No. 9421-2006

IN THE MATTER OF MOHAMMED SHOAIB SAYEED, Registered Foreign Lawyer

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr J C Chesterton (in the chair)
Miss J Devonish
Mrs N Chavda

Date of Hearing: 15th September 2009

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 of 72-74 Fore Street, Hertford, Herts SG14 1BY on 24th February 2006 that Mohammed Shoaib Sayeed, a Registered Foreign Lawyer, might be required to answer the allegations contained in the statement that accompanied the application and that such Order might be made as the Tribunal should think fit.

The allegation against the Respondent was that :-

1. He had been guilty of conduct unbefitting a Registered Foreign Lawyer in that he contravened the provisions of Section 91 of the Immigration and Asylum Act 1999 ("the Act") which resulted in him being convicted of criminal offences.

A supplementary statement was made by the Applicant under Rule 4 (2) on 31st October 2006. However, the allegation contained within this supplementary statement was withdrawn at the hearing.

A further Supplementary Rule 4 Statement was made by the Applicant on 3rd December 2007. That statement contained allegations against both the Respondent and Shabana Wahab, a solicitor. Shabana Wahab's case was severed from that of the Respondent by Order of the Tribunal on 18th September 2008 and the case against her was concluded on that day. The allegations against Shabana Wahab and the Respondent were that they had been guilty of conduct unbefitting a solicitor and Registered Foreign Lawyer respectively in that:-

2. They were party to an arrangement whereby a solicitor's firm of which Shabana Wahab was the principal was not run and managed according to proper professional standards in that:-

(i) There was no proper supervision of staff and direction of client matters;

(ii) Declarations were made in respect of Work Permit Applications in circumstances where their truth and accuracy could not be verified;

(iii) Applications for Work Permits were submitted in respect of employment of members of staff at the firm which were false and misleading;

(iv) The Respondent was able to operate a practice offering Immigration services and advice other than as permitted by the Immigration and Asylum Act 1999;

(v) Cheques and card payments submitted by the firm in respect of Work Permit Applications were dishonoured.

And that in respect of the Respondent only;

(vi) He caused or permitted information to be given to Companies House in respect of directorships and secretaryships in companies held by him which was confusing and/or misleading;

(vii) He acted as a Director of UK companies without having leave to remain in the country, contrary to Paragraph 120 of the Work Permit Guidance Notes;

(viii) He remained in the United Kingdom without being the holder of a Work Permit entitling him to do so.

The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 15th September 2009 when Stephen Battersby appeared as the Applicant. The Respondent was not present and was represented in the preliminary matter by Mr Treverton-Jones QC of 39 Essex Street, London WC2R 3AT.

Preliminary Matter

At the beginning of the hearing an application was made to the Tribunal by the Respondent for an adjournment. Mr Treverton-Jones QC had submitted a skeleton argument dated 14th September 2009 to support an application on behalf of the Respondent that the Tribunal should adjourn the case against him on the grounds that he was not well enough to attend the hearing, and that it would not be fair to proceed in his absence.

The Respondent had been represented throughout by solicitors, Murdochs, but for various reasons concerning the Respondent's health they had been unable to take proper instructions from him. They had sought on several occasions to meet him in order to take detailed instructions but had been unable to do so. The allegation in the first Rule 4 Statement was admitted, however the Respondent's solicitors had been unable to take instructions as to mitigation. The Respondent wished to contest the second set of allegations (in the third Rule 4 Statement) but had been unable to give instructions to his solicitors to enable them to prepare the matter before the hearing.

On Friday 11th September 2009, the Respondent's solicitors had received a hand written letter from Dr V Watts BSc, MBBS, MRCPsych of the Holly House Hospital in the following terms:

> "I have advised Mr Sayeed he is not fit to work in any capacity for at least six weeks. I have advised him to be admitted to hospital early next week for a period of four weeks. I have advised him not to attend any courts or take/give instructions."

Mr Treverton-Jones had met the Respondent and the instructing solicitors in consultation on Monday 14th September. The Respondent informed his legal advisors that he proposed to be admitted to hospital on Tuesday 15th September. His current problems appeared to be in addition to other serious medical difficulties of which the Tribunal had already been made aware.

Mr Treverton-Jones apologised for the lateness of the application and was aware of the considerable administrative inconvenience that it would cause. There had been a number of adjournments in the case to date, some caused by the illness of the Respondent. However, not all of the adjournments had been caused by the Respondent, some had been at the request of The Law Society and supplementary statements had been added. Mr Treverton-Jones drew the Tribunal's attention to the case of Brabazon-Drenning -v- United Kingdom Central Council for Nursing, Midwifery and Health Visiting [2001] HRLR6 in the Divisional Court. In that case the Appellant had contended that her rights under Article 6 of Schedule 1 to the Human Rights Act 1998 had been breached by the Professional Conduct Committee's refusal to adjourn the hearing, as well as their failure to give reasons for their decision. In allowing the appeal and remitting the case to a differently constituted Professional Conduct Committee for reconsideration the Divisional Court said, amongst other things, that:

> "In the absence of any overriding public interest considerations, it was wrong for a committee which had the livelihood and reputation of a professional individual in the palm of its hands to deprive the Appellant of her right to put her case where the Committee had before it unchallenged medical evidence showing her unfitness to attend. Failure to adjourn the hearing was therefore in breach of both Article 6 and of the principle of natural justice"

It was submitted on behalf of the Respondent that in the interests of justice and fairness the Tribunal should think long and hard before proceeding with the matter today. The Tribunal needed to balance the public interest against the Respondent's right to have the case heard fairly.

The Applicant submitted that the situation was deeply unsatisfactory. Due to the very late submission of the medical evidence he was not in a position to challenge it. The matter had first been listed for hearing on 7th December 2006 but following the addition of the further supplementary matters a final hearing date had been fixed for 18th and 19th September 2008. At the substantive hearing against Shabana Wahab on the 18th September 2008 directions had been given in relation to the Respondent that any further medical evidence that he wished to submit should be in the form of a medical report by an independent medical consultant and that he should file a properly pleaded defence statement. Neither an independent medical report nor a properly pleaded defence statement had been submitted to the Applicant or to the Tribunal.

On questioning from the Chair Mr Treverton-Jones indicated that following discussions with his client and his client's solicitors he could not put forward an undertaking by his client not to practice as a potential solution.

The Tribunal considered the application most carefully and as well as considering the case of Brabazon-Drenning to which they had been directed they had also considered the cases of R - v – Hayward [2001] EWCA Crim 168, R – v – Jones (Anthony) [2002] UKHL 5, Tait – v – The Royal College of Veterinary Surgeons [2003] UKPC 34 and Yusuf – v – The Royal Pharmaceutical Society of Great Britain [2009] EWHC 867 and made the following decision:-

(1) The medical evidence put before the Tribunal in relation to the hearing on 18th September 2008 had itself been received late. In addition, the medical evidence put before today's hearing was unacceptably late and inadequate. It was not in accordance with the Order made at the hearing of 18th September 2008 or at a further hearing on 19th February 2009 where the Tribunal had directed that the respondent file and serve a consultant's report seven days prior to a hearing on 14th May 2009. It had been made clear at the hearing of 18th September 2008 in the Tribunal's Directions that any further medical evidence that the Respondent wished to submit should be a medical report by an independent medical consultant, which should contain a declaration acknowledging their primary duties to the Tribunal, providing up to date information on the Respondent's medical condition, a prognosis, and an indication of the Respondent's ability to attend a hearing and give instructions. In addition the Tribunal's own Practice Note on Adjournments dated 4th October 2002 at paragraph 4 stated that the following reason will not generally be regarded as providing justification for an adjournment:-

"Ill-health

The claimed medical condition of the Applicant or Respondent unless this is supported by a reasoned opinion of an appropriate medical adviser....."

(2) The Respondent had not filed a response as Ordered on 18th September 2008. In fact save to apply for adjournments the Respondent has not engaged in the process before the Tribunal at all.

(3) The gravest concern of the division of the Tribunal was one of delay in a case which if proved, might well lead to an inability to practice as a Registered Foreign Lawyer within the solicitors' profession and the ability of the SRA to prohibit or control the

Respondent from working in a solicitors practice in another capacity. To deal with this concern, focusing directly on the protection of the public (and in particular vulnerable Immigration clients), let alone the profession, the Tribunal had invited Counsel for the Respondent to take instructions as to the giving of an undertaking in that regard. However they were informed that this was unavailable for unspecified reasons. The fact that the Tribunal found themselves after three and a half years in such a serious position without sight of resolution of the case was exceptional.

The Tribunal had used the utmost care and caution in the exercise of their discretion, which they believe to be severely constrained in any event, but nevertheless in this exceptional case they Ordered that the hearing against the Respondent should proceed in his absence.

Mr Treverton-Jones indicated to the Tribunal that he was without any further instructions and would therefore have to withdraw. At that point Mr Treverton-Jones left the Tribunal and the Respondent was thereafter unrepresented.

Evidence before the Tribunal

The evidence before the Tribunal consisted of a Rule 4 Statement dated 24th February 2006 together with accompanying bundle, a Rule 4 Statement dated 3rd December 2007 together with accompanying bundle including two Forensic Investigation Reports dated 31st May 2005 and the sworn oral evidence of the Forensic Investigation Officer ("FIO"), Mr Smith.

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

The Tribunal Orders that the Respondent, Mohammed Shoaib Sayeed of 271 Kingston Road, Ilford, Essex, IG1 1PQ, Registered Foreign Lawyer, be Struck off the Roll of Registered Foreign Lawyers and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £26,179.25.

The facts are set out in paragraphs 1 - 19 hereunder:-

1. The Respondent was born in October 1966 and was registered as a Foreign Lawyer on 20th February 2001. At the times material to the first allegation, he was trading from 27 Wakefield Street, East ham, London E6 1NG as the East London Law Practice.

<u>The First Allegation</u>

2. On 18th May 2005 the Respondent was convicted of three offences under s91 of the Immigration and Asylum Act of providing Immigration advice and services, he not being a person qualified to do so. The offences were committed between April 2002 and February 2003 and therefore came after his registration as a Foreign Lawyer.

3. The Act provided that from 1st May 2001 any person wishing to provide Immigration advice and services had to be registered with the Office of the Immigration Services Commissioner (OISC) unless working under the supervision of a solicitor. Any person providing such services other than as permitted committed an offence under s91 of the Act triable either way and punishable summarily by six months imprisonment or a fine of £5000.

4. Following an investigation by the OISC, proceedings were launched against the Respondent in the Stratford Magistrates Court for the three offences, in respect of each of which he pleaded not guilty on 5th October 2004 and consented to summary trial.

5. The trial took place at Stratford Magistrates court on the 2nd and 23rd February and 9th and 10th May 2005, with judgement and reasons being delivered on 18th May 2005. The Respondent claimed that he was not in breach of the Act in that he had been working under the supervision of a solicitor, but the District Judge who dealt with the case did not accept this and found him guilty of the three offences imposing a fine of £2000 on each.

6. The Respondent appealed against his convictions to Snaresbrook Crown Court and the appeal hearing was set for 3rd October 2005. Shortly before that date, however, the Respondent abandoned his appeal and the convictions stood.

The Second Set of Allegations

7. At the time material to the second set of allegations Shabana Wahab ("SW") was the Principal in a solicitors firm called East London Law Practice ("ELLP"or "the firm") whose address was 27 Wakefield Street, East Ham, London E6 1NG. The Respondent was described as Honorary Practice Manager. The firm was set up on 3rd February 2003 and continued in operation until 31st October 2004, after which SW started to practise under the name of East London Solicitors. From 1st November 2004 for one month she was a partner in that firm with a solicitor, Mr B, and then continued as sole Principal until 18th March 2005 when the practice was sold as a going concern to the Respondent and a solicitor AB.

8. On 13th January 2004 a Law Society Investigation Officer, Mr Smith, commenced an inspection of the books of account and other documents of the firm at 27 Wakefield Street. His report was dated 31st May 2005. A second report of Mr Smith of the same date related to matters solely concerning the Respondent.

9. The Reports detailed a number of concerns which led to the second set of allegations.

10. The Law Society, now the SRA, wrote to the Respondent on 9th September 2005 setting out what was alleged against him and seeking an explanation.

11. The Respondent's explanation was contained in letters of 13th October 2006 and 8th April 2006. Among his comments were:-

    (i) he had no responsibility for recruitment within the firm;

    (ii) he did no work in respect of Work Permit Applications.

    (iii) he had no supervisory role within the firm;

    (iv) he was not the main source of introductions of business;

(v) he could not comment on the procedures SW followed when checking the files;

(vi) all applications had to be checked by the Principal or the consultant solicitor;

(vii) he was unaware of the reason for lack of documentation on the files;

(viii) to the best of his knowledge BJ, KS, US and Mr KhS performed the functions as described in their Work Permit Applications;

(ix) he had never been discharged from his employment by Mr K officially and he was therefore allowed to work for another employer in similar employment for 20 hours per week.

(x) his attendance at ELLP was to enhance his experience and did not exceed 20 hours per week;

(xi) he never issued personal cheques or gave his credit card details as he did not fill out Work Permit Applications and never supervised or signed such work;

Allegation 2(i)

12. Although SW claimed to have 'skimmed through' Work Permit applications to ensure their completeness, Mr Smith's inspection of a sample of client matter files revealed numerous shortcomings in the way in which client matters were dealt with.

Allegation 2(ii)

13. Mr Smith noted that the firm had made 484 applications for Work Permits in the capacity of Representative of which 188 had been made for four potential employers. One of these firms was Kebabish Original Ltd in respect of which 66 applications had been made. A Companies House search revealed that the Respondent was secretary of this firm from 31st October 2002. It was apparent from Mr Smith's examination of the sample client files that the procedures which the Respondent claimed to have followed in compliance with the Work Permit Guidance Notes issued by Work Permits (UK) had not, in fact, been followed.

Allegation 2(iii)

14. Among the staff of the firm were four employees in respect of whom the firm had made successful Work Permit applications. The actual roles filled by these members of staff were quite different from those described in the applications made to Work Permits (UK).

Allegation 2(iv)

15. As from 1st May 2001 any person wishing to provide immigration advice and services had to be registered with the Office of the Immigration Services Commissioner (OISC) unless working under the supervision of a solicitor. Allegation 1 against Mr Sayeed dealt with his convictions under the Act for offences committed between April

2002 and February2003 (before his involvement with ELLP) of providing immigration advice and services other than as permitted by the Act. This part of Allegation 2 relates to a different period.

Allegation 2(v)

16. The amount owing by the firm to Work Permits (UK) in respect of payments made but not honoured was over £50,000. Some of the dishonoured payments were made by cheques drawn on the firm's account and others were drawn on the personal account of the Respondent. Other purported payments which were dishonoured were made by credit card.

Allegation 2(vi)

17. Searches made by Mr Smith with Companies House revealed that the Respondent had been involved either as director or secretary with eight different companies. In each case his date of birth was correctly given as 20th October 1966 but there were a variety of different addresses given for him and in respect of three firms he was shown on the particulars more than once; in one case his nationality was shown as being Australian.

Allegations 2(vii) and 2(viii)

18. Under paragraph 120 of the Work Permit Guidance Notes, a Work Permit holder is not allowed to enter into self employment, set up a business or join another business as a director or partner without applying to the Home Office for leave to remain for this purpose.

19. The Respondent ceased to be employed by Solicitors Law Chambers in May 2002. As soon as he ceased to be employed by Mr K at Solicitors Law Chambers the Work Permit covering that employment expired. He was not therefore able to rely on paragraph 119 of the Work Permit Guidance Notes to cover his employment with ELLP. Paragraph 19 says that a person with a Work Permit who wishes to take on additional work outside the original permission may do so without further permission provided the work is outside their normal working hours, no more than 20 hours per week and within the same profession.

The Sworn Oral Evidence of Mr Smith, the FIO

20. The FIO confirmed that the contents of the two inspection reports both dated 31st May 2005 were true. In questioning from the Tribunal the FIO confirmed that the Immigration clients of the Respondent would have been vulnerable by nature although he had been unable to speak to any of them themselves. He had been particularly concerned about the client matter files which he found to be incomplete with little evidence of how the Respondent had ensured that matters were carried out in accordance with Work Permits UK's Guidance Note. The FIO confirmed that the Respondent had been present in the office every day, that he just dealt with Immigration work and that he was familiar with the rules involved with that work. He said that Shabana Wahab had had no involvement with the Work Permit applications.

The Submissions of the Applicant

21. The Applicant indicated to the Tribunal that the allegation contained in the Supplementary Statement dated 31st October 2006 was withdrawn.

22. The Applicant confirmed that the first allegation in respect of the case involving the three criminal convictions was admitted. In that case there had been a live issue as to whether the Respondent was working under the supervision of Mr K. The District Judge had heard the evidence from Mr K and found all three cases against the Respondent proved. All of these matters pre-dated the Respondent's involvement with Shabana Wahab. The Respondent was no longer alleging dishonesty but did say they were reasonably serious matters for which suspension or strike off may well follow. The Respondent had been fined £2,000 on each conviction and had entered an appeal. However, that appeal had been made at the time the Respondent was applying for admission to the Roll of Solicitors and he had later abandoned the appeal citing a lack of funding.

23. The other allegations were based upon the FIO's inspection into East London Law Practice. Shabana Wahab had admitted a breach of supervision. The Applicant submitted that the firm was not run according to proper professional standards. In particular two of the four members of staff had been brothers of the Respondent and he had been able to operate other than as permitted and cheque and card payments had been dishonoured.

24. The Applicant submitted evidence to show that:-

    (i) The Respondent had told The Law Society that he did no work in respect of Work Permit Applications and that he had only been engaged on a part time basis as a clerk, drawing no salary or commission. However Miss Wahab had told the FIO that she employed the Respondent as an Honorary Practice Manager and paralegal and that he was the main source of introductions of Applicants wishing to obtain Work Permits. She had also told the FIO that the Respondent was a signatory to the office account.

    (ii) The Respondent had been a director of S Sayeed & Co Ltd which was described as merged into ELLP in a letter to the Indemnity Insurers of that firm dated 22nd July 2003. He was described as a partner who has not left the firm in a further letter to the Indemnity Insurers of 1st August 2003. In the proposal form for indemnity insurance East London Law Practice Ltd was described as a successor practice to S Sayeed & Co. Miss Wahab had informed The Law Society that the Respondent had been dealing with important administrative matters and that he had initially been described as a Principal on the Solicitors Professional Indemnity Insurance form. In a further letter to The Law Society a former partner of East London Solicitors in the period 1st November 2004 to 30th November 2004 had confirmed that the Respondent had been practice manager on a full time basis at the firm.

    (iii) In information given to The Law Society Miss Wahab had confirmed that Work Permits UK were owed a total of £48,000 in relation to dishonoured credit cards and personal cheques made by the Respondent. She stated that

she had never authorised the Respondent to use personal money to pay for fees. Copies of cheques and dishonoured credit card transactions were provided in evidence. These had been signed by the Respondent and the Applicant submitted that it was unlikely that he would be signing such cheques if he was not making the applications. In addition some client account cheques had been signed by the Respondent after the account had been closed.

(iv) The FIO had examined a number of Work Permit files and there was a lack of information apparent on them, such that the Respondent could not verify the truth and accuracy of the applications. As an example, a representative had a duty to ensure that a potential employer was registered and there was no evidence of that on the files.

(v) The FIO made enquiries with Work Permits UK and established that out of 484 applications 188 had been made for four employers. In respect of one of these employers Kebabish Ltd there was evidence from Companies House to show that the Respondent was the secretary of this company. In respect of four employees with Work Permits employed at ELLP the capacities in which they were said to be employed in those applications were very different from the actual employment. For example BJ was employed by the firm as a paralegal at £75.00 per week for 15 hours. The Work Permit application made on his behalf said that he was to be employed as an International Lawyer on an annual salary of £24,500 working 45 hours per week. KS, who actually worked as a secretary for 15 hours per week earning £75.00, had been described in the Work Permit application relating to her as a Business Development Manager with an annual salary of £25,000 working 45 hours per week. The Applicant submitted that this evidence showed that the information supplied by the Respondent to obtain the Work Permits was misleading.

(vi) A number of print outs from Companies House showed that the Respondent was involved either as director or secretary with eight different companies. However, different addresses were given for him and on one particular company, Dollywood Films Ltd, his nationality was described as Australian.

(vii) As the Applicant was no longer working for Mr K, in respect of whom he had applied for and been issued with a Work Permit, he was not allowed to enter self employment, set up a business or join another business as a director or partner. If he wished to be self employed or set up a business he would need to apply to the Home Office for leave to remain for that purpose (paragraph 120 Work Permit Guidance Notes).

25. The Applicant applied for costs in the sum of £26,179.25.

The Findings of the Tribunal

26. The Tribunal found the first allegation to be proved. The facts in this matter, together with the convictions, spoke for themselves.

27. The Tribunal noted that the allegations contained in the Rule 4 Statement dated 31st October 2006 had been withdrawn.

28. The Tribunal found that the second set of allegations were all proved with the exception of the allegation of proper supervision of staff and direction of client matters (2(i)). The Respondent himself should have been under supervision and it was not his responsibility to provide supervision of other staff.

29. In relation to allegation 2(ii) the Tribunal had heard from the FIO that there were very few documents to support the Work Permit Applications discovered on the files despite his very best efforts to find any and they therefore found that this allegation was proved on the facts.

30. Evidence had been adduced to show that applications had been made for Work Permits in relation to members of staff, including the Respondent's brothers that were false and misleading and therefore allegation 2(iii) was proved on the facts.

31. In relation to allegation 2(iv) it had been shown to the Tribunal's satisfaction that the Respondent was able to operate a practice offering Immigration services other than as permitted by the Immigration and Asylum Act and that the period of time referred to in this allegation was not the same as the period of time referred to in the first allegation. The evidence of the FIO had indicated to the Tribunal that the Respondent had not been working under the supervision of a solicitor at the relevant time.

32. In relation to allegation 2(v) the Tribunal was satisfied that on the facts, cheques and card payments submitted by the firm and the Respondent personally in respect of Work Permit Applications had been dishonoured. Similarly in relation to allegation 2(vi) the evidence had shown that confusing and/or misleading information had been given by the Respondent to Companies House in respect of directorships and secretaryships in companies held by him. These matters were both therefore proved.

33. In relation to allegation 2(vii) the Tribunal was satisfied that the Respondent's leave to remain in the country had expired once he was no longer working under the supervision of Mr K as had been proved in the Magistrates Court to the satisfaction of the District Judge. He was therefore in breach of paragraph 120 of the Work Permit Guidance Notes in acting as a director of UK companies and this matter was proved. Similarly in relation to allegation 2(viii) once his Work Permit had expired on 27th December 2003 he was not able to rely on paragraph 119 of the Work Permit Guidance Notes to cover his employment with ELLP. He therefore remained in the United Kingdom without being a holder of a Work Permit entitling him to do so and this matter was proved.

34. The fundamental purpose of the Tribunal was to maintain the reputation of the profession and protect the public. In the Respondent's dealings with immigration clients he fell far below the integrity, probity and trustworthiness that is required of a solicitor or registered foreign lawyer. There was also the serious matter of the convictions in the Stratford Magistrates Court for offences under the Immigration and Asylum Act 1999. In all the circumstances, the Tribunal found that the proportionate sanction in this case was to Strike off the Respondent.

35. In relation to costs, it was noted by the Tribunal that an Order had already been made against Shabana Wahab to pay costs of £8,500 and therefore the balance of the Applicant's costs were the responsibility of the Respondent, these amounted to £26,179.25.

36. The Tribunal Order that the Respondent, Mohammed Shoaib Sayeed, Registered Foreign Lawyer, be Struck Off the Roll of Registered Foreign Lawyers and they further Order that he do pay the costs of our incidental to this application and enquiry fixed in the sum of £26,179.25.

Dated this 4th day of December 2009
On behalf of the Tribunal

J C Chesterton
Chairman