

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11577-2016

BETWEEN:

PAUL JULIAN MARK BAILEY

Applicant

and

SOLICITORS REGULATION AUTHORITY

Respondent

Before:

Mrs J. Martineau (in the chair)

Mr B. Forde

Mr P. Wyatt

Date of Hearing: 7 February 2017

Appearances

Ms Taryn Lee QC of 37 Park Square Chambers, 37 Park Square North, Leeds LS1 2NY for the Applicant Paul Julian Mark Bailey

Mr Inderjit Johal, Counsel, employed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Respondent the Solicitors Regulation Authority

MEMORANDUM OF AN APPLICATION TO REMOVE CONDITIONS IMPOSED BY THE TRIBUNAL

Documents

1. The Tribunal reviewed all the documents including:

Applicant

- Application dated 15 November 2016
- Outline response of the Applicant dated 10 January 2017 and signed 7 February 2017
- Testimonial from Mr Rob Walsh Chief Executive North East Lincolnshire Council dated 2 February 2017
- Testimonial from His Honour John Dowse dated 6 February 2017
- Medical report from the Applicant's GP dated 18 January 2017
- Report from Professor Ann Mortimer, consultant psychiatrist dated 12 August 2011
- Statement by Mrs Elizabeth Bailey

Respondent

- Outline submissions of the Respondent dated 16 December 2016 with attachments including;
 - Tribunal judgment in case no. 10787-2011 Tofield and Bailey
 - Respondent's records listing the Applicant's posts in organisations
- Respondent's Statement of Costs dated 30 January 2017

Factual Background

2. The Applicant was admitted to the Roll in 1991 and currently practised as a solicitor at North East Lincolnshire Council as Head of its Child Protection Legal Team. He was Sole Principal at Bailey & Co in Gainsborough until August 2007 when he formed Bailey & Tofield ("the firm") with the First Respondent in the original Tribunal proceedings (see below). He was a partner in the firm until he left in or around August/September 2009.
3. The Applicant appeared before the Tribunal on 25 June 2012 as Second Respondent in case number 10787-2011 along with his partner in the firm who was the First Respondent. The allegations against the Applicant in the Rule 5 Statement dated 28 July 2011 were that he, while a partner in the firm (following the numbering of the original judgment):
 - "2.1 Acted in breach of the SARs* by transferring sums from the firm's Client Account to the firm's Office Account other than in circumstances permitted by Rule 19 or Rule 22 of the SARs;
 - 2.2 Acted in breach of Rule 32 of the SARs in that he failed to keep properly written up accounting records of dealings with client money in respect of the matters referred to in 2.1 above;
 - 2.3 Acted in breach of Rule 7 of the SARs, in that, having become aware of a shortfall in the Client Account of the firm arising from, inter-alia, the transfers referred to at 2.1 above, did not promptly rectify the shortfall;

- 2.4 Acted in breach of Rule 5 of the Solicitors Code of Conduct in that he failed to provide for effective financial control of the firm;
- 2.5 Acted in breach of Rule 6 of the SARs, in that he failed to ensure compliance with the rules by the practice and by everyone employed by the practice.”

(*Solicitors Accounts Rules)

4. In relation to allegation 2.1 above, the Applicant caused the transfer of the balance of client monies to office account of £1,479.30 on or about 16 June 2009 when such money was not properly due to the firm. There was no evidence that the balances on the client account had been the subject of bills and there was no evidence that the money was not client funds. The Applicant had explained that the client balances were a list of residual amounts on old conveyancing matters at his former firm, Bailey & Co, where they could not locate the clients.
5. In relation to allegation 2.2 above, although the Applicant’s then partner caused a duplicate transfer from client account to office account of £10,555.40 on 20 January 2009 resulting in a shortage of that sum on client account from that date, the Applicant signed a client account reconciliation for the month of January 2009 which showed the shortfall arising from the over-transfer of £10,555.40.
6. In relation to allegation 2.3, the Applicant accepted that he became aware of the over-transfer of £10,555.40 in April or May 2009. He signed a reconciliation form for January 2009 making reference to this error. However, there was no evidence that he as a partner of the firm took steps to rectify the shortfall. His partner repaid the shortage by personal cheque in January 2011.
7. In relation to allegation 2.4, documentation sent to the firm by HMRC recorded that the firm had not submitted two VAT returns for the periods 1 August 2009 to 31 October 2009 and 1 November 2009 to 31 January 2010. The Applicant disputed that he was liable for half of the outstanding VAT for the firm and submitted that he was ill. However he accepted that he should have dealt with the VAT.
8. In relation to allegation 2.5 above, as a partner of the firm, the Applicant should have ensured compliance with the rules by the practice and by everyone employed by the practice.
9. The Applicant admitted all the allegations and the Tribunal found them proved.
10. In mitigation at the Tribunal hearing, the Applicant stated as recorded in the Tribunal’s judgment that he had become ill and was diagnosed with mental health problems, although his mental health at the time of the hearing was stable. He stated that he did not want to go back to private practice; he wished to continue doing what he was then doing, representing local authorities in care proceedings. He informed the Tribunal that he had been on courses on accounts and the Solicitors Code of Conduct. He stated that he had informed his employer in each job about the conditions of his practising certificate and they were told about the allegations before the Tribunal.

11. In its judgment in respect of sanction, the Tribunal said:

“The Tribunal considered the mitigation made by each of the Respondents and their testimonials. The Tribunal had no reason to doubt that both Respondents were decent lawyers and no dishonesty was alleged against either of them. It had borne in mind that no client had suffered loss; however the accounting side of their practice had been poorly run.”

and

“...The subject matter of the allegations related mainly to breaches of the SARs including that as a partner he [the Second Respondent] was responsible for matters covered by reconciliations that he signed off and that he had not dealt appropriately with an accumulation of residual amounts of client money left from his former practice. These breaches were quite serious and the Tribunal considered that in the Second Respondent’s case a fine of £7,000 was appropriate and that a more serious penalty was not called for.”

and

“In respect of both Respondents, the Tribunal considered that because of the shortcomings they had displayed in managing their firm, certain conditions should be imposed upon their future practice.”

The Tribunal imposed the following conditions upon the Applicant’s future practice:

“The Respondent may not:

1. Practice as a sole practitioner, partner of a recognised body, member of a Limited Liability Partnership (LLP) Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS).
2. Handle client money or become a signatory to any client or office account.”

The Applicant/Second Respondent was also ordered to pay costs of £11,800.

12. The Tribunal could not impose conditions on the Applicant’s practising certificate. The Respondent had its own statutory regime for imposing conditions – the SRA Practising Regulations 2011. Conditions mirroring those imposed by the Tribunal had been imposed by the Respondent on all practising certificates held by the Applicant since the Tribunal hearing in June 2012 up to and including his 2015/2016 practising certificate. The Applicant’s current practising certificate conditions were that;

- He must not act as a manager or owner of any authorised body.
- He may not handle client money or become a signatory to any client or office account.
- He shall immediately inform any actual or prospective employer of these conditions and the reasons for their imposition.

Whilst the wording of the first condition imposed by the Respondent was different from that of the Tribunal it had the same effect. There was no requirement to include a condition preventing the Applicant from acting as a sole practitioner as the SRA Handbook had been amended to reflect that sole practitioners would now be treated as a recognised sole practice which fell within the definition of an authorised body in the SRA Handbook Glossary 2012.

13. The conditions imposed by the Tribunal on 25 June 2012 were the subject of the application made by email dated 15 November 2016 in which the Applicant stated amongst other things:

“I would be grateful if I may make an application to the Tribunal to have the conditions imposed on my Practising Certificate removed.

They have been in place for over five years and I have practised without any complaint since then. I do not believe it would be expected that these restrictions were to be imposed sine die.

There are a number of matters that I was unable to put before the Tribunal at the time of the original proceedings given the state of my mental health... Since then I have been appropriately medicated...There has been no recurrence of any mental health difficulties.

I have headed up a very busy Child Protection Department for a Local Authority for 5 years since the imposition of these conditions, managed a team of 10 lawyers, been responsible for the husbandry of a significant budget, implemented a series of changes internally in order to save approximately £200k for the public purse and I am leading the move to digital case management and digital court rooms for the Humberside area. I chair the Public Law LFJB [Local Family Justice Board].

I have the support of a number of Judges, my Director and senior Counsel and Solicitors with whom I work with daily...”

Submissions for the Applicant

14. Ms Lee QC referred to the Applicant’s position statement (Outline Response) filed dated 10 January 2017. She submitted that when the Applicant was before the Tribunal in 2012 he was not at his best; it had been an extremely traumatic time. He had not really addressed the Tribunal but only answered questions put to him. He had not put in any written response. This application meant a great deal to the Applicant and he would give evidence so that the Tribunal could gain an understanding of him as a person.
15. Ms Lee informed the Tribunal that she and Mr Johal for the Respondent had had discussions before the hearing and that having received all the information provided by the Applicant, the Respondent would agree to a variation of the conditions so that all were rescinded save one; the condition that the Applicant should not practise as a sole practitioner. The Applicant wished to address the Tribunal on that aspect. He had not practised as a sole practitioner for some years but when he did he had been

audited on a number of occasions and there had been no adverse findings made against him when he was managing a client account running into millions of pounds. Difficulties had arisen subsequently when he entered into a partnership. The Applicant entirely accepted the findings of the Respondent's investigation at the time. The Tribunal had found absolutely no dishonesty and that no client had suffered loss but that risk arose from the Applicant's management of the firm. It had arisen out of the dynamics of the relationship of the two partners which had completely broken down so that the Applicant was unable to speak to his partner about how the firm was run. If the Applicant had decided to dissolve the partnership as soon as he had become unwell his liabilities would have been much smaller. As it was he had taken on all the debts of the former firm and continued to pay them. He had not shirked the huge financial burden and his wife who had retired in 2009 had had to go back to work to service the payments. Ms Lee submitted that some might say that the Applicant had chosen to do the honourable thing and to discharge all the debts.

16. Ms Lee referred to the testimonials submitted by His Honour Judge Dowse a Designated Family Judge and from local authority Chief Executive Mr Rob Walsh who had employed the Applicant for a number of years. Both the testimonials were glowing. The Judge referred to his belief that the Applicant was "personally and professionally ready for an entirely clean sheet..." He also commented:

"He has been appearing before me now for many years. He has grown in stature and responsibility. When the restrictions on the practising certificate were imposed the Tribunal would not have then been able to assess him in the way that it can now. From my point of view, (and I have had over 50 years experience in the law) I can no longer see the necessity of the restrictions which were plainly appropriate at the time of imposition."

The Judge also referred to the enormous emotional strain and pressure arising from extreme family circumstances and that as a senior judge he had never encountered the serious mix of circumstances which the Applicant had endured. He continued that Applicant had never faltered in his professionalism and his workload as a result of what was considerable pressure. The Chief Executive indicated that he was keen for the Applicant to extend his responsibilities and perhaps take on the role of Monitoring Officer and that he would prefer that the Applicant had a clean sheet. (He indicated that "It is likely that [the Applicant] will be increasingly and more directly involved in the discharge of Monitoring Officer responsibilities. The continuation of the conditions may present a significant hurdle to that preferment which would be unfortunate for him and the Authority..."). In that connection Ms Lee informed the Tribunal that the role of Monitoring Officer was concerned with the lawfulness of the actions of a local authority and the person holding the role came under a great deal of scrutiny and so it would be preferable for all the restrictions on practice to be removed. Ms Lee emphasised to the Tribunal the high regard in which the Applicant was held and the extent of the responsibilities he had carried out with the local authority which had led it to wish to extend those responsibilities.

17. Ms Lee also made representations about what she described as the lack of guidance about how to apply to remove restrictions on practise or for such conditions to be reviewed. This explained why initially the Applicant had submitted his application in the form only of an e-mail without supporting documents.

Evidence of the Applicant

18. The Applicant informed the Tribunal that he was presently employed as a principal solicitor for safeguarding children and adults. When he was previously before the Tribunal he had represented himself and had been glad to do so but since then he had felt that, while not in any way attempting to suggest that the imposition of the conditions upon him was unfair or inappropriate, there were things which he ought to have said. He had begun practice as an employed solicitor but then wanted to develop a childcare practice. He felt that the then Legal Aid Board wanted to see larger firms utilised, and, as the legal aid position became tighter he developed a conveyancing practice which built up to a level of 300 completions a month. He had undergone three audits as a sole practitioner which could last several days and during which only one error had been identified; accounting for disbursements on the wrong side of the bill. In respect of that he changed the firm's practice. Conveyancing work then fell away nationally. The Applicant had taken advice and having received favourable recommendations went into partnership. He had no criticism of his former partner; suffice it to say that he reached a point where he did not feel that he could control the finances of the practice or the financial risks which were being taken. It was ironic that his former partner had said that he spent too much time worrying about client account and money matters. The Applicant accepted that he then fell ill for a period of three months and failed to cope with his responsibilities. At the end of that period when he decided he wanted to go back to work he became a locum with a local authority which went reasonably well. He was once again respected for the work which he undertook.
19. The Applicant stated that he had very little wish to go back into private practice but he had tried very hard indeed to address a number of issues and referred the Tribunal to the medical evidence in that regard. At the earlier hearing he did not feel that he could explain to the Tribunal about his illness; possibly he had been too proud to do so. He acknowledged that Mr Johal had made a very reasonable offer in terms of removing most of the conditions on his practice but it was very important for the Applicant to recover his pride and dignity. He had been very reluctant to call a halt to the partnership because he knew what would happen and that was what occurred. For the last seven years he had been trying to repay the former firm's debts. This would take a further two or three years to complete. He was paying £700 a month by standing orders. The Applicant stated that he would make sure that those debts were paid off. The distress he felt when discussing these earlier issues was not an indicator of his present ability to practice without supervision. It was not only he who had suffered adverse consequences; they had also impacted on his wife and he felt very responsible for that. He had devoted his entire career to protecting the public and it was hard for him to read that the conditions had been imposed for that purpose.
20. The Applicant stated that he was now presented with two opportunities, possibly to work for the local authority as a Monitoring Officer or to carry on with his present role. If he moved into the former he would undertake less court work which he enjoyed but he had to be conscious of his financial obligations and he felt that his family were deserving of some financial security. The financial loss relating to his former firm meant that they were still paying off a mortgage and going without things that they would otherwise expected to have had. For example he would have liked to assist his children at university to a greater extent. The Applicant clarified for the

Tribunal that moving to the post of Monitoring Officer would involve a very significant increase in salary. He also explained that if he had not moved from sole practice into partnership he thought that he would have had to wind up his practice which was what he should have done when he had become ill.

21. Mr Johal did not cross-examine the Applicant.

Submissions for the Respondent

22. Mr Johal relied on the outline submissions submitted for the Respondent subject to having reviewed its position in the light of recent evidence submitted by the Applicant. The Respondent was generally of the opinion that a fair outcome would be the variation of the conditions to allow the Applicant to return to private practice but not to sole practice. Mr Johal distinguished sole practice on the basis that for the last five or six years the Applicant had excelled in practice where he had the support of colleagues and of the organisation. He had been a sole practitioner some 10 years ago. He said that he had no intention of returning to practise and Mr Johal submitted that for all practical purposes to leave that restriction in place would therefore have no practical effect on the Applicant's plans. The fact that leaving a restriction in place might expose the Applicant to attack in litigation was not a powerful reason to remove the restriction. Mr Johal accepted that there had been no issues when the Applicant was in sole practice and he did not challenge the Applicant's honesty or integrity. The earlier Tribunal described both Respondents in that case as being "decent lawyers". Its concern had been about the Applicant's ability properly to manage the practice and Mr Johal submitted that this division of the Tribunal needed to take that into account in deciding if it would remove all the conditions. Mr Johal was impressed with the Applicant's references. He took no issue with their contents but did not feel that the Applicant's experience of the last five years equipped him to run a sole practice if indeed he wanted to do that.

Decision of the Tribunal

23. The Tribunal had regard to the submissions for and evidence of the Applicant and the submissions for the Respondent. It also had regard to its Guidance Note on Sanctions which stated:

"Restricted practice will only be ordered if it is necessary to ensure the protection of the public and the reputation of the legal profession from future harm by the respondent."

The Tribunal had to consider whether continuing to restrict the way in which the Applicant might practise was justified in the present circumstances. The original Tribunal had been concerned about shortcomings which the Applicant and the other respondent in those proceedings displayed in managing their firm. There had been no concerns about his ability as a solicitor in his chosen field of practice. The Respondent had initially opposed any variation to the restrictions but having seen the Applicant's supporting evidence particularly the most impressive testimonials from the Designated Family Judge for the geographical area in which the Applicant practised and from the Chief Executive of the local authority which now employed him and had done so for the last five years, the Respondent had dropped its opposition

to the removal of all the restrictions save a prohibition on working in sole practice. The Tribunal recognised that the Applicant had not been a sole practitioner for some years but when he had no significant problems had arisen. The earlier application to the Tribunal which led to the imposition of the restrictions (in addition to a fine) had arisen while the Applicant was practising in partnership and while as the evidence he now produced showed he was suffering from mental health issues. The Applicant had shown a great deal of insight into what had occurred and freely acknowledged that he should have at the latest dissolved the partnership or earlier on should have wound down his sole practice. The testimonial from his employer showed that the Applicant was managing a considerable budget and a sizeable legal team and while this occurred within the context of a wider organisation the Tribunal was satisfied that in what, according to the sworn testimony of the Applicant, would be the unlikely event of a return to any form of private practice there was no risk of poor management recurring. Even when problems had occurred no client had lost out. The Tribunal was impressed by the financial responsibility and commitment which the Applicant had shown in clearing the debts of his former practice which had all fallen to him because of the bankruptcy of his former partner and his determination to clear all those debts from his personal resources. The Applicant had been very open with the Tribunal about the health problems from which he had suffered and the medical evidence showed how he successfully addressed them. The Applicant might have the opportunity for considerable career progression with all the benefits that would bring, if the restrictions were removed in their entirety. However the Tribunal bore in mind in arriving at its decision that the fortunes of an individual member of the profession must give way to ensuring the protection of the public and protecting the reputation of the legal profession from future harm. The Tribunal did not consider based on all the evidence including the oral evidence of the Applicant that there would be any future risk to the public or to the reputation of the legal profession if it removed the restrictions placed upon the Applicant almost five years earlier including the only restriction which the Respondent wished still to see in place that upon sole practice. The Tribunal would so order.

Costs

24. Ms Lee submitted that as the Applicant had succeeded in the entirety of his application then he should not be required to pay the Respondent's costs. The Tribunal took the view that the Respondent was obliged to respond to the application in its role as regulator and the application only arose because of a finding which had been made previously against the Applicant by the Tribunal. It was therefore reasonable for the Respondent to be awarded its costs. The Respondent's schedule of costs amounted to £2,294. The parties had reached a provisional agreement upon costs in the figure of £1,400. The Tribunal determined that it would award the Respondent costs in that amount.

Statement of Full Order

25. The Tribunal Orders that the conditions imposed by the Tribunal on 25 June 2012 upon the Applicant, Paul Julian Mark Bailey, solicitor, be removed as of 7 February 2017 and it further Orders that he do bear the costs of and incidental to this application fixed in the sum of £1,400.00.

Dated this 15th day of February 2017
On behalf of the Tribunal

J. Martineau
Chairman