

IN THE MATTER OF MOHAMMAD CHAUDHARY AFZAL, former solicitor

- AND -

IN THE MATTER OF THE SOLICITORS' ACT 1974

Mr. A. H. Isaacs (in the chair)
Mr. L. N. Gilford
Mr. S. Marquez

Date of Hearing: 31st January 2008

**APPLICATION FOR
RESTORATION TO THE ROLL**

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

1. By Affidavit dated 6th November 2007 Mr Afzal, a solicitor who had been struck off the Roll of Solicitors, applied for restoration to the Roll.
2. The application was heard at The Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS when Mr Afzal appeared in person and The Law Society, the Respondent to the application, was represented by Hilary Morris solicitor advocate employed by the Solicitors Regulation Authority at 8 Dorner Place, Leamington Spa, CV32 5AE.

The History of the Matter

3. At a hearing on 10th February 1994 the Tribunal found substantiated against Mr Afzal (together with another Respondent, Ashraf Ullah Khan) that they had been guilty of conduct unbecoming a solicitor in that they had been convicted of criminal offences of dishonesty and sentenced to a term of imprisonment. In its findings dated 5th May 1994 the Tribunal said:

"The Tribunal note that both respondents have been convicted for offences involving dishonesty perpetrated during the course of their ordinary practice as solicitors. It is wholly unacceptable for solicitors to turn a blind eye to transactions which arouse their suspicions even if they do not have full knowledge of the fraud being committed or a direct involvement with it. Clearly it was a most serious matter for a solicitor to give an untrue reference concerning one of his employees. The first Respondent claimed an altruistic motive for giving such a reference but nothing can exonerate a solicitor from knowingly making an untrue statement in order to procure an advance from a lending institution made worse by the fact that that lending institution would also become a client of his in the transaction. The Tribunal ORDER that Mohammed Chaudhary Afzal of care of Her Majesty's Prison, Stamford Hill, Church Road, East Church, Sheerness, Kent, solicitor and Ashraf Ullah Khan of 42 Bradley House, Claredale Street, London E2, solicitor both be struck off the Roll of Solicitors and the Tribunal further Order that they do pay the costs of and incidental to the two applications and enquiries which have been consolidated fixed in the sum of £1,080.00 to include profit costs, disbursements and Value Added Tax, such costs to be paid by the two respondents in equal proportions."

4. The Tribunal had taken into account on that occasion the sentencing remarks of His Honour Judge Clarke on 28th June 1993 and in particular when he said that the offences occurred when property prices were escalating enormously and mortgage fraud became more widespread than the building societies were prepared to believe at the time. He supposed it was the nature of the conveyancing and mortgage transaction itself which always necessitated the use of the services of professional people like solicitors. He said one could see how in the instance of a single transaction for one client such professional people could easily be deceived and supply their services to a fraudulent operation without realising it. But when a series of transactions, all mutually linked in some way by some common factor, took place for the same client or clients suspicions could be aroused and it was then that failure to allay those suspicions called into question the integrity of the professional who was involved. He said that the two respondents seemed to have preferred to ask no questions. The Learned Judge said that the respondents broke the trust which the building societies reposed in them as clients and the trust to the solicitors' profession, he said when a solicitor behaved in a dishonest way it tainted not only the solicitor himself but the whole of the profession as it undermined the trust which the public looked for and expected.
5. The Tribunal had also taken into account the submission of Mr Afzal and his co-Respondent that in 1988 building societies had been very keen to lend money and building society managers had large lending targets to meet. He said that, in effect, building societies were conspiring with people like one of the Respondent's co-defendants who had been improperly receiving large mortgage advances from building society lenders. It was pointed out that when a solicitor received instructions from a building society client it was not part of his duty to check the bona fides of the borrower named therein. The first Respondent had delegated the handling of a number of transactions to his articled clerk. She was relatively inexperienced and had failed to recognise such problems as there might have been. The first Respondent

accepted that he had failed properly to supervise his clerk properly but invited the Tribunal to consider that that was his only shortcoming in connection with the matter. His only benefit was to secure low cost conveyancing fees. He made no other financial gain from the matters.

The First Respondent had given a reference for his articled clerk to help her. She suffered from matrimonial problems and wanted to buy a home for herself. He agreed to give her a reference stating a salary higher than she was actually paid. The Respondent had been in no doubt that she would pass her qualifying examinations and the figure he quoted was that which she would receive after passing them.

6. In its findings dated 5th May 1994 the Tribunal recorded two earlier appearances of Mr Afzal before the Tribunal namely that:-

On 17th January 1985 the Tribunal found the following allegation to have been substantiated against the first Respondent (together with one other), the allegation was that the Respondent had acted in breach of the provisions of the Solicitors Accounts Rules 1975 in that notwithstanding the provisions of Rule 7 and 8 of the said Rules had drawn from clients account money not permitted to be so drawn and utilised the same improperly so drawn for the benefit and for the purposes of other clients not entitled thereto. The Tribunal ordered that the first Respondent pay ten percent of the costs and no other order was made against him.

On 1st December 1992 the Tribunal found the following allegations to have been substantiated against the first Respondent together with one other. The allegations were that the respondents had:-

- (1) failed to comply with the Solicitors Accounts Rules 1986 in that they failed to keep their books of account properly written up notwithstanding Rule 11(1) of the said Rules;
- (2) failed to comply with the said Rules in that they had drawn money from client account other than as permitted by Rule 7 of the said Rules and contrary to Rule 8 of the said Rules

when the Tribunal ordered that the first Respondent should pay a fine of £1,500.00 and he should pay three-quarters of the Applicant's costs and three-quarters of the costs of the Investigation Accountant.

The Submissions of Mr Afzal

7. Mr Afzal was admitted as a Solicitor of the Supreme Court in 1980. He worked as a Solicitor until 1993.
8. He was a partner in firm of Charnley & Afzal Solicitors of Manchester from 1980 to 1984. Thereafter he was principal of Afzal Solicitors in London E17 from 1984 to 1993. He had been convicted of Mortgage deception. He had been shocked and disheartened by the result and he failed to appeal; consequently he was struck off the Roll of Solicitors.

9. From 1994 - 1997, Mr Afzal went to live in Pakistan and undertook a teaching assignment as part time lecturer at the Lahore College of Law at Lahore, Pakistan.
10. In 1997 Mr Afzal returned to England at the request of his daughter, a practising solicitor, as she had set up her own practice and needed assistance. Mr Afzal was permitted by The Law Society to work as a legal consultant for his daughter and he worked with her for three years. He was granted permission to work for T. Osmani & Co in December 1997. This was following his conviction.
11. Mr Afzal had worked as a supply teacher in schools in and around London, after obtaining permission from the Secretary of State for Education for one year.
12. Despite his age Mr Afzal still felt the need to put his energies into work. He enjoyed good health. He had a great deal of enthusiasm, confidence and experience to offer.
13. In November 2003, Shah & Co. Solicitors obtained permission to employ Mr Afzal as a legal assistant. He performed his duties to the satisfaction of his employers and he was able to draw on his ability to communicate in English, Urdu, Punjabi and Persian.
14. In June/July 2004 Mr Afzal subsequently applied to the OISC for permission to work for JS Laws as an Immigration Advisor. He worked there until May 2005.
15. In May 2005, Mr Afzal started a new practice, A M Law Associates, where he was senior partner continuing in that role up to the present. He personally had gained an OISC Level three accreditation enabling him to present cases before the Asylum & Immigration Tribunal.
16. Having been convicted in June 1993 Mr Afzal had served his sentence and paid a heavy price for his mistake. Many solicitors had found themselves in similar difficulties. Mr Afzal had accepted his fault and had rebuilt his life over many years, enduring the legacy of a criminal conviction. Mr Afzal accepted that he had misled a mortgage lender when he confirmed the current salary of a trainee as being what she would be earning upon qualification.
17. Mr Afzal invited the Tribunal to have due regard for the decision of the House of Lords in R -v- Preddy (1996) 2CR App. R524 in which solicitors, who had been convicted of the same offence as Mr Afzal, had successfully appealed against conviction. The House of Lords having found that in the circumstances it was not appropriate to charge the mortgagor with having obtained property by deception contrary to Section 15 (1) of the 1968 Theft Act, it was Mr Afzal's submission that had he pursued a similar appeal the outcome would have been the same and he would not have stood convicted and the striking off order would not have been made. It was clear that many other solicitors undertaking conveyancing work at the material time had found themselves in similar difficulty at a time when it was generally believed that mortgage fraud had been prevalent when the reality was that lending institutions were extremely anxious to grant loans secured by mortgages on property.
18. Mr Afzal had come to the United Kingdom and had worked as a labourer. He had studied and had qualified as a teacher, then as a barrister and subsequently as a solicitor.

19. He had demonstrated by working within the legal environment that he was able to work with a minimum of supervision and was entirely trustworthy. He had taught in various institutions and had always had responsibility for teaching trainee solicitors. Mr Afzal had a wide range of experience in teaching children of all ages and young adults. He had not remained with the teaching agency for health reasons.
20. Whilst working within the solicitors' profession and under the regulation of the OISC no complaints of any kind had been made against Mr Afzal.
21. Mr Afzal was entirely trustworthy. The Tribunal was invited to give due weight to the testimonials written in his support and to note that a firm of solicitors had offered him a job should he be successful in achieving restoration of his name to the Roll. Mr Afzal had skills that would be an asset to a legal practice particularly any practice that offered its services to disadvantaged members of the ethnic community.
22. Mr Afzal's conviction was spent. He had never misappropriated client funds and that would never happen. He was proud of his integrity and would never improperly use client money. It was not his case that he was unable to make a living but he wished to preserve his good name. He did not complain and had suffered his punishment with some dignity. He had never drawn Social Security benefits. The Respondent was a man to be trusted and did not represent a danger to the public. The Tribunal was invited to consider that the Respondent had been punished enough.
23. In The Matter of a Solicitor Number 5 of 1990 the late Lord Donaldson, then the Master of the Rolls, said:-

"... there is a parliamentary intention that in some circumstances it must be possible for somebody to have been involved in a situation which justified their being struck off the Roll for having brought the profession into disrepute and been unfit to be solicitors, but in which, nevertheless, thereafter by their own efforts or otherwise a different situation would arise in which it is right that they should be permitted to be restored to the Roll. That is clearly the parliamentary intention."
24. The Law Society prayed in aid the case of Bolton -v- The Law Society in the Court of Appeal and the judgment dated 6th December 1993 in which Sir Thomas Bingham, then Master of the Rolls, held that a solicitor who discharged his professional duties with anything less than complete integrity, probity and trustworthiness had to expect severe sanctions to be imposed upon him by the Tribunal. Mr Afzal invited the Tribunal to distinguish his case from that of Mr Bolton who had parted with client funds without authority. Mr Afzal had never misused client money.
25. In Application Number 5 of 1983 the Master of the Rolls (the late Sir John Donaldson as he then was) pointed out that:-

"the difficulties that would face him (an immigrant from Sri Lanka) are incomparably greater than would face somebody who was born in this country and was not coloured. I make no apology for referring to the question of colour. We are trying to eliminate racial discrimination in this country, but it

is a fact, and it would be idle and unfair to the Applicant to pretend that it is not a fact, that it must be incomparably more difficult for him to obtain employment than it would be for a white native born Englishman. So I have to take that into account."

Mr Afzal wished to point out that he did not put his case in that way. He had put his own background and submissions before the Tribunal and invited the Tribunal to consider his case on its merits and to make an order restoring him to the Roll.

The Submissions of The Law Society

26. The Law Society opposed Mr Afzal's application for Restoration to the Roll on the basis of the seriousness of the underlying facts leading to his being struck off the Roll.
27. The Respondent acknowledged that the Applicant had provided references and that he had taken steps to re-establish himself working in several legal environments over the previous eight years. Mr Afzal had been struck off after being convicted of offences involving dishonesty perpetrated during the course of his practice as a solicitor and then already had a history of appearances before the Tribunal.
28. The Respondent drew the attention of the Tribunal to a bundle of authorities. In particular the Tribunal was invited to take into account that it was acknowledged that the Applicant had provided references to support his Application and that the Applicant had taken steps to re-establish himself and had worked in several legal environments over the past eight years.
29. The Tribunal was invited to bear in mind that the Applicant had appeared before the Tribunal on three occasions.
30. Where a solicitor had been struck off for having brought the solicitors' profession into disrepute it was only in "a very narrow category" of applicants that it would be appropriate for restoration to the Roll to be made (*Lord Donaldson in No. 5 of 1990*).
31. Bolton -v- The Law Society (1964) established the principle that whilst orders of the Tribunal might have a punitive purpose, orders are primarily directed to one or both of the purposes to ensure that the particular offender does not re-offend and it was said, "The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the reputation of the profession it is sometimes necessary that those guilty of serious offences are not only expelled but denied readmission."
32. In determining whether or not restoration was appropriate, the Tribunal had regard to the fitness of the applicant. The Tribunal had to have regard to the Applicant's apparent fitness in the eyes of the public and whether or not a reasonably minded member of the public would conclude that any profession would "be proud to readmit the applicant".
33. The circumstances which led to Mr Afzal's being struck off the Roll were very serious. He had been convicted of offences of dishonesty. Restoration of Mr Afzal to

the Roll would adversely affect and damage the good reputation of the solicitors' profession. The Tribunal was invited to refuse the application.

The Decision of the Tribunal

34. The Tribunal gave Mr Afzal credit for his very considerable achievements after arriving in the UK as an immigrant from Pakistan. The Tribunal did not accept Mr Afzal's contention that had he appealed his criminal conviction it would have been overturned as in the case of Mr Preddy and others. It was noteworthy that in the House of Lords judgment relating to the case of Mr Preddy and others their Lordships called for a change in the law to plug what was seen to be a loophole. Further it was the Tribunal's view that had Mr Afzal's conduct been referred to it without his having been convicted, it would have been likely to have regarded his conduct as so serious as to result in a striking off order. The Tribunal also bore in mind Mr Afzal's, it had to be said, very frank admission to the Tribunal that in giving the salary reference for his trainee solicitor as he had, namely setting out what she would earn when she was qualified rather than her then current salary, he had misled her mortgage lender.
35. The Tribunal fully accepted Mr Afzal's high level of personal rehabilitation and his satisfactory work within the solicitors' profession and as an immigration advisor regulated by the OISC.
36. The Tribunal gave Mr Afzal credit for not suggesting that he could not earn a living without being a solicitor on the Roll and for relying on the case he had put before the Tribunal without inviting the Tribunal to take into account his national and ethnic background. The Tribunal accepted that Mr Afzal had, since the striking off order, worked in positions of responsibility and trust. The Tribunal recognised that in his application Mr Afzal had been a good advocate on his own behalf.
37. The Tribunal took full account of the authorities placed before it on behalf of the Applicant and the Respondent.
38. The Tribunal recognised that its duty was to protect the good reputation of the solicitors' profession. Mr Afzal had not been able to overcome the fact that he had been convicted of criminal offences involving dishonesty and had served a custodial sentence. In such a circumstance it could not be said that the solicitors' profession would be proud to readmit him as a member.
39. Having given Mr Afzal every credit for his personal rehabilitation, the Tribunal refused his application for restoration to the Roll on the basis that such restoration would serve to damage the good reputation of the solicitors' profession and would undermine the public's perception that members of the solicitors' profession were persons of the utmost probity, integrity and trustworthiness.
40. Mr Afzal had very properly agreed to be responsible for the Respondent's costs and had agreed the quantum. The Tribunal ordered him to pay the costs fixed in the agreed sum.

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

"The Tribunal Orders that the application of Mohammad Chaudhary Afzal of 121 Woodlands Avenue, London, E11 3RB 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 £932.00."

Date this 11th day of March 2008
On behalf of the Tribunal

A H Isaacs
Chairman