

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF SHEILA DAVENPORT, (The Respondent)
A person (not being a solicitor) employed or remunerated by a solicitor

Upon the application of Jayne Willetts
on behalf of the Solicitors Regulation Authority

Mr A G Gibson (in the chair)
Mr R Hegarty
Mrs C Pickering

Date of Hearing: 15th September 2010

FINDINGS & DECISION

Appearances

Ms Jayne Willetts, solicitor advocate and partner of Townshends LLP, Cornwall House, 31 Lionel Street, Birmingham, B3 1AP appeared on behalf of the Solicitors Regulation Authority ("SRA").

The Respondent appeared and was represented by Mr Tracy Newport, who acted as her McKenzie Friend.

The application was dated 12th March 2010.

Allegation

The Respondent occasioned or was a party to an act or default in relation to a legal practice which involved conduct on her part of such a nature that in the opinion of the Society it would be undesirable for her to be involved in a legal practice in one or more of the ways

mentioned in s43(1)(A) of the Solicitors Act 1974 as amended by the Legal Services Act 2007 in that:

- (a) She failed to account to her employer for a cash payment of £1,500 received from a client; and
- (b) She prepared applications to transfer legal aid orders to her future employer whilst still employed by her previous employer.

The Respondent admitted the allegation.

Factual Background

1. The Respondent, born in 1958, was unadmitted and was employed as a legal clerk by Associated Legals (Leeds) Limited trading as Kaufman & Co Solicitors ("Kaufman & Co") of 19 Armley Park Court, Stanningley Road, Leeds LS12 2AE from 1st October 2006 until 9th August 2008.
2. On 25th March 2009 Mr SN complained to the Legal Complaints Service ("LCS") about the service that he had received from the Respondent and from her firm Kaufman & Co. His principal complaint was that his father ("Mr LSN") had handed over to the Respondent a cash payment of £1,500 which had not been returned. Mr SN complained that as he was legally aided, any privately funded payments were not necessary. The Respondent signed a receipt on Kaufman & Co letterhead on 27th February 2007 and handed it to the father of Mr SN.
3. It was subsequently discovered that the Respondent had failed to account to her employer Kaufman & Co for the £1,500 cash payment. In addition the file relating to Mr SN's case was missing and was never located.
4. On 21st January 2009 an Adjudicator from the LCS ordered that Kaufman & Co should refund to the father £1,500 and also ordered that Kaufman & Co should pay to Mr SN £500 compensation.
5. By letter dated 12th July 2008 the Respondent gave two months notice to Kaufman & Co to terminate her employment to expire on 9th September 2008. The Respondent referred in the letter to her sick note expiring on 30th July 2008 which explained her absence from work at that time.
6. Kaufman & Co received seven letters dated 18th July 2008 from Chambers Solicitors ("Chambers") (where the Respondent subsequently took employment) requesting the transfer of criminal legal aid orders from Kaufman & Co to Chambers. The requests were in respect of seven clients for whom the Respondent was acting whilst employed by Kaufman & Co. To each letter was attached a form headed "Authorisation for the transfer of legal aid". The reason given for the transfer of legal aid was that the caseworker acting for the client was moving firms to Chambers and that the client wished the same caseworker to continue representing him. The details on the form had been filled in by the Respondent on behalf of Chambers and the form signed in each case by the individual client. At the date of completion of these forms the

Respondent was still employed by Kaufman & Co and was not an employee of Chambers.

7. Upon receipt of these requests Kaufman & Co wrote to the relevant Crown or Magistrates Court and to Chambers explaining that as the caseworker concerned was still employed by Kaufman & Co consent to the transfer of the legal aid orders would not be given.
8. The Respondent wrote again to Kaufman & Co on 3rd August 2008 confirming that she wished to reduce her notice period from two months to one month to expire on 9th August 2008. The Respondent's employment contract with Kaufman & Co therefore terminated on 9th August 2008. The Respondent subsequently began work for Chambers and the legal aid orders referred to above were transferred to that firm.
9. The Respondent wrote to the SRA on 6th March 2009 stating that she had acted on behalf of Mr SN at Kaufman & Co. She stated that she was instructed by the brother of Mr SN to "do a reading of the case papers in late 2006" for a fee of £1,500. The Respondent further stated that "this reading was to be undertaken by SLS Legal Services and not Kaufman's". She also confirmed that she was given £1,500 in cash in February 2007 from the father of Mr SN and that she gave a receipt on the wrong letter heading.
10. The Respondent also produced a statement (undated and unsigned) from the brother of her client, Mr SN. He stated that "the matter would be conducted under her own business of SLS Legal Services as she was doing a read of the papers only for me".
11. The Respondent's contract of employment with Kaufman & Co stated:

"It is a condition of your employment that apart from work within the Company, you do not engage in any other employment or engage in any profession, trade or business, directly or indirectly, without the company's express prior consent".
12. The Respondent's employer Kaufman & Co had not provided its consent for the Respondent to operate a separate business providing legal advice by the name of SLS Legal Services or by any other name.

The Tribunal reviewed all the documents submitted by the Applicant which included:

- (i) Rule 8(5) Statement dated 12th March 2010 together with all attached documents;
- (ii) Applicant's Schedule of Costs dated 31st August 2010;
- (iii) Statement of Stuart Anthony Kaufman dated 9th July 2010;
- (iv) Letter from Mr SSN to LCS dated 6th November 2008.

The Tribunal reviewed all the documents submitted by the Respondent which included:

- (i) Written statement of Sheila Davenport;

- (ii) Amended receipt from Sheila's Legal Services to Mr SN dated 27th February 2007;
- (iii) Bundle of character references from members of the Bar;
- (iv) Schedule of Respondent's financial income and expenditure.

Findings as to Fact and Law

- 13. The Tribunal found the allegation was proved, indeed it had been admitted by the Respondent.

Mitigation

- 14. The Respondent accepted she had made an error of judgment and that she had failed to consider the view and thoughts of her employers. The Tribunal was referred to her written statement, the character references provided and the receipt on SLS letterhead dated 27th February 2007. It was submitted that the Respondent's mistake/judgment in error should not prevent her from continuing to work, particularly as she had been practising within the legal profession for many years.
- 15. There had been no allegation of dishonesty and the Respondent was very embarrassed to be appearing before the Tribunal. She accepted that if she had had a meaningful discussion with Kaufman & Co at the time, matters could have been resolved.
- 16. The Respondent was currently employed by a firm of solicitors in Stockport where she was closely supervised. She had been engaged in a serious and large case which was due to come to trial at Sheffield Crown Court on 27th September 2010. The Tribunal was invited to make any order effective from 1st December 2010 in order to allow the Respondent time to deal with this trial and for her employers to obtain any permission necessary from The Law Society. It would be a waste of public funds for another fee earner to take over the matter at such a late stage, especially as a trial was due to take place in approximately two weeks time.

Costs

- 17. The Applicant provided the Tribunal with a Schedule of her Costs which came to a total of £12,688.34. She requested an order in this amount.
- 18. The Respondent did not have the means to pay and the Tribunal was provided with a Schedule of her financial income/expenditure for consideration.

Previous Disciplinary Sanctions before the Tribunal

- 19. None.

Sanction and Reasons

- 20. The Tribunal had listened carefully to the submissions of both parties and had considered all the documents in detail including the references provided. The Tribunal was mindful that the Respondent had not provided any evidence of the actual

work carried out in relation to Mr SN, who had paid a fee of £1,500. At the time the Respondent took this fee from Mr SN, she was employed by Kaufman & Co and in the Tribunal's view, she should have accounted to Kaufman & Co for that fee, but kept it for herself. By failing to do so she had caused damage to the reputation of the profession.

21. Furthermore, the Tribunal noted that the letters dated 18th July 2008 requesting the transfer of criminal legal aid orders from Kaufman & Co to Chambers which were in the Respondent's handwriting, had been completed whilst the Respondent was still employed by Kaufman & Co. It was clear to the Tribunal that the Respondent intended to take those clients with her to her new employers and this was further evidenced by the fact that the Respondent brought forward the date of termination of her employment with Kaufman & Co to 9th August 2008, when Chambers was informed by Kaufman & Co that she was still employed by them and therefore the legal aid orders would not be transferred. This conduct alone would in the view of the Tribunal be sufficient grounds for making the order sought.
22. The Tribunal was particularly concerned about the supervision of the Respondent as she appeared, to all intents and purposes, to be an outdoor clerk who did not work from an office. In the Tribunal's view, supervision in those circumstances would be very difficult. The Tribunal had considered the cases of Ojelade v The Law Society [2006] EWHC 2210 (Admin) and Gregory v The Law Society [2007] EWHC 1724 (Admin) which the Applicant had referred to. It was quite right that the public should have confidence both in solicitors and in those employed by solicitors' firms. Accordingly, the Tribunal granted the order requested under s43(2) of the Solicitors Act 1974 (as amended) to be effective from 1st December 2010.

Decision as to Costs

23. The Tribunal considered the Applicant's costs to be rather high and noted that the matter had not taken a full day as had been estimated. Having considered the Respondent's Schedule of her financial income and expenditure, the Tribunal then considered the case of D'Souza v The Law Society [2009] EWHC 2193 (Admin) on the question of the Respondent's means and ability to pay costs.
24. Taking all the circumstances into account, the Tribunal assessed the costs at £6,000 and Ordered the Respondent to pay these.

Order

25. The Tribunal Ordered that as from 1st day of December 2010 except in accordance with Law Society permission:-
 - (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Sheila Davenport;
 - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Sheila Davenport;
 - (iii) no recognised body shall employ or remunerate the said Sheila Davenport;

- (iv) no manager or employee of a recognised body shall employ or remunerate the said Sheila Davenport in connection with the business of that body;
- (v) no recognised body or manager or employee of such a body shall permit the said Sheila Davenport to be a manager of the body;
- (vi) no recognised body or manager or employee of such a body shall permit the said Sheila Davenport to have an interest in the body;

And the Tribunal further Ordered that the said Sheila Davenport do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,000.

DATED this 13th day of October 2010
on behalf of the Tribunal

A G Gibson
Chairman