12 / Answer / Schedules in their current form as they directly quote highly sensitive information from the witness statements.

It follows that by redacting all extracts of the witness statements from the Rule 12 / Answer / Schedules, the Tribunal can strike the right balance between protecting the witnesses' Article 8 Rights, preventing salacious reporting and serving the principle of open justice. The witnesses were cross examined and the Rule 12 statement read out in open court, and disclosing large extracts from the witness statements would simply render obsolete the witnesses' Article 8 Rights and the decision of the Tribunal at paragraph 57 of the Memorandum, whilst not advancing the open justice principle, which the Tribunal has found to be already met.

We are therefore surprised by the SRA's position in respect of the extracts from the statements of their own witnesses. An important consideration for our suggested redactions was to take into account the wishes of the SRA's own witnesses. Whilst we believe that the position of Persons A and B are clear from the Memorandum, we have no objections to Person A, B or C's views on the level of redactions being canvassed if the Tribunal believe that would be helpful. We also agree with Person B's statement at paragraph 41 of the Memorandum which states "As the hearing was public (with appropriate approvals in place to protect identities), I would hope that the media/public have obtained enough information. ...

We do not share the SRA's view that our redactions negatively impact upon the ability of the media to understand and report accurately on the proceedings. We do however share the Tribunal's concerns (and would suggest that Person A and B also share these concerns), that the further disclosure of highly sexualised and private matters which have been directly extracted from the witness statements would only advance salacious reporting with the purpose of satisfying the prurient public interest as opposed to advancing the principle of open justice..."

### Tribunal's Decision

12. The Tribunal considered the submissions of the parties on the basis of its previous decision dated 27 March 2023 which made plain the fine balancing act between the fundamental principle of open justice and the countervailing Article 6, 8 and 10 rights. The Tribunal did not propose to rehearse the same for the present purposes.
13. The Tribunal noted the agreed proposed redactions and reached the following conclusions:

### 13.1 Rule 12 Statement

- 13.1.1 Respondent's date of birth. The Tribunal determined that, in order to preserve his Article 8 rights and that of his family, the Respondent's year of birth was sufficient.
- 13.1.2 Date that Person A started at the Firm. The Tribunal determined that in order to maintain the spirit of the anonymity order in place, the date should be redacted.
- 13.1.3 Person B's initials with reference to her witness statement/exhibits. The Tribunal determined that in order to maintain the spirit of the anonymity order in place, the initials should be redacted.

### 13.2 Answer

- 13.2.1 Dates when Person B was the Respondent's trainee. The Tribunal determined that in order to maintain the spirit of the anonymity order in place, the dates should be redacted.
- 13.2.2 Dates and information referring to the birth of the Respondent's son. The Tribunal determined that, in order to preserve the Article 8 rights of the Respondent's family, the dates and attendant information should be redacted so as to minimise the risk of jigsaw identification.
- 13.2.3 The job title of an individual (not party to the proceedings) whom the Respondent suspected Person B was in a relationship with at the material time. The Tribunal determined that in order to maintain the spirit of the anonymity order in place, the job title should be redacted so as to minimise the risk of jigsaw identification.
- 13.2.4 Dates that the Respondent was Person B's supervisor. The Tribunal determined that in order to maintain the spirit of the anonymity order in place, the job title should be redacted so as to minimise the risk of jigsaw identification.

### 13.3 Counter Schedules

- 13.3.1 Person B's holiday destination. The Tribunal determined that in order to maintain the spirit of the anonymity order in place, the destination should be redacted so as to minimise the risk of jigsaw identification and to ensure consistency with its agreed redaction from the Amended Rule 12 Statement.
- 13.3.2 Initial of a colleague not party to the proceedings. The Tribunal had ordered redaction of this initial in the Rule 12 Statement and Schedules thus for consistency determined that this entry should also be redacted.

- 14. The Tribunal carefully considered the Respondent's submissions in relation to quoted extracts from witness statements. That decision related to the disclosure of the witness statements in their entirety. Each statement contained an abundance of evidence which was (i) deeply sensitive, (ii) fell outside of the scope of the allegations in dispute, (iii) were not ventilated in the public hearing and (iv) would require a disproportionate

amount of the Tribunal's limited resources to redact with limited evidence beyond that which is contained in the Amended Rule 12 Statement, Schedules, Answer and Counter Schedules remaining. It was for those reasons that the Tribunal reached the decision not to disclose the witness statements in their entirety.

15. Conversely, the extracts from witness statements quoted in the Amended Rule 12 Statement, Schedules, Answer and Counter Schedules fundamentally form the bases of the Applicant's case. They were read into the record and witnesses were cross examined in relation to their content. The Tribunal rejected the contention that disclosure of the same would "render the Article 8 rights" of the witnesses "obsolete. The balancing act previously performed by the Tribunal was to protect the same whilst maintaining open justice. Open justice was an ongoing principle. The Tribunal did not consider that it was served solely through the public hearing of the allegations. The highly sexualised and private matters were already in the public domain, some of which had been admitted by the Respondent.
16. The Tribunal was deeply sympathetic to Mrs Bretherton's position in relation to the impact of the proceedings on her and her family to date. It was eminently understandable why she objected to the disclosure of any material at all so as to mitigate any further detrimental impact. However, the Tribunal was required to apply the relevant legal tests and principles as set out in its Memorandum dated 27 March 2023.
17. In circumstances where the Respondent had not made an application for the hearing to be convened in private and/or anonymity in respect of any of the witnesses' who elected to give evidence on his behalf, the Tribunal determined that it had struck the correct balance by disclosing redacted versions of the Amended Rule 12 Statement, Schedules, Answer and Counter Schedules
18. The Tribunal concluded that it had done all within the power vested in it to prevent a breach of Article 8 and preserve open justice in so far that it could by way of the redactions set out above at §13.

Dated this 13<sup>th</sup> day of April 2023

On behalf of the Tribunal



G Sydenham  
Chair