Neutral Citation Number: [2016] EWHC 501 (Ch)

Case No: HC-2015-002585

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

The Royal Courts of Justice
Strand
London WC2A 2LL

Date: 11/03/2016

Before

His Honour Judge Behrens sitting as a Judge of the High Court in Leeds

- -

Between:

RAJESWARY RAMASMY	**Claimant**
- and -	
THE LAW SOCIETY	**Defendant**

- -
- -

Jeremy Barnett (instructed by **Lewis Nedas Law Ltd**) for the **Claimant**
Andrew Tabachnik (instructed by **Bevan Brittan LLP**) for the **Defendant**

Hearing dates: 29 February 2016, 1 March 2016

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Judgment

Judge Behrens:

1 1.27 cmIntroduction

1. This is an application by Mrs Ramasamy to set aside the intervention on 17 June 2015 by the Law Society into her practice as a solicitor. The Law Society oppose the application and seek to maintain the intervention.

2. Mrs Ramasamy commenced practice as a sole practitioner (with a small number of employees) trading as Thames Chambers Solicitors ("the Firm") in October 2008. The Firm initially traded from a two room office, later moving to a three room office (with a conference room).

3. The grounds on which the Law Society seek to maintain the intervention are not identical to those relied on when the intervention took place. There are 6 matters relied on by the Law Society.

1. There are a number of instances in which Mrs Ramasamy sought to claim VAT on the Firm's fees from non-clients (one of which was the SRA Compensation Fund), despite not being VAT registered or therefore having any entitlement to do so. The various false VAT claims were maintained over an extended period. The Law Society contends that there is reason to suspect dishonesty on Mrs Ramasamy's part arising from these matters.

2. The transcript of a hearing which took place on 12 December 2011 indicates that the Firm represented its clients through a struck-off solicitor called Rajesh Singh Pathania ("Mr Pathania"). Shortly afterwards Mrs Ramasamy sent the client an email seeking £600 for "attendance in court". Mrs Ramasamy denied that anyone had appeared at the hearing and subsequently explained that the email was written in order to assist one client in a payment dispute with another client. The Law Society considers that there is reason to suspect dishonesty on the part of Mrs Ramasamy arising out of this.
3. Mr Pathania was a client of the Firm. He was adjudged bankrupt on 29 June 2010. On a number of occasions Mrs Ramasamy made applications on behalf of Mr Pathania at a time when the relevant cause of action was vested in his Trustee. One such instance was visited with a wasted costs order which was upheld on appeal by a High Court Judge. This is said to be "gross incompetence" on the part of Mrs Ramasamy.
4. Mr Mutahar Hussain was an administrative assistant employed by the Firm. As such he had an email account – m.hussain@tc-solicitors.co.uk ("the M Hussain account"). There is considerable evidence that Mr Pathania used the M Hussain account. The Law Society believe that Mrs Ramasamy permitted this state of affairs and then dishonestly denied that she had done so.
5. There is substantial evidence that Mr Pathania was allowed to participate in the management of the Firm. The Law Society contends that it is inconceivable this occurred without Mrs Ramasamy's knowledge and consent.
6. The Law Society believe that Mrs Ramasamy was employing and/or remunerating Mr Pathania in connection with her practice as a solicitor, and that she has aided and abetted his "acting as a solicitor" by way of conducting litigation. They believe that she dishonestly denied the true position during her various regulatory interviews.

4. One of the grounds relied upon by the Adjudication Panel in its decision to intervene in the Firm's practice related to an advice and invoice from a Barrister, John McLanachan, ("Mr McLanachan") that was said to be fabricated. This was one of two grounds set out in its decision which were said to be reasons to suspect dishonesty by Mrs Ramasamy. Although Mr McLanachan had confirmed the position in a witness statement dated 15th September 2015 he later retracted his evidence with the result that the Law Society no longer rely on this ground.

5. Mrs Ramasamy's case is summarised in paragraph 73 and 74 of Mr Barnett's skeleton argument. He submits:

1. The main reason for dishonesty that was initially relied upon by the SRA has been abandoned.
2. The remaining allegations are not based on clear or cogent evidence.
3. The remaining allegations might support a disciplinary sanction in due course if proved, they are not sufficiently serious to justify intervention.

In answer to the allegations he submits:

1. There is no reliable evidence that that Mr Pathania was working or purporting to work as a solicitor at the Firm. Mrs Ramasamy was acting for him in respect of 32 cases and he also introduced approximately 7 cases to the practice. Even if Mr Pathania was giving legal advice to clients at the Firm's offices, there is no reliable evidence that he did so with the knowledge of Mrs Ramasamy. Mrs Ramasamy has positive evidence of good character which is cogent evidence and directly relevant to consideration of the issue of dishonesty.

2. Although it appears that there was a claim for VAT on the invoice, there is no evidence that Mrs Ramasamy made such a claim dishonestly. On the balance of evidence, this claim was made by Mrs Ramasamy as the result of an innocent misunderstanding as to whether or not the invoice should include VAT or not. Further, there is no evidence that the VAT was ever paid to Mrs Ramasamy.
3. The allegation of incompetence is not even sufficient to constitute a matter of professional misconduct that would in the ordinary course of events be brought before the Solicitors Disciplinary Tribunal, and is therefore incapable of being a ground to justify or continue an intervention.

2 The Law

6. The law relating to the intervention of solicitors is relatively uncontroversial and has been recently explained in the decision of Newey J in *The Law Society v Elsdon* [2015] EWHC 1326 (Ch). For convenience I will set it out again. Much of this section is taken verbatim from that judgment.

Intervention powers

7. The Law Society (of which the SRA is a functionally independent arm performing regulatory functions) is empowered to intervene in a solicitor's practice in certain circumstances by the Solicitors Act 1974. Paragraph 1 of schedule 1 to the Act states that such powers can be exercised where (among other things):

> "(a) the Society has reason to suspect dishonesty on the part of– (i) a solicitor, or… in connection with that solicitor's practice or former practice …;
> (c) the Society is satisfied that a solicitor has failed to comply with rules made by virtue of section 31, 32 or 37(2)(c);
> (m) the Society is satisfied that it is necessary to exercise the powers conferred by Part 2 of this Schedule (or any of them) in relation to a solicitor to protect–
> (i) the interests of clients (or former or potential clients) of the solicitor or his firm, or
> (ii) the interests of the beneficiaries of any trust of which the solicitor is or was a trustee."

8. The Law Society (through the SRA) makes rules as to professional practice, conduct, discipline and accounting matters pursuant to sections 31 and 32 of the 1974 Act, to which reference is made in paragraph 1(c) of the schedule to the Act.

9. Guidance as to the meaning of "dishonesty" in this context is to be found in *Bryant v Law Society* [2007] EWHC 3043 (Admin), [2009] 1 WLR 163. The Divisional Court there held that the decision of the Court of Appeal in *Law Society v Bultitude* [2004] EWCA Civ 1853 stood as "binding authority that the test to be applied in the context of solicitors' disciplinary proceedings is the *Twinsectra* test … as it was widely understood before [*Barlow Clowes International Ltd v Eurotrust International Ltd* [2005] UKPC 37, [2006] 1 WLR 1476] …, that is a test that includes the separate subjective element" (see paragraph 153). The Court accordingly concluded (in paragraph 155) that, in the case before it, the tribunal "should … have asked itself two questions when deciding the issue of dishonesty: first, whether [the solicitor] acted dishonestly by the ordinary standards of reasonable and honest people; and, secondly, whether he was aware that by those standards he was acting dishonestly". This formulation echoed the House of Lords' seeming endorsement in *Twinsectra Ltd v Yardley* [2002] UKHL 12, [2002] 2 AC 164 of:

> "a standard which combines an objective test and a subjective test, and which requires that before there can be a finding of dishonesty it must be established that the defendant's conduct

was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest".

10. Applications for intervention notices to be withdrawn can be made under paragraph 6(4) of schedule 1 to the Solicitors Act 1974. This states:

> "Within 8 days of the service of a notice under sub-paragraph (3), the person on whom it was served, on giving not less than 48 hours' notice in writing to the Society and (if the notice gives the name of the solicitor instructed by the Society) to that solicitor, may apply to the High Court for an order directing the Society to withdraw the notice."

11. The Court of Appeal considered the approach to be adopted to applications under paragraph 6(4) of schedule 1 to the 1974 Act in *Sheikh v Law Society* [2007] 3 All ER 183. In that case Chadwick LJ noted at [87] that in the usual case "the single issue for the court on an application under para 6(4) … is whether the notices should be withdrawn"

12. In addressing that question (as Chadwick LJ explained in paragraphs 90 and 91):

> 90. "… [T]he court must, indeed, weigh the risks of re-instating the solicitor in his (or her) practice against the potentially catastrophic consequences to the solicitor (and the inconvenience, and perhaps real harm, to his or her existing clients) if the intervention continues. In weighing the risks of re-instatement the court must have regard to the views of the Law Society as the professional body charged by statute with the regulation of solicitors … and as the body whose members are obliged, through the compensation fund, to underwrite those risks …. In a case where the Society has taken, and continues to take, the view that there are reasons to suspect dishonesty on the part of the solicitor, the court may well need to address those reasons in the context of weighing the risks of re-instatement; although, as *Buckley (No 3)* shows, that will not always be the case. It is important to keep in mind that (in cases where there is no challenge to the validity of the resolution or to the service of the notices) there is no free-standing requirement for the court to decide whether there are grounds for suspecting dishonesty; *a fortiori*, no requirement for the court to decide whether the solicitor is or has been dishonest. The issue arises (if at all) in the context of deciding whether the intervention needs to continue."
>
> 91. "… On a true analysis, as I have sought to explain, the issue for decision on the application was whether the intervention notices should be withdrawn. In addressing that issue the judge did not need to ask himself whether, at the time of the panel resolution to intervene (on 17 February 2005) the society had reason to suspect dishonesty. His task, given that the society was opposing withdrawal of the intervention notices on the basis, inter alia, that the suspicion of dishonesty which had led to the resolution to intervene had not been dispelled, was to address the society's concerns in the context of weighing the risks of reinstatement."

13. On the facts of the case, Chadwick LJ observed (at paragraph 97):

> "It was unnecessary — and, I would say, inappropriate — in the present case for the judge to make a finding of honesty or dishonesty. The question which he had to decide was whether the suspicion of dishonesty raised by the material on which the Society relied had been dispelled by the oral evidence of Miss Sheikh and Mr Sampat so that he could safely direct withdrawal of the intervention notices notwithstanding the view of the Law Society, after hearing that evidence, that intervention needed to remain in place for the protection of the public. In my view he was wrong to conclude — on the basis of Miss Sheikh's demeanour as a witness — that he should answer that question in the affirmative. He was wrong because he did not address adequately the serious inconsistencies between her oral evidence at the trial on the one hand and the answers which she had given at interview, the explanations in her witness statements and the documentary material on the other hand."

14. It is well established that an intervention challenge is not "frozen in time" and confined to an examination of what was before the decision-maker at the time the intervention was

resolved upon. In short, the question for the Court is not "Was it right to issue the notice?", but "Should the notice now be withdrawn?

The SRA Code of Conduct

15. The SRA Code of Conduct 2011 ("the Code") identifies ten "mandatory Principles" which are stated to "define the fundamental ethical and professional standards" that are expected of all solicitors and to which they "should always have regard". These include:

> "You must:
>
> 1. uphold the rule of law and the proper administration of justice;
> 2. act with integrity;
> 3. not allow your independence to be compromised;
> 4. act in the best interests of each client;
> 5. provide a proper standard of service to your clients;
> 6. behave in a way that maintains the trust the public places in you and in the provision of legal services;
> 7. comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;
> 8. run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles …"

16. When an intervention is carried out, the Law Society (through its agents) takes possession of the practice papers and a statutory trust arises in respect of practice monies and receipts, in exercise of the powers contained in paragraphs 5 – 9 of Schedule 1 to the Act.

Restrictions in relation to struck off solicitors

17. There are a number of inter-related restrictions on the involvement of a struck-off solicitor with an ongoing legal practice. I shall refer to them in slightly more detail in section 8 of this judgment. In summary there is:

1. A prohibition (without Law Society permission) on employing or remunerating a struck-off solicitor in connection with practice as a solicitor. See section 41 of the Act, and a comparable SRA rule.
2. A prohibition (amounting to a criminal offence) on a struck-off solicitor acting as a solicitor: see section 20 of the Act, and sections 12-14 of the Legal Services Act 2007.
3. A prohibition on a struck-off solicitor being concerned in the management of an authorised body (such as the Firm), per Rule 8.6(a) of the SRA's Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011.

Comment

18. As I have mentioned, there was very little difference between Mr Barnett and Mr Tabachnik on the legal principles involved. Both Counsel agreed that it is no part of my function to make findings of fact (including findings of dishonesty against Mrs Ramasamy). Such findings are for the Solicitiors Disciplinary Tribunal ("SDT"). In the result it was agreed between the parties that there would be no cross examination of the witnesses and the matter would be determined on the basis of submissions on the evidence filed.

19. Both Counsel, however agreed that it was for the Law Society to establish that there are grounds for suspecting dishonesty. Mr Barnett submitted that the evidence had to be clear and cogent. Mr Tabachnik did not seriously dissent from that test though he drew my attention to the test applied by Newey J in *Elsdon*. In paragraph 59 he held *"that there is good reason to*

suspect that Mr Elsdon's conduct was dishonest by the ordinary standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest". In paragraph 61, however, he commented that "Mr Elsdon's conduct in relation to Mrs Lilley's estate does provide *"clear and cogent evidence of dishonesty"*. It may be, in reality, that there is little difference between the two tests.

3 History

20. Mrs Ramasamy was admitted as a solicitor on 15 January 2007. She became a partner in the Firm on 4 July 2008. On 13 October 2008 her partner (Mr Khan) left the firm and Mrs Ramasamy became a registered sole practitioner.

21. Mr Pathania was also admitted as a solicitor. He practised in partnership with his wife under the name of Newland Solicitors until an intervention by the SRA on 1 June 2009. He was known by a number of names including Rajesh Pathania, Rajesh Singh, and Rajesh Singh Kumar. On 29 June 2010 Mr Pathania was adjudged bankrupt. On 22 September 2010 Mr Pathania was stuck off the Roll by the SDT. Mr Pathania became a client of the Firm in about March 2011. Mr Pathania's instructions mainly related to money claims against former clients to whom he had made loans. There were approximately 30 matters in respect of which instructions were given to the Firm.

22. In June/ July 2012 Forensic Investigations ("FI") were asked to investigate whether Mr Pathania was employed by Mrs Ramasamy without the necessary authority of the SRA. On 11 December 2012 Mrs Ramasamy was interviewed in connection with the Investigation. Documents were put to her about three clients – Mr Azeem, Mr Zabed, and Mr Miah. In the course of the interview Mrs Ramasamy admitted that Mr Pathania had overstepped the mark but stated that what he had done was without her knowledge. No further action was taken.

23. FI were re-commissioned in August 2013 in respect of a number of matters including the suspected involvement of Mr Pathania. There was felt to be insufficient evidence to pursue the matter.

24. There was a third investigation by FI which commenced on 30 April 2014. During the course of that investigation Mrs Ramasamy was interviewed on 19 January 2015. In that interview she specifically stated that Mr Pathania[1] had only worked on his own files.

25. Following a final FI report on 15 February 2015, a supervision report was sent to Mrs Ramasamy for comment on 22 May 2015. On 2 June 2015 Mrs Ramasamy submitted her objections to a possible intervention. However on 15 June 2015 the Adjudication panel resolved to intervene. It is clear from the decision that the panel were satisfied that there was reason to suspect dishonesty on the part of Mrs Ramasamy, that Mrs Ramasamy had breached rules under s 31 of the Act and that intervention was necessary to protect clients or former clients of the Firm.

26. The relevant Notices were served on 17 June 2015. The application for the intervention to be withdrawn was issued on 25 June 2015. The effect of the intervention was to suspend Mrs Ramasamy's practising certificate. It was open to Mrs Ramasamy to apply for the suspension to be lifted and the SRA would have power to remove the suspension. It is likely that any lifting of the suspension would have been subject to conditions. In any event Mrs Ramasamy has made no application to lift the suspension or to renew her practising certificate when it expired on 31st October 2015.

[1] Mr Pathania was referred to in the interview as Mr Singh but it is not in dispute that it is one and the same person.

4 The Claim for VAT

27. The Firm was originally registered for VAT on 11 June 2007. On 9 October 2008 the registration was cancelled. On 1 March 2015 it reregistered for VAT. The registration followed an email to Mrs Ramasamy from the Firm's accountant which reads:

> As mentioned earlier, you need to register for VAT as your firms turnover is more than the VAT threshold of £81,000.

28. There is no suggestion that Mrs Ramasamy ever sought to charge VAT from her clients. Indeed it is clear that throughout the relevant period Mrs Ramasamy submitted invoices to her clients that did not include VAT.

29. Mrs Ramasamy did, however claim VAT on a number of occasions in relation to two matters where she was seeking costs from third parties. No payment has in fact been made by the SRA.

The Compensation Fund

30. Mrs Ramasamy made a claim for compensation to the SRA Compensation Fund on behalf of the Firm's clients, Mr Hannan and Mrs Akter. The claim was accepted by the Compensation Fund and £20,709.52 was paid in compensation on 15 May 2013.

31. Mrs Ramasamy then made a claim for the Firm's costs, which included a claim for VAT on her costs incurred in the period March – August 2012. On 23 August 2013[2], the Firm wrote to the SRA's Compensation Fund to "attach our bill of costs with the detailed narrative of the work undertaken." The attached bill of costs claimed £1,122 as VAT on solicitor's costs:

> "£6,310 PLUS VAT AND MINUS OF COUNSEL IS NOT CHARGING VAT SO THE VAT IS £1,122. GRAND TOTAL IS £7,432"

32. There was correspondence between Mrs Ramasamy and the SRA in relation to the claim[3]. In that correspondence Mrs Ramasamy wrote a detailed letter on 7 October 2013 and sent an email on 6 January 2014. She did not withdraw or modify the claim for VAT in either of these documents.

Claim by Mr Pathania against Mr Sharif

33. This was a case where Mrs Ramasamy was acting for Mr Pathania in a claim against Mr Sharif. A money judgment had been obtained against Mr Sharif. Mrs Ramasamy had obtained a charging order against property owned by Mr Sharif and had threatened to apply for an order for sale. In a letter dated 11 February 2013 signed by Mrs Ramasamy she asked for an undertaking to "Pay £9,000 plus interest and additional costs which currently stands at £2,300 plus VAT" by 18th February 2013.

34. On 15 February 2013 Mrs Ramasamy sent Mr Sharif's solicitors a breakdown of costs totalling £5,400 plus VAT of £1,080. The next day she sent the solicitors a further letter claiming further costs which were limited to £300 plus VAT.

35. On 20 April 2013, Mrs Ramasamy prepared a letter to Mr Sharif's new solicitors which included a statement:

> "VAT is chargeable on our profit costs on work done post judgment and excluding the judgment sum."

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[2] The letter is mis-dated 23 August 2012.

[3] The SRA were only prepared to offer £850.

36. On 10 June 2013 Mrs Ramasamy sent a breakdown of the settlement figure to Mr Sharif's solicitors. The letter included claims for VAT of £228 and £3,006.60.

37. On 10 July 2013 Mrs Ramasamy sent a bill to Mr Pathania for £5,400. It contained no claim for VAT. The VAT Registration Number was said to be N/A.

Mrs Ramasamy's explanation.

38. Mrs Ramasamy has attempted to explain the position in paragraphs 31 to 36 of her third witness statement and paragraphs 2 – 9 of her fourth witness statement[4].

39. In her third witness statement she says:

> 31 … [m]y accountant had suggested that I may have to register VAT again in 2013 as I might be above the threshold amount based on the Invoices I have raised. However since some of the Invoice remained unpaid the VAT was not registered.
>
> "32 The issue came up again in late 2014 and I applied again in February 2015 for the VAT to be backdated to December 2014 …
>
> "33 VAT was due to be registered in 2012/2013 and that was the reason I was entered VAT amount as I will have to pay the VAT backdating the time the amount is over the threshold. There was no intention on my part to claim VAT for my benefit.
>
> "…
>
> "36 … every year I have the same discussion with the Accountant to make sure I complied with the VAT threshold".

40. In her fourth witness statement she makes a number of points. She denies she was dishonest in charging clients VAT. It was only one invoice which was circulated to four different firms as she was advised she would have to pay VAT as it would exceed the threshold. However it was apparent to her that the income did not exceed the threshold. The SRA have not paid the costs involved in the claim. She requested HMRC to backdate the VAT to December 2014.

Discussion

41. The Law Society makes a number of points in answer to these explanations. I shall only refer to three of them. First, the claims for VAT extend over a lengthy period. On any view it was from February 2013 to August 2013. If one takes into account that Mrs Ramasamy did not retract the claim for VAT in the two final communications to the Compensation Fund it would extend to January 2014.

42. Second, the period is well before the date of registration and any requested backdating. If it was apparent that the income did not exceed the threshold it is not clear why she claimed VAT.

43. Third the explanation does not begin to explain why Mrs Ramasamy told Mr Sharif's solicitors that VAT was payable on the costs of £5,400 yet the bill to Mr Pathania did not contain a claim for VAT. Equally it does not explain why Mrs Ramasamy was not charging VAT to any of her clients over this period.

44. As already noted I am not required to make a finding of dishonesty. In the absence of cross-examination or an admission it would be wrong to do so. However, after taking into account Mrs Ramasamy's explanations I am satisfied that that there is good reason to suspect

[4] Also called her third.

that her conduct in claiming the VAT was dishonest by the ordinary standards of reasonable and honest people and that she realised that by those standards her conduct was dishonest. The documents speak for themselves and in my view the evidence is both clear and cogent.

5 The hearing on 12 December 2011

45. This concerns an action between Mr Sharma, Glow Well Management Ltd and Mr Rabindraneth (the Claimants) and Colemans (the Defendant). The Claimants had been introduced to the Firm by Mr Pathania and had been represented by the Firm since August 2011.

46. The hearing on 12 December 2011 was a costs hearing before Master Simons. The transcript of the proceedings shows that the Claimants were represented by Mr Singh (a paralegal from the Firm) and the Defendant was represented by Miss Williams (a solicitor from the Defendant firm).

47. The application was an application by Miss Williams for a detailed assessment of 2 bills. The matter was somewhat complicated because there was an argument that the judgment that had been obtained was irregular. During the course of the hearing Mr Singh made submissions as to whether the judgment was irregular complaining that the Claimants should have been notified before judgment was entered.

48. Miss Williams has a file note dated 14 December 2011 which records a conversation with Mr Singh at the firm and which reads:

> Conf'd I emailed him 15 minutes ago re draft order. He hasn't rec'd it. KW resending. He'll call in 10 mins if still not received.

49. On 16 December 2011 Mrs Ramasamy sent an email to Mr Sharma which reads:

> "We shall appreciate if you would please forward our fee of £600.00 for attendance in court on 12th December 2011 and drafting draft order, liaising with other side and forwarding to court for seal."

50. It is the Law Society's case that Mr Singh was in fact Mr Pathania. It will be recalled that his first two names are Rajesh Singh. Furthermore in much of the litigation on his behalf he was known as Rajesh Singh. However if he appeared in a hearing on behalf of the Firm without the sanction of the SRA there would be a clear contravention of restrictions on employing a struck off solicitor.

Mrs Ramasamy's explanations.

51. Mrs Ramasamy has consistently denied that Mr Pathania attended the relevant hearing on behalf of the Firm. In short, her stance is that she did not instruct anyone from the Firm to attend the hearing, and that if (which she does not necessarily accept) Mr Pathania attended, this was at Mr Sharma's express invitation.

52. At her first interview Mrs Ramasamy denied that Mr Pathania had ever attended Court on behalf of the Firm

53. In the second interview she said she did not know who had attended Court and asserted that she "didn't send anyone". She refused to accept that Mr Pathania had attended, but said that, if he had, this was because Mr Sharma "has taken him". She suggested that the relevant "Mr Singh" might have been a work experience individual she had hosted named Rajinder Singh.

54. In the response dated 2 June 2015 Mrs Ramasamy said:

> "I do not know which Mr Singh attended court. If Mr Pathania did attend and did address the court, it must have been at the express invitation of Mr Sharma and not on my instruction".
>
> "I reiterate that even if Mr Pathania has attended it would have been on the invitation of Mr Sharma without my knowledge. I wish to categorically state in response to her statement that I did not instruct any person in the name of Mr Singh or Mr Hussain to attend the hearing on the 12th December 2011. I only had a work experience staff by the name of Rajinder Singh working for me during the period however I did not instruct him to attend court on 12th December 2011."

55. Mrs Ramasamy repeated this explanation in her first witness statement.

56. If this explanation is correct there was no basis for the email Mrs Ramasamy sent to Mr Sharma on 16 December 2011. If she did not instruct anyone to attend the hearing she was not entitled to the £600 fee.

57. Her explanation at the second interview was that she had sent it because Mr Sharma had asked her to, in light of a dispute as to payment of fees he was having with his partner and Mr Ravindranath:

> "[Mr Sharma] asked me to, he didn't say he'd taken anyone, all he asked me, all the various work I've done, he's paying some of the fees but his partner is paying nothing. … [T]hey are both partners, they have to pay 50/50 so because the reason Jai Sharma is now complaining is because he asked us to bill his partner, he was in dispute with his partner, his partner doesn't pay anything towards the fees although they both came and agreed".

Discussion

58. The Law Society's primary position is that Mr Pathania attended the hearing on behalf of the Firm on the authority of Mrs Ramasamy. It relies on a number of matters in support of this. Mrs Ramasamy had conduct of the litigation on behalf of the Firm. There is no reason why she would not have sent a representative to the hearing. The conduct of the hearing was not something that could possibly have been entrusted to a work experience individual. Rajesh Singh was a name used by Mr Pathania. Mr Pathania's attendance is consistent with the attendance note of 14 December 2011 and the email sent on 16 December 2011. There is a witness statement dated 30 March 2015 from Mr Sharma who confirms (in paragraph 34) that Mr Pathania attended on behalf of the Firm. It accordingly contends that the denials by Mrs Ramasamy are evidence of dishonesty.

59. If, however, the primary position is not correct, the Law Society's alternative position is that the sending of the email of 16 December was evidence of dishonesty. It was manifestly dishonest for Mrs Ramasamy in order to assist one client who was in dispute with another client to concoct an email seeking fees for which (on her case) there was no basis to charge.

60. After taking into account Mrs Ramasamy's explanations I am satisfied that there is good reason to suspect that she was dishonest by the ordinary standards of reasonable and honest people and that she realised that by those standards her conduct was dishonest. The documents speak for themselves and in my view the evidence is both clear and cogent.

61. I agree with the Law Society that the more likely explanation is that Mr Pathania did attend the hearing on behalf of the Firm, that Mrs Ramasamy was aware of this and that accordingly there is good reason to suspect dishonesty in relation to her replies. However I also agree that if she did not instruct Mr Pathania to attend there is good reason to suspect dishonesty in relation to the sending of the email.

6 Gross Incompetence

62. There is no doubt that Mrs Ramasamy made a negligent mistake in not appreciating that Mr Pathania's claims had vested in his trustee and that Mr Pathania could not pursue them until they had been validly re-assigned back to him by the Trustee. As a result she was visited with a wasted costs order on one occasion.

63. However I would not castigate that mistake as "gross negligence". Equally I would not consider that it justified disciplinary proceedings against Mrs Ramasamy. She had professional indemnity insurance and (if the value of the claim exceeded her excess) the matter could have been dealt with by her insurers. The fact that the same error occurred on a number of occasions before Mrs Ramasamy was aware of it does not, to my mind, make it any worse.

64. Mr Tabachnik accepted that the error would not by itself have justified an intervention but suggested that it could be cumulated with the other more serious allegations. With respect I do not agree. In my view this was not a disciplinary matter and the existence of other disciplinary matters did not transform it.

7 Use by Mr Pathania of the M Hussain email account

65. Mr Mutahar Hussain was an administrative assistant employed by the Firm. The Law Society contends that there is overwhelming evidence that Mr Pathania was afforded effective access to the email account in Mr Hussain's name. It further contends that Mrs Ramasamy knew perfectly well that Mr Pathania had use of the "M.Hussain" email account, and that there is reason to suspect that her denials at both interviews with the Law Society were not honest.

Mrs Ramasamy's denials

66. In her first interview Mrs Ramasamy was asked a series of questions about the use by Mr Pathania of the Firm's IT. Amongst other things she said:

1. That Mr Pathania (Mr Singh) used a computer for his own cases. It is not networked or connected to the other three computers. He did not have access to client documents.
2. That Mr Pathania did not have an email address at the firm and did not use any of the staff email addresses. He did not use Mr Hussain's email address. She could be sure about this because the computer did not give access to anyone else's emails.

67. In her second interview she repeated these denials. In particular she denied in emphatic terms that Mr Singh had access to anyone's email accounts. In doing so she used words such as "Definitely not", and "No, No, No" in answer to a question whether he could use Mr Hussain's or her account.

Evidence of use

68. In his skeleton argument Mr Tabachnik provided an extensive list of examples which showed that Mr Pathania had in fact made use of the M Hussain account.

69. In the course of his submissions Mr Barnett accepted that Mr Pathania was permitted to use the M Hussain account but contended that the position had changed since 2012. He also pointed out that the M Hussain account was in fact used by a number of employees of the Firm.

70. In those circumstances I shall not set out all the examples relied on by Mr Tabachnik. It is, however, necessary to refer to some of them.

Oliver Jones

71. Mr Jones was a costs lawyer instructed by the Firm during the first part of 2012 in relation to the case of *Sharma v Colemans Solicitors*. Mr Jones exhibits an email exchange between himself and the M Hussain account in February and March 2012. A number of points can be made about these emails:

1. 5 of the emails from the account are signed by a person described as "Rajesh". 4 of the emails to the account are addressed to "Rajesh". 3 of the emails are copied to Mrs Ramasamy's own email address.
2. In his witness statement Mr Jones stated that he spoke to a man called Rajesh on perhaps 3 or 4 occasions.
3. At her second interview these emails were shown to Mrs Ramasamy. She maintained her denial and suggested that she had dictated the emails to Mr Hussein and that he had misspelt her name. When asked about Mr Jones's telephone conversations with "a man" she was not able to give any clear answer save to suggest that he might have spoken to one of her previous workers.

Victoria Roberts

72. On 21 January 2013 an email was sent from the M Hussain account to Victoria Roberts (Counsel) giving her instructions in relation to a money claim for £14,000. The email includes:

> I acted for the Defendant on sale transaction my Firm was later closed by SRA as I was stuck in India due to my VISA problem.

73. The Law Society suggests that this can only refer to Mr Pathania's firm. It points out that there is reference to Mr Pathania's VISA problems in the SDT decision when he was struck off. It also points out that the subject of the email was "ahmed khan". Victoria Roberts was instructed in the litigation between Mr Pathania and Ahmed Khan.

Emails between December 2014 and May 2015

74. On 23 December 2014 an IT provider, Mr Richardson sent an email to the M. Hussain account concerning the purchase of a USB Drive and backup for the Firm. The email is addressed to Mr Singh. Mr Richardson had emailed "M. Hussain" earlier that day commencing the email "Hi Mr Singh" and expressing good wishes that "Rajes gets better soon" (a reference to Mrs Ramasamy, who had just undergone surgery).

75. There are similar such emails from other people addressed to Mr Singh and regarding the Firm's website and server on 23 December 2014 and 13 March 2015.

76. In the period December 2014 to May 2015, there were a considerable number of emails relating to the Firm's tax and VAT affairs, and its annual accounts. These include numerous emails between Mr Siddiqui (the Firm's accountant) and "M. Hussain". In one such email dated 22 December 2014 (relating to new payroll software) Mr Siddiqui had suggested that "*it may be better if you get one of your assistants to enter the address*". On 21 December 2014 (the day before) Mr Siddiqui had instructed one of his assistants (copying in the M Hussain account and Mrs Ramasamy) to "*call Rajesh on … to set up paye"* The number given was the phone number of the firm.

77. On 25 January 2015 Mr Sritharan, an employee of the Firm sent an email to the M Hussain account addressed to Mr Singh.

Discussion

78. The Law Society submits that this evidence shows extensive use of the M Hussain account by Mr Pathania and that that use continued up to May 2015. It contends that Mrs Ramasamy must have known about that use. It relies on the fact that this was a small firm with only 2 or 3 offices, that many of the emails were copied to Mrs Ramasamy and that other employees of the Firm knew that Mr Pathania was using the M Hussain account. It is inconceivable that Mrs Ramasamy did not also know.

79. In my view there is no answer to these submissions. In my view there is good reason to suspect that Mrs Ramasamy's emphatic denials that Mr Pathania was using the M Hussain account were dishonest by the ordinary standards of reasonable and honest people and that she realised that by those standards the denials were dishonest. The documents speak for themselves and in my view the evidence is both clear and cogent. In the context of the investigation by FI the question whether Mr Pathania was using the M Hussain account was plainly of considerable importance.

8 Permitting Mr Pathania to be involved in Management

Law

80. Rule 8.6(a) of the SRA's Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 provides that an "authorised body must ensure that any manager or owner of the authorised body … has been approved by the SRA". It is not in dispute that the Firm was "an authorised body" and that Mr Pathania was not approved by the SRA as a manager or owner. Thus the question is whether Mr Pathania had a management role within the Firm.

81. Mr Tabachnik referred me to the decision of Tim Kerr QC in *Shah v Law Society* [2014] EWHC 4832 (Ch) which gives some guidance on the necessary test. The case in fact involved the grant of an injunction rather than intervention and the question whether the Law Society should have applied for an injunction in this case is part of the balancing exercise that has to be performed later in this judgment.

82. In paragraph 56 of the judgment Tim Kerr QC summarised the evidence that he found sufficient to establish a management role:

> "It shows that Mr Shah advised on or influenced recruitment decisions made by Ms Fosuhene on behalf of Trinity, in the case of Mr Akondan and Mr Naveed; that he assisted Trinity in its response to Mr Mansoori's complaint; that he "has a tendency to volunteer advice" (in his own words); that he advised on the acquisition of office premises by Trinity; that he had a telephone extension number at Trinity; that he was physically working from within the firm's office premises from late January to March 2014; that he was party to an arrangement whereby Ms Fosuhene was shown as an employee of Bradwell; and that he was the author of legal documents prepared on behalf of Trinity."

Evidence of Management Role

83. In paragraph 57 of his skeleton argument Mr Tabachnik summarises the evidence under a number of headings some of which I have already referred to:

PAYE

84. There is evidence that Mr Pathania was involved in setting up the new PAYE payroll system for the firm in December 2014. In addition Mr Tabachnik drew my attention to an email dated 22 December 2014 (from the M Hussain account) regarding the registration of Mr Goffar.

There is a witness statement from Mr Goffar which suggests that he may have sent the email at Mr Pathania's dictation. However even if right it is still evidence that Mr Pathania was involved in the registration of a new employee – a management role within the firm.

Tax, VAT and Annual Accounts

85. There are a number of emails in the period December 2014 and May 2015 between Mr Siddiqui and "M.Hussain" which relate to the Firm's tax and VAT affairs, and annual accounts. These include:

1. Emails about the registration for VAT
2. Emails asking for details of a loan of £125,000 and an income item of £6,500
3. An email on 9 May 2015 from Mr Siddiqui to the M Hussain account in which M Hussain tells Mr Siddiqui "… I have to pay lot of tax is it possible you can give me online system to make payment", and when pressed on what tax or bill this refers to, he responds "no not your bill The tax of Rajesway" Mr Siddiqui supplies the relevant reference and asks "When will you be paying our bill?".

Emails in relation to the supply of IT.

86. There are emails between Mr Richardson and Mr Pathania already referred to in relation to the supply of IT products to the Firm.

Mrs Ramasamy's case

87. In her two interviews with FI Mrs Ramasamy said that Mr Pathania was merely a client of the Firm (with a substantial volume of his own litigation), and an introducer of other clients (usually his friends) to the Firm. She said that this resulted in Mr Pathania attending the Firm's offices 2 – 3 days per week and was why he had his own desk at the Firm (initially in the room with Mr Hussain, then with Mr Sritharan).

Discussion

88. In my view there are good grounds for believing that Mr Pathania was far more involved in the Firm than is disclosed in Mrs Ramasamy's replies in the two interviews. In my view the matters relied on by the Law Society do demonstrate cogent evidence that Mr Pathania was involved in the management of the firm and that that involvement continued up to the intervention in June 2015.

9 Employment of Mr Pathania/ Aiding and Abetting Prohibited Functions.

Law

89. Under s 41 of the Act:

> No solicitor shall, except in accordance with a written permission granted under this section, employ or remunerate in connection with his practice as a solicitor any person who to his knowledge is disqualified from practising as a solicitor by reason of the fact that: (a) his name has been struck off the roll …

90. In his skeleton argument Mr Tabachnik referred me also to Rule 8.6(c) of the SRA's Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 which provides that an authorised body must not "employ or remunerate a person" who is a struck off solicitor.

91. Further, Note (xv) to this provision states:

> "The scope of the duty in Rule 8.6(c) is beyond the strict employer-servant relationship (contract of service) and includes a relationship founded on a contract of services or indirect arrangements which are intended to have the effect of frustrating this rule".

92. Similarly under ss 13 and 14 of the Legal Services Act 2007 a person is only entitled to carry on "reserved legal activity" if authorised to do so, or if exempt from authorisation. Under s 12(1)(b) the conduct of litigation is a reserved legal activity. This includes (a) the issuing of proceedings before any court; (b) the commencement, prosecution and defence of such proceedings, and (c) the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions).

Mrs Ramasamy's position

93. Mrs Ramasamy has filed a number of statements from clients or former clients who have said that they were told that Mr Pathania was a struck off solicitor who was not employed by the Firm.

94. It is the Law Society's case that the true position was markedly different from this.

The evidence

95. It will be recalled that in her first interview Mrs Ramasamy accepted that Mr Pathania had "overstepped the mark". That was based on material placed before her in 3 cases – Syed Azeem, Mohammed Zbed, and Ana Miah.

96. The Law Society now submits that there had already been other occasions on which Mr Pathania had acted for the Firm's clients, to Mrs Ramasamy's knowledge, and that this course of action continued, notwithstanding the evident warning which Mrs Ramasamy should have understood after the first interview.

The Sharma et al v Coleman litigation

97. The Law Society rely on three matters. First it relies on the attendance at the 12 December 2011 hearing referred to above. Second it relies on a number of file notes taken by Miss Williams (the solicitor at Colemans) which evidence phone calls between herself and Mr Singh between December 2011 and January 2013. At the second interview Mrs Ramasamy denied that they referred to Mr Pathania but could not suggest any credible alternative recipient. Third it relies on emails in September 2011 relating to the case which were sent from and/or forwarded to Mr Pathania's personal email address.

The Middlesbrough County Court

98. Mr Pathania was the Defendant in an action by National Westminster Bank plc in respect of residential property in Middlesbrough. On 18 November 2012 Mrs Ramasamy on behalf of Mr Pathania sent an application to the Court to suspend the warrant for possession which was due for execution on 19 November 2012. The application was supported by an additional sheet signed by Mr Pathania which set out his financial position including the fact that he was made bankrupt on 29 June 2010. The document continues:

> "I have now obtained a permanent position in a solicitors Firm working as a clerk to the solicitors and earn now £1200 per month after paying my mortgage and living expenses I am able to save £300 per month which now I can afford to pay.

99. The Law Society submits that this is clear evidence of employment by the Firm. It points out that Mrs Ramasamy has not chosen to explain this document in any of her evidence or in the submissions of Mr Barnett.

100. Mr Tabachnik also referred to the fact that in the first interview Mrs Ramasamy described what might loosely be described as a sort of "no win no fee arrangement" in respect of work carried out for Mr Pathania. He suggested that this was sufficient to constitute remuneration in return for services.

Other Matters

101. In paragraphs 68.2.to 68.5 of his skeleton argument Mr Tabachnik identifies 4 other occasions where Mr Pathania appears to be performing prohibited functions. These include:

1. An email exchange dated 30 January 2015 between Abedur Shimu and "Rajesh" (using the M Hussain account) Mr Pathania asks if he is in a position to obtain a deed of assignment. Mr Shimu refers to the fact that he has a requested a consent from his insolvency manager.
2. An email dated 6 March 2015 from Mr Shah addressed to "Mr Rajesh" at the M Hussain account. It refers to a visit by the bailiffs in respect of unpaid council tax. He enclosed a letter which he had been given and asked for Mr Pathania's "immediate reaction", asked him to contact the bailiffs and deal with the matter that day. It referred to previous warrants that he had dealt with.
3. An email exchange on 7, 9 and 12 March 2015 between the M Hussain account and "Nimesh". The email from Nimesh is addressed to "Rajesh". The first email encloses a Notice of Hearing. The email from Nimesh states that £300 has been paid to the Firm for a barrister – Isabella.
4. On 9 March 2015 Ms Macheneni sent an email to the M Hussain account addressed to "Rajesh" in which she enclosed a detailed letter from a firm of estate agents which deals with the state of a flat and the proposal by the landlord that the tenant's deposit will be forfeited.

Discussion

102. It is plain from the evidence filed and from the submissions filed by Mr Barnett that Mrs Ramasamy criticises the failure by the Law Society to file evidence from Mr Pathania and Mr Sharma. She suggests (though not in evidence) that there is some form of conspiracy between Mr Sharma and Mr Pathania which would enable Mr Sharma to avoid paying the Firm's fees and that there are challenges to the oral evidence filed on behalf of the Law Society.

103. I am conscious of these points and the fact that I am not in a position to make findings of fact. It is for that reason that in this judgment I have concentrated on the documents including the replies given by Mrs Ramasamy in her two interviews. I have also taken into account the large number of detailed allegations that Mrs Ramasamy has chosen not to deal with. A good example is the letter sent to the Middlesbrough County Court in November 2012.

104. Despite the evidence of her former clients I am satisfied that there is good reason to believe:

1. That at least from 2011 that Mr Pathania has been performing prohibited services on behalf of the Firm. These include giving legal advice, making applications to Court and appearing on behalf of clients of the Firm.
2. That the situation continued up until the intervention in June 2015
3. That Mrs Ramasamy must have been aware that Mr Pathania was performing those services on behalf of the Firm.
4. That the relationship between Mrs Ramasamy and Mr Pathania was sufficient to amount to a prohibited employment in the absence of authorisation by the SRA.

105. There is also good reason to believe that Mrs Ramasamy's answers in the second interview that Mr Pathania had never worked on a client file was wrong to her knowledge and dishonest within the relevant test.

106. I am satisfied that the documents provide sufficiently clear and cogent evidence of these matters.

10 The Balancing Exercise.

107. As is clear from *Sheikh* I have to weigh the risks of reinstating Mrs Ramasamy in her practice against the potentially catastrophic consequences to her (and the inconvenience, and perhaps real harm, to her existing clients) if the intervention continues. In weighing the risks of reinstatement I must have regard to the views of the Law Society.

108. I have set out Mr Barnett's submissions which are made in paragraph 73 of his skeleton argument. Whilst I accept that the allegation in relation to Mr McLanachan has not been pursued, I have found that there is good reason to suspect dishonesty in a number of other serious allegations. For reasons set out in detail above I am satisfied that the other allegations are based on sufficiently good, clear and cogent evidence.

109. Thus the question for me is whether the allegations are sufficiently serious to justify intervention.

110. Mr Barnett points to the fact that there is no allegation that the clients funds are at risk, that there are good references from Mrs Ramasamy's clients and that there is no significant risk to the public or to the Firm's clients.

111. Mr Tabachnik points out that it is now over 8 months since the intervention, that Mrs Ramasamy has not sought to lift the suspension or apply for a new practising certificate. There is no realistic possibility of the files being returned to her or (without a practising certificate) that any client or office money would be returned. He points out that it is unlikely that she would be granted an unconditional certificate. If she did apply for a certificate it is highly unlikely that she would be able to practice as an unsupervised sole practitioner. In the absence of an application this is speculation.

112. He points to the fact that this is a case where there is good reason to believe substantial dishonesty by Mrs Ramasamy even though it does not involve client funds. In paragraphs 50 to 55 of his skeleton he sets out the Law Society's concerns in some detail.

113. As he points out the Law Society's concerns go well beyond her association with Mr Pathania. Mr Pathania was struck for serious breaches of the rules and irregularities. Even though he did not act dishonestly he posed a risk to the public and to the profession. There were no conditions that could be attached to his practising certificate that were appropriate. There has been no application by Mrs Ramasamy to authorise the employment of Mr Pathania. He concludes in paragraph 55 in this way:

> The Law Society's primary concern on this aspect of the case is that, if the intervention were ordered to be withdrawn and the practice restored to Mrs Ramasamy, she would resume her quasi-partnership / professional relationship with [Mr Pathania], such that the latter would once again have a front through which to service his friends / putative clients. In light of [Mr Pathania's] adverse regulatory history, this is not an outcome which the Law Society would regard as in the public interest

114. In my view there is force in Mr Tabachnik's submissions which I prefer. The application to withdraw the intervention is refused.

115. I cannot leave this case without expressing gratitude to Counsel and the solicitors on both sides for the way this case has been presented. The skeleton arguments were clear, detailed and extremely helpful. The oral submissions were clear and concise. This enabled a large amount of material to be covered in a relatively short period of time.