



Neutral Citation Number: [2022] EWHC 2882 (Admin)

Case No: CO/102/2022

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

**ON APPEAL FROM THE SOLICITORS DISCIPLINARY TRIBUNAL**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 15 November 2022

**Before :**

**THE HONOURABLE MR JUSTICE MURRAY**

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**Between :**

**FARID EL DIWANY**  
**- and -**  
**SOLICITORS REGULATION AUTHORITY**  
**LIMITED**

**Appellant**

**Respondent**

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**The Appellant** appeared in person and represented himself.

**Mr Benjamin Tankel** (instructed by **Capsticks LLP**) for the **Respondent**

Hearing date: 18 October 2022  
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**Approved Judgment**

This judgment was handed down remotely by circulation to the Appellant and the Respondent's representatives by email and release to The National Archives. The date and time for hand-down are deemed to be 15 November 2022 at 10:30 am.

**Mr Justice Murray :**

1. This is an appeal by the appellant, Mr Farid El Diwany, under section 49(1) of the Solicitors Act 1974 against an order of the Solicitors Disciplinary Tribunal (“the SDT”) dated 18 November 2021 (“the Order”) refusing his application dated 5 August 2021 to be restored to the Roll of Solicitors (“the Restoration Application”).
2. The SDT had struck Mr El Diwany off the Roll of Solicitors by its order dated 11 December 2019 (“the 2019 SDT Decision”).
3. The hearing before the SDT at which the Order was made refusing the Restoration Application took place on 18 November 2021 (“the Hearing”).
4. Roughly a week before the Hearing, Mr El Diwany applied for the SDT panel to recuse itself from hearing the Restoration Application (“the Recusal Application”) on the basis that it was not properly qualified to adjudicate on the Restoration Application given the Norwegian state-endorsed Islamophobic abuse of Mr El Diwany that formed an important part of the background to the 2019 SDT Decision and which needed to be taken into account as part of the SDT’s consideration of the Restoration Application.
5. The SDT set out its reasons for making the Order in a written judgment dated 14 December 2021 (“the Judgment”).
6. At the end of the hearing before me, I dismissed the appeal and said that I considered that the grounds of appeal put forward by Mr El Diwany were totally without merit. I gave summary reasons for my decision and indicated that I would provide my full written reasons in due course. These are my reasons.
7. Mr El Diwany has represented himself on this appeal as he did before the SDT in 2019 and in 2021. I made appropriate allowance for that during the hearing and when considering his written materials, which are lengthy, diffuse, and repetitive and which include a lot of background material of considerable personal importance to Mr El Diwany but which, as I pointed out to Mr El Diwany during the hearing, are not relevant, strictly speaking, to the issues that arise on this appeal. Nonetheless, I had regard to all the materials he put before the court for this appeal in his initial bundle and in his updated bundle. I also had regard to his original skeleton argument, his updated skeleton argument, and his written reply to the skeleton argument for the respondent, the Solicitors Regulation Authority Limited (“the SRA”).
8. I also had the benefit of a supplemental bundle and skeleton argument from the SRA.
9. Mr El Diwany appeals against the Order on the following grounds, which I have slightly reformulated based on the Grounds of Appeal dated 4 January 2022, having regard to his case as set out in his skeleton arguments and his oral submissions:
  - i) Ground 1: the SDT was wholly unreasonable not to grant the Restoration Application given that he is a fit and proper person and in no need of rehabilitation before re-admission to the Roll of Solicitors;
  - ii) Ground 2: the SDT panel were wrong to refuse the Recusal Application;

- iii) Ground 3: the SDT acted unreasonably in requiring:
  - a) evidence of employment; and/or
  - b) evidence from solicitors as to his suitability for work as a solicitor as a condition of restoration to the Roll of Solicitors,given that he had not been working for three years before being struck off on 11 December 2020 and simply wanted to be restored to the position he was in before being struck off, namely, registration on the Roll of Solicitors without necessarily having to work;
- iv) Ground 4: the SDT in the Judgment misrepresented the facts in relation to the earlier matters in Norway that led to the 2019 SDT Decision and demonstrated an inability to reach a decision independently of the decision of Saini J in which he dismissed Mr El Diwany’s appeal against the 2019 SDT Decision (neutral citation: [2021] EWHC 275 (Admin)) (“the Saini J Judgment”), even though it was open to the SDT to do so on the facts;
- v) Ground 5: the SDT panel demonstrated at the hearing on 18 November 2021 (“the Hearing”) an inability to rethink and revise previous misconceptions, which, had it done so, would have enabled it to reach a greater degree of understanding and sympathy for the unique circumstances of Mr El Diwany’s case, which would have led the panel to grant the Restoration Application;
- vi) Ground 6: the SDT panel failed to engage with Mr El Diwany at the Hearing to disclose its thinking or possible objections to his readmission, which, had it done so, would have enabled him “to clarify and rebut and reassure”, the result of this failure by the SDT panel being that the hearing was unfair to Mr El Diwany.

*Adjournment applications by Mr El Diwany*

- 10. Shortly before the hearing of this appeal, on 20 September 2022, Mr El Diwany applied to adjourn the appeal on various grounds, none of which, in my judgment, had any merit. I therefore refused the adjournment in an order that I made on 17 October 2022, to which I appended my reasons for refusing the application. I also certified the application as totally without merit.
- 11. On the evening before the hearing of this appeal, Mr El Diwany sought an adjournment on a new ground. Through my clerk, I indicated to the parties that I would consider this new adjournment application at the beginning of the appeal hearing.
- 12. By way of background to this further adjournment application:
  - i) On 29 March 2022 Warby LJ, on consideration of the papers, refused Mr El Diwany’s application for permission to appeal to the Court of Appeal Saini J’s order dismissing Mr El Diwany’s appeal (“the Saini J Order”) against the 2019 SDT Decision.

- ii) Mr El Diwany then made an application to the Court of Appeal for Warby LJ to set aside his order refusing permission to appeal the Saini J Order (“the Set-Aside Application”) on the basis that he should recuse himself for reasons that are immaterial for present purposes.
  - iii) On 17 October 2022, Warby LJ made an order referring the Set-Aside Application to another member of the Court of Appeal. In his reasons for doing so, Warby LJ said, in brief, that he did not consider that he should recuse himself, but that in all the circumstances it was better that the matter be determined by another member of the Court of Appeal.
13. In support of his new adjournment application, Mr El Diwany said, in summary, that if his application to the Court of Appeal to set aside Warby LJ’s order refusing to permission to appeal the Saini J Order was successful, then that raised the possibility that on a new determination he would be granted permission to appeal by a different member of the Court of Appeal, which, in turn, if successful, would mean that the Saini J Order would be quashed, with the possible outcome being that there would be a new hearing of his appeal against the 2019 SDT Decision, which could ultimately be decided in his favour. In those circumstances, it was a “conflict of interest” and/or an “abuse of process” to proceed with this appeal.
14. Not surprisingly, the SRA opposed the adjournment application.
15. I refused the new adjournment application on the basis that:
- i) Without having seen a copy of the Set-Aside Application or Mr El Diwany’s evidence and supporting submissions, I could not take a realistic view of his chances of success, but such applications were, to my knowledge, rarely successful.
  - ii) In any event, Warby LJ’s order of 29 March 2022 remained valid until set aside, and I had to proceed on the basis that Mr El Diwany’s appeal rights in relation to the 2019 SDT Decision were exhausted.
  - iii) In light of this, it was neither a “conflict of interest” nor “an abuse of process”. There was no other reason not to proceed to the hearing of the appeal.

*The background including the 2019 SDT decision*

16. The background to these proceedings is set out in detail in the Saini J Judgment at [11]-[33]. For present purposes, a brief summary will suffice:
- i) Mr El Diwany, who is currently 64 years old, was admitted to the Roll of Solicitors on 1 September 1987. He held a practising certificate until 6 December 2017. During the nearly 20 years that he was a practising solicitor, Mr El Diwany worked at various law firms and also for a time at the Port of London Authority.
  - ii) On 2 November 2001, Mr El Diwany was convicted in Norway of harassing a Swedish woman who has been referred to in these proceedings as “Ms H”. He was sentenced to a fine of 10,000 Norwegian Kroner (less than £900 at the current exchange rate) or alternatively to 25 days’ imprisonment.

- iii) On 17 October 2003, Mr El Diwany was convicted in Norway of a second offence of harassment. This related to a publicity campaign conducted by Mr El Diwany, in part through a website [www.norwayuncovered.com](http://www.norwayuncovered.com). He was sentenced to an 8-month prison sentence, suspended for two years. The sentence was imposed with conditions, including that Mr El Diwany remove the offending information from the website and refrain from contacting Ms H in any way. Nevertheless, the website remained online until at least 2013. Mr El Diwany freely admitted during the hearing before me and in his written materials submitted for the appeal that he continues to operate websites containing similar material, as he considers it important to expose Islamophobia in Norway.
- iv) Mr El Diwany's last period of employment as a solicitor was between 23 February 2015 and 1 February 2017 with a firm named Gawor & Co.
- v) On 9 February 2017 the SRA received a report from a partner at Gawor & Co that Mr El Diwany had admitted that he had a criminal record in Norway for harassment, which he had failed to disclose when he was hired by the firm or during the time he worked for the firm until on or about 1 February 2017. Upon making this admission to a member of the firm, he had been dismissed.
- vi) The SRA subsequently undertook an investigation. On 12 March 2019, the SRA referred Mr El Diwany to the SDT, alleging that:
  - a) Allegation 1.1: On 2 November 2001 and 17 October 2003 he was convicted of harassment offences in Norway in contravention of section 390(a) of the Norwegian Penal Code, this being a breach of Rule 1.08(1) of the Solicitors Practice Rules 1990; and
  - b) Allegation 1.2: He failed to notify his regulator about the convictions referred to in allegation 1.1 in breach of the following rules and principles:
    - i) from the date of the convictions until 1 July 2007, Rule 1.08(1) of the Solicitors Practice Rules 1990;
    - ii) from 1 July 2007 until 5 November 2011, either or both of Rules 1.02 and 1.06 of the Solicitors Code of Conduct 2007; and
    - iii) from 5 November 2011 to the date of the Hearing, all or any of Principles 2, 6 and 7 of the SRA Principles 2011 and Outcome 10.3 of the SRA Code of Conduct 2011.
- vii) It was the SRA's case that the allegations amounted to or arose out of breaches by Mr El Diwany of several of the SRA's professional standards, including the duty to act with integrity and the duty to act in a way that maintains public confidence in the profession.
- viii) Mr El Diwany's defence was that his conduct in Norway was justified by the fact that Ms H had told lies about him that were reported in the Norwegian

press and that both she and the Norwegian press were Islamophobic. He contended also that his convictions were unsound for various reasons, including that they were procedurally unfair and that he was not given a fair opportunity to advance his provocation defence.

- ix) On 11 December 2019, the SDT found the allegations against Mr El Diwany to have been proved and made the 2019 SDT Decision, striking Mr El Diwany off the Roll of Solicitors. Its reasons for doing so were set out in its written judgment handed down on 17 January 2020.
- x) Mr El Diwany appealed the 2019 SDT Decision under section 49(1) of the Solicitors Act 1974, the matter coming before Saini J at a two-day hearing on 3-4 February 2021. Following that appeal hearing, Saini J made the Saini J Order dismissing the appeal. He set out his reasons for doing so in the Saini J Judgment.
- xi) As already noted, on 29 March 2021, Warby LJ refused Mr El Diwany's application for permission to appeal the Saini J Order to the Court of Appeal. I have also already referred to Mr El Diwany's subsequent Set-Aside Application and the current status of that.

#### *The Hearing and the Judgment*

- 17. The Restoration Application was made on 5 August 2021, just under 20 months after Mr El Diwany was struck off the Roll of Solicitors by virtue of the 2019 SDT Decision. The SDT's published guidance on restoration applications, in Part B of the SDT's "Guidance Note on Other Powers of the Tribunal" (5<sup>th</sup> edition – December 2021) ("the SDT Guidance") at paragraph 8, 5<sup>th</sup> bullet point, indicates that, save "in the most exceptional circumstances", the SDT would likely regard as premature an application to restore a solicitor to the Roll within six years of the date of striking-off.
- 18. The SRA, in its response dated 2 September 2021 to the Restoration Application, opposed the Restoration Application on the basis that it was bound to fail as it was totally without merit.
- 19. Mr El Diwany filed a reply dated 4 September 2021 to the SRA's response.
- 20. On 12 November 2021, the SDT held a case management hearing before the panel that was constituted to hear the Restoration Application, Mr El Diwany appearing in person and the SRA being represented by Mr Nathan Cook, a solicitor employed by the SRA. The SDT panel of three members included one lay member and two solicitors, one of whom was the chair of the panel. On the same day, Mr El Diwany made the Recusal Application.
- 21. The Hearing took place before the same SDT panel on 18 November 2021. Mr El Diwany once again appeared in person and the SRA was represented by Mr Cook.
- 22. The SDT dealt first with the Recusal Application.
- 23. Mr El Diwany made the Recusal Application on the basis that none of the SDT panel members was a Muslim and that only an all-Muslim panel could determine the Restoration Application fairly given the background of Norwegian state-endorsed

Islamophobic abuse of Mr El Diwany that was an important part of his case that his convictions in Norway were unsound. He submitted that if a non-Muslim panel of the SDT panel were to hear the Restoration Application that would demonstrate actual and apparent bias against him. He complained that the SDT panel that made the 2019 SDT Decision demonstrated bias against him and the fact that the SDT panel in 2019 contained no Muslim members was evidence of Islamophobia by the SDT. He could therefore not expect a fair hearing of his case.

24. The SRA opposed the Recusal application on the basis of the normal test, laid down in *Porter v Magill* [2001] UKHL 67, [2002] 2 AC 357 (Lord Hope of Craighead) at [103], namely:

“... whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.”

25. Mr Cook also drew the attention of the SDT to the following passage in *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451 (CA) at [25]:

“It would be dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. Everything will depend on the facts, which may include the nature of the issue to be decided. We cannot, however, conceive of circumstances in which an objection could be soundly based on the *religion*, ethnic or national origin, gender, age, class, means or sexual orientation of the judge.” (emphasis added)

26. The SDT dismissed the Recusal Application. It was satisfied on the test set out in *Porter v Magill* that Mr El Diwany had presented no evidence to show that a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the SDT was biased. It also noted the passage in *Locabail*, cited by Mr Cook, in which the Court of Appeal had specifically rejected the possibility that an objection that there was a real danger of bias could be soundly based on the religious beliefs of the judge. The Recusal Application did not put forth a legitimate basis of objection to the SDT panel on the ground of bias. It was not open to Mr El Diwany to pick and choose his own panel. The SDT panel also noted that it was a professional and experienced panel, the members of which had received relevant training on unconscious bias and were familiar with the important guidance set out in the Equal Treatment Bench Book 2021, including the passages relating to Islamophobia.

27. Having refused the Recusal Application, the SDT then went on to consider the Restoration Application. At paragraph 53 of the Judgment, the SDT held that:

“The Tribunal concluded that Mr El Diwany’s application for restoration was a device to go behind his conviction and an attempt to re-litigate matters already decided upon and appealed, unsuccessfully by him: his failure to grasp this point was found by the Tribunal to be indicative of Mr El Diwany’s absolute lack of insight on the conduct which had resulted in

strike off. His combative language had illustrated his ongoing anger in relation to the events that had led to his striking off. However he had not addressed at all this essential issue, namely his lack of insight into the offences of which he had been convicted (whatever the provocation may have been), and his need to comply with all laws and regulations relevant to him as a solicitor, not just those he judged to be relevant. The content and tone of his comments had instead highlighted his continuing absence of insight.”

28. The SDT found at paragraph 57 of the Judgment that the absence of any insight meant that it could not be satisfied that Mr El Diwany had had “a total change of heart ... and a change of character” as Lord Donaldson had found that it must be satisfied on an application for restoration to the Roll of Solicitors in an unreported case, *Re a Solicitor (No 8) of 1995*. A “total change of heart” required insight, and the Restoration Application failed to provide any evidence in support of this aspect of rehabilitation.
29. The SDT noted that the Restoration Application was made a little under two years after Mr El Diwany had been struck off but the only “exceptional circumstances” that he could put forward for making the Restoration Application within so short a period was that the 2019 SDT Decision was wrong. That, in the view of the SDT, could not count as an exceptional circumstance, and there were no other exceptional circumstances that could have permitted the SDT to reach a different conclusion on this point.
30. The SDT found that Mr El Diwany had failed to provide any evidence of:
  - i) employment either within or outside the profession;
  - ii) an employment opportunity if restored to the Roll; and
  - iii) the supervision and protections that would be in place were he to be restored to the Roll.
31. The SDT concluded at paragraph 62 of the Judgment that:

“... there was no evidence before it to show any rehabilitation on the part of the Applicant since his strike off, nor any evidence of previous or prospective employment to support the application. There was no evidence of insight on the part of the Applicant as to the need to comply with law and regulation if he wished to return as a solicitor. There were no exceptional circumstances which justified him being considered for a return to the roll less than 6 years after his strike off. The Tribunal also concluded on the evidence before it that public confidence in the profession would, given the Applicant's ongoing failure to accept previous findings against him and the applicability of regulations and law to him, be damaged if the Applicant was readmitted to the profession. The application was almost in its entirety an attempt to re-open the previously concluded, and



unsuccessfully appealed, decision of the Tribunal and was bound to fail.”

32. For these reasons, the SDT refused the Restoration Application.

*Legal principles on an appeal under section 49 of the Solicitors Act 1974*

33. In relation to the legal principles that govern an appeal under section 49 of the Solicitors Act 1974, Mr Benjamin Tankel, for the SRA, referred me to the summary of the relevant principles set out by Morris J in *Ali v Solicitors Regulatory Authority Limited* [2021] EWHC 2709 (Admin) at [91]-[94]. I have borne those principles in mind. Key points for present purposes include the following:

- i) this appeal proceeds by way of review and not by way of rehearing;
- ii) the appeal will only be successful if the SDT’s decision to make the Order was “wrong” or “unjust because of a serious procedural or other irregularity in the proceedings” before the SDT; and
- iii) a decision is wrong where there is an error of law, error of fact, or an error in the exercise of discretion outside the generous ambit within which reasonable decision-makers could legitimately differ on the appropriate exercise of discretion in specific circumstances.

*The appeal against the refusal of the Recusal Application*

34. Mr El Diwany submitted that the SDT’s analysis of the Recusal Application was wrong. The particular religious affiliations or “religious beliefs” of the SDT panel were not at issue but rather their “adoption” of the flawed reasoning of the non-Muslim SDT panel that made the 2019 SDT Decision. The SDT panel in 2019 demonstrated an inability to appreciate the constituent elements of Islamophobia and the overwhelming Islamophobic abuse that Mr El Diwany had suffered as a result of Ms H’s conduct and related events in Norway, including his improperly obtained convictions, all of which “was the cause for his rebellion and which led to him being struck off” (Mr El Diwany’s updated skeleton argument at paragraph 10).

35. Mr El Diwany further submitted that the failure of the SDT panel to condemn the 2019 SDT panel’s “incompetence and vast underestimation of [Ms H’s] evil intentions to pervert the course of justice over the best part of a decade”, resulting in Mr El Diwany’s “extreme suffering”, which should not have resulted in his being struck off the Roll of Solicitors, meant that the SDT panel was “unfit to sit in judgment” on Mr El Diwany and failed the *Porter v Magill* test. A fair-minded and impartial observer, he submitted, noting that the SDT panel lacked the necessary firm knowledge of the constituent elements of Islamophobic abuse by virtue of none of its members being Muslim, would conclude that there was a real risk that the SDT panel was biased.

36. Mr El Diwany made a number of similar submissions along these and related lines in his skeleton arguments, reply to the respondent’s skeleton argument, and orally. He also relied on the SDT panel’s failure to condemn, at his invitation, the behaviour of

Ms H or the allegations reported in the Norwegian press that he was “an alleged rapist and a potential child-killer”. None of these submissions, in my view, has any merit.

37. The first point is that the SDT panel had no power or, indeed, reason to go behind the 2019 SDT Decision. Mr El Diwany’s appeal against the 2019 SDT Decision was dismissed by Saini J, and Mr El Diwany’s further application for permission to appeal the Saini J Order to the Court of Appeal was refused by Warby LJ. That exhausted his appeal rights in relation to the 2019 SDT Decision. Although Warby LJ on the day before this hearing referred the Set-Aside Application to another member of the Court of Appeal, that is not a further appellate stage. The position is that the 2019 SDT Decision stands until such time as Warby LJ’s order of 29 March 2021 is set aside. Accordingly, the SDT panel was entitled, and indeed required, to proceed on the basis of its validity.
38. The SDT panel also had no power to look into and assess the merits of events in Norway, the safety or otherwise of the Norwegian convictions, or any of the related events about which Mr El Diwany complains, including various reports in the Norwegian press reporting allegations about him and the Islamophobic abuse he received as a result of events in Norway from various sources. Not only did the SDT panel lack the power to look into or assess those matters, but also it had no realistic basis for doing so.
39. Mr El Diwany misunderstands the relatively narrow exercise that the SDT panel was required to undertake. The only task for the 2021 SDT panel was to assess whether Mr El Diwany satisfied the necessary criteria for restoration to the Roll of Solicitors. The question of any alleged or potential bias of the SDT panel needs to be considered in that light.
40. Mr El Diwany provided no evidence and made no submissions that show that there was any error in the SDT’s reasons for rejecting the Recusal Application. Mr El Diwany, in other words, did not put forward any legitimate reason why an impartial and fair-minded observer would find that there was a real risk of bias. The SDT panel identified the correct principles and gave reasons that were open to it for refusing the Recusal Application.
41. The SDT panel’s decision on the Recusal Application was not wrong and therefore not liable to be overturned on appeal. In fact, it was clearly right. There was no merit in the grounds advanced by Mr El Diwany to the SDT panel in support of the Recusal Application. Accordingly, Mr El Diwany’s appeal on Ground 2, which is the sole ground of appeal relating to the Recusal Application, is dismissed.

*The appeal against the refusal of the Restoration Application*

42. Section 47(2)(f) of the Solicitors Act 1974 sets out the power of the SDT, in relation to a solicitor who has been struck off the Roll of Solicitors, to make an order restoring him or her to the Roll.
43. The principles that the SDT should apply when considering an application for restoration to the Roll of Solicitors are set out in the leading authority of *Bolton v The Law Society* [1994] 1 WLR 512 (CA). The Master of the Rolls, Sir Thomas Bingham MR, gave the principal judgment. In *Bolton* at pp 518A-519E, he said:

“It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness. ...

Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. ...

It is important that there should be a full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element ... . In most cases the order of the Tribunal will be primarily directed to one or other or both of two other purposes. ... 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 integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession’s most valuable asset is its collective reputation and the confidence which that inspires.

... The reputation of the profession is more important than the fortunes of any individual member. Membership of the profession brings many benefits, but that is part of the price.”

44. In *Thobani v The Solicitors Regulation Authority* [2011] EWHC 3783 (Admin), Burnett J, having referred at [3]-[4] to the leading authority of *Bolton*, said at [44] and [46]:

“44. ... What is being considered is the past conduct of an applicant, an evaluation of risk for the future should someone be restored to the roll, and importantly, public confidence in the solicitors’ profession.

...

46. ... Public confidence in the integrity of the solicitors' profession is of cardinal importance. That is the leitmotif that has echoed through all of the authorities. ...”

45. In *Solicitors Regulation Authority v Kaberry* [2012] EWHC 3883 (Admin), a case involving an appeal by the SRA against an order of the SDT restoring the respondent to the Roll of Solicitors, Elias LJ in the Divisional Court made the following observations at [64] and [68] as to the considerations that the SDT must bear in mind in assessing an application for restoration:

“64. ... would the public have confidence in the solicitors' profession if it admits a person with the disciplinary and personal history of the respondent, in circumstances where it had recognised that it had to act on the assumption there was some culpability, and having regard to the amount of losses in this case, then it would have been compelled to say that it would not be appropriate to restore him to the Roll.

...

68. ... It is a hard case, but as has been emphasised so often, the overriding consideration here must be the interests of the profession, and public confidence in a proper running of the profession has to be maintained.”

46. In *Ellis-Carr v Solicitors Regulation Authority* [2014] EWHC 2411 (Admin), Collins J said at [57]:

“The appellant [solicitor] must in my judgment now appreciate that what matters is his present position and future. ... Accordingly, he should be judged on the basis of what he now is and whether there is any real prospect that notwithstanding [his] convictions he can be regarded as someone who is fitted to be on the roll of solicitors.”

47. In support of its submission that the SDT is entitled to expect to see evidence of rehabilitation, the SRA included in its skeleton argument the following quotation from *Re A Solicitor No 5 of 1983* (unreported), where Lord Donaldson said:

“I cannot see how the Disciplinary Tribunal would have agreed to his being restored without having ... been given positive evidence of his active good character and his trustworthiness in some other context; either by employment with a solicitor with leave of the Law Society or by employment in some other position which involved trust.”

48. I have already referred to Part B of the SDT Guidance, which deals with restoration applications. The SDT Guidance makes it clear that a restoration application must be supported by details of the applicant's employment and training history since the applicant was struck off as well as details of the applicant's intentions as to future employment and any offers of employment within the legal profession if the restoration application is successful.

49. The SDT Guidance also makes clear that a restoration application is not an appeal against the order of the SDT by which the applicant was originally struck off. In colloquial terms, that ship has sailed.
50. As noted in the SDT Guidance at paragraph 7:
- “7. ... The Tribunal’s function when considering an application for restoration is to determine whether the applicant has established that they are now a fit and proper person to have their name restored to the Roll/Register.”
51. Paragraph 8 of the SDT Guidance sets out in bullet point guidance and factors that the SDT will have regard to when considering and determining a restoration application. Paragraph 8 makes reference to various authorities, including *Bolton* and *Kaberry*. As I have already noted, the fifth bullet point makes clear that the SDT will have regard to the period since the order striking off the applicant, and “[s]ave in the most exceptional circumstances”, a restoration application made less than six years since the date of striking off is likely to be regarded by the SDT as premature.
52. Mr El Diwany makes a wide variety of points in his submissions in support of this appeal. He contends that the SDT’s decision to make the Order was wrong for a variety of reasons and that there were aspects of the Hearing that were unfair to him.
53. Many, if not most, of Mr El Diwany’s submissions, written and oral, were based on the premise that the 2019 SDT Decision was wrong and unfair, that the decision of Saini J to dismiss the appeal was wrong and unfair (unfair because he did not look at all the material), and/or that the decision of Warby LJ not to grant permission to appeal was wrong or unfair (unfair for the reasons set out in support of the Set-Aside Application).
54. As I explained to Mr El Diwany at the hearing, none of his submissions made on these grounds were relevant to the appeal. The sole issues for me were:
- i) whether the SDT had been wrong (in law, in fact, or in the exercise of any relevant discretion) in reaching its decision to make the Order; or
  - ii) whether the Order was unjust due to a serious procedural or other irregularity in the proceedings before the SDT.
55. I explained to Mr El Diwany that, in determining those questions, I was bound to take the 2019 SDT Decision as correctly decided, as well as the appeal to Saini J and the application for permission to appeal to the Court of Appeal. I had no power to go behind any of those decisions.
56. Therefore, I could not enquire into events in Norway or consider any of Mr El Diwany’s arguments about the injustice of his Norwegian convictions or the Islamophobic abuse he received as a result of events in Norway that he described in his various submissions.
57. I have no reason to doubt Mr El Diwany’s assertion that he received Islamophobic abuse as a result of stories that appeared in the Norwegian press around the time of his

convictions, including the period leading up to those convictions. Obviously, any such abuse is inexcusable and must be condemned. I do condemn it. But I am not able to take it into account for the purposes of this appeal.

58. Once Mr El Diwany’s collateral attacks on (i) the 2019 SDT Decision, (ii) the Saini J Order dismissing his appeal against the 2019 SDT Decision, and (iii) the order of Warby LJ refusing permission to appeal against the 2019 SDT Decision are excluded, Mr El Diwany had relatively little to say, and nothing of any merit to say, in support of his Grounds of Appeal.
59. I turn now to each of the remaining Grounds of Appeal.
60. In relation to Ground 1, Mr El Diwany asserted that it was wholly unreasonable not to grant the Restoration Application because he is a fit and proper person and in no need of rehabilitation before re-admission to the Roll of Solicitors. This ground, however, is simply assertion. The SDT panel reached a different view. It did so for reasons that were open to it, which I have summarised above. There was no error of law or fact in their reasoning. In brief, the SDT considered that:
- i) the Restoration Application was premature (having been made within two years rather than after six years, there being no exceptional circumstances to justify such an early application for restoration);
  - ii) Mr El Diwany failed to provide evidence of:
    - a) his employment and training history since being struck off; and
    - b) his future employment intentions, including any supporting offers of employment within the legal profession.
  - iii) Mr El Diwany failed to demonstrate any insight into the matters that led to his being struck off in 2019 and his need to comply with all laws and regulations relevant to a solicitor.
61. Mr El Diwany made the point that one reason that he made the Restoration Application after only two years is that six years following the 2019 SDT Decision he would be over retirement age. The SDT panel were clearly not wrong to consider that this did not amount to “exceptional circumstances” justifying a restoration application after just under two years.
62. The SDT acknowledged in the Judgment at paragraph 60 that the path back to the profession after being struck off was:
- “... necessarily, a very difficult one, but others had achieved it by gaining experience in different areas of work; by carrying out charitable and voluntary work; by seeking positions of trust and eventually finding openings in the legal sector, sometimes as a ‘para-legal’ in order to keep up to date with practice, procedure and the law. The rebuilding of reputation and trust was a long process which often took many years and in which evidence was required to demonstrate that the Applicant had taken credible and real steps to rehabilitate.”

63. It was open to the SDT Panel to conclude that Mr El Diwany had failed to present any evidence on these issues that would support the conclusion that he was rehabilitated. Simple assertion by Mr El Diwany that he was a fit and proper person was not sufficient. Accordingly, there is no merit in Ground 1.
64. In relation to Ground 3, there was nothing unreasonable about the SDT's requirement, as conditions to his restoration to the Roll of Solicitors, that Mr El Diwany provide evidence of employment and evidence from solicitors as to his suitability for work as a solicitor. The SDT Guidance makes it clear that these requirements apply to all applicants for restoration to the Roll. The value and relevance of this evidence is self-evident. See the remarks of the SDT panel which I have quoted at [62.] above. Accordingly, there is no merit in Ground 3.
65. Grounds 4 and 5 are concerned with Mr El Diwany's impermissible collateral attack on the 2019 SDT Decision and on the appeal decision of Saini J. For the reasons I have already given, there is no merit in Ground 4 or in Ground 5.
66. Ground 6 is, in effect, an allegation that the Hearing was unjust because of a serious procedural or other irregularity in the proceedings of the SDT panel. In assessing this, not only do I have the benefit of the Judgment, but I also have transcripts of the case management hearing held on 12 November 2021 and the Hearing held on 18 November 2021. A careful review of each of these does not reveal any procedural or other unfairness to Mr El Diwany.
67. Ground 6 is misconceived. Hearings before the SDT panel follow the normal adversarial model of contested legal proceedings in this country. Each side presents its evidence and arguments in support of its respective position. The SDT is entitled, but not required, to ask questions of either or both parties in order to clarify any points that concern the SDT and to enable the members of the SDT panel to reach a proper understanding of the case and the respective positions, evidence, and arguments of each side. Whether or not the SDT panel feels the need to pose any questions, it is required to listen carefully to the submissions of each, with an open mind, free of any bias, to ensure that it can reach a fair and impartial decision. All of this requires a degree of "engagement" between the SDT panel and each of the parties. The SDT panel is not, however, required to answer questions from either party or to engage in any form of dialogue with either party regarding any preliminary views that any member of the SDT panel may have formed so that a party can "clarify and rebut and reassure".
68. Sometimes, the SDT or, indeed, any other tribunal, may consider it helpful to indicate during the course of a hearing that it has reached a preliminary view on an issue, which, in turn, may help to ensure that further proceedings during the hearing are appropriately focused and so that each party has a fair, further opportunity to address the issue. Whether it is a good idea to do that in any specific set of circumstances is entirely a matter for the relevant tribunal.
69. No party has the right, in effect, to participate in the deliberations of the tribunal as it sorts through any relevant views it may have on specific issues in order to reach whatever decision or decisions it is required to reach on the matter before it. The tribunal, especially if it is composed of more than one person, does that in private, in the absence of the parties and any other person, when it reflects on the case and the

evidence and arguments that it has heard for the purpose of reaching its decision. There is no merit in Ground 6.

*Conclusion*

70. Accordingly, Mr El Diwany's appeal against the SDT panel's refusal of the Restoration Application on each of Grounds 1, 2, 3, 4, 5 and 6 is dismissed. None of these grounds, in my judgment, has any merit.
71. Mr El Diwany's appeal against the Order is dismissed. His grounds of appeal are totally without merit. Accordingly, it is necessary for me to consider making a civil restraint order against him. There are other applications by Mr El Diwany that have been found to be totally without merit. In my order, I will give directions for a hearing at which the court will consider whether a civil restraint order should be made and, if so, what the scope of the civil restraint order should be.
72. My order will also reflect that at the hearing I summarily assessed costs in favour of SRA in the amount of £13,000, to be paid by Mr El Diwany to the SRA within 14 days of the date of the order.