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IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
OF ENGLAND AND WALES  
BUSINESS LIST (ChD)  
[2021] EWHC 3765 (Ch)



No's. BL-2021-001519  
BL-2021-001684

Rolls Building  
7 Rolls Buildings  
Fetter Lane  
London EC4A 1NL

Thursday, 11 November 2021

Before:

MR JUSTICE FANOURT

B E T W E E N :

SOLICITORS REGULATION AUTHORITY

Claimant

- and -

(1) SOOPHIA KHAN  
(2) SOPHIE KHAN & CO LIMITED  
(3) JUST FOR PUBLIC LIMITED

Defendants

MR R. ALLEN (Counsel) appeared on behalf of the Claimant.

MR M. JAMES (Counsel) appeared on behalf of the Defendants.

J U D G M E N T

**MR JUSTICE FANCOURT:**

- 1 On 19 August 2021, the Solicitors Regulation Authority (“the SRA”) resolved to intervene in the practice of Sophie Khan & Co Limited (“the firm”). The first respondent, Soophia Khan (“Ms Khan”), is the sole principal and a director of the firm. The SRA resolved to intervene on the grounds of suspected dishonesty of Ms Khan in connection with the firm’s practice and a failure by Ms Khan to comply with regulatory rules.
- 2 Ms Khan was notified on 19 August and the SRA sought to take possession of the practice’s books and papers on the following day, but Ms Khan refused to make herself available on that day, citing the need for religious observance on a Friday. So the SRA agreed to wait until Monday, 23 August, and arrived on that day at the business address of the firm in Leicester to find the doors locked and no one inside. Ms Khan did not respond to phone calls or emails asking her to attend the premises and the attempt to execute the intervention was abandoned. A further attempt to gain access on 27 August was unsuccessful because Ms Khan did not respond and agree to facilitate entry.
- 3 The intervention resolution has the effect under s.15(1A) of the Solicitors Act 1974 of suspending Ms Khan’s practising certificate. That means she is no longer entitled to carry on reserved legal activities, as defined in the Legal Services Act 2007. No application has been made by Ms Khan for the SRA to reinstate her practising certificate, but she did issue a new Part 8 claim, challenging the lawfulness of the intervention. That claim has not yet been heard. Indeed, it has not been able to be listed to be heard.
- 4 The challenge to the intervention does not, of course, deprive the intervention of its effect in the meantime. If it did, the statutory powers of the SRA would be effectively toothless to achieve the urgent objectives that they are needed for, in the public interest. The conduct of the intervention having been frustrated, the SRA issued the first claim and applied to the court for an order that Ms Khan and the firm deliver up to the SRA’s nominee the files and papers relating to clients and former clients of the firm and to allow access to the firm’s offices for a search to be conducted. Mr Justice Adam Johnson made that order on 7 September 2021 (“the First Order”).
- 5 Ms Khan attended the hearing in person and she sought to persuade the judge that her clients were being looked after by the third respondent, Just For Public Limited (“JFP”), which she said was a not for profit body, and that she was wearing one of her other hats in order to look after the clients. She said she was entitled to continue to carry on reserved legal activities through JFP and that the clients of the firm were content with that arrangement. The evidence of Claire Louise Crawford, for the SRA, is that Ms Khan did not on that occasion mention that the business of the firm had been sold to JFP on 10 August 2021, a contention that Ms Khan now relies on to seek to defeat the intervention into the firm’s practice.
- 6 The SRA attended the firm’s premises in Leicester on 9 September 2021 to seek to enforce the first order. On gaining entry, they found that the premises had been stripped of all documents relating to the practice. There were even empty ring-binder files bearing the names of clients on the spine. All that remained was stationery and textbooks. The obvious inference was that everything had been removed to JFP’s office or Ms Khan’s residence.

- 7 So, in the light of what Ms Khan had said at the 7 September hearing, the SRA then issued a second claim with JFP as an additional defendant. The SRA discovered that JFP's registered office had been changed to office premises in Wimbledon that the firm used to occupy, so they applied for further urgent relief permitting them to enter and search the office in Wimbledon and what was thought to be Ms Khan's flat in Wimbledon. Mr Justice Miles granted the application without notice ("the Second Order").
- 8 By that time, Ms Khan had sent the SRA an unsealed application on 16 September 2021 seeking to set aside the first order. She sent it to the SRA using her email address, sophiek@sophiekhane.co.uk, not her JFP email address. The application was made on the basis that the business of the firm was sold to JFP on 10 August 2021 and the firm had no clients and papers left. Therefore, the attempted intervention had no effect.
- 9 A search of the offices in Wimbledon produced a similar nil return and attendance at the flat, which could not be entered, appeared to show that it was uninhabited. Despite the second order having been made against JFP as well as against Ms Khan and the firm, none of the respondents have complied with it to any extent. There was clearly no wish or intention to comply with it. No application was made to set aside or vary the second order.
- 10 As a consequence, the SRA issued contempt applications against Ms Khan on 1 October 2021. There has still apparently been no belated compliance with the first order or the second order by any of the respondents. Meanwhile, Ms Khan is continuing to provide legal services to the clients or former clients of the firm, wearing the hat of a director of JFP. It is the SRA's case that, whether in that capacity or otherwise, she is continuing to carry out reserved legal activities, in particular, exercising a right of audience in the court and conducting litigation.
- 11 There are various proceedings in which Ms Khan readily admits that she has continued to have a role, including at least two coronial inquiries, a claim in Manchester County Court, an appeal to the High Court in a case involving the firm, and a client's appeal to the Court of Appeal Civil Division. Her case has been that, despite the suspension of her practising certificate, she is entitled in law to do so as a director of JFP. That depends on the true construction of the Legal Services Act 2007, and I will return to that issue.
- 12 In her evidence for this hearing filed only two days ago, however, there is more emphasis placed on reasons why, despite doing what she is doing, Ms Khan is not in law carrying out reserved legal activities, but only causing JFP to take steps that might or might not amount to the conduct of litigation and seeking to appear at hearings as a director of JFP, rather than in her own right, and advancing her clients' cases by steps that fall short of being reserved legal activities. That emphasis was continued by Mr Mark James of counsel, who appeared on behalf of all the respondents and who advanced detailed argument as to why the steps relied on by the SRA did not amount to the conduct of litigation by Ms Khan herself.
- 13 The contempt applications came before me on 22 October 2021 this year for directions. The SRA was understandably anxious to have them heard as early as possible because of the need to determine the allegations of contempt in court. Risk of committal might persuade Ms Khan that it was better to comply, belatedly, with the first and second orders. That would serve the purposes of the intervention, which, of course, is the SRA's primary concern. At that hearing, Ms Khan opposed a hearing of the contempt applications before 23 November 2021, somewhat to my surprise on the basis that she had heavy commitments in court representing clients of JFP. That gave rise to the question of whether Ms Khan was lawfully entitled to meet those commitments in view of the suspension of her practising certificate.

- 14 On that occasion, I decided that I would not direct an earlier hearing of the contempt applications unless the SRA sought to establish that Ms Khan could not lawfully represent clients at the hearings on which she relied for saying that she was unavailable sooner. After some thought, but not as swiftly as I had expected, the SRA issued the applications that are now before me. The two applications are issued in the same proceedings in which the first and second orders were made.
- 15 The relief sought in the applications is essentially threefold: first, an injunction restraining Ms Khan, whether by herself or by any agent or employee, whether in her own name or the name of any other person or entity, from carrying on any reserved legal activity unless and until she has a valid practising certificate; second, an injunction restraining JFP, by itself or any officer, employee or agent, from carrying on any reserved legal activity through Ms Khan in her capacity as an employee of JFP for or on behalf of any other person or entity unless and until Ms Khan has a valid practising certificate; and, third, an injunction restraining Ms Khan in similar terms from holding herself out to any other person or entity as being entitled to act as a solicitor or to carry on any reserved legal activity unless and until she has a valid practising certificate.
- 16 The injunctions sought, therefore, do not seek to prevent Ms Khan or JFP from doing anything specific, such as representing client X at enquiry Y, or prosecuting claim Z. It seeks generic relief, which would not prevent Ms Khan from providing legal services in a way that did not amount to carrying on a reserved legal activity provided that she does not hold herself out as a solicitor.
- 17 The approach of the SRA in the applications is understandable for two reasons. First, with the exception of the cases or enquiries that have come to the SRA's attention by chance, either because Ms Khan herself has alluded to them or because a litigant has contacted the SRA about them, the SRA does not have anything like full details of the clients for whom Ms Khan is acting and their cases. The reason for that is obvious. Second, it was in the application to set aside the first order and in the hearing on 22 October 2021 that Ms Khan for the first time fully articulated her argument that she **is entitled** to continue to carry out reserved legal activities as a director and employee of JFP. Her argument was not that she was not doing so. The injunction sought is, therefore, to meet the case previously advanced that impliedly accepted that reserved legal activities were being carried on but maintained that Ms Khan was entitled to do so.
- 18 In the way in which the injunctions sought are formulated, they amount to orders restraining Ms Khan from breaking the criminal law. That is because carrying on reserved legal activities if one is neither exempt nor authorised is, with certain exceptions, a crime under the Legal Services Act, as is wilfully to pretend to be entitled to do so when one is not. That gave rise to a question as to whether the SRA has standing to seek to restrain such conduct even if the court has inherent jurisdiction over Ms Khan as a solicitor, which, of course, it does.
- 19 The first question, therefore, is whether, as a matter of law, Ms Khan is correct to contend that, as a director and employee of JFP, which she accepts that she is, she is entitled to carry out reserved legal activities on behalf of JFP.
- 20 The Legal Services Act 2007 brought into force a new regulatory regime requiring firms and other bodies of lawyers and licensed bodies of lawyers and others to be regulated by the Law Society, or other frontline regulators, as well as the individual solicitors or others who practise

as partners, members or employees of the firm or body in question. There are, therefore, two layers of regulation, which I can loosely describe as “the firm” and “the individuals”.

21 In summary, regulation under the 2007 Act works by allowing regulators to authorise persons, corporate or individual, to carry out reserved legal activities. The Act exempts others from the need for regulation. There are also transitional provisions under which certain persons are given an entitlement to continue to carry on activities that are reserved legal activities for a transitional period. A not for profit body, as defined in the 2007 Act, is one such person. Section 23 of the Act provides, so far as material, as follows:

“(1) During the transitional period, a body within subsection (2) is entitled to carry on any activity which is a reserved legal activity.

(2) The bodies are -

- (a) a not for profit body,
- (b) a community interest company, or
- (c) an independent trade union.”

22 Ms Khan’s case is that JFP is a company limited by guarantee and a not for profit body. The SRA does not accept that. But, for the purposes of this hearing, as the SRA agrees, I can work on the basis that it is a not for profit body without deciding the point. The evidence in support of the argument that it is a not for profit body only emerged in Ms Khan’s witness statement filed two days ago.

23 Ms Khan’s case is that, because the not for profit body is entitled to carry out activities that are reserved legal activities, necessarily the directors and employees of the company must be entitled to carry on those activities on its behalf. Otherwise, how could a corporate body carry on those activities without having regulated lawyers as employees? Ms Khan relies, in particular, on s.13 of the Act, which provides, so far as material, as follows:

“(1) The question whether a person is entitled to carry on an activity which is a reserved legal activity is to be determined solely in accordance with the provisions of this Act.

(2) A person is entitled to carry on an activity (‘the relevant activity’) which is a reserved legal activity where -

- (a) the person is an authorised person in relation to the relevant activity, or
- (b) the person is an exempt person in relation to that activity.

(3) Subsection (2) is subject to section 23 (transitional protection for non-commercial bodies).”

24 Subsection (3), Ms Khan says, is to be interpreted as meaning that the requirement for any person to be authorised or approved is subject to an exception, namely where s.23 applies, and,

where s.23 applies and a not for profit body is entitled to carry on reserved legal activities there is no requirement for the body or anyone working for it to be authorised or exempt.

- 25 If that is right, it would mean that a not for profit body could provide advocacy services by employing people with no relevant legal qualification or advocacy skills, who would have a right to be heard in court on behalf of the client, or, as another example, conduct probate activities using employees with no knowledge or training of the law or procedures of probate and, in both cases, simply leave it to the market to decide whether to make use of that body's services. I would find that a surprising conclusion to reach in the context of the regulatory objectives of the Act and its creation of a requirement for regulation at the level of both the firm and the individual, and I would not reach it unless the language of the statute clearly required that conclusion.
- 26 The language of the statute does, in fact, make clear that the opposite is the case. When looked at in the context of the sections of the Act that come between the two sections on which Ms Khan relies, in particular, ss.14, 15 and 16, it is clear that what s.13 means is that any person who carries on reserved legal activities must be either authorised or exempt or, during the transactional period, a non-commercial body falling within section 23. It does not mean that a requirement for any individual to be authorised or exempt is trumped by the non-commercial bodies entitlement if the individual is an employee of the body.
- 27 "Employee" for these purposes has an extended meaning specified in s.15(11) of the Act: "If P is a body, references to an employee of P include references to a manager of P." "Manager" is defined for the purposes of the Act in s.207(1) as follows:

"In relation to a body, means (subject to subsection (5)) a person who -

- (a) if the body is a body corporate whose affairs are managed by its members, is a member of the body,
- (b) if the body is a body corporate and paragraph (a) does not apply, is a director of the body,
- (c) if the body is a partnership, is a partner, and
- (d) if the body is an unincorporated body (other than a partnership), is a member of its governing body."

- 28 So, while the non-commercial body itself does not need to be authorised during the transaction period, its entitlement does not mean that any individual working for the body is exempted from the requirement in section 13(2). This, in my judgment, is clear from the following statutory provisions: First, section 14(1):

"It is an offence for a person to carry on an activity ('the relevant activity') which is a reserved legal activity unless that person is entitled to carry on the relevant activity."

I note that it is that person who must be entitled. What subsection (1) means is explained in s.15, which provides as follows:

- “(1) This section applies for the interpretation of references in this Act to a person carrying on an activity which is a reserved legal activity.
- (2) References to a person carrying on an activity which is a reserved legal activity include a person (‘E’) who -
- (a) is an employee of a person (‘P’), and
  - (b) carries on the activity in E's capacity as such an employee.
- (3) For the purposes of subsection (2), it is irrelevant whether P is entitled to carry on the activity.
- (4) P does not carry on an activity (‘the relevant activity’) which is a reserved legal activity by virtue of E carrying it on in E's capacity as an employee of P, unless the provision of relevant services to the public or a section of the public (with or without a view to profit) is part of P's business.”

29 So the employee, E, who carries on the reserved legal activity in their capacity as an employee, is still carrying on the reserved legal activity themselves, even if the employer body P is entitled to carry on the activity.

30 Subsection (4) demonstrates that, if the employer’s business includes the provision of legal services to the public, the carrying on of a reserved legal activity by the employee amounts to the carrying on of that reserved legal activity by the employer too. Thus, in the case of such an employer, both the employee and the employer are carrying on the same reserved legal activity. This subsection is intended to enable lawyers to give advice to their employer or others without requiring the employer to be authorised.

31 See also s.16(2), which makes it clear that, where s.15(4) does not apply, an employer will be carrying on the relevant activity by virtue of the employee carrying it on. Section 16 provides, so far as material, as follows:

- (1) Where subsection (2) applies it is an offence for a person (‘P’) to carry on an activity (‘the relevant activity’) which is a reserved legal activity, despite P being entitled to carry on the relevant activity.
- (2) This subsection applies if -
  - (a) P carries on the relevant activity by virtue of an employee of P (‘E’) carrying it on in E's capacity as such an employee, and
  - (b) in carrying on the relevant activity, E commits an offence under section 14.
- (3) If P is a body, references in subsection (2) to an employee of P include references to a manager of P.”

32 This section makes it clear that there is a separate requirement for the employer body and the employee to be entitled to carry on the reserved legal activity since, if the employee is not so entitled, the body commits an offence despite itself being entitled to carry on the reserved legal

activity. That provision would make no sense if there was no requirement for an employee to be authorised. So it is not an answer for JFP, the not for profit body in this case, to say that it is entitled to carry on reserved legal services if it is carrying them on by virtue of Ms Khan carrying them on.

- 33 The answer to Ms Khan's argument that the entitlement of non-commercial bodies is, therefore, illusory if they cannot provide reserved legal services except through authorised or exempt persons is that the entitlement nevertheless exempts the body from the cost and trouble of having to be regulated by an approved regulator, and there may be cases (I do not decide the point) in which it can be said that what each individual employee does falls short of amounting to carrying on a reserved legal activity, but the totality of what is done by various employees amounts to carrying on that reserved legal activity by the body alone.
- 34 That can hardly be said, of course, where the body only has one employee. Nor can it be said in relation to the particular reserved legal activity of exercising a right of audience; i.e. appearing in a court or tribunal on behalf of a client as of right and not with the permission of the judge as an informal spokesman. In such a case, it is clear that the employee is exercising a right of audience. In a coroner's court under r.91(1) of the Coroners (Inquests) Rules 2013, there may be more latitude for a person without a right of audience to be an interested person's representative, but that is a matter for the coroner.
- 35 In my judgment, Ms Khan is, therefore, wrong in her primary argument that, acting as a director or employee of JFP, she is entitled to continue to provide to clients of JFP as a director and on behalf of JFP services that are reserved legal activities. She may not, as things stand, provide such services. Indeed, it would be a criminal offence on the part of both JFP and Ms Khan for her to do, so pursuant to ss.14 and 16 of the 2007 Act.
- 36 Ms Khan now seeks to establish as a fallback position that, since the intervention, she has not carried out reserved legal activities or held herself out as a practising solicitor and will not do so, and that, for that reason, the relief sought by the SRA is inappropriate. In view of the contempt applications that are pending and the possibility of criminal proceedings, I do not think I should decide, even on the balance of probabilities, whether the SRA is right in contending that Ms Khan has since 19 August 2021 carried on reserved legal activities. The evidence of what has happened between that date and the date of the hearing is, however, directly material to the question of whether there is a real risk of Ms Khan doing so in future, which is what I must decide, and in particular whether, if so, it is more convenient to grant injunctive relief than to refuse it.
- 37 The first point to make is that Ms Khan has, throughout the proceedings, consistently asserted that she is entitled to continue to carry out reserved legal activities on behalf of clients through JFP. Although I have decided that that contention is wrong in law, Ms Khan may well disagree with that, as she has previously disagreed with the validity of the intervention resolution and the First and Second Orders. It is also now her position that the limited steps that she has taken in connection with litigation do not amount to her providing reserved legal services.
- 38 I consider there to be a real risk of her continuing to provide reserved legal services such that I cannot be confident that the mere determination of the primary case advanced by Ms Khan against her, even if in the form of a declaration, will be sufficient to ensure that there will be no further infringement. It is, in my view, notable that no undertaking was previously offered by Ms Khan to desist from carrying on reserved legal activities in the event that the court decided that she was wrong in her interpretation of the Legal Services Act until the point was considered



towards the end of Mr James's submissions, after the question was raised by the court. An injunction backed by a penal notice may well make a material difference in terms of enforcing compliance.

- 39 The second point is that there is cogent evidence that would support a conclusion that Ms Khan has in the past exercised or sought to exercise a right of audience and conduct litigation and that she has held herself out to be a solicitor able to exercise those rights, giving the impression to clients that nothing in substance has changed as a result of the transfer of their files. That is what happened to JFP. The evidence of Ms Crawford in her first witness statement signed on 1 November 2021 shows that, on a number of identified occasions, Ms Khan appears to have conducted herself in that way.
- 40 The evidence of Ms Crawford is supported by documents that she exhibits. The first example is a tweet in the name of Ms Khan that was published on 27 August 2021, which stated "I am glad to announce that Sophie Khan & Co solicitors and higher court advocates has been taken over by Just For Public Limited. Client work continues as normal." That implies that the client work will continue to be conducted by a solicitor. It is not consistent with Ms Khan ceasing to exercise rights of audience or issuing out process or prosecuting or defending proceedings or performing ancillary functions in relation to them (see the definition of "the conduct of litigation" in para.4 of Sch.2 to the Legal Services Act). Materially, Ms Khan did not dispute that she is the only employee capable of doing such matters on behalf of JFP.
- 41 The second example relied upon is what was said by Ms Khan during the hearing before me on 22 October 2021. Ms Crawford says that, during that hearing, Ms Khan stated in terms that she was carrying on reserved legal activities, such as the conduct of litigation, for members of the public through JFP. Ms Khan also specifically referred during this hearing to JFP being on the record for clients on matters that were pending before the Court of Appeal.
- 42 Third, in the hearing in Manchester County Court on 10 September 2021, Ms Crawford said that the SRA received a telephone call from Weightmans raising concerns about Ms Khan in connection with the hearing in front of HHJ Sephton QC that day. The content of the telephone call was in an exhibited email. The email records that the judge asked Ms Khan to explain why she was present because she did not have rights of audience. The email went on to note that the Judge rejected Ms Khan's argument that JFP has rights of audience and then refused to hear further submissions from her.
- 43 The fourth example is an email from a former client of Ms Khan to the intervention agent on 5 October 2021. The email confirms that the client wished to proceed with the inquest without legal representation, but stated "I was contacted by Sophie Khan to say that she was opening a business under another name and would still be able to represent me." Again, this implies that the representation would continue to be as a solicitor.
- 44 Fifth, Ms Khan has continued in her email signature to describe herself as a solicitor without drawing attention to the fact that her practising certificate has been suspended. Ms Khan rightly points out in her witness statement, and this is not disputed by the SRA, that this has only, in fact, been in connection with correspondence relating to the intervention and these proceedings and not in relation to any clients of JFP. Nevertheless, the instances alluded to in evidence show how Ms Khan tends on occasions to hold herself out, even if that is not a consistent practice.

45 Sixth, Ms Khan said in her witness statement that:

“All clients have been notified in writing as to the takeover of Sophie Khan & Co Limited by Just For Public Limited and a follow-up telephone conversation was held with each client. I exhibit a specimen attendance note as exhibit SK11.”

46 The specimen attendance note is a curious document, in that it is headed “Specimen”, as if prepared for the purpose of supporting the assertion in the witness statement. It has four boxes titled “File Number”, “Client”, “Date” and “Time”, and then states as follows:

“Call made to XX to follow up letters sent out to XX as to the takeover by JFP Limited of the law firm, Sophie Khan & Co Limited, and transfer of XX’s case files to JFP Limited. XX asked whether they have any questions in relation to the transfer of the case files, and no issues were raised. Work on XX’s case matter will continue without any disruption, and Sophie Khan will be the lead contact and will keep XX updated as to XX’s case matter.”

47 I find this piece of evidence from Ms Khan unconvincing and, if it is intended to be a specimen of an actual attendance note, I observe that not a single letter written to a client nor an actual attendance note of a follow-up telephone conversation has been produced as evidence to support what Ms Khan says.

48 In her witness statement, Ms Khan denies flatly that she has held herself out as being entitled to act as a solicitor or carried out any reserved legal activity as a principal of the firm. That assertion is carefully phrased, because Ms Khan appears to have held herself out as being entitled to carry out reserved legal activities on behalf of JFP. In any event, in view of the evidence before me, I am persuaded that, without appropriate undertakings or an injunction, there is a real risk that Ms Khan will hold herself out as entitled to act as a solicitor.

49 Her version of what happened at Manchester County Court is at odds with the complaint that was received by the SRA and what is said by HHJ Sephton in his judgment. There does appear to have been an attempt by Ms Khan to exercise a right of audience that HHJ Sephton, having been made aware of the issue somehow, was alert to. On any view, it was Ms Khan who issued the application that Sephton HHJ declared to be a nullity on the ground that she had no right to do so.

50 It appears to be true that, at a pre-inquest hearing before the acting Senior Coroner of Carmarthenshire and Pembrokeshire, Ms Khan went to some lengths to try to avoid exercising a right of audience, but that may have been because the SRA had been tipped off about the hearing and sent written submissions as to why Ms Khan was not entitled to exercise a right of audience.

51 Ms Crawford made a second witness statement on 8 November 2021 providing further evidence that Ms Khan, acting as a director of JFP, has since 19 August 2021 issued proceedings or appeals, served an appellant’s notice on a respondent, certified service of that notice and entered notices of appearance in actions. These were all done in the name of JFP as legal representative, signed where appropriate by Ms Khan acting as a director of JFP.

52 Mr James on behalf of Ms Khan addressed a skilful and well-sustained argument to the effect that the individual steps that Ms Khan took in the evidence presented, which I have briefly

summarised, do not in themselves, taken one by one, amount to the conduct of litigation. That was in some instances because they were administrative steps, rather than substantive steps of the type that fall within the definition of “conduce of litigation”, or alternatively were steps overtly taken by JFP, not by Ms Khan in her personal capacity.

53 The argument, however, seems to me to founder for two reasons. First, as Ms Khan did not dispute, only she is capable of taking such steps on behalf of JFP. Where, in the course of litigation where JFP is on the record as acting, there are steps required to be taken in the client’s interests, JFP acting by Ms Khan will have to take those steps. There can, therefore, be no argument in this case to the effect that small individual steps were taken by different persons, none of whom individually were carrying on a reserved legal activity even if the aggregate of the steps did amount to JFP carrying on a reserved legal activity.

54 Second, the fact that Ms Khan is taking or will have to take those steps acting as a director or employee of JFP does not mean that she too has not taken those steps or, in the language of s.15 of the Legal Services Act, she has carried on an activity which is a reserved legal activity and JFP has also carried on that activity. It is part of JFP’s business to provide reserved legal services to the public, and so, under s.15(4), JFP carried on the reserved legal activity in question by virtue of Ms Khan carrying it on as an employee. The position is even clearer in the case of the exercise of a right of audience. It clearly cannot be said that it is only JFP that is exercising a right of audience to the exclusion of Ms Khan. I, therefore, reject the argument that, because of the way that Ms Khan has conducted her work since August 2021, there is no real risk of her carrying on reserved legal activities.

55 Mr James’s next argument was that, even though the court has inherent jurisdiction over Ms Khan as an officer of the court because she is still a solicitor, the SRA should be considered as not having standing to pursue the grant of injunctions against Ms Khan. His argument was that the injunctions sought were to enforce the criminal law. The SRA does not have a general function of law enforcement in support of public rights, as the Attorney General has, and only in exceptional circumstances will an injunction be granted in civil proceedings to restrain a crime.

56 The guiding principles, recognised as such in *Birmingham City Council v Shafi* [2009] 1 WLR 1961 at 36, are stated by Bingham LJ in *City of London Corporation v Bovis Construction Limited* [1992] 3 All ER 697 at p.714 (g) to (j). Bingham LJ said:

“The guiding principles must, I think, be:

- (1) that the jurisdiction is to be invoked and exercised exceptionally and with great caution;
- (2) that there must certainly be something more than mere infringement of the criminal law before the assistance of civil proceedings can be invoked and accorded for the protection or promotion of the interests of the inhabitants of the area;
- (3) that the essential foundation for the exercise of the court's discretion to grant an injunction is not that the offender is deliberately and flagrantly flouting the law but the need to draw the inference that the defendant's unlawful operations will continue unless and until effectively restrained by

the law and that nothing short of an injunction will be effective to restrain them.”

- 57 Mr James submitted that alternative remedies open to the SRA were adequate in this case, namely the contempt proceedings to enforce the First and Second Orders and criminal proceedings, if issued. The high threshold for starting injunction proceedings here is, therefore, not met.
- 58 Mr Rupert Allen for the SRA disputed that analysis and argued that, although the proceedings did, in effect, seek to enforce compliance with the criminal law and so Bingham’s LJ guiding principle applied, it is right to say that the purpose of the claim was not to enforce the criminal law as such, but to further the regulatory objectives in the Legal Services Act by seeking to close down Ms Khan’s attempt to outface the intervention and the First and Second Orders by conducting her practice through JFP, conduct which has had the effect of removing the very protection of the public that the intervention order was intended to give.
- 59 He further submitted that there was, therefore, something more than a mere infringement of criminal law that was being complained of. The evidence and inference from it was clear that Ms Khan’s conduct would continue unless effectively restrained by the law. Indeed, Ms Khan asserted that she was entitled to do what she was doing, and other methods of seeking to restrain the unlawful conduct have failed.
- 60 I agree with Mr Allen’s submissions. The grant of an injunction will effectively close an imagined loophole that Ms Khan appears to be using as a means of continuing her practice, notwithstanding the intervention order and the First and Second Orders. Granting the injunction will be likely to further the public purpose of the intervention. Given the SRA’s statutory role as regulator of the provision of legal services, it does seem remarkable if Mr James is right that the very body that is charged with the responsibility of protecting the public from misfeasance by solicitors has no standing to enlist the assistance of the court in seeking to put a stop to such misfeasance.
- 61 This is certainly not a case, as was *The Law Society v Shah* [2015] 1 WLR 2094, where the intervention process had been concluded and the solicitor had been struck off. This is a case where the coercive power of the court is needed to ensure that the intervention takes effect. All attempts to do so to date appear to have failed, so that an injunction can be said to be necessary to seek to achieve it as a matter of urgency. The clients of the firm have not had the benefit of the SRA’s review of their files and independent advice, which they should have had in August 2021.
- 62 Mr Allen then argued that, as a matter of discretion, an injunction should be refused. It was argued that Ms Khan on the basis of her own evidence has no intention of breaching the relevant restrictions, ss.14, 20 and 21 of the Act. However, Ms Khan’s assertion in her witness statement was premised on her case that she is entitled to carry on reserved legal activities, either because of s.23 of the Act or because JFP and not she is carrying on those activities. Once those arguments fall away, there was only assertion and no evident basis for it. I note again that Ms Khan did not until after the argument yesterday was concluded offer any undertaking to the SRA in the event that her legal interpretation of the Act was held to be wrong.
- 63 Second, Mr Allen argued that the breaches alleged were at the lower end of the range of seriousness. The concern of the court is with breaches that may be committed in future. If, despite the intervention resolution, the First and Second Orders and the committal proceedings,

Ms Khan were to continue to provide reserved legal services to JFP's clients, that would, on any view, be a very serious matter. One purpose of the intervention was to stop her from doing exactly that. It cannot, therefore, be said that, if there is a risk of further breaches, they are not particularly serious breaches. They would be having the effect of frustrating the intervention process.

- 64 Third, Ms Khan argued and it was submitted that the courts and coroners have proved themselves perfectly able to police their own jurisdictions without an injunction being in place. As to this, there is only evidence of, first, the acting Chief Coroner addressing the issue when tipped off by a written note from the SRA and, in that case, the issue was effectively sidestepped because Ms Khan was able to instruct an in-house barrister; and, secondly, HHJ Sephton apparently realising that Ms Khan's practice had been intervened in and the consequences of that. There is also evidence that the Registrar of Civil Appeals picked up the intervention and alerted the Lord or Lady Justice considering the application for permission to appeal of Ms Khan's lack of standing to represent the appellant. I do not accept that the full facts will come to the court's or coroner's attention in all cases, as things stand. Part of the problem is that the SRA and the court do not know how many other such cases there are.
- 65 Fourth, Mr James submitted that there is a public interest in permitting Ms Khan to continue to represent clients of JFP in ongoing court proceedings where it would not be practicable for other lawyers to read the papers in time. I cannot accept that if what is meant is that she should be enabled to continue to carry on reserved legal activities or be seen to be acting as a solicitor entitled to do so, in view of the grounds of intervention in Ms Khan's practice. That cannot be in the public interest as things stand. As Ms Khan herself said, the judge or coroner should be put in a position to decide whether to permit her to ask questions or make representations on behalf of clients, but not as a solicitor with a right of audience. The judge or coroner needs to be fully apprised of the facts in order to make that judgment. Further, if it is suggested that Ms Khan will not conduct litigation, that could well prejudice clients who might need to have a solicitor who can take steps in their case that do amount to the conduct of litigation. Further, there is no evidence that it would be impracticable for other lawyers to take on the cases of JFP's clients.
- 66 Ms Khan is wrong to assert that the injunction will prevent her from acting as a McKenzie Friend or as a representative of an interested person in the coroner's court. It will not do so, and Ms Khan will, if determined to act in that way, have to inform the judge or coroner of the circumstances and ask for permission to do so. I make clear that it would be a misleading of the court if Ms Khan were to fail to make full disclosure of why she is unable to exercise a right of audience and act as a solicitor, including the grounds of the intervention. She would though be entitled to say that she has a legal challenge to the intervention pending. Neither will the injunction itself prevent Ms Khan from providing non-reserved legal services to clients, such as legal advice, provided that she makes it clear that she has had her practising certificate suspended and is not entitled to practise as a solicitor.
- 67 Next, it was argued that the SRA has adequate powers to enforce any non-compliance by means of the contempt application and/or the criminal law. For the reasons I have already given, the contempt application has not to date had the effect of facilitating the intervention or of protecting the public against continued provision of reserved legal services by Ms Khan. It was issued six weeks ago. The matter is urgent because the SRA is intended, under Sch.1 to the Legal Services Act, to obtain control of the money and papers of the firm within a day or so of the intervention resolution in order to protect clients. That has not happened. It is now almost

three months later. Criminal proceedings would not be likely to engender a speedier resolution of the problem.

68 Finally, Ms Khan argued that there is a good chance that the intervention will be set aside. The hearing of her application is now unlikely to be before January 2022 at the earliest. The outcome of that application is pure speculation. I am in no position to assess it. Even if it were to succeed in 2022, that is no answer to compliance with the intervention in the meantime.

69 There is a further argument that was raised by Mr James relating to the grant of injunctive relief. That is that, in view of relatively recent authority on what exactly is comprehended by the words “conduct of litigation”, an injunction granted to restrain Ms Khan from carrying on reserved legal activities may lead to unacceptable uncertainty about what Ms Khan is entitled to do and, therefore, make policing of the order difficult or unfair, or both.

70 It is true that the courts have struggled over the decades to pinpoint what is and what is not the conduct of litigation (see, for example, *Agassi v Robinson (Inspector of Taxes) (No 2)* [2006] 1 WLR 2126 and *Ndole Assets Ltd v Designer M&E Services UK Ltd* [2019] BLR 147). However, there is a new statutory definition of “the conduct of litigation” in para.4 of Sch.2 to the Legal Services Act which specifies that it means:

- “(a) The issuing of proceedings before any court in England and Wales,
- (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).”

71 In my judgment, the Legal Services Act itself places responsibility for not unlawfully doing any such matter on the regulated person. Such a person must not carry on a reserved legal activity, which includes the conduct of litigation, without a practising certificate that authorises that person to carry on the particular reserved legal activity. A solicitor is, therefore, responsible in any event not to transgress in that respect and transgression is a criminal offence (see s.14 of the Act).

72 In that light, I do not consider that it can be said that an injunction to restrain the carrying on of reserved legal activities as defined in the Act unless Ms Khan has a practising certificate authorising the carrying on of such an activity is unfairly ambiguous. This is not a case of an injunction order being made against a layperson. Ms Khan is a trained lawyer and she has the necessary expertise to understand the drafting of the Legal Services Act and, if she is in doubt, has access to the services of the Law Society to give her advice about it. As I have already indicated, Ms Khan can without breaching the injunction ask for permission to represent a client in court, provided that she does so on the basis that she has no right of audience. Full disclosure of the intervention and suspension of the practising certificate must be given to avoid misleading the court.

73 Mr James did not develop any argument that JFP, which is not a body regulated by the SRA, is not amenable to the court’s jurisdiction if it is considered appropriate to grant an injunction against Ms Khan. I consider that he was right not to do so. As in *The Law Society v Shah*, the court has jurisdiction and, in this case, it is inherent and now a statutory jurisdiction under s.50 of the Solicitors Act 1974, to do what is appropriate to restrain any misconduct by a solicitor.

- 74 In *Shah*, the misconduct was that of a solicitor who employed a person who had been struck off the Roll of Solicitors for misconduct. Although the Law Society in that case had no direct basis of enforcement against the struck off former solicitor, the court held that, giving the Act a purpose of construction, an injunction could also be granted against the non-solicitor ancillary to the injunction granted against the solicitor, to prevent a breach of the law.
- 75 The same, in my judgment, applies here, although, unlike in *Shah*, Ms Khan remains a solicitor. The court has jurisdiction to grant ancillary relief to ensure that the injunction granted against Ms Khan is effective. That is particularly so because Ms Khan's threatened breaches of the law will be activities done in the name of JFP and any breaches by her will also be breaches by JFP, by virtue of s.16 of the Legal Services Act. The appropriate injunction to grant against JFP will, therefore, restrain it from carrying on any reserved legal activity through Ms Khan in her capacity as an employee or director of JFP. There is no reason to prevent JFP from doing so if it engages another authorised employee.
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