

The Solicitors Regulation Authority appealed to the High Court (Administrative Court) against the decision of a different division of the Tribunal dated 7 March 2011 under SDT Case Number 10606-2010 to grant the Respondent's application to revoke the Section 43 Order with effect from 13 January 2011. The appeal was heard by Mr Justice Wilkie on 26 June 2013. The appeal was upheld and the order revoking the Section 43 Order quashed. As a result, the Section 43 Order imposed in these Findings remains in force. Solicitors Regulation Authority v Liaqat Ali [2013] EWHC 2584 (Admin).

No. 9333-2005

IN THE MATTER OF LIAQAT ALI,
A person (not being a solicitor) employed or remunerated by a solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mrs H Baucher (in the chair)
Mr L N Gilford
Mr M C Baughan

Date of Hearing: 17th October 2006

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Stephen John Battersby solicitor and partner in the firm of Jameson & Hill Solicitors, of 72-74 Fore Street, Hertford, Herts, SG14 1BY on 1st September 2005 that an Order be made by the Tribunal directing that as from a date to be specified on such Order no solicitor should except in accordance with permission in writing granted by The Law Society for such period and subject to such conditions as the Society might think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor Liaqat Ali of 15-17 Alexandra Road, Leeds, LS6 1QT, a person who was or had been a clerk to a solicitor, or that other such Order might be made as the Tribunal should think right.

The allegations against the Respondent were that having being a clerk to a solicitor but not himself being a solicitor:-

- (i) Withdrawn
- (ii) He had, in the opinion of The Law Society, occasioned or been a party to, with or without the connivance of the solicitor to whom he is or was a clerk, an act or default in relation to that solicitors practice which involved conduct on his part of such a nature that in the opinion of The Society it would be undesirable for him to be in employment by a solicitor in connection with his practice.

The application was heard at the Court Room 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Stephen John Battersby appeared as the Applicant. The Respondent did not appear and was not represented. Messrs Irwin Mitchell Solicitors of Sheffield had addressed a letter to the clerk to the Tribunal dated 16th October 2006 enclosing written representations on behalf of the Respondent. They confirmed that the Respondent would not attend or be represented. He had made this decision on financial grounds and intended no discourtesy or disrespect for the Tribunal.

The Applicant noted the written submissions made on behalf of the Respondent that the Tribunal should not make a finding on the basis of dishonesty. It was also noted that the Respondent accepted in the written submissions that he should be made subject to an Order pursuant to section 43(1)(b) of the Solicitors Act 1974.

In the light of the Respondent's acceptance that an Order should be made in respect of him Mr Battersby took the view that the public interest did not demand that he pursue the argument as to the Respondent's dishonesty or otherwise. He therefore sought to withdraw allegation (i) and continued to pursue only allegation (ii). The Tribunal consented to this course of action.

At the conclusion of the hearing the Tribunal made the following Order:

The Tribunal Orders that as from 17th day of October 2006 no solicitor, Registered European Lawyer or incorporated solicitor's practice shall, except in accordance with permission in writing granted by the Law Society for such period and subject to such conditions as the Society may think fit to specify in the permission, employ or remunerate in connection with the practice as a solicitor, Registered European Lawyer or member, director or shareowner of an incorporated solicitor's practice Liaqat Ali of 15-17 Alexandra Road, Leeds, LS6 1QT a person who is or was a clerk to a solicitor and the Tribunal further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,500 plus VAT.

The facts are set out in paragraphs 1 - 9 hereunder:

1. The Respondent was born on 25th March 1960. He was not a solicitor.
2. The Respondent was the sole director of a limited company called Ali & Co Practitioner Ltd which was incorporated on 23rd May 2000 with the registered office at 15-17 Alexandra Road, Leeds above. The Company was described as "Nationality and Immigration Lawyers, Family Welfare Consultants".
3. Until the coming into force of the Immigration and Asylum Act 1999 ("the Act") in April 2001 any person or company could act as an Immigration Advisor. For the first 10 months of its existence the Respondent's Company was able to operate without the need to be registered with the Office of the Immigration Services Commissioner (OISC).
4. The Act required any person or company who wished to provide immigration advice and services after 1st May 2001 to apply for registration with the OISC to ensure that such persons were fit and competent to do so. An exception to this requirement arose when the provider was a solicitor or a person working under the supervision of a solicitor. The provision of immigration advice and services by an unregistered person

not otherwise qualified became, from 1st May 2001, a criminal offence punishable under s. 91 of the Act summarily by up to six months imprisonment and/or a fine not exceeding £5,000 or on indictment by up to two years imprisonment and/or a fine.

5. The OISC received a flood of applications for registration. To ensure that the provision of immigration advice and services was not unduly interrupted, the Immigration Services Commissioner agreed not to institute proceedings against unregistered providers during the period when vetting procedures were being carried out.
6. The Respondent made application for registration with OISC in February 2001. It was incomplete and could not be determined. The OISC wrote to the Respondent on 8th August 2001 informing him that it was an offence to provide immigration advice and services unless he was registered. It was made clear to him that his application had not been determined and he could no longer represent clients.
7. The Respondent continued to deal with cases involving FK and IH. He was prosecuted by the OISC. On 24th November he entered guilty pleas to two of the four allegations on the Indictment. He was conditionally discharged for two years on each offence and ordered to pay prosecution costs of £1,000.
8. During 2001 the Respondent had entered into negotiations with Churchill Solicitors with a view to his immigration practice becoming a part of that firm. This would have obviated the Respondent's need to become registered with the OISC. From 24th September 2001 Churchills used notepaper which indicated that they had incorporated Ali & Co. Churchills were described as "Churchill Solicitors incorporating Ali & Co Immigration and Nationality Lawyers". The Respondent's Ali & Co business address was described as a "Consulting Room". The Respondent was described as "Head of Immigration Department".
9. A Law Society Investigation of Churchills revealed no solicitor at the firm was carrying out immigration work or that unadmitted staff who were doing so (including the Respondent) were not under any form of meaningful supervision from any solicitor.

The Submissions of the Applicant

10. It was The Law Society's case that the Respondent had entered into the arrangement with Churchills as a way of continuing to carry out immigration work without the need to be registered with the OISC. Churchills for their part saw it as a way to facilitate the obtaining of an LSC Franchise. No accounting records had been maintained at the firm in connection with immigration work and the fee of £180 received from each client at the commencement of a case was retained by the Respondent and used to pay staff salaries. The Respondent had agreed at an interview with The Law Society's Investigator on 6th February 2002 that that was the case.

The Submissions of the Respondent (contained in the before mentioned written representation)

11. Section 84 made it clear that anybody providing immigration advice other than the category of persons described therein would have committed an offence in accordance with the terms of Section 91 of the Act. It was clear from the Act that the offence provides no defence and is an offence of strict liability under the Immigration and Asylum Act 1999. A perfectly competent and honest provider of immigration advice outside the required provisions would commit an offence.
12. In about September 2001 Ali & Company Ltd ceased trading and its work was absorbed by the firm of solicitors "Churchills" for whom Mr Ali became an employee. When this occurred, the requirements for Mr Ali to register with the OISC ceased.
13. The Respondent had never worked in a solicitors' practice prior to September 2001 and it was a matter of extreme regret that his first such experience was in a firm where there was a wholesale disregard for professional responsibilities. The partners in Churchills had been subject to disciplinary proceedings before the Tribunal. In its Findings, so far as they related to the Respondent, it was clear that:-
 - (i) There was no supervision of his work and no requirement that he comply with the Solicitors Accounts Rules and other professional responsibilities;
 - (ii) That he was required to receive cash payments from clients, which he understood were not paid into the firm's accounts;
 - (iii) He entered a regime where VAT was not regularly charged to clients;
 - (iv) The firm of which he was an employee failed to give full costs and other relevant information to the clients and regularly used confusing and misleading notepaper.
14. The Respondent's cooperation with the regime at Churchills was clearly inappropriate and wrong and on this basis he accepted that it would be proper for an order to be made under the Solicitors Act. He was very much an employee of the firm and at least one partner in that firm was not only dishonest but also highly manipulative.
15. Whilst the Respondent did not seek to abdicate his responsibility for his behaviour, he was an innocent who had been deceived by the "mirage" established by Mr Iqbal and referred to the Tribunal's Findings.
16. In the light of the Respondent's wholly unfortunate introduction to the legal profession, it was clear that in any future employment by a solicitors' firm the issue of supervision would be critical. The Tribunal was invited to make a recommendation/order that the restriction under Section 43 of the Solicitors Act continue until such time as the Respondent had been so employed for a period of five years. This would enable the Respondent to become thoroughly grounded in issues such as supervision, the Solicitors Accounts Rules and appropriate administrative and professional rules of practice.
17. The Respondent accepted that he would properly be required to pay at least a contribution to the Applicant's costs. It had been agreed that the Applicant's costs be limited to £3,500 plus VAT.

The Findings of the Tribunal

18. The Tribunal found the allegation to have been substantiated.

The Tribunal's Decision and its Reasons

19. The Tribunal was concerned that the Respondent appeared to consider it sufficient to have an arrangement with a firm of solicitors which on its face made it appear that he complied with the requirements of the OISC. The arrangement was a shell and none of the safeguards which would have been in place had the Respondent been a properly controlled and supervised member of a solicitors' firm were present. Although the Respondent agreed that an order should be made in respect of him but for a limited period of time, the Solicitors Act makes no provision for the Tribunal to make an order for such limited period of time and historically it has not done so as a matter of practice. It would, of course, be open to any Respondent in respect of whom such an order had been made to apply to the Tribunal for revocation of the order. The Tribunal agreed that it was right that the Respondent's future employment in a firm of solicitors be subject to the control of the Law Society and it made the order sought, although in its Order it followed the wording set out in the Access to Justice Act 1999. The Tribunal further noted that the Respondent agreed to pay the Applicant's costs. It was right that he should do so and the Tribunal ordered such costs to be paid by the Respondent in the agreed fixed sum.

DATED this 5th day of December 2006
on behalf of the Tribunal

H Baucher
Chairman