

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11513-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

WILLIAM BETTS

First Respondent

ABID HUSSAIN

Second Respondent

DANIEL THOMPSON

Third Respondent

GREGORY SHIELDS

Fourth Respondent

MARK HUNTER

Fifth Respondent

JON PAUL ELSE (Unadmitted)

Sixth Respondent

Before:

Mr. R. Nicholas (in the chair)

Mr J P Davies

Mr P Hurley

Date of Hearing: 14 December 2016

Appearances

The parties did not attend as the matter was dealt with on the papers.

JUDGMENT

Allegations

1. The Allegations made against the First, Second, Third and Fourth Respondents on behalf of the SRA were that they, whilst in practice as principals at Forster Dean Limited (“the Firm”):
 - 1.1 Caused or allowed the retention in the Firm’s office bank account of monies received in respect of unpaid disbursements for periods in excess of the time limits prescribed by Rule 19 of the Solicitors Accounts Rules 1998 (“SAR 1998”) on or prior to 5 October 2011 and/or Rule 17.1 of the SRA Accounts Rules 2011 (“SAR 2011”) on or after 6 October 2011, and in doing so:
 - 1.1.1 insofar as such conduct took place during the period from 1 October 2010 to and including 5 October 2011, acted in breach of Rule 1.04, 1.05 and/or 1.06 of the Solicitors Code of Conduct 2007 (“SCC 2007”); and
 - 1.1.2 insofar as such conduct took place on or after 6 October 2011, acted in breach of Principles 4, 5, 6 and/or 10 of the SRA Code of Conduct 2011 (“SCC 2011”) and failed to achieve Outcomes 1.1 and/or 1.2 of the SCC 2011;
 - 1.2 Failed to remedy promptly on discovery breaches of the SAR 1998 in breach of Rule 7 of the SAR 1998 and/or in breach of Rule 7 of the SAR 2011 and Principle 7 of the SCC 2011;
 - 1.3 Having been made aware that the Firm’s treatment of unpaid professional disbursements was in breach of the relevant accounts rules, caused or allowed the Firm to revert to such practices in around May 2012 and in doing so acted in breach of Principles 6 and 8 of the SCC 2011;
 - 1.4 Failed to run the Firm effectively and in accordance with proper governance and sound financial and risk management principles in that they failed to ensure that the Firm had appropriate systems in place to identify, prevent and rectify the breaches of the SAR 1998 and/or SAR 2011 identified at paragraphs 1.1 to 1.4 and in doing so:
 - 1.4.1 insofar as such conduct took place during the period from 1 October 2010 to and including 5 October 2011, acted in breach of Rule 5.01 of the SCC 2007; and
 - 1.4.2 insofar as such conduct took place on or after 6 October 2011, breached Principle 8 and/or 10 of the SCC 2011 and failed to achieve Outcomes 7.2, 7.3, 7.4 and/or 10.3 of the SCC 2011.
2. It was further alleged as against:
 - 2.1 the First Respondent that, in his capacity as the Firm’s Compliance Officer for Legal Practice, he failed to ensure compliance with the Firm’s regulatory obligations and failed to report material issues to the SRA contrary to Rule 8.5 of the SRA Authorisation Rules 2011; and

- 2.2 the Fourth Respondent, that his conduct in relation to Allegations 1.1 and 1.3 amounted to a failure to act with integrity contrary to Rule 1.02 of the SCC 2007 insofar as such conduct took place during the period from 1 October 2010 to and including 5 October 2011, and contrary to Principle 2 of the SCC 2011 insofar as such conduct took place on or after 6 October 2011.
3. The Allegations made against the Fifth Respondent were that he, whilst in practice as a principal at the Firm:
 - 3.1 Caused or allowed the retention in office bank account of monies received in respect of unpaid disbursements in excess of the time limits prescribed by Rule 19 of the SAR 1998 and in doing so acted in breach of Rule 1.04, 1.05 and/or 1.06 of the SCC 2007;
 - 3.2 Failed to remedy promptly on discovery breaches of the SAR 1998 in breach of Rule 7 of the SAR 1998; and
 - 3.3 Failed to run the Firm effectively and in accordance with proper governance and sound financial and risk management principles in that he failed to ensure that the Firm had appropriate systems in place to identify, prevent and rectify the breaches of the SAR 1998 identified at paragraphs 3.1 to 3.3 and in doing so acted in breach of Rule 5.01 of the SCC 2007.
4. The Allegation made against the Sixth Respondent was that he had been guilty of conduct of such a nature that in the opinion of the SRA it would be undesirable for him to be involved in a legal practice in one or more of the ways mentioned in section 43 (1) (a) of the Solicitors Act 1974 (as amended) in that he, while employed as the Firm's Finance Director and Compliance Officer for Finance and Administration:
 - 4.1 Caused or allowed the retention in office bank account of monies received in respect of unpaid disbursements in excess of the time limits prescribed by Rule 17.1 of the SAR 2011;
 - 4.2 Failed to remedy promptly upon discovery breaches of the SAR 2011 in breach of Rule 7 of the SAR 2011;
 - 4.3 Having been made aware that the Firm's treatment of unpaid professional disbursements was in breach of the SAR, caused or allowed the Firm to revert to such practices in around May 2012; and
 - 4.4 In relation to the matters set out at 4.1 and 4.3, acted in a manner that amounted to a failure to act with integrity.
5. It was further alleged against the Sixth Respondent that in his capacity as the Firm's Compliance Officer for Finance and Administration, he failed to ensure that the Firm and its managers and employees complied with the SAR 2011 contrary to Rule 8.5 of the SRA Authorisation Rules 2011.

Documents

6. The Tribunal had before it the following documents;
- Rule 5 and Rule 8(5) Statement dated 12 May 2016
 - Answer to Rule 5 Statement by First, Second, Third and Sixth Respondents dated 1 July 2016
 - Answer to Rule 5 Statement by Fifth Respondent dated 4 July 2016
 - Answer to Rule 5 Statement by Fourth Respondent dated 19 July 2016
 - Answer to Rule 5 Statement by Fourth Respondent (amended) dated 3 August 2016
 - Applicant's Reply dated 15 August 2016
 - Witness Statement of Fourth Respondent dated 28 September 2016
 - Submissions on behalf of First, Second, Third and Sixth Respondents dated 2 December 2016
 - Statement of Agreed Facts and Outcome ("Agreed Outcome") in relation to First, Second, Third, Fifth and Sixth Respondents dated 2 December 2016
 - Submissions on behalf of Fifth Respondent (undated – served on the Tribunal on 13 December 2016)
 - Correspondence from Capsticks LLP to Tribunal dated 8 December 2016.

Factual Background

7. The First Respondent was born in 1970 and was admitted to the Roll of solicitors on 17 July 2000. At the time of the Rule 5 statement he held a current practising certificate free from conditions.
8. The Second Respondent was born in 1969 and was admitted to the roll of solicitors on 1 October 1997. At the time of the Rule 5 statement he held a current practising certificate free from conditions.
9. The Third Respondent was born in 1974 and was admitted to the Roll on 15 September 1998. At the time of the Rule 5 statement he held a current practising certificate free from conditions.
10. The Fourth Respondent was born in 1973 and was admitted to the Roll on 15 March 1999. At the time of the Rule 5 statement he did not hold a current practising certificate.
11. The Fifth Respondent was born in 1970 and was admitted to the Roll on 16 September 1996. At the time of the Rule 5 statement he held a current practising certificate free from conditions.
12. The Sixth Respondent was born in 1977. He was a chartered accountant and joined the Firm as a financial director in December 2011. He was not a solicitor nor had his name ever appeared on the Roll of solicitors. He became the Firm's Compliance Officer for Finance and Administration on the 1 January 2013 and at the time of the Rule 5 statement remained in that role and was the Firm's Finance Director.

Application for Proceedings against the First, Second, Third, Fifth and Sixth Respondents to be resolved by way of Agreed Outcome.

13. The Applicant, the First, Second, Third, Fifth and Sixth Respondents had invited the Tribunal to deal with the Allegations against these Respondents in accordance with the Agreed Outcome, annexed to this Judgment. If the Tribunal was agreeable to such a course of action and matters were resolved as proposed, there would no longer be a need for a full hearing, save in the case of the Fourth Respondent.
14. Although this matter had been listed to be dealt with on the papers, the Fourth Respondent's representative, Ms Saima Hanif of 39 Essex Chambers had attended the Tribunal's offices and spoken with the Clerk. Ms Hanif had confirmed to the Clerk that her client was aware of the contents of the proposed Agreed Outcome. Although the Fourth Respondent did not agree with the contents of that document, there was no objection to the other five Respondents and the Applicant reaching an Agreed Outcome or to the Tribunal approving it. The Tribunal was made aware of the Fourth Respondent's position before reaching its decision.

Submissions

15. The Applicant submitted that the outcomes proposed were consistent with the Tribunal's guidance note on sanctions.
16. The five Respondents who were the subject of the proposed agreed outcome endorsed this submission. They submitted that the Agreed Outcome was perfectly proper given the Allegations and the facts contained therein and further submitted that the appropriate levels of sanction were contained within the Agreed Outcome.

Findings of Fact and Law

17. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
18. The Tribunal reviewed all of the material put before it and referred to the Guidance Note on Sanction (December 2015). The Tribunal considered the issue of whether there was any potential prejudice to the Fourth Respondent by the endorsement of the Agreed Outcome. The Tribunal noted the confirmation by the Fourth Respondent's Counsel that no objection was taken to the Agreed Outcome being approved by the Tribunal. The Tribunal saw nothing on the material before it that suggested the Fourth Respondent would be prejudiced by the Agreed Outcome and was therefore satisfied that it could proceed to consider the application.
19. The Tribunal was satisfied that the each of the five Respondent's admissions were properly made. All of the Respondents were legally represented and it was clear from the submissions made on their behalf that they understood the case against them.
20. The Tribunal was satisfied that the proposed sanctions adequately reflected the seriousness of the misconduct, having regard to the level of culpability attaching to each Respondent, the harm caused and the aggravating and mitigating factors that

existed. In respect of the sixth Respondent, the Tribunal was satisfied that his conduct was such that it would be undesirable for him to be involved in a legal practice in any of the ways set out in section 43(1) of the Solicitors Act 1974 as amended.

21. The Tribunal was satisfied, taking into account all of the information placed before it, that the Agreed Outcome was a proportionate and proper basis for the resolution of the Allegations against these Respondents. The Agreed Outcome was therefore approved by the Tribunal and proceedings against the First, Second, Third, Fifth and Sixth Respondents were concluded in accordance with the terms of that document.
22. In order to ensure a fair hearing in respect of the Fourth Respondent, a different division of the Tribunal would hear the case against him. In addition, as a further safeguard, the Tribunal would direct that this Judgment not be published before the conclusion of the proceedings against the Fourth Respondent. That direction is contained in the Memorandum of Case Management hearing dated 15 December 2016.

Costs

23. The Tribunal was satisfied that the figure agreed between the parties was a reasonable and proportionate figure.

Statement of Full Orders

24. The Tribunal Ordered that the Respondent, WILLIAM BETTS, solicitor, do pay a fine of £15,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00.
25. The Tribunal Ordered that the Respondent, ABID HUSSAIN, solicitor, do pay a fine of £10,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00.
26. The Tribunal Ordered that the Respondent, DANIEL THOMPSON, solicitor, do pay a fine of £10,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00.
27. The Tribunal Ordered that the Respondent, MARK HUNTER, solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00.
28. The Tribunal Ordered that as from 14th December 2016 except in accordance with Law Society permission:-
 - (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor JON PAUL ELSE;

- (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Jon Paul Else
- (iii) no recognised body shall employ or remunerate the said Jon Paul Else;
- (iv) no manager or employee of a recognised body shall employ or remunerate the said Jon Paul Else in connection with the business of that body;
- (v) no recognised body or manager or employee of such a body shall permit the said Jon Paul Else to be a manager of the body;
- (vi) no recognised body or manager or employee of such a body shall permit the said Jon Paul Else to have an interest in the body;

The Tribunal also Ordered that the Respondent, JON PAUL ELSE, do pay a fine of £10,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00.

Dated this 20th day of December 2016

On behalf of the Tribunal

R. Nicholas
Chairman