

IN THE MATTER OF SIMON FONKWA FONKWO, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr J P Davies (in the chair)
Mr J R C Clitheroe
Mr J Jackson

Date of Hearing: 14th January 2010

**APPLICATION TO REMOVE OR VARY
PRACTISING CONDITIONS**

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

1. On 16th October 2009 Simon Fonkwa Fonkwo, solicitor, of RAE & Co, solicitors of 2c Trinity Street, London, SE1 1DB made an application to the Tribunal that the restrictions on his practising certificate placed thereon by Order of the Tribunal dated 13th December 2007 be removed and/or varied.
2. The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 14 January 2010 when Ashitey Ollenni of Counsel appeared for Mr Fonkwo and Inderjit Singh Johal of Counsel employed by the Legal Department at the Solicitors Regulation Authority ("SRA") (the Respondent to the application) appeared.
3. The Tribunal had before it a statement by Mr Fonkwo dated 16th October and a bundle of documents. Inderjit Singh Johal, had prepared outline submissions.

The history of the matter

4. Mr Fonkwo had, together with Uriah Adebisi Bajela, been required to answer allegations before the Tribunal. The allegations were that the Respondents had been guilty of conduct unbecoming a solicitor in each of the following particulars:

In respect of both Respondents:

- (i) That they were involved together in running a solicitor's practice in a manner designed to disguise that the First Respondent remained the actual principal of the practice in breach of conditions on his Practising Certificate;
- (ii) That they were involved together in running a solicitor's practice in a manner designed to give the impression that the Second Respondent was in partnership when he was not discharging the responsibilities arising from that partnership;

In respect of Mr Bajela alone (the First Respondent)

- (iii) That he practised as a sole principal when he was not qualified to supervise in breach of Rule 13(2) of the Solicitors Practice Rules 1990 (as amended) (SPR 1990);
- (iv) That he made misleading statements to The Law Society on a number of occasions about the composition of the partnership of Ballantyne Taylor Solicitors;
- (v) That he made a misleading statement to the Assigned Risks Pool ("ARP");
- (vi) That he failed to comply with a condition on his Practising Certificate for the practice year 2004/05.

In respect of Mr Fonkwo alone (the Second Respondent)

- (vii) That he practised as a sole principal when he was not qualified to supervise in breach of Rule 13(2) of the SPR 1990;
 - (viii) That he made misleading statements to The Law Society on a number of occasions about the composition of the partnership of Ballantyne Taylor Solicitors;
 - (ix) That he failed to keep the books of account properly written up for the purposes of Rule 34 of the Solicitor Accounts Rules 1998 ("the 1998 Rules");
 - (x) That he failed to produce the books of account and other documentation to the Investigation Officer of The Law Society as requested and in breach of Rule 32 of the 1998 Rules;
5. The matter was heard before the Tribunal on 18th - 20th September 2007 the Tribunal's written Orders were dated 20th September 2007 and the Tribunal's written Findings were dated 13th December 2007;
6. In its Findings the Tribunal said:

"33. The Tribunal found the allegations against Mr Fonkwo to have been substantiated, indeed they were not contested.

34. As the Tribunal had indicated at the commencement of the hearing the allegations made against Mr Fonkwo were serious even though they had not ultimately been put as matters involving dishonesty on his part.

35. The Tribunal has given Mr Fonkwo credit for his admissions and his recognition that his behaviour had been foolhardy in the extreme. He had expressed his contrition, and acknowledged that the limitations on his ability to practise were justified. He had incurred substantial costs.
36. The Tribunal also took into account mitigating circumstances put forward on Mr Fonkwo's behalf and the fact that he had been and was now in employment with a firm providing supervision and that it was not alleged that he had been in breach of any of the conditions imposed by The Law Society in his practising certificate.
37. Mr Fonkwo acknowledged that he had been foolish and that he had placed his trust in Mr Bajela who was now shown to be wholly untrustworthy. The evidence before the Tribunal showed however that Mr Fonkwo had very little comprehension of the rules of conduct which are necessary to protect the reputation of the profession and so the interests of the public. His acceptance of salaried and then equity partnership in circumstances where he had no assurance as to who his partners were, whether they were competent to be his partners or were persons in whom he could place his trust demonstrated a complete lack of understanding of what it meant to be a partner in a professional practise as a solicitor.
38. This lack of understanding though not alleged to have been with dishonest intent was serious and put the public at risk particularly when account is taken of Mr Fonkwo's failure to comply with important rules of conduct and practice including the Solicitors Accounts Rules. Furthermore Mr Fonkwo should have known that as a newly qualified solicitor he needed at least three years properly supervised experience before seeking to be a principal in a firm. All these considerations led the Tribunal to the conclusion that a reprimand suggested by Mr Fonkwo through his counsel would be a wholly inadequate sanction.
39. The Tribunal concluded that the seriousness of Mr Fonkwo's conduct could only be met by the imposition of a suspension from practice for a period of one year. In addition, the public needed to be protected by the imposition of conditions that restrict Mr Fonkwo's ability to practise.
40. Taking all of the circumstances of this matter into account, not the least the fact that Mr Fonkwo was at the material time a recently qualified and inexperienced solicitor currently employed under supervision the Tribunal concluded that it would be both appropriate and proportionate to suspend the operation of the suspension from practise so long as Mr Fonkwo punctiliously complied with the conditions contained in the Tribunal's Order. Those conditions were that Mr Fonkwo (a) is not a sole principal, partner or salaried partner nor a member, office holder or shareholder of an incorporated solicitors practice (b) does not hold clients' money (c) is not a signatory to any office or client account cheques (d) acts only in employment which is first approved by the Solicitors Regulation

Authority and (e) that any employer or prospective employer has been informed of these conditions.

41. The Tribunal decided that these conditions were to be varied or abrogated only upon further application to the Tribunal.
42. Whilst the Tribunal cannot to bind any future division of the Tribunal as to any variation of the conditions any application would be expected to be supported by evidence of Mr Fonkwo's fitness to be a practising solicitor and compliance with rules of conduct, supported by evidence of his ability and competence in the conduct of client matters and his knowledge of the rules and regulations relating to practice including the Solicitors Accounts Rules. The Tribunal considered it unlikely that all of these conditions could be dispensed with before the expiry of 5 years from the date of the Tribunal's order.
43. The Tribunal noted that the Applicant's costs had been agreed between the parties and it therefore Ordered Mr Fonkwo to pay the costs of and incidental to the application and enquiry fixed in the sum of £3,000.00 plus VAT."

7. It was the conditions set out in paragraph 40 that were the subject of Mr Fonkwo's application.

Mr Fonkwo's case

8. Mr Fonkwo was 45 years of age. He had been admitted as a solicitor on 16th May 2005.
9. Mr Fonkwo had joined Collisons & Co, solicitors, as a trainee on 1st October 2003 where he remained employed until 29th July 2005 when the name of the firm was changed to Balham Law Partnership. Mr Bajela had also been employed there until he left in February 2005. Mr Fonkwo later came to discover that Mr Bajela had been dismissed for gross misconduct.
10. Mr Bajela invited Mr Fonkwo to join him as a salaried partner at his firm at Ballantyne Taylor Solicitors. He did so in August 2009. Mr Fonkwo had been flattered and had no suspicions about Mr Bajela, although he had later learned that he had been subject to investigation by The Law Society and his practising certificate had been revoked in 2005.
11. Mr Fonkwo was not happy to manage the firm on his own as he did not have the necessary experience. He had offered gradually to wind down the practice with a view to closing it. The Law Society asked him not to close the firm. He did not see clients or take on new clients. It was not until the Assigned Risks Pool Monitoring visit on 6th, 7th and 8th September 2005 that Mr Fonkwo suspected the reason why Mr Bajela had wanted him to join the firm as a partner. It was then that he was made aware of the restrictions on Mr Bajela's practising certificate. Mr Fonkwo's involvement with Ballantyne Taylor Solicitors would have lasted no longer than 23 days if the SRA had allowed him to wind down the firm or if they had intervened

earlier. Mr Fonkwo felt that he had been victimised and betrayed by the SRA and Mr Bajela.

12. It was this situation that led to the allegations brought before the Tribunal. No allegation of dishonesty had been made against Mr Fonkwo.
13. Following the imposition of conditions on his practising certificate by the SRA in 2005, the SRA approved Mr Fonkwo's employment at Victor Evans Solicitors in March 2006 supervised by two named solicitors. A change in the composition of the partnership at that firm meant that Mr Fonkwo had to leave in September 2006. Both of his approved supervisors had since been struck off the Roll.
14. In 2007 Mr Fonkwo's employment at Stephen Isaacs Solicitors was approved by the SRA. On 29th September 2008 he had to stop his employment there because of a change in the partnership arrangements. He now understood that the firm ceased trading in October 2008 because it could not obtain insurance cover.
15. In December 2008 Mr Fonkwo's employment at Rae & Co Solicitors was approved by the SRA subject to his being supervised by two named solicitors. When a supervisor left the firm in 2009 the SRA further approved Mr Fonkwo's employment there.
16. Because of the nature of the conditions imposed by the Tribunal Mr Fonkwo's employment could abruptly come to an end whenever there is a change in the composition of his employer's firm. The effect on Mr Fonkwo was not only financial but humiliating. It was seen as a reflection on his integrity and credibility as a solicitor and caused inconvenience to clients. Mr Fonkwo had lost his client base as a result of the constant changes of the firms from which he worked. When Mr Fonkwo made full disclosure of the conditions in his practising certificate he was ridiculed and humiliated. To find employment was very difficult. Where he had found employment his rate of pay had been very low. He had suffered loss of income when between employments.
17. Financial difficulties had left Mr Fonkwo embarrassed in front of his children and family. He had fallen into arrears with his rent. Great hardship had been caused to his family of three children, his wife and his mother-in-law as well as family in Cameroon for whom he was responsible. Mr Fonkwo's oldest child was disabled.
18. The events that led to the imposition of conditions on Mr Fonkwo's practising certificate happened two months after he qualified as a solicitor and happened at a time when he was very young and inexperienced. Mr Fonkwo had learned a great deal and a repeat of the 2005 events was unlikely to occur in the future.
19. As an indication of his resolve not to make the same mistakes, Mr Fonkwo had for the previous four years complied with all the conditions imposed on his practising certificate by the SRA in 2005 and then on 20th September 2007 by the Tribunal. He had attended several courses through which he had been alerted to some of the potential pitfalls as well as best practice. In particular he had taken a course in the Solicitors Accounts Rules.
20. Mr Fonkwo recognised that the imposition of conditions were to safeguard the public. There had to be a finite time for imposition and the conditions should not be so onerous. In the past four years Mr Fonkwo had demonstrated no cause for concern.

The Tribunal was asked to give due weight to the testimonials written in Mr Fonkwo's support, all of which attested to his competence and good character.

21. Were the conditions on his practising certificate to be relaxed, varied or removed, Mr Fonkwo intended to continue to practise in the areas of immigration and asylum on a private basis, employment law, private housing law and criminal litigation. It was his intention to set up in practice undertaking such work.
22. Mr Fonkwo accepted that the conditions imposed had been necessary at the time but were now too onerous and had unreasonably caused hardship to Mr Fonkwo.
23. At the time of the events leading to the disciplinary proceedings, the Applicant had been deceived by Mr Bajela, who proved to be totally dishonest and had been struck off the Roll. At the material time Mr Fonkwo had tried to do the best he could to safeguard clients.
24. Mr Fonkwo had found it very difficult to make a living and support his family which included a severely disabled child.
25. Mr Fonkwo had made great progress in the time that the conditions had been in place. He was not a danger to the public and would take care to uphold the principles of the solicitors' profession.
26. Mr Fonkwo invited the Tribunal either to rule that the restrictions be removed in their entirety or be varied to take the following form:
 - (i) that he must not practice as a sole principal;
 - (ii) he does not hold clients' money;
 - (iii) he is not a signatory to any client account cheques;
 - (iv) that any employer, prospective employer, prospective partner or member of an incorporated solicitors' practice must be informed of these conditions.

The submissions of the SRA

27. The conditions imposed on Mr Fonkwo by the Tribunal were free standing conditions imposed upon his practice with the proviso that the conditions could be varied or abrogated upon application to the Tribunal. The Tribunal does not have jurisdiction to give orders to or direct the SRA to remove or impose conditions upon a solicitor's practising certificate.
28. The SRA was neutral in respect of Mr Fonkwo's application, nevertheless the Tribunal was invited to take the following points into account.
29. Mr Fonkwo had not had any regulatory or disciplinary concerns with the SRA since the imposition of the Tribunal's Order in September 2007. He had worked in approved employment for almost a continuous period since the start of 2006 and had complied with all of the conditions upon his practising certificate for some four years

as well as the conditions imposed by the Tribunal. It was recognised that Mr Fonkwo had attended a number of courses.

30. This Tribunal was not bound by the previous Tribunal's expectations but was invited to have regard to them when considering whether the conditions should be discharged or varied. Such expectations were not unreasonable.
31. Mr Fonkwo's request to remove the conditions in their entirety would have been considered by the previous Tribunal to have been premature, although it was accepted that Mr Fonkwo was not precluded from applying to vary the conditions before the expiry of five years.
32. The criticisms of The Law Society made by Mr Fonkwo in his statement were not justified. Its investigations into Mr Bajela were confidential and the SRA had no duty to advise solicitors about the advisability of their career moves. The Law Society's powers of intervention arose only in specific circumstances: it had no discretion in this regard.
33. Were the Tribunal minded to remove the condition that Mr Fonkwo should not practise as a partner, then it should also consider removing the condition relating to his not holding clients' money and not being a signatory to any office or client account cheques as such a condition would be illogical were he to practise in partnership because as a partner in a firm he would be held out to the public as handling clients' money.
34. Should the Tribunal discharge or vary the conditions it was anticipated that any changes would also be reflected on Mr Fonkwo's practising certificate. Ultimately that was a matter for the Adjudicator of the SRA.
35. The Tribunal's ruling would reflect its duties to protect the public and maintain the good reputation of the solicitors' profession.
36. The Tribunal had considered the conditions imposed to be necessary and proportionate to reflect the serious allegations substantiated against Mr Fonkwo. The Order of suspension was itself suspended on the basis that he complied with the conditions. Difficulties suffered by Mr Fonkwo in obtaining employment was a factor that was personal to him and should not be given undue weight by the Tribunal when considering whether to remove or vary the conditions. He had in fact been able to work in approved employment for approximately the last four years.
37. It was accepted that should the Tribunal remove or vary the conditions on the Order that Mr Fonkwo be suspended from practice would no longer have effect.

The decision of the Tribunal

38. The Tribunal noted that the SRA adopted a neutral stance. The Tribunal also noted that Mr Fonkwo's practising certificate had been subject to conditions for some four years. He had complied with those conditions and in particular his employment within the solicitors' profession had been properly approved by the SRA.

39. The Tribunal gave Mr Fonkwo credit for his recognition of his failures and accepted that the circumstances in which he had found himself when a young and inexperienced solicitor were very difficult.
40. The Tribunal also gave Mr Fonkwo credit for the fact that he had undertaken courses in pursuance of compulsory professional development and which had addressed some of the concerns expressed by the earlier Tribunal.
41. The Tribunal did consider that he had perhaps made his application for the removal of the conditions rather earlier than might have been appropriate but the Tribunal concluded that it was both proportionate and appropriate to vary the Tribunal's conditions .
42. The SRA sought the costs of its response to Mr Fonkwo's application. Mr Fonkwo did not object in principle nor to the sum sought but he had expressed concern about his ability to pay.
43. The Tribunal decided summarily to fix the costs in the sum of £1,000 and recognised that the SRA would consider reasonable offers with regard to instalment payments.

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

44. The Tribunal Ordered that the conditions imposed upon Mr. Fonkwo by the Tribunal on the 20th September 2007 be varied as from today's date so that he is now subject only to the condition that he shall not be a partner or employed in a solicitor's firm without the consent of the Solicitors Regulation Authority first obtained. This condition shall cease to have effect on 1st November 2010. The Tribunal further Ordered that Mr. Fonkwo shall pay the costs of the application fixed in the sum of £1,000.

Dated this 10th day of March 2010
On behalf of the Tribunal

J.P. Davies
Chairman