

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11915-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

JILL ELIZABETH BENBOW
(AKA JILL ELIZABETH TYE)

Respondent

Before:

Mr A. N. Spooner (in the chair)
Mr D. Green
Mrs L. Barnett

Date of Hearing: 19 - 20 March 2019

Appearances

There were no appearances as the matter was dealt with on the papers.

JUDGMENT ON AN AGREED OUTCOME

Allegations

The allegations against the Respondent made by the Applicant were set out in a Rule 5 Statement dated 18 January 2019 namely that she:

1. Drove a motor vehicle on a road after consuming so much alcohol that her alcohol levels exceeded the prescribed limits, contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988, and was convicted for the offence on 14 February 2018. She thereby breached:
 - 1.1 Principle 2 of the SRA Principles 2011 (“Principles”) by failing to act with Integrity and/or;
 - 1.2 Principle 6 of the Principles by failing to behave in a way that maintains the trust the public places in her and the provision of legal services.

Documents

2. The Tribunal had before it the following documents:-
 - Application and Rule 5 Statement dated 18 January 2019
 - Statement of agreed facts and indicated outcome dated 12 March 2019.

Factual Background

3. The Respondent was admitted to the Roll of Solicitors on 16 December 1991. She currently holds a Practising Certificate free from conditions.
4. On 14 February 2018 the Respondent was convicted, following a guilty plea, of driving a motor vehicle, namely a Ford Focus YT65VNX, on 18 January 2018 on Mill Lane, Holloway, after consuming so much alcohol that the proportion of it on her breath namely 91 microgrammes of alcohol in 100 millilitres of breath exceeded the prescribed limit contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.
5. On 14 February 2018 she was sentenced to:
 - Disqualification from holding or obtaining a driving licence for 36 months.
 - Community order to have been completed by 13 February 2019.
 - Programme requirement – participation in an accredited programme for 14 days.
 - Rehabilitation Activity Requirement – compliance with any instructions of the responsible officer to attend appointments (with the responsible officer or someone else nominated by them), or participation in any activity as required by the responsible officer up to a maximum of 5 days.
 - Unpaid work requirement – completion of 65 hours unpaid work within 12 months.

- Pay a surcharge to fund victim services of £85.
- Pay costs of £85 to the Crown Prosecution Service.
- Collection order.

Application for the matter to be resolved by way of Agreed Outcome

6. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

Findings of Fact and Law

7. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
8. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondent's admissions were properly made.
9. The Tribunal considered the Guidance Note on Sanction (December 2018). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors in particular:

Aggravating

- 9.1 The allegations were predicated on a second conviction for driving having consumed excess alcohol.
- 9.2 The Respondent did not appear to have learnt from her previous conviction or indeed the Regulatory Settlement Agreement ("RSA") reached in that regard. The Respondent did not appear to have taken note of the warning within the RSA that "if any disciplinary finding is made against her in the future this finding may be taken into account when deciding on what action to take in relation to that matter."
- 9.3 The criminal offence was reported in the local press in respect of which she was named albeit not identified as a solicitor.
- 9.4 The driving disqualification previously imposed expired a mere five months prior to the commission of this offence.
- 9.5 In respect of this conviction she was driving having consumed nearly three times the legal limit for alcohol consumption

Mitigating

- 9.6 The Respondent cooperated with the police fully.
- 9.7 The Respondent pleaded guilty in the criminal proceedings.
- 9.8 The Respondent had completed all that was required of her in terms of the sentence imposed.
- 9.9 The Respondent had self-reported to the Applicant in contrast to her first conviction in respect of which she did not self-report.

The Tribunal's Decision (19 March 2019)

10. The Tribunal was not prepared to agree the first Statement of Agreed Facts and Indicated Outcome lodged with the Tribunal on the 12 March 2019. The Tribunal did not accept the proposal that the conduct found proved could be categorised as “moderately serious” and considered the proposed fine of £4,000 to be unduly lenient.
11. The Tribunal assessed the conduct as “more serious” in light of the aggravating features set out at paragraphs 9.1 – 9.5 and concluded that a fine in the region of £8,000 would more adequately protect the public and the reputation of the profession. The Tribunal, through the Tribunal's Office, indicated their decision to the parties making it plain that it was in no way binding. The parties were invited to reconsider their respective positions and revert accordingly.
12. The SRA advised the Tribunal that, having considered the Tribunal's indication, it was prepared to agree with the Tribunal's assessment of seriousness and level of financial penalty. Professional obligations of the Respondent's legal representative prevented instructions being taken thus the matter could not be concluded

The Tribunal's Decision (20 March 2019)

13. The Respondent, through Mr Goodwin, reverted to the Tribunal and advised that their position remained in that the conduct, on their assessment, could be classified as “moderately serious” as opposed to “more serious.” However, the Respondent acknowledged the Tribunal's concerns regarding the “undue leniency” of the £4,000 fine. The Respondent submitted that a fine in the sum of £6,000 would be appropriate in all of the circumstances. The Applicant relayed that essentially it was a matter for the Tribunal as how best to proceed.
14. The Tribunal was not minded to negotiate on the level of fine and did not consider this to be the correct approach to sanction the purpose of which is to protect the public and the reputation of the profession. The Tribunal therefore presented the parties with two options:
- Consider the, non-binding, indication given by Tribunal.
 - Proceed to substantive hearing listed on 11 July 2019.

15. The parties agreed the indicated sanction given by the Tribunal and undertook to file an amended Statement of Agreed Facts and Indicated Outcome to reflect the same.

Costs

16. The Applicant applied for, and the Respondent agreed to pay, costs in the sum of £1,632.00 which the Tribunal considered to be appropriate and proportionate. The Tribunal Ordered that the Respondent do pay the Applicant's costs in the agreed amount.

Statement of Full Order

- 13 The Tribunal ORDERED that the Respondent, JILL ELIZABETH BENBOW (AKA JILL ELIZABETH TYE), solicitor, do pay a fine of £8,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,632.00.

Dated this 8th day of April 2019
On behalf of the Tribunal



A. N. Spooner
Chairman

Judgment filed
with the Law Society

on 08 APR 2019

Number:

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY

APPLICANT

**JILL ELIZABETH BENBOW
(ALSO KNOWN AS JILL ELIZABETH TYE)**

RESPONDENT

STATEMENT OF AGREED FACTS AND INDICATED OUTCOME

By its application dated 18 January 2019, and the statement made pursuant to Rule 5(2) Solicitors (Disciplinary Proceedings) Rules 2007 which accompanied that application ("the statement"), the Solicitors Regulation Authority ("SRA") brings proceedings before the Solicitors Disciplinary Tribunal concerning the conduct of Jill Elizabeth Benbow.

The allegation

1. The allegation made within the statement against Ms Benbow is that she drove a motor vehicle on a road after consuming so much alcohol that her alcohol levels exceeded the prescribed limits, contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988, and was convicted for the offence on 14 February 2018. She thereby breached:
 - 1.1 Principle 2 of the SRA Principles 2011 ("Principles") by failing to act with integrity and/or;
 - 1.2 Principle 6 of the Principles by failing to behave in a way that maintains the trust the public places in her and the provision of legal services.

Admissions

2. Ms Benbow admits the allegation made against her in the statement as set out in paragraph 1 above.

Agreed Facts

3. The following facts and matters are agreed between the SRA and Ms Benbow:
 - 3.1 Ms Benbow was admitted to the Roll of Solicitors on 16 December 1991. At the date of this statement Ms Benbow remains on the Roll of Solicitors and currently holds a Practising Certificate free from conditions.
 - 3.2 On 14 February 2018 Ms Benbow was convicted, after pleading guilty, to driving a motor vehicle, namely a Ford Focus YT65VNX, on 18 January 2018 on a road namely Mill Lane, Holloway, after consuming so much alcohol that the proportion of it on her breath namely 91 microgrammes of alcohol in 100 millilitres of breath exceeded the prescribed limit contrary to section 5(1)(a) of

the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.

3.3 On 14 February 2018 the following orders were made against Mr Benbow:

- 3.3.1 Disqualified for holding or obtaining a driving licence for 36 months;
- 3.3.2 Community order which Ms Benbow must comply with by 13 February 2019:
 - Programme requirement – participate in an accredited programme for 14 days;
 - Rehabilitation Activity Requirement – offender to comply with any instructions of the responsible officer to attend appointments (with the responsible officer or someone else nominated by them), or to participate in any activity as required by the responsible officer up to a maximum of 5 days;
 - Unpaid work requirement – carry out unpaid work for a period of 65 hours within the next 12 months.
- 3.3.3 To pay a surcharge to fund victim services of £85;
- 3.3.4 To pay costs of £85 to the Crown Prosecution Service;
- 3.3.5 Collection order.

3.4 The disqualification period in paragraph 3.3.1 above was obligatory for the offence by reference to section 34(1) of the Road Traffic Offenders Act 1988 as Ms Benbow had previously been convicted for driving with alcohol levels that exceeded the prescribed limit on 9 June 2016. She was fined £800, disqualified from driving for 18 months, ordered to pay a victim surcharge of £80 and court costs of £85. Ms Benbow completed a Rehabilitation Course for Drink Drive Offenders which resulted in a reduction of her 18 month disqualification for drink driving by 18 weeks. Her conviction was dealt with by the SRA by way of a Regulatory Settlement Agreement ("RSA"). In the RSA Ms Benbow was *"warned that if any disciplinary finding is made against her in future this finding may be taken into account when deciding on what action to take in relation to that matter"*.

3.5 The background to the conviction set out in paragraph 3.2 above was set out in the Crown Prosecution Service's MG5 form as follows:

- 3.5.1 On Thursday 18 January 2018 at 14.43hrs at Mill Lane, Holloway a police constable was looking for a possible drink driver acting on information received;
- 3.5.2 The police constable saw a vehicle, a Ford Focus in silver YT65VNX, cross his position;
- 3.5.3 The police constable followed the vehicle onto Church Street and caused it to stop;
- 3.5.4 The female driver and only occupant TYE smelled of intoxicants so the police constable carried out a roadside breath test the result being 91;
- 3.5.5 TYE was arrested and taken to St Marys Wharf custody where she provided two evidential samples of 91 and 91.
- 3.5.6 Charged with the offence.

3.6 On 15 February 2018 a press article about Ms Benbow's conviction appeared in the Derbyshire Times.

Mitigation

4. The following mitigation is advanced by Ms Benbow and is not endorsed by the SRA:
 - 4.1. She was going through an extremely difficult time in her personal life as her marriage broke down in May 2016 and her father was ill and subsequently died;
 - 4.2. The breakdown of her marriage contributed to the difficulties she faced with alcohol;
 - 4.3. She self-reported her conviction to the SRA on 15 February 2018;
 - 4.4. She was going to a local store about a quarter of a mile from her home to get medication for her son who was ill;
 - 4.5. There were no passengers in the car on the date of the incident;
 - 4.6. No harm was caused to property or persons;
 - 4.7. She cooperated with the police fully and gave a roadside breath specimen;
 - 4.8. She has attended various courses to deal with her alcohol issues;
 - 4.9. She has complied with all the orders that the court made.
 - 4.10. The disqualification hasn't impacted on her work as a solicitor
 - 4.11. She has undertaken the Rehabilitation Activity Requirement and completed 65 hours of unpaid work.

Proposed penalty

5. Ms Benbow and the SRA agree that the seriousness of Ms Benbow's conduct warrants a fine of £8,000.00, with any lesser fine or sanction being inappropriate.
6. With respect to costs, Ms Benbow agrees to pay the SRA's costs of this application fixed in the sum of £1,632.00.

Explanation as to why such an order would be in accordance with the Tribunal's sanctions guidance

7. Having considered the Solicitors Disciplinary Tribunal's Guidance Note on Sanctions Ms Benbow accepts that her misconduct falls into level 3 of the Indicative Fine Bands as her misconduct was assessed as moderately serious.
8. Ms Benbow had previously been convicted of driving when the level of alcohol in her body exceeded the prescribed limits and so being convicted again for the driving when the level of alcohol in her body exceeded the prescribed limits made her misconduct more serious.
9. Ms Benbow's second occasion of driving when the level of alcohol in her body exceeded the prescribed limits occurred approximately 5 months after her previous disqualification for driving had expired.
10. In determining the level of sanction Ms Benbow's mitigation has been taken into account.

11. Accordingly, having regard to Ms Benbow's conviction and admission, the SRA and Ms Benbow invite the Solicitors Disciplinary Tribunal to make an order that Jill Elizabeth Benbow pay a fine of £8,000.00 and pay the SRA fixed and agreed costs of £1,632.00.

Dated this ^{4th} day of April 2019

Mark Gibson

On behalf of the SRA

Jill Elizabeth Benbow