CO/10276/2009

Neutral Citation Number: [2012] EWHC 3251 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Wednesday, 18 July 2012

B e f o r e:
THE PRESIDENT OF THE QUEEN'S BENCH DIVISION
(SIR JOHN THOMAS)
and
MR JUSTICE SILBER

Between:
MUHAMMAD IQBAL

Claimant

v

SOLICITORS REGULATIONS AUTHORITY

Defendant

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(Official Shorthand Writers to the Court)

Mr T Nesbitt (instructed by Crangle Edwards) appeared on behalf of the **Claimant**
Mr G Williams Qc (instructed by Russell Cooke) appeared on behalf of the **Defendant**

J U D G M E N T
(As Approved by the Court)

1. PRESIDENT OF THE QUEEN'S BENCH DIVISION: The appellant is a solicitor who appeals against the sentence of the Disciplinary Tribunal on 4 August 2009. The immense delay in this appeal, although not atypical of some cases, is not, because of the personal circumstances we need not mention, the fault of Mr Iqbal. However, it is essential that these appeals are for the future dealt with in a much shorter time range. As the court has indicated, it is important that procedures are put in place to ensure that that happens.

2. I turn to the facts of this appeal. The appellant is 42. He was admitted as a solicitor in 1998. He then practised in Rochdale on his own under the style of MI Solicitors from 31 January 2006, prior to that being employed as a solicitor with other firms. The allegations against him brought before the Solicitors Tribunal fall into two heads. The first relates to his conduct in holding two persons out as his partners, and issues associated with that, and the second refers to breaches of the Solicitors Account Rules.

3. It is convenient to deal with the Account Rules first. There can be no doubt in my mind of the very substantial importance that ought to be accorded to the strictest possible compliance with Solicitors Account Rules. What happened in this case related to small personal injury cases when monies were received from the insurers, who were paying, by way of costs and disbursements incurred in the prosecution of a claim, almost the same amount as was being recovered by way of damages. Care was not taken in paying the monies into the correct account. Instead of placing some of those monies into the client account, they were instead placed into the firm's account. However, although this matter was investigated and complaint very properly made by Mr Williams QC of the gravity of the breaches that had occurred, the Tribunal took the view expressed in one sentence:

> "The Respondent has not achieved a punctilious compliance with the Solicitors' Account Rules."

4. It is therefore to be inferred by us that the Tribunal did not take a serious view of the breach of the rules, and therefore we must proceed to consider this appeal on that basis. We therefore put those matters out of our minds. It is for that reason we deal with the issue first.

5. We then turn to the area where the decision of the Tribunal resulted in the striking of the appellant off the roll of solicitors. That related to his conduct in holding others out as partners in his firm. The facts as to holding out are not in dispute as a result of the findings of the Tribunal. It appears that in May 2006 the appellant told the Law Society that a Mr Qadier Hussain had become a partner. A few days later the appellant sent a panel application form to the Bristol and West Building Society. That form stated under the heading "Sole Practitioners":

> "We must advise that we do not appoint sole practitioners to our panel. Whilst we recognise the honesty and integrity of the vast majority of sole practitioners, we regret to say that the actions and past records of those in the minority have forced us to reluctantly take this measure."

6. The form was filled in and it bore the signature of the appellant and there was under it in manuscript under the second place for a partner to sign the words "Q Hussain". The evidence was that Mr Hussain had had discussions with the appellant about becoming a partner and that after that discussion, where Mr Hussain had indicated he would, he changed his mind and told the appellant's wife. The appellant's evidence was that he had not appreciated that Mr Hussain was not becoming his partner when he had sent the communication to the Law Society and made the application in question, despite the fact that Mr Hussain was at the time working for another law firm and had come nowhere near his office.

7. There was before the Tribunal a question as to the honesty of the appellant in relation to the form sent to the Bristol and West Building Society. The case made was that there had been dishonesty by the appellant in that when he forwarded the application to the Bristol and West he knew it was not signed by Mr Hussain.

8. The Tribunal found, in circumstances where the appellant did not give evidence, that the Law Society had failed to prove dishonesty. Their finding is the following:

> "With regard to the question of dishonesty on the part of the Respondent in relation to allegation (e), the Respondent had accepted that the document sent to a mortgage lender on its face appearing to have been signed by Mr Hussain had not in fact been signed by Mr Hussain. There had been no suggestion that the Respondent himself had written the signature. The Respondent had sent the form to Mr Hussain's house and it appeared to have been returned to the Respondent's firm. There remained the possibility that the document had been signed either while it was outside the Respondent's office or when it had been returned to the office. No evidence had been placed before the Tribunal that could render it sure that the Respondent had known when he sent the form to the mortgage lender that it had not in fact been signed by Mr Hussain. Bearing in mind the required high standard of proof required to establish dishonesty against a solicitor the Tribunal concluded that the Applicant had not discharged the burden of proof that fell upon him to meet such high standard and the Tribunal did not make a finding of dishonesty against the Respondent."

9. In respect of what I will for convenience call "the first holding out", it is plain there was a finding that there was no dishonesty. However, and there can be no conceivable doubt about it, the appellant behaved with gross negligence in writing to the Law Society and to the Bristol and West Building Society in stating that he had a partner, Mr Hussain, when Mr Hussain was working with another firm, that he had not come to his office, but nonetheless he still believed he was a partner.

10. We turn next to the second holding out. What happened was as follows.

11. On 6 October on letter heading, which showed that the principal in the firm of MI Solicitors was only the appellant, he said the following:

"Please as a matter of urgency record Miss Saydia Iqbal law society reference no 316675 as partner.

I understand Mr Qadier Hussain's name has been removed in error as I crossed him off my RF3 form as his employers Basra solicitors were to pay for his certificate, if this too can be reinstated your co-operation is very much appreciated as we are unable to complete a large number of existing conveyancing matters due to the change at law society records details department."

Following that was an email to the Law Society on 10 October which said:

"Further to our telephone conversation please note that Mr Qadier Hussain has been a partner since the 27 April 2006 and continues to this date.

Kindly further note that Miss Saydia Iqbal joined as partner from the 4 October 2006."

12. At that time Mr Hussain continued, as he had for the past months been, to work for another firm which had employed him. The position of Miss Iqbal was the same. It was the appellant's case, though denied by Miss Iqbal in a statement, that they had had a conversation at which Miss Iqbal had said she would join the firm. His understanding of her position, as set out in a written statement because he did not give oral evidence, was the following:"

"It is correct that Ms Iqbal's name was displayed on our headed notepaper as a partner and that Ms Iqbal did not actually work in the offices of MI Solicitors at any time. It was not necessary for her to do so because the agreement was that she could start working there at any time of her choosing. She was a silent partner and I registered her with the Law Society on the basis of this agreement.

Ms Iqbal was at liberty to start work at MI Solicitors at any point that she wished to. She carried out no work at MI Solicitors.

Ms Iqbal has suffered no loss or detriment. I deny that in relation to my dealings with her I have acted in breach of any duty that I owed her. Her recollection of relevant matters is different to mine. I cannot account for her recollection. I know that she reached a clear verbal agreement with me to become a salaried partner."

13. It is not necessary to set out Miss Iqbal's account because again we must proceed, as we do, on the finding that throughout there is no dishonesty on the part of the appellant. But we are faced here with a second holding out of two people, neither of whom, it is common ground, were at the time working in the office, and both of whom denied that they had become partners. It seems to us that these further communications to the Law Society, happening in relation to one person who is exactly the same and a new person, but in relation to exactly the same matter, moved the very serious negligence to clear

evidence that here was someone who was verging on being incompetent. It is quite extraordinary that a person could practise as a solicitor, purporting to know at least enough about the law to be able to set up a firm and communicate to the Law Society, and by inference from the letter we have read out to others, and tell the Law Society that he was not a sole practitioner but in partnership with others, when he had not taken the elementary steps to check that they had become partners in the firm and had ceased to work for other people.

14. Before we turn to the third holding out it is important that we should record what happened on 22 November. On that occasion the appellant gave an undertaking to Mr Qadier Hussain in writing. He said:

> "I will forthwith delete Mr Qadier Hussain's name from my firm's letterheads and elsewhere where his name appears.
>
> 2. I will notify ALL professional bodies forthwith that Qadier Hussain was and is not a partner at MI Solicitors including Law Society etc.
>
> 3. I undertake to notify all my clients and to place a notice in the local paper and gazette that I am not a partner at MI Solicitors and be responsible for the costs involved for this if so requested.
>
> 4. I undertake to be responsible for any losses Mr Qadier Hussain incurs upon request and consideration if reasonable."

15. There then followed the third holding out, which occurred in December. On 14 December the appellant wrote to the Law Society on letter heading which showed as partners in the firm himself, Mr Qadier Hussain, and Ms Saydia Iqbal, a letter which said:

> "I have enclosed an original letter head which we were utilising prior to our letter dated the 06 October as can be seen from that letter the Law Society had MI SOLICITORS as a one partner firm at that point in time when I wrote to you hence the notepaper which I had forwarded to you and the Law Society previously as I did not wish to fall foul of the business names and in particular the publicity code of the Solicitors Practice Rules 1990.
>
> We are pleased to invite your good selves to reinstate Mr Qadier Hussain as partner law society reference No 300826 and delete Miss Saydia Iqbal law society reference No 316675."

16. So it follows on that occasion that there was another letter to the Law Society about Mr Qadier Hussain, again he was working at another firm of solicitors and he had not come to join. It seems to me quite clear that a person who wrote in those terms on the same point for the third time behaved with a degree of incompetence that it is impossible to understand.

17. It appears thereafter that Mr Hussain joined the firm as a salaried partner on 22 January 2007 and remained there until 13 March 2007. It is not necessary for me to set out the other information provided to the Law Society in relation to the dates of him coming or going, because the seriousness of what is alleged against the appellant, with regard to his competence to act as a solicitor, is apparent from what I have already set out.

18. So it seems to us clear on the findings that were made by the Solicitors Disciplinary Tribunal, bearing in mind its finding that there had been no dishonesty, that what they were doing were concluding that the conduct in which he had engaged exhibited manifest incompetence.

19. When the Solicitors Disciplinary Panel came to express their reasons they said this at paragraph 51:

> "The allegations found to have been substantiated against the Respondent represented a wide range of unprofessional behaviour. A solicitor before stating to anybody that another solicitor is his partner must be absolutely sure that this is the case. A solicitor is a person who is fully aware of the serious implications of partnership and in particular that a person who becomes a partner takes on a great burden of professional and regulatory responsibilities and liabilities. The Respondent has given information to third parties, including The Law Society and mortgage lenders about his partnership status which was wrong. In particular in making such statements he had **sought to mislead** mortgage lenders as to the structure of his firm so that the lenders would instruct the firm in connection with mortgage business which they would not have done had that lender been aware that the Respondent was a sole practitioner. The Respondent had not achieved a punctilious compliance with the Solicitors' Accounts Rules."

20. Very properly before us Mr Nesbitt has taken the point that the Panel referred to "these statements he had sought to mislead." He submitted that the only view that can be taken of those words is that the Panel was returning to an allegation of dishonesty. It is clear from what I have set out earlier, and from what was said orally by the Panel, that they had made it very clear that they were making no finding of dishonesty. The appellant is therefore entitled to ask us, when looking at the sanction imposed, to enquire whether the Panel was relying on a finding of dishonesty.

21. It is difficult, in my view, to avoid the conclusion that the words "sought to mislead" were anything other than a finding of dishonesty. In that case it seems to us that the appellant may have a legitimate grievance that the Tribunal was considering his case as regards sentence on the basis, despite what they had said earlier, that there had been no element of dishonesty. In those circumstances I accept that it must be right for us to consider again the penalty on the basis that there was no dishonesty.

22. I turn to do so on an understanding as to the position of the solicitor. It is not necessary to set out statements as to the position and esteem in which the profession is held and the importance of the highest professional standards. Those are set out in the

judgments of Sir Thomas Bingham MR, as he then was, in the well-known case of Bolton v Law Society [1994] 1 WLR 512 and again in his decision in Weston v the Law Society reported in the Times 15 July 1998, when Sir Thomas Bingham spoke of standards of integrity, probity and trustworthiness. In Western he made clear that trustworthiness did not merely refer to honesty, but also the duty arising from holding someone else's money.

23. It seems to me that trustworthiness also extends to those standards which the public are entitled to expect of a solicitor, including competence. If a solicitor exhibits manifest incompetence, as, in my judgment, the appellant did, then it is impossible to see how the public can have confidence in a person who has exhibited such incompetence. It is difficult to see how a profession such as the medical profession would countenance retaining as a doctor someone who had showed himself to be incompetent. It seems to me that the same must be true of the solicitors' profession. If in a course of conduct a person manifests incompetence as, in my judgment, the appellant did, then he is not fit to be a solicitor. The only appropriate remedy is to remove him from the roll. It must be recalled that being a solicitor is not a right, but a privilege. The public is entitled not only to solicitors who behave with honesty and integrity, but solicitors in whom they can impose trust by reason of competence.

24. It seems to me, therefore, in this case, putting aside the view, which I fear inadvertently the Tribunal did, of returning to the issue of honesty, that the degree of incompetence exhibited by the appellant in relation to so serious matters as to who his partners were, is such that the only possible sanction was striking off the roll.

25. There is one observation that has arisen out of this case in relation to the practice of the Tribunal to which it is the duty of this court to draw attention. As I have observed, the appellant did not give evidence, despite the gravity of the allegations against him. He merely provided a statement. Of course a person is entitled to decline to give evidence, but it has been the practice in the civil courts from time immemorial to take into account the failure of a person to give evidence or submit to cross examination when reaching a conclusion in respect of him. Similarly in the criminal courts it has been the practice, since the change in the law at the end of the last century, that a court is entitled in considering the whole of the evidence, to take into account the position that the defendant has taken as regards the giving of evidence. We understand that it is the practice of the Solicitors Tribunal not to take into account the failure to give evidence by a solicitor. Ordinarily the public would expect a professional man to give an account of his actions.

26. It seems to me that it would be appropriate for the Solicitors Disciplinary Authority to review this practice as it can only be in the public interest that the practice, which may have been justified by analogy to the law, as it used to be, in the last century, might be brought up-to-date for the present century. I add that merely as a postscript, and as a matter to be considered. It arises only incidentally in this case.

27. In my judgment this appeal must be dismissed for the reasons that I have already given.

28. MR JUSTICE SILBER: I agree with the order proposed for the reasons given by my Lord, the President. I also agree with what he said about the need to reconsider the idea that people in the position of this appellant can fail to give evidence without inferences adverse to them being drawn. That only applies for the future.

29. MR WILLIAMS QC: My Lord, as the appeal has been dismissed I am instructed to make an application for costs, which I do. If I can please address you very briefly in principle. In making the application that I do I recognise fully that Mr Iqbal was motivated, if not provoked, into appealing by the error made by the Tribunal, which could have reflected on his integrity, but the court has now made clear does not. That finding that the court has made in his favour will be directly relevant to any restoration he makes in the future.

30. The other point is that there is the judgment of Gross J, as he then was, in Merrick [2007] EWHC 2997 (Admin) with which my Lord, Thomas LJ agreed, that in cases where solicitors are struck off, or suspended for lengthy periods, the question that arises is: is that punishment enough for this man, or should costs be added? I know nothing about the financial situation of Mr Iqbal. I understand it not to be good, but I have to make the application I am instructed to. However, I think it is right that those points that I just made to you should be considered firstly before we even consider --

31. SIR JOHN THOMAS: Mr Nesbitt, two points: I hope that in the judgment I gave there is nothing that we said that could be taken to infer any dishonesty on his part.

32. MR WILLIAMS QC: Not that I heard.

33. SIR JOHN THOMAS: Because that is why we did not set out the statement of Miss Iqbal.

34. MR WILLIAMS QC: I am grateful, my Lord.

35. SIR JOHN THOMAS: We are very conscious of the need to ensure that if he wishes to apply to the Tribunal again it cannot be thought that this court took a dim view of the Tribunal below. It is not our wish to do so. I did not want any inference to come from that. I hope there was not anything.

36. MR NESBITT: The finding was plainly as a result of the assessment of his competence.

37. SIR JOHN THOMAS: Secondly, what do you say about costs?

38. MR NESBITT: I am grateful to Mr Williams for his acknowledgment that there was a point of principle here that Mr Iqbal has succeeded on. I respectfully suggest that in the view of that the appropriate order here is no order for costs.

39. SIR JOHN THOMAS: What are his financial circumstances?

40. MR NESBITT: Difficult. I cannot present you with any evidence of his means.

41. SIR JOHN THOMAS: What does his wife do? She is a doctor of something.

42. MR NESBITT: She is a locum optometrist.

43. SIR JOHN THOMAS: They have small children, one of whom is very ill or has autism. We think no order as to costs. We think, Mr Williams, if we may say so, you always deal with these matters with impeccable fairness.

44. MR WILLIAMS QC: I am much obliged.