

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF ALASTAIR JOHN GRAHAME BROWN, former solicitor

Upon the application of Alastair John Grahame Brown

Mr L N Gilford (in the chair)
Mrs K Thompson
Mrs L Barnett

Date of Hearing: 3rd June 2010

**APPLICATION FOR RESTORATION
TO THE ROLL**

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

Appearances

The Applicant Alastair John Grahame Brown of 467 High Road, Wood Green, London N22 8JD appeared and the Respondent, the Solicitors Regulation Authority (“SRA”) was represented by Mr Iderjit Singh Johal a barrister employed by the SRA.

Application Date

An application to the Tribunal by Mr Browne was made on 9th February 2010.

The Application

Alastair John Grahame Brown of 467 High Road, Wood Green, London N22 8JD was admitted as a solicitor in October 1977. By an Order of the Solicitors Disciplinary Tribunal dated 1st June 1999 he was struck off the Roll of Solicitors. He applied to have his name restored to the Roll and undertook to advertise the application in accordance with the Rules.

Factual Background and Submissions of the Applicant

1. Mr Browne was struck off the Roll on 1st June 1999 following his disregard of an Order of indefinite suspension made by the Tribunal on 15th July 1997. The order of indefinite suspension was made after four allegations had been proven against Mr Browne including one allegation of failing to comply with Rule 5 of the Solicitors Practice Rules 1990 and three allegations of conduct unbecoming a solicitor.
2. In his application Mr Browne stated that he had no future intention to return to the profession and his application was in respect of re-enrolment only. He would give an undertaking to the Tribunal that he would not apply for a Practising Certificate.
3. Mr Browne said that he could give no explanation of his actions that had led to him being suspended. He was appalled by those actions and would not dream of such a course of conduct today. He was sorry that he did it and had never again considered doing anything like it and considered the whole episode to be done and an aberration that would never occur again. He was ashamed of what he had done and believed that all things taken together showed a woeful degree of incompetence and lack of appreciation of the consequences on his behalf.
4. The Applicant also dealt with his actions leading to his being struck off. He believed that at the time he had given the Tribunal no option other than to strike his name from the Roll and that his actions had been caused by a continuing combination of arrogance and stupidity. He agreed with what the Tribunal had done and indeed stated that he would have done the same. He had had a very difficult time rebuilding his then practice from 1994-1997 following a disastrous attempt at partnership and had worked very hard and was very much overstressed but although this could not explain his actions it had possibly had an effect.
5. Mr Browne stated in his application that he felt he had been fortunate that he was struck off when he was, as his state of mind could well have led to far more serious events. He felt perhaps he had reached an age where some men act entirely out of character. However he did not seek a practising certificate only restoration to the Roll and the Tribunal need have no concerns in regard to the protection of the public and the reputation of the solicitors' profession.
6. He had felt a shame at the professional exclusion and rejection on a daily basis and the punishment that in itself had inflicted. He had paid the price daily for ten years and truly felt that he had paid enough and asked the Tribunal to agree with that sentiment. He asked the Tribunal's forgiveness and wished to move forward. He had been encouraged by other professional former colleagues to apply for reinstatement to the Roll to include a determination of his suspension. However he did not seek a determination of that suspension by means of his application before the Tribunal today.
7. Since he had been struck off he had been away from the profession for eight years. During that time he built up the practice as an arbitrator, mediator and advisor on town and country planning, the Law of Landlord and Tenant and the Domestic Law of France.

8. Many of his previous clients from his large client list had consulted him during the intervening years and even though he had told them he had been struck off that did not seem to have deterred them from using his services so far as possible within the law. Mr Browne produced a testimonial from such a client.
9. Mr Browne also produced a testimonial from a former professional colleague and two others had given him permission to mention their names in connection with the application. In addition since he was struck off he had rigorously maintained his knowledge of the law and continued his membership of the Solicitors European Group together with subscriptions to The Law Society Gazette and all England Law Reports. He attended such lectures as were relevant to the work that he did.
10. He had many times tried to find employment in the profession with a view to readmission and had replied to advertisements over the last two or so years. Out of all the applications he made he received only one reply and that had been an invitation to work in a “conveyancing factory” which he did not take.
11. The application also included details of the Applicant’s determination and grit to pass the professional exams by means of evening study. He went on to say that he was so keen to practise that he was blind to all other considerations and had never had the benefit of the advice of an older man in the profession. In summary he would have benefited from such advice as he had not appreciated the risks of self employment within the profession.
12. In summary the Applicant was about to retire to complete his degree in History. None of his plans concerned the profession but he had an interest in academia and had nothing to lose and everything to gain by making the application. He had provided references and no-one had objected to his readmission following his statutory advertisements.
13. The Applicant also said that there was no dishonesty involved when he had been suspended and at that stage he had been in practice for over 20 years had had no difficulties and clear accountant’s reports. He referred the Tribunal to ten previous decisions of the Tribunal including the cases of Chopra 9002/2004, Daultrey 9061/2004 and Johnstone 9584/2007. In his submission the case of Black before the Tribunal on 29th July 2003 and 18th January 2007 that would be mentioned by the Respondent Authority could be distinguished by reference to these three cases.

Submissions on behalf of the Respondent SRA by Mr Johal

14. Mr Johal told the Tribunal that he relied upon the submissions dated 17th February 2010 that were already before them. In summary the application was opposed.
15. The most serious allegation found proven by the Tribunal leading to the Applicant’s indefinite suspension was that the Applicant had “*continued to act as a solicitor when his own interests conflicted with those of his client*” and that “*he took or attempted to take unfair advantage of his client*”. The Applicant had loaned monies to the client, a Mr M, and a mortgage was granted to the Applicant personally over Mr M’s property as security in respect of the loans. The rate of interest was specified to be 40% per annum. The mortgage was between Mr M as the borrower and the Applicant

personally as lender. Mr M also signed a transfer in respect of the same property, and a letter of credit which appeared to have involved the creation of credit facilities of £15,000. The Applicant also recorded a loan to Mr M of £1,500 of which some £500 was to be charged to Mr M as an arrangement fee. The mortgage granted over client M's property contained a clause as to foreclosure and that was enforced by the Applicant who entered into possession of the property and attempted to sell it. It appears that the clause was enforced because of a debt owed by client M to the Applicant. The Applicant did not ensure that Mr M received independent legal advice on the arrangements that he had entered into with the Applicant.

16. The Applicant also overcharged Mr M, his hourly rate on a number of bills increased from £35 per hour to £120 per hour, apparently without consultation, shortly before all final bills were delivered. In many cases the bills referred to a mark up of care and attention of 90% on the hourly rate but no provision for mark up had been made in the Applicant's terms of business. The bills demanded payment of interest at 15% per annum from 7 days from the date of the bill whereas under the terms of business the percentage interest rate was 2% above the National Westminster Bank base rate.
17. A consultant costs draftsman, Mr Danks, had considered 23 invoices rendered by the Applicant's company to Mr M in light of extracts from 9 files of papers relating to some of those invoices. A summary of his findings revealed that even when work had been properly undertaken and justifiably charged, the file of papers indicated that charges had been duplicated, the terms of business agreed with the client had not been observed and invoices had raised wholly excessive charges for work which did not seem to benefit the client at all. In his considered assessment the total value of work recorded on the Applicant's files could be fairly represented in the sum of £3,757.69. This would have to be compared with £8,776.67, based upon the costing sheets contained in the file of papers (although the file of papers did not bear out the details shown on the costing sheets). From a comparison of actual costs charged by the Respondent which totalled in excess of £25,000, the Applicant appeared to have overcharged client M by some £17,000.
18. When the Tribunal suspended the Applicant indefinitely they commented as follows:

“The Tribunal reached the view that it must bear in mind its duty to protect the public and to protect the good name of the solicitors’ profession. The Respondent had fallen seriously below the high standards of integrity, probity and trustworthiness required of a member of the solicitors’ profession. The submissions made by the Respondent both in his written affidavit and orally before the Tribunal were inconsistent, ineffectual and irrational.”
19. Despite the Order of the Tribunal suspending the Applicant from practice indefinitely, he continued to practice as a solicitor. Just a few months after the Tribunal's Order, in September of 1997, the Applicant acted for clients in a conveyancing transaction. The Applicant appeared to be instructed through his same company. The Law Society also received information from another source suggesting that the Applicant was continuing to practice. When the Tribunal struck the Applicant from the Roll of Solicitors they found that *“the Respondent had deliberately flouted the previous Order of the Tribunal”*.

20. In Mr Johal's submissions the principles to be observed on an application for restoration to the Roll was summarised in the Guide to the Professional Conduct of Solicitors, 8th Edition pages 859-861. In particular Mr Johal submitted that the Applicant had to establish that:-
- (a) That he has sufficiently rehabilitated himself and that he is fit, in the "*eyes of a member of the public*", to be readmitted as a solicitor;
 - (b) That the public will consider any profession to be proud to have the Applicant as a member;
 - (c) The reputation of the profession would not be damaged by restoration and;
 - (d) That the original offences occurred in exceptional circumstances.
21. The Respondent agreed that if the Tribunal were to accept the undertaking which the Applicant had offered not to apply for a practising certificate there would be no issue of public protection. Whilst he accepted that the case of Black already mentioned by the Applicant was not on all fours with this case and that it was not binding on the Tribunal, it was persuasive.
22. The Applicant has not caused a loss to the profession through either the Compensation Fund or the Indemnity Fund. However the Applicant had not yet repaid the costs of The Law Society arising from the disciplinary hearing in which he was struck off the Roll. The Tribunal Ordered that the Applicant pay the costs of and incidental to the application in the fixed amount of £2,608.38. The Law Society subsequently wrote to the Applicant on 14th June 1999 and on 5th August 1999 in which they invited the Applicant to discharge the Order for costs against him. The Applicant had to date failed to discharge those costs. He wrote to The Law Society on 24th August 1999 informing them that he was without funds and unemployed.
23. The Applicant had indicated in his affidavit that he did not intend to practise as a solicitor. It appears that the Applicant applied for restoration as he wanted the qualification of a solicitor for academic accreditation and to remove the stigma of being struck off.
24. Although the Applicant appeared to have achieved a degree of personal rehabilitation, that should be viewed in light of a criminal conviction in 2004. Post the Order striking the Applicant off the Roll he continued to act as a solicitor. On 21st May 2004 the Applicant was convicted of two counts of wilfully pretending to be a solicitor contrary to Section 21 of the Solicitors Act 1974. The Applicant was prosecuted by The Law Society and admitted both offences for which he received fines of £1,800 in relation to each count. The convictions related to the Applicant's retainer with a client, a Mr F, from approximately May 2002 until July 2003. Specifically on 18th October 2002 the Applicant countersigned Mr F's application for a shotgun certificate as a solicitor. After Mr F was arrested on 5th March 2003 the Applicant represented Mr F at an interview at a police station in which he introduced himself as a solicitor.

25. There was also evidence that the Applicant continued to describe himself post the strike off as a solicitor. Between 17th September 1999 and 23rd December 2001 he made applications in his own name for firearms certificates in which he described his occupation as a solicitor and also during the same period he countersigned applications for shotgun certificates in the names of Mr D and Mr C as a solicitor.
26. In the Respondent's submission, it was evident from the convictions and evidence that the Applicant completely disregarded the Order of the Tribunal striking him off in much the same way as he did in respect of the previous Order of the Tribunal by which he was suspended indefinitely.
27. The Applicant had not demonstrated that the original offences occurred in exceptional circumstances and they could not be described as aberrational. The Applicant took advantage of a client in a number of ways and was suspended indefinitely. He continued to act as a solicitor for clients through a business and was struck off for violating the Tribunal's Order. In violation of the striking off Order he continued in a similar course of conduct which ultimately led to his conviction.
28. Mr Johal told the Tribunal that the essential issues for the Tribunal to consider were the maintenance of the good reputation of the profession and the protection of the public and that the Tribunal may consider that the application for restoration had been made prematurely, despite the length of time that has elapsed since the strike off (over 10 years) in light of the conduct of the Applicant post the striking off. In his submission in all circumstances the Applicant was not a suitable person to be admitted to the Roll and this was not an exceptional case.

The decision of the Tribunal and its Reasons

29. The Tribunal had considered all of the documents before it most carefully and had listened to the submissions of both the Applicant and the Respondent Authority. In this case the Tribunal were not satisfied that the Applicant had sufficiently rehabilitated himself or that the profession would be proud "to have him as a member". The matter of the Applicant's convictions following his striking off was serious and the Tribunal had been concerned that the Applicant himself had not sought to mention or explain the convictions in his application. Indeed he had disregarded the fact that he had been struck off as a solicitor until he had been convicted. The Applicant had told the Tribunal that his purpose in seeking readmission to the Roll was for academic purposes but that did not give of itself a sufficient reason for the Tribunal to reinstate the Applicant. Neither was the Tribunal convinced that the reputation of the profession would not be damaged by restoration as anyone looking at all the facts in the round would wonder why the Applicant had been restored to the Roll. There was no proof that any of the original offences had occurred in exceptional circumstances.
30. In these circumstances the application would be refused.

Application for costs

31. An application for costs in the sum of £493.60 had been made by the SRA and Mr Johal told the Tribunal that these had already been paid.

Order

32. The Tribunal Orders that the application of Alastair John Grahame Brown of 467 High Road, Wood Green, London, N22 8JD for restoration to the Roll of Solicitors be REFUSED and the Tribunal further Orders that he do pay the costs of the response of the Law Society to this application fixed in the sum of £493.60.

Dated this 2nd day of August 2010
on behalf of the Tribunal

LN Gilford
Chairman