

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10386-2009

BETWEEN:

SOLICITORS REGULATION AUTHORITY	Applicant
and	
[RESPONDENT 1] –NAME REDACTED	First Respondent
(Solicitor)	
and	
QUARTERS TRUSTEES LIMITED	Second Respondent
(a Recognised Body)	
and	
SUSAN MCKENZIE BEAUMONT	Third Respondent
(Former Registered Foreign Lawyer)	

Before:

Mr D. J. Leverton (in the chair)
Mr A. H. B. Holmes
Mr S. Howe

Date of Hearing: 3rd October 2011

Appearances

Mr Andrew Tabachnik of Counsel, instructed by Peter Cadman, solicitor of Russell-Cooke Solicitors of 8 Bedford Row, London, WC1R 4BX for the Applicant.

All three Respondents were represented by Robert Ham, QC.

The First Respondent, was present.

JUDGMENT

Allegations

1. The allegations made against the First, Second and Third Respondents (respectively, [Respondent 1 – Name Redacted], Quarters Trustees Limited and Mrs Beaumont) on behalf of the Solicitors Regulation Authority were:

In respect of the Solicitors Accounts Rules 1998 ("SAR"):

- 1.1 That the books of accounts were not properly written up in breach of Rule 32 of the SAR;
- 1.2 That they failed to show dealings with office money relating to client matters in breach of Rule 32(1)(c) of the SAR;
- 1.3 That they failed to record in an office cash account and on the office side of the appropriate client ledger all dealings with any office money relating to any client matter in breach of Rule 32(4) of the SAR;
- 1.4 That they failed to show at all times the current balance on each client ledger account in breach of Rule 32(5) of the SAR;
- 1.5 That the Second Respondent failed to maintain a central register of appointments in breach of Rule 9 and 32(12) of the SAR;
- 1.6 That they failed to hold client money in a client account in breach of Rule 15(1) of the SAR;
- 1.7. That they improperly withdrew, allowed or caused to be withdrawn client money from client account in breach of Rule 22(1)(a) of the SAR;
- 1.8 That they failed to ensure compliance by themselves with the SAR in breach of Rule 6 thereof;
- 1.9 That they failed to ensure compliance with the SAR by those working or employed by them in breach of Rule 6 thereof;
- 1.10 That they failed to remedy breaches of the SAR promptly upon discovery thereof in breach of Rule 7 of the SAR; and

In respect of the Solicitors Code of Conduct 2007:

- 2.1 That the First Respondent falsified documentation provided to Officers of the Solicitors Regulation Authority or otherwise misled them and thereby acted in breach of Rules 1.01, 1.02, 1.03 and 1.06 of the Solicitors Code of Conduct ("SCC");
- 2.2 That the First Second and Third Respondents transferred client monies without adequate authority in breach of Rules 1.02, 1.03, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct;

- 2.3 that the First, Second and Third Respondents overcharged their clients in breach of Rules 1.02, 1.03, 1.04, 1.05 and 1.06 of the SCC;
- 2.4 That the First, Second and Third Respondents raised bills of costs against clients in a manner and practice contrary to Rule 2.03 of the SCC and previously contrary to the Solicitors' Costs Information and Client Care Code 1999;
- 3.1 That the First, Second and Third Respondents failed to set up client accounts in accordance with the provisions of Rule 14(3) of the SAR when client monies were transferred from accounts in the joint names of the Second Respondent and individual clients to accounts in the sole name of the Second Respondent;
- 3.2 That the First, Second and Third Respondents failed to take adequate steps to ensure that their involvement with a separate business (the Freedom SIPP Limited) was conducted in a manner compliant with Rule 21 of the SCC, in particular Rule 21.05 (Safeguards); and
- 3.3 That the First and Third Respondents failed to discharge their duties or responsibilities adequately in respect of ensuring proper and effective supervision and management of the business of the Firm and that in their capacities as directors of the Second Respondent they failed to discharge the same duties in respect of the business and functions of the Second Respondent contrary to Rule 5 of the SCC;

Documents

4. The Tribunal reviewed all the documents submitted by the Applicant and the Respondents, which included:

Applicant

- Application, Rule 5 Statement and Exhibits dated 18 November 2009;
- Decision of Pension Regulator dated 20 August 2009;
- Memorandum of Agreed Terms between SRA and Respondents.

Respondents:

- Revised Response to Rule 5 Statement dated 28 February 2011.

Preliminary Matters

5. The Tribunal was informed that terms had been agreed between the SRA and the Respondents, subject to the Tribunal's approval, for the disposal of this matter. The Memorandum of Agreed Terms signed by Counsel for the parties was passed to the Tribunal and placed on the file.
6. It was noted that the Memorandum of Agreed Terms contained the admissions of all three Respondents to all of the allegations, save for allegations 2.1 and 2.3. Those allegations (falsifying documents and dishonestly overcharging clients) were not

admitted and the Applicant sought the Tribunal's permission to withdraw those allegations.

7. The terms agreed by the parties were, in brief, that the First Respondent would apply for his name to be removed from the Roll and he undertook to the SRA (and would undertake to the Tribunal if required) not to apply to any body for his name to be restored to the Roll. All Respondents agreed to consent to an Order revoking the recognition of the Second Respondent and the Third Respondent agreed to consent to an Order directing that she should be prohibited from being re-registered as a Registered Foreign Lawyer ("RFL") except by Order of the Tribunal. It was further agreed that the parties would pay the SRA's costs of the proceedings, such costs to be assessed on the standard basis if not agreed.
8. Mr Tabachnik set out an overview of the allegations and the proceedings in order to obtain the Tribunal's consent to proceed in the way set out in the Memorandum of Agreed Terms.
9. The allegations made fell into three broad categories, and allegations within all three categories had been admitted by the Respondents.
10. The first category related to the way in which the Respondents kept the books and records, in particular in relation to client account, of both Quarters Solicitors(a firm in which the First and Third Respondents were the principals) and the Second Respondent. The Respondents had advertised the Second Respondent as being "regulated by The Law Society" (at the relevant time) and the Applicant's view was that the SAR applied directly to the Second and Third Respondents in their capacity as directors of the Second Respondent, as well as partners in the firm of Quarters. The allegations related to the way in which the Second Respondent had performed its trustee duties in relation to certain pension funds, in particular keeping proper records of assets.
11. Concerns about the way in which the books of account had been maintained had led to a number of inspections both by the Applicant and by other regulatory bodies. Accountants' Reports for the years ended April 2006 and April 2007 showed significant problems. The SAR's Forensic Investigation Team began an inspection in February 2008 and found no improvements had been made since the previous Accountants' Report. The inspection was not completed at that time and the Officers returned several months later and again found no improvement in the management of the accounts. The management of Quarters, the Second Respondent and a third entity operating from the Respondents' premises had led to investigations by the SRA, the Financial Services Authority ("FSA") and the Pensions Regulator. In late 2008 Russell-Cooke LLP had been appointed as an "expert person" to investigate the state of the records of both the solicitors' firm and the pension business run by the First and Third Respondents. This led to a s.44(B) report which showed that no reconciliations had been carried out, such that it was impossible to find easily what cash or other funds were held for clients. This had given rise to grave concerns, particularly given the substantial sums of money involved. Whilst the figures quoted had varied, the amounts administered, or in respect of which the Respondents acted as trustee, had been stated to be £50m and/or up to £160m. Concerns about the fact that no proper records were kept concerning such a large amount of money and other assets had led

to the alleged breaches of the SAR. The s.44(B) report led to the SRA's decision to intervene in the Respondent's practices in late 2008. A further review of the papers following the intervention confirmed the extensive and fundamental problems with the record keeping at Quarters and the Second Respondent. The problems had lasted over an extended period, when the Respondents had been given clear warnings that far-reaching and effective action was needed.

12. The second category of allegations related to the Respondents' billing practices. The SRA's position was that charges had not been made on proper, time recorded or otherwise documented and agreed basis. Rather than billing on a precise basis, the First and Third Respondents had made comments during interviews with the SRA's Officers which suggested their billing was based on "guesstimates".
13. In relation to one matter, the B Pension Scheme, a bill had been raised to offset the receipt of VAT, which receipt should have been paid into the pension fund. The VAT receipt of approximately £47,000 was paid into office account and subsequently a bill was raised for approximately £65,000. No proper records had been kept or produced which would support such a bill and it was not possible to tell if the pension scheme had been over or indeed undercharged. Other examples of such billing practices were shown within the papers.
14. A further aspect of this category of allegations was that a number of clients had been charged separately for matters which should properly have been part of the annual fee charge. The Third Respondent had accepted in interview with the SRA Officers that she had signed a number of invoices for fees without seeing the breakdowns, which might have shown that the bills included charges for matters which had already been charged. The SRA's position was that this showed a careless attitude to reviewing bills.
15. The third category of allegations related to the transfer of certain bank accounts, operated as trustee, to NBS. The way in which this transfer was carried out had led to discontent amongst the Respondents' clients and the FSA's particular interest in the activities of the Respondents' businesses.
16. There had been some dispute about whether the First Respondent was permitted to effect the transfer of client funds, held as trustee, from one bank to another without the authority of the clients concerned. The SRA's position was that letters sent to clients gave the impression that funds would be transferred only if they signed the consent form. Whilst a majority did this, a significant minority did not but their funds were transferred in any event. The First Respondent now admitted that he should not have transferred the bank accounts without the consent of the clients.
17. A further difficulty which had occurred was that when the money was transferred to NBS it was not shown as being in a client account, and the accounts did not show the name of the underlying clients, such that the funds appeared to belong to the Second Respondent. The form of mandate appeared to require only the Second Respondent's authority in order to operate the account, which had led to the opportunity for misappropriation. It was not suggested that there had been any such misappropriation but the possibility was there, particularly when combined with the "anarchic" books of account.

18. In the light of the admissions by the Respondents, the parties had agreed on certain appropriate sanctions subject to the Tribunal's agreement. One issue the Tribunal would need to consider was whether it remained in the public interest to pursue the allegations of dishonesty. The First Respondent proposed to be removed from the Roll and to give an undertaking never to reapply. The recognition of the Second Respondent, a recognised body, would be revoked and the Third Respondent would be prohibited from re-registering as a Registered Foreign Lawyer without the Tribunal's consent.
19. It was submitted that in the circumstances the proposed sanctions met the justice of the case. The public was protected and it was therefore not in the public interest to pursue the allegations of dishonesty.
20. It was confirmed to the Tribunal that the First Respondent should give an undertaking to the Tribunal as well as to the Applicant.
21. The Tribunal sought clarification of whether it had any jurisdiction or powers to impose sanctions in addition to those agreed by the parties.
22. Counsel for the parties agreed that the Tribunal retained jurisdiction to impose an additional sanction on the First Respondent if it saw fit. The only Order which could be made in respect of the Second Respondent in any event was revocation of its recognition. The Third Respondent had ceased to be a RFL on 15 December 2008. Her original referral to the Tribunal, in a decision made on 16 December 2008, had to be rescinded as at that point the Tribunal had had no jurisdiction to deal with a former RFL. However, on 1 July 2009 the Registered Foreign Lawyers' Order 2009 came into force which, in brief, extended to the Tribunal the power to deal with former RFLs as if they were former solicitors. The only Order which could be made against former RFLs was that they should be prohibited from re-registering without the permission of the Tribunal.

Tribunal's Determination of the Preliminary Matters

23. The Tribunal agreed to proceed on the basis set out in the Memorandum of Agreed Terms.
24. The Tribunal gave permission for allegations 2.1 and 2.3 to be withdrawn. The public would be protected adequately by the terms agreed by the parties and the Tribunal and it was no longer in the public interest to continue to prosecute those allegations.
25. The Tribunal determined that the First Respondent should give an undertaking to the Tribunal, in a form to be determined by the Tribunal, in addition to any undertaking given to the Applicant.

Factual Background

24. The First Respondent, [Respondent 1 – Name Redacted], born in 1948, was admitted as a solicitor in 1976. At the date of the hearing his name remained on the Roll of Solicitors.

25. The Second Respondent, Quarters Trustees Limited (a Recognised Body) was a private company limited by guarantee. It was incorporated on 13 February 2003 and was registered as a Recognised Body from 26 July 2004.
26. The Third Respondent, Susan McKenzie Beaumont, born in 1966, became a Registered Foreign Lawyer with The Law Society of England and Wales in 2004. Her registration as a RFL was cancelled by the SRA on 15 December 2008.
27. At all material times the First and Third Respondent practised in partnership together under the trading style Quarters Solicitors at 33 Bolton Street, Ramsbottom, Bury, Lancashire, BL0 9HU.
28. At all material times the First and Third Respondents were the sole directors and shareholders in the Second Respondent. At all material times the Second Respondent undertook from 33 Bolton Street, Ramsbottom, Bury, Lancashire, BL0 9HU the provision of auxiliary insurance and pension fund services as well as the provision of trustee services.
29. A third business entity, Freedom SIPP Limited ("FSL") operated from the premises at 33 Bolton Street, Ramsbottom. This body was not within the aegis of the SRA but was connected with the businesses of the First, Second and Third Respondents. The First and Third Respondents were at all material times directors of FSL together with, at various times, certain non-admitted persons. FSL operated as the administrator of a Self Invested Personal Pension Scheme ("SIPP") trading under the style "the Freedom SIPP". The Freedom SIPP was set up on 1 October 2004 under a deed of trust between Butterfield Pensions (UK) Limited and the Second Respondent, which deed of trust was amended by deed on 8 January 2007.
30. The administration, taxation and structure of SIPPs were determined by, amongst other legislative measures, the Financial Services and Markets Act 2000 and various statutes relating to taxation and pensions as well as to rules promulgated by Her Majesty's Revenue and Customs. The Second Respondent acted as trustee for the Freedom SIPP. In the operation of individual Freedom SIPP funds the Second Respondent was appointed as trustee along with the individual investor/member. FSL was registered with and authorised by the FSA which, together with the Pensions' Regulator, had taken certain regulatory action in respect of FSL. On 14 October 2009 the FSA reported that FSL had been made subject to a winding up order in the High Court, the petition to wind up FSL having been made by Her Majesty's Revenue and Customs.
31. An inspection of the books of account of Quarters and the Second Respondent commenced on 25 February 2008 and resulted in a Forensic Investigation Report ("FI Report") dated 14 August 2008.
32. On 29 October 2008 the SRA served notice on the First and Second Respondents and another that they were required to produce records to the appointee of the SRA under s.44(B) of the Solicitors Act 1974. Russell-Cooke LLP was appointed under the s.44(B) notice and attended the offices of the firm and the Second Respondent on 4 and 5 November 2008. The FI Report under s.44(B) led to the decision of the

Adjudication Panel of the SRA on 16 December 2008 to intervene in the practice of the firm and the Second Respondent.

33. A second report (the Intervention Report), was made to the SRA by Russell-Cooke LLP on 7 July 2009.

Witnesses

34. None.

Findings

35. All allegations, save for 2.1 and 2.3 which were withdrawn, were admitted by the Respondents and the Tribunal found them to have been proved.

Previous Disciplinary Matters

36. None.

Mitigation

37. The Tribunal noted that it did not have powers to impose further sanction in respect of the Second or Third Respondents over and above that envisaged by the Memorandum of Agreed Terms. Mitigation was therefore required only in respect of the First Respondent.
38. On behalf of the First Respondent it was submitted that the agreement reached, whereby the First Respondent would be removed from the Roll and would never reapply, would protect the public.
39. The First Respondent admitted that so far as responsibility for the practices were concerned, "the buck stopped" with him. However, he had placed trust in employees who had proved to be not worthy of that trust.
40. The First Respondent had been overwhelmed by the regulatory activities of the SRA, FSA and Pensions Regulator. Indeed, there were still some proceedings ongoing involving the FSA. There was a possible defect in the system in that there was no single Tribunal which could deal with all aspects of this matter.
41. Before the First Respondent established Quarters, he had had a distinguished career at Nabarro Nathanson and had built up their highly regarded pensions practice. He had had diverse and high profile clients and had been involved in establishing and chairing the Association of Pension Lawyers. He had an unblemished record prior to the matters raised in these proceedings.

Sanction

42. The Tribunal had taken a considerable time in preparation of the hearing to read the extensive papers in this matter. The members of the Tribunal had therefore arrived at

the Tribunal with a great deal of background knowledge. The Tribunal had listened carefully to the representations made by both Mr Tabachnik and Mr Ham, QC.

43. The Tribunal considered this to be a serious case. As had been outlined to the Tribunal, there were three different types of allegations against the Respondents. The first category involved breaches of the SAR. Those breaches had been admitted. It was clear that the accounts of the various organisations in which the Respondents were involved had been a shambles. There had been two Accountants' Reports which had been qualified, those for 2006 and 2007, and no improvements were made to the accounting systems. The state of the books meant it was impossible to distinguish between funds belonging to individual clients or to see clearly how those funds were composed.
44. With regard to the allegations of overbilling, it was clear that there had been no proper system of time recording or assessment of bills. It was difficult to know whether clients had been under or overcharged but the suspicion must remain that there had been overcharging.
45. The way in which accounts had been transferred to NBS was also a serious matter. It had led to considerable concern on the part of the FSA. The Respondents had failed to obtain consent from all of their clients to the transfer.
46. Overall, the Respondents had shown a wholesale disregard of the SAR and the way in which a proper solicitor's practice should be run. Indeed, the First and Third Respondents had dealt with accounts matters in a totally cavalier fashion.
47. The Tribunal noted that it had no power to make orders beyond those consented to by the Second and Third Respondents, namely a revocation of recognition in the former case and an order that the latter should not be re-registered as a Registered Foreign Lawyer without permission of the Tribunal.
48. So far as the First Respondent was concerned the Tribunal came to the conclusion that it should approve the condition set out in the Memorandum of Agreed Terms, that the First Respondent should be removed from the Roll and should undertake to the SRA and the Tribunal not to reapply. The Tribunal would require the First Respondent to sign a written undertaking in terms set by the Tribunal.
49. The Tribunal had been told that the First Respondent was bankrupt. In the circumstances described, the imposition of a financial penalty on him by way of a further sanction would not be meaningful. This conclusion had been reached somewhat reluctantly given the very serious nature of the allegations in the light of the First Respondent's financial circumstances. The Tribunal considered that the admitted allegations were so serious that, even without the allegations of dishonesty, the First Respondent's conduct was so bad that a Striking Off Order would have been warranted.

Costs

50. The Tribunal noted that within the Memorandum of Agreed Terms the First, Second and Third Respondents had agreed to pay the SRA's costs of the proceedings, to be

assessed on the standard basis if not agreed. The Tribunal was told that an agreement had been made as to the amount of the costs, being a total of £93,623.13 inclusive of VAT. With the agreement of the parties, the Tribunal Ordered that that sum should be paid on a joint and several basis.

Statement of full Order

51. The Tribunal Ordered that the Respondent [Respondent 1 – Name Redacted] of Bury, Lancashire, BL8, solicitor, be jointly and severally liable with the Second and Third Respondents to pay the costs of and incidental to this application and enquiry fixed in the sum of £93,623.13, inclusive of VAT.
52. The Tribunal Ordered that the recognition of the recognised body of Quarters Trustees Limited of 33 Bolton Street, Ramsbottom, Bury, Lancashire, BL0 9HU be Revoked and it further Ordered that it be jointly and severally liable with the first and third Respondents to pay the costs of and incidental to this application and enquiry fixed in the sum of £93,623.13, inclusive of VAT.
53. The Tribunal Ordered that the Respondent Susan McKenzie Beaumont of Bury, Lancashire, BL8, former Registered Foreign Lawyer, be prohibited from being re-registered as a Registered Foreign Lawyer except by further Order of the Tribunal and the Tribunal further Ordered that she be jointly and severally liable with the first and second Respondents to pay the costs of and incidental to this application and enquiry fixed in the sum of £93,623.13, inclusive of VAT.

Dated this 14th day of October 2011
On behalf of the Tribunal

D. J. Leverton
Chairman