

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12417-2022

**BETWEEN:**

AURAN KHATTAK

Applicant

and

SOLICITORS REGULATION AUTHORITY LTD

Respondent

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Before:

Mr W Ellerton (in the chair)

Mr R Nicholas

Mr D Kearney

Date of Hearing: 14 April 2023

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## **Appearances**

Mr Khattak represented himself.

Joshua Bold, solicitor in the employ of the Solicitors Regulation Authority Ltd of The Cube,  
199 Wharfside Street, Birmingham B1 1RN for the Respondent.

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**JUDGMENT ON AN APPLICATION  
FOR RESTORATION TO THE ROLL**

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## Background

1. By an application dated 6 December 2022, Mr Khattak applied for restoration to the Roll.

## The 2012 Proceedings

2. The Tribunal found the following allegations proved:
  - “1.1 In breach of Rule 32(1) of the Solicitors Accounts Rules 1998 he failed to keep books of account properly written up at all times;
  - 1.2 In breach of Rule 32(7) of the said Accounts Rules he failed to carry out reconciliations in accordance with the requirements thereof;
  - 1.3 In breach of Rule 22 of the said Accounts Rules he withdrew money from client account in circumstances other than permitted by the said Rule;
  - 1.4 He had breached Rule 1 of the Solicitors Code of Conduct 2007 in either or both of the following respects:
    - he failed to act in the best interests of clients;
    - he allowed his independence to be compromised;
  - 1.5 In breach of Rule 5.01 of the said Code he failed to make arrangements for the effective management of his firm to provide for either or both of the following:
    - compliance with the duties of the principal to exercise appropriate supervision over all staff and ensure adequate supervision and direction of client matters;
    - Control of undertakings;
  - 1.6 In breach of Rule 10.05 of the said Code he failed to fulfil an undertaking and/or in breach of Rule 1.02 of the said Code failed to act with integrity.
  - 4.1 He had failed to pay the premium due for indemnity insurance for the indemnity year 2009- 2010 to Capita (which manages the Assigned Risks Pool (“ARP”) on behalf of the SRA within the prescribed period for payment and is in policy default in breach of Rule 16.2 of the Solicitors Indemnity Rules 2009;
  - 4.2 He had failed to pay the run off premium within the prescribed period for payment and is in policy default in breach of Rule 16.2 of the Solicitors Indemnity Insurance Rules 2009.

- 5.1 In breach of Rule 1 of the Solicitors Code of Conduct 2007 he failed to act with integrity (Rule 1.02); and/or behaved in a way that diminished the trust placed in him or the profession (Rule 1.06);
  - 5.2 In breach of Rule 5.01 of the said Code he failed to make arrangements for the effective management of his firm to provide for: the control of undertakings; and/or compliance with the duties of a principal to exercise appropriate supervision over all staff and ensure adequate supervision and direction of client matters.
  - 5.3 In breach of Rule 10.05 of the said Code he failed to fulfil undertakings dated 25 January 2010, and 9 and 10 February 2010 (or any of them);
  - 5.4 In breach of Rule 20.05 of the said Code he failed to deal with the SRA in an open prompt and cooperative way.
  - 6.1 They had failed to deliver their Accountant's report for the period 1 January 2009 to 31 December 2009, due on or before the 30 June 2010;
  - 6.2 He had failed to deliver his Accountant's report for the period 1 January 2010 to 29 January 2010 due on or before the 29 July 2010;
  7. In breach of Rule 1.02 of the Code he wrote a false and misleading letter to the SRA dated 9 July 2010 in which he stated that Caffrey and Co ceased to hold or deal with client money on the 29 January 2010 whereas this was not so."
3. The Tribunal determining the allegations considered that they were serious even absent any allegation of dishonesty. It found that Mr Khattak "had showed an almost total disregard of the need to protect his clients and their interests. He was guilty of gross dereliction of duty both as a partner and as a trustee of his clients' monies". The Tribunal determined that Mr Khattak was not a fit and proper person to remain on the Roll and accordingly struck him off the Roll of solicitors.

#### The Applicant's Submissions

4. In his statement in support of the application, Mr Khattak submitted that the application was not premature, his having been struck off for more than 10 years. At the time of the misconduct, he had been ill advised and was running a firm with no previous experience of doing so.
5. Since 2012 he had worked as a Company Secretary for a restaurant chain. He had been promoted to Group Secretary and Director of Legal Services, and was involved in Crime, Contract, Compliance, defending Local Authority Prosecutions and Employment Law. He held a position of substantial trust. He had undertaken the following work:
  - Preparation of Witness Statements, compiling evidence, putting together trial bundles for onward transmission to instructed solicitors.

- Responding to letters before claims for onward transmission to solicitors to be instructed. Dealing with correspondence legal or otherwise.
  - Attending Conferences with Employers and solicitor, Counsel, Experts, Banking Institutions and involved in substantial and several litigation issues with multi-million-pound issues.
  - Administration and Company/Group Secretarial Work.
  - Liaising with Accounts for the employer and associated companies.
  - Complaints Handling.
  - Training and lecturing on Health & Safety Contract Specialist: Compliance Teaching law Health Safety Food Hygiene Compliance.
  - In house Disciplinary Proceedings.
  - Liaising with a number of SRA authorised bodies.
6. Mr Khattak submitted that he had undertaken approximately 170 Data Law Courses over the previous two years to keep himself apprised of previous and new legislation. He had been instrumental in setting up charities and had worked as an executive officer for an association in Birmingham.
  7. Mr Khattak was currently working in approved employment for Allerton & Gladstone Solicitors. If restored to the Roll, the Firm would employ him as a solicitor dealing with a number of areas of law. He would not be involved in conveyancing matters, and was happy for his practising certificate to prohibit him from doing so. He intended to continue to undertake further training in the areas of law in which he intended to practise.
  8. Mr Khattak provided a letter from the Firm dated 5 December 2022, in which the Firm offered him a position as an assistant solicitor subject to his being restored to the Roll.
  9. Mr Khattak confirmed that he had no previous criminal convictions or cautions and no findings of dishonesty recorded against him. He was a qualified barrister and held a current practising certificate for the Bar.
  10. Mr Khattak submitted that his restoration to the Roll should be subject to the following conditions:
    - He be prohibited from working or engaging in conveyancing;
    - He be prohibited from being responsible for client account or client funds;
    - He be prohibited from being a signatory on client account or have the power to authorise any electronic transfers of client money;

- He be prohibited from practising as a sole practitioner or sole manager or sole owner of an authorised or recognised body.

### The Respondent's Submissions

11. Mr Bold submitted that following being struck off the Roll on 25 July 2012, Mr Khattak had obtained approved employment at ASR Legal as an administrative support clerk. In 2021, a further application for approved employment was made by the Firm. That application was approved on 28 February 2022.

12. The application for restoration was opposed on two grounds.

13. Mr Khattak was struck off for disciplinary offences which, as exemplified by Lord Donaldson in Case No. 11 of 1990 (unreported), amount to conduct which would shake the public's faith in solicitors as a whole. The relevant extract setting out what the Tribunal should ask itself was as follows:

“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’.”

This case was referred to in the Solicitors Disciplinary Tribunal Guidance Note on Other Powers of the Tribunal (6th Edition).

14. Whilst the SRA acknowledged that the application had some merit, it was considered that the application did not meet the high standards expected from the Tribunal's guidance and case law when seeking restoration to the Roll.

15. Mr Bold submitted that the conduct and findings from the original matter were serious, involving a lack of integrity, serious accounts rule breaches and providing false and misleading impressions. Mr Khattak had not provided a completed application to satisfy the SRA that he had established that he was now a fit and proper person to have his name restored to the Roll.

16. Mr Bold referred the Tribunal to the principles which the Tribunal should consider in the cases of Bolton v The Law Society [1994] 1 WLR 512, Thobani v SRA [2011] EWHC 3783 (Admin), SRA v Simon Kaberry [2012] EWHC 3883 (Admin). Those cases all made it plain that the overriding consideration was maintaining public confidence in the profession, the reputation of the profession being more important than the fortunes of any individual member.

17. Mr Bold referred the Tribunal to its Guidance Note on Other Powers of the Tribunal – 6<sup>th</sup> Edition. As regards the factors that the Guidance Note detailed should be considered:

### The Guidance in Bolton

17.1 Mr Bold submitted that Mr Khattak was struck off the Roll following 15 allegations made and admitted which demonstrated that he had breached several rules across the Solicitors Accounts Rules 1998, Solicitors Code of Conduct 2007 and Solicitors Indemnity Insurance Rules 2009.

17.2 He exhibited behaviour which was assessed by the Tribunal as being very serious. The Tribunal found that:

“Under his supervision and management disgraceful events took place in the firm including mortgage transactions where significant amounts of money were paid away to fictitious sellers’ solicitors; clients’ property was sold in breach of their wishes and large sums of clients’ money went missing. He had responsibility to supervise the Third Respondent an unadmitted person but admitted that he knew nothing about conveyancing and instead relied on the Third Respondent. [Mr Khattak] had showed an almost total disregard of the need to protect his clients and their interests. He was guilty of gross dereliction of duty both as a partner and as a trustee of his clients’ monies.”

17.3 In Bolton, Sir Bingham stated:

“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.”

17.4 The Tribunal’s finding that Mr Khattak was guilty of gross dereliction of duty and showed an almost total disregard of the need to protect his clients and their interests (property) showed that the Tribunal found that Mr Khattak’s conduct had fallen very short of the high standards of probity, integrity and trustworthiness required of a member of the solicitors’ profession. This accorded with Bolton.

18. The Tribunal’s Guidance Note on Sanctions (10th Edition) stated that strike off was appropriate in the absence of a clear dishonesty finding where:

“56. the seriousness of the misconduct is itself very high; and the departure by the respondent from the required standards of integrity, probity and trustworthiness is very serious.

57. In such cases, the Tribunal will have regard to the overall facts of the misconduct, and in particular the effect that allowing the respondent’s name to remain on the Roll will have upon the public’s confidence in the reputation of the legal profession - see in particular Solicitors Regulation Authority v Emeana, Ijewere and Ajanaku [2013] EWHC 2130 (Admin).”

19. Mr Khattak, it was submitted, had met the threshold of paragraph 56 of the guidance in the findings of the Tribunal and, applying the guidance in paragraph 57, the effect upon the public's confidence in the reputation of the legal profession was very high; the Tribunal found that Mr Khattak had allowed dubious conveyancing and mortgage transactions to take place which went to the very core of the public's confidence in the profession. Conveyancing was the cornerstone of legal practice, arguably the main (and sometimes only) interaction the public might have with the legal profession and continually shaped their view of the profession. Further, the whole conveyancing system relied on the undertakings solicitors gave which were misused in this matter. Equally, the public placed significant trust in the profession to handle their money in large transactions.
20. In addition, the Tribunal's Guidance Note on Sanctions was clear about the severity of the misappropriation of client money falling short of dishonesty. It stated that:
- “58. The Tribunal regards the breach of the absolute obligation to safeguard client money, which is quite distinct from the solicitor's duty to act honestly, as extremely serious.
  - 59. The dishonest misappropriation of client money will invariably lead to strike off.
  - 60. Strike off can be appropriate in the absence of dishonesty. Where a respondent's failure properly to monitor client money leads to its misappropriation or misuse by others, such a serious breach of the obligation could warrant striking off.
- “...the tribunal had been at pains to make the point, which was a good one, that the solicitors' accounts rules existed to afford the public maximum protection against the improper and unauthorised use of their money and that, because of the importance attached to affording that protection and assuring the public that such protection was afforded, an onerous obligation was placed on solicitors to ensure that those rules were observed” per Bingham LCJ in Weston v Law Society [1998] Times, 15th July.”
21. Mr Bold submitted that the relevant section of the Tribunal's findings in Mr Khattak's matter was that “Under his supervision and management disgraceful events took place in the firm including mortgage transactions where significant amounts of money were paid away to fictitious sellers' solicitors; clients' property was sold in breach of their wishes and large sums of clients' money went missing.” Applying this to the guidance, it showed the severity of the conduct, to misappropriate client money was viewed as incredibly serious and could be viewed distinct from the solicitor's duty to act honestly. As stated in the guidance and case law, where a solicitor had failed to properly monitor client money and that led to its misappropriation or misuse by others it amounted to a serious breach of an onerous but important obligation placed on solicitors to afford protection to the public.

22. Mr Khattak, it was submitted, suggested that he had reached the required threshold as being a fit and proper person to be restored to the Roll as the Bar Council had accepted him as a fit and proper candidate, knowing his regulatory history, his employment since strike off and charity and community work. However, the SRA took a different view on the seriousness and public perception. This was due to the misuse of client money, lack of integrity and misleading actions. Such conduct, it was submitted, would “shake the public’s faith in solicitors as a whole.”
23. The Tribunal, it was submitted needed to determine whether restoration of Mr Khattak to the Roll would (i) affect the good name and reputation of the solicitors’ profession; (ii) be contrary to the interests of the public; and (iii) there was any real prospect that Mr Khattak could be regarded as someone who was fit to be on the Roll of Solicitors.
24. Mr Bold submitted that the public, having full knowledge of the facts of this case, would still have concerns about whether Mr Khattak was a fit and proper person to be restored to the Roll of Solicitors. He was wholly culpable for the matters which led to him being struck off the Roll. He had embarked on a course of conduct which fell very short of the high standards of probity, integrity and trustworthiness required of a member of the solicitors’ profession.
25. Mr Bold submitted that restoring Mr Khattak to the Roll would not maintain the reputation of the profession and would be contrary to the interests of the public.

The period which has elapsed since the order of strike off was made.

26. Mr Bold submitted that the application having been made over 10 years since Mr Khattak was struck off the Roll, the Tribunal might not consider that the application had been prematurely made.

Evidence of rehabilitation

27. Mr Bold submitted that the evidence provided by Mr Khattak as to this rehabilitation thus far was to his credit. However, Mr Khattak had not undertaken extensive rehabilitation and he had failed to provide any evidence to show that he had achieved the high level of rehabilitation required.
28. Mr Khattak had had two brief periods of approved employment in 2016 and 2022. This demonstrated that Mr Khattak had not consistently, and for a reasonable period of time, worked within the regulated sector of the profession. As a result, his ability to conduct himself in accordance with the high ethical standards of the profession had not been tested. The SRA considered that Mr Khattak required a longer period of approved employment to demonstrate his ability to accord with the expected standards and also to show that he was no longer a risk to the public.
29. Mr Bold accepted that the references provided by Mr Khattak supported the application and were to Mr Khattak’s credit.
30. With regard to the courses undertaken by Mr Khattak, it was noted that during a 5 month period, he had attended 158 courses. This did not demonstrate a continual updating of Mr Khattak’s knowledge. The SRA would expect to see Mr Khattak attending courses



regularly over a number of years. The attendance on numerous courses over a short period of time meant that the SRA could not be confident that Mr Khattak was routinely updating his knowledge since being struck off the Roll.

#### Future Employment

31. Mr Khattak had provided a copy of a letter dated 5 December 2022 in which the Firm offered him employment as an assistant solicitor in the event his application for restoration is successful. However, the letter was not clear on how Mr Khattak would be supervised on a day-to-day basis and what restrictions and monitoring would be in place. Whilst Mr Khattak was currently working at the Firm and his employment there as a solicitor might continue with the same safeguards in place, the Tribunal would need confirmation that this was the position before it could be satisfied that there would be adequate supervision and support put in place to oversee Mr Khattak's work.

#### Repayment of any losses including costs

32. Mr Bold submitted that Mr Khattak was made bankrupt and had been unable to pay the costs of £43,897.78 as Ordered by the Tribunal on 25 July 2012.
33. Mr Bold submitted that if Mr Khattak were to be restored to the Roll, the protection of the public and the reputation of the profession would not be sustained. Further, this was not a case whereby it would be appropriate to restore Mr Khattak to the Roll subject to conditions that restricted his ability to practise. Mr Khattak had failed to demonstrate consistent experience, rehabilitation, training, and compliance within the regulated legal profession. In all the circumstances, the application should be refused in order to protect the reputation of the profession and uphold public trust and confidence in the solicitors' profession.

#### The Tribunal's Decision

34. The Tribunal agreed that it needed to consider the matters raised by Mr Bold when determining the application. Mr Khattak agreed that the law cited by Mr Bold was relevant to the application.

#### The Guidance in Bolton

35. The Tribunal found, and Mr Khattak accepted, that the findings made against him in 2012 were serious and demonstrated a number of failings on his part. He had fallen well below the standards expected of him as a solicitor. Mr Khattak accepted, and the Tribunal agreed that the appropriate sanction for that misconduct was for Mr Khattak to be struck off the Roll.
36. The Tribunal noted that the Bar Council had determined that Mr Khattak was a fit and proper person to practise as a Barrister. Whilst the Tribunal took note of that decision, the Tribunal found that it was not determinative for the present application.

37. In applying the relevant caselaw, the Tribunal was required to consider whether the restoration of Mr Khattak to the Roll would be contrary to public interest, would harm the reputation of the profession and whether Mr Khattak would be regarded as a fit and proper person to be on the Roll.
38. The Tribunal, it was submitted needed to determine whether restoration of Mr Khattak to the Roll would (i) affect the good name and reputation of the solicitors' profession; (ii) be contrary to the interests of the public; and (iii) there was any real prospect that Mr Khattak could be regarded as someone who was fit to be on the Roll of Solicitors.

#### The period which has elapsed since the order of strike off was made

39. The Tribunal considered that Mr Khattak's application was not prematurely made. Indeed, that this was the case had been fairly conceded by Mr Bold. Mr Khattak had been struck off the Roll in 2012 and had waited 10 years before making any application for restoration.

#### Evidence of rehabilitation

40. The Tribunal agreed that the evidence provided by Mr Khattak of his rehabilitation was to his credit. The Tribunal noted that he had been undertaking legal work (albeit in an unregulated environment) for a significant period of time. The shortness of time in which he had been working in employment approved by the SRA was of some concern, however, the Tribunal did not consider that given the other work he had been doing, this was a bar to his restoration.
41. Mr Bold submitted that the evidence provided by Mr Khattak as to this rehabilitation thus far was to his credit. However, Mr Khattak had not undertaken extensive rehabilitation and he had failed to provide any evidence to show that he had achieved the high level of rehabilitation required. There was nothing to suggest that during his approved employment (and unregulated legal work) that Mr Khattak had failed to conduct himself to the requisite standards since being struck off in 2012.
42. Mr Khattak had provided a number of references which attested to the standard of his work, such references being from other legal professionals. It was stated that Mr Khattak's recovery had been witnessed and that he was considered to be a fit and proper person to be restored to the Roll.
43. The Tribunal noted that Mr Khattak had undertaken a number of courses to keep up-to-date with developments. Mr Khattak explained that he had taken some of the courses as a result of discussions that solicitors had with clients in his presence. He explained that some of the courses were taken simply for him to improve his knowledge in areas of law that he did not practise. The Tribunal found that such an attitude was an asset for any solicitor.

#### Future Employment

44. Mr Khattak had provided a copy of a letter dated 5 December 2022 in which the Firm offered him employment as an assistant solicitor in the event his application for restoration is successful. In a letter dated 25 January 2023, the Firm detailed the steps

it would take to supervise Mr Khattak were he to be restored to the Roll. The Firm also confirmed that Mr Khattak would not handle any client money in any way.

45. The Tribunal was satisfied that Mr Khattak had demonstrated that he would be properly supervised if he were to be restored to the Roll and that the Firm had adequate safeguards in place so as to ensure that there would be no repetition of his previous misconduct. The Tribunal considered that appropriate conditions would ensure that if Mr Khattak were to gain employment with another Firm, members of the public would still be protected; the conditions would ensure that Mr Khattak was properly supervised before he could take up employment anywhere else.
46. The Tribunal gave careful consideration to the application. Mr Bold had, quite properly, conceded that the application was one of some merit and that Mr Khattak, whilst not achieving the necessary standard, should nevertheless be proud of the progress he had made.
47. The Tribunal agreed that Mr Khattak had demonstrated significant progress. The Tribunal was aware of its duty to assess Mr Khattak's ability to practise now, taking all relevant matters into account. The Tribunal noted that there were no findings of dishonesty against Mr Khattak and considered that he had made such significant progress that his re-admission to the Roll would not harm the reputation of the profession.
48. The allegations found proved in 2012 were serious. The Tribunal found that the protection of the public required Mr Khattak to be subject to indefinite conditions. Such conditions, it was determined would adequately protect both the public and the reputation of the profession.
49. Given the nature of the allegations, the Tribunal determined that it would be inappropriate for Mr Khattak to own or manage a firm. Further, he should have no dealings with client money, nor should he act as a compliance officer. Additionally, the Tribunal determined that Mr Khattak should not practise in the area of conveyancing.
50. In order to ensure that Mr Khattak would be properly supervised irrespective of his employer, the Tribunal determined that he should only be permitted to work in employment that had been approved by the SRA. In this way, the SRA could ensure that proper and rigorous supervision of his employment was in place.
51. Accordingly, for the reasons above, the Tribunal granted the application for restoration to the Roll.

### **Costs**

52. The parties agreed costs in the sum of £2,002.00. The Tribunal found the costs claimed to be appropriate and reasonable. Accordingly, the Tribunal granted the application for costs in the agreed amount.

53. **Statement of Full Order**

1. The Tribunal Ordered that the application of AURAN KHATTAK for restoration to the Roll of Solicitors be GRANTED and it further Ordered that the Applicant do pay the costs of and incidental to the response to this application fixed in the agreed sum of £2,002.00.
2. Mr Khattak shall be subject to conditions imposed indefinitely by the Tribunal as follows:
  - 2.1 Mr Khattak may not:
    - 2.1.1 Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body; or as a freelance solicitor; or as a solicitor in an unregulated organisation;
    - 2.1.2 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;
    - 2.1.3 Be a Head of Legal Practice/Compliance Officer for Legal Practice or a Head of Finance and Administration/Compliance Officer for Finance and Administration;
    - 2.1.4 Hold client money;
    - 2.1.5 Be a signatory on any client account;
    - 2.1.6 Practise/engage in Conveyancing transactions;
    - 2.1.7 Work as a solicitor other than in employment approved by the Solicitors Regulation Authority Ltd.
3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

Dated this 26<sup>th</sup> day of April 2023

On behalf of the Tribunal



W Ellerton  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**

**26 APR 2023**