

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10604-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MICHAEL EDWARD FRENCH

Respondent

Before:

Mr D. J. Leverton (in the chair)

Mr R. Hegarty

Mr P. Wyatt

Date of Hearing: 21st February 2011

Appearances

David Barton, solicitor (Solicitor Advocate of 13-17 Lower Stone Street, Maidstone, Kent, ME15 6JX) for the Applicant.

Mr Michael Edward French, the Respondent, appeared in person.

JUDGMENT

Allegations

1. The allegations against the Respondent were that he:-
 - 1.1 Failed to deliver his accountant's report for the period ended 31 March 2009, due by 30 September 2009.
 - 1.2 Contrary to Rule 7 of the Solicitors Accounts Rules 1998 ("SAR") he failed to remedy breaches promptly on discovery.
 - 1.3 Contrary to Rule 32(1) of the SAR he failed to keep his books of account properly written up at all times.
 - 1.4 Contrary to Rule 32(7) of the SAR he failed to carry out reconciliations of his client account in accordance with the requirements of the said Rule.
 - 1.5 He did not provide his professional indemnity insurers with his full regulatory history, thereby failing to act with integrity in breach of Rule 1.02 of the Solicitors Code of Conduct 2007 ("SCC").
 - 1.6 He failed to deliver his accountant's reports for the periods ended 31 March 2009 and 31 March 2010.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent, which included:-

Applicant:

- Application dated 25 August 2010.
- Rule 5 Statement dated 25 August 2010, and Exhibit "DEB 1".
- Rule 7 Statement dated 4 February 2011, and Exhibit "DEB 2".

Respondent

- Letter from the Respondent to the Solicitors Regulation Authority ("SRA") dated 11 December 2010.

Preliminary Matter

3. Mr Barton asked the Tribunal to certify a prima facie case in respect of the allegations contained in the Rule 7 Supplementary Statement made on 4 February 2011.
4. Mr Barton informed the Tribunal that he had been instructed to pursue the five allegations in the Rule 7 Supplementary Statement (numbered 1.2 – 1.6 above) after this hearing date had been fixed. The Respondent had been aware of the background to the allegations for some time and in particular had received a Forensic Investigation Report ("FIR") dated 3 December 2010 during December 2010. The

Respondent had indicated to Mr Barton that he was content to accept short service and deal with all of the matters at this hearing.

5. The Respondent confirmed to the Tribunal that he was content to proceed with all matters today.
6. The Tribunal, having read all the papers in this matter, certified that there was a prima facie case to answer.

Factual Background

7. The Respondent was born in 1947 and was admitted as a solicitor in January 1974. His name remained on the Roll of Solicitors.
8. At all material times the Respondent carried on practice under the style of Michael French & Booth Hearn Solicitors from 50-52 High Street, Chatham, Kent, ME4 4DZ.
9. The Respondent's accountant's report for the period ended 31 March 2009 was due to be delivered to the SRA on or before 30 September 2009. This was not received by the SRA by the due date. By letter dated 19 October 2009 the SRA wrote to the Respondent indicating that he had not delivered his accountant's report for the period ended 31 March 2009. In the absence of a reply the SRA wrote again on 5 January 2010. The Respondent failed to deal with that letter and the SRA wrote again on 16 March 2010. On 26 April 2010 the Adjudicator decided that the Respondent had failed to comply with Section 34 (2) of the Solicitors Act 1974 as amended and with Rule 35 of the SAR and the decision contained an expectation that the Respondent should deliver the outstanding report within 28 days of the date of the letter notifying him of the decision. The notification letter was sent on 27 April 2010. The report remained outstanding as at the date of the application and at the date of the hearing.
10. On 16 February 2010 the SRA commenced an investigation of the Respondent's books of account and other documents. The FIR produced as a result of that investigation was dated 3 December 2010 and was relied on by the Applicant.
11. The FIR revealed a cash shortage of £18,423.53 as 31 January 2010. The last client account reconciliation had been carried out on 31 July 2009 and no postings had been recorded after 30 June 2009 until the period of investigation began. The Respondent agreed there was a cash shortage and that it had been in existence in the period July 2009 to February 2010, in which time the amount of the shortage fluctuated.
12. The FIR also reported that the Respondent had not given his professional indemnity insurers all the information to which they were entitled in his insurance proposal forms for the 2009/2010 indemnity year.
13. Further, the Respondent did not deliver accountant's reports for the periods ended 31 March 2009 and 31 March 2010.

Witnesses

14. None.

Findings as to Fact and Law

15. Allegation 1.1. Failed to deliver his accountant's report for the period ended 31 March 2009, due by 30 September 2009.

15.1 The Respondent admitted this allegation, and the Tribunal found it proved. The accountant's report for the period ended 31 March 2009 should have been delivered by 30 September 2009 in accordance with Section 34 (2) of the Solicitors Act 1974 as amended and Rule 5 of the SAR. The report had still not been received by the SRA.

16. Allegation 1.2. Contrary to Rule 7 of the SAR he failed to remedy breaches promptly on discovery.

16.1 The Respondent admitted this allegation and the Tribunal found the allegation substantiated on the facts and the documents.

16.2 The FIR recorded there was a cash shortage of £18,423.53 on client account in existence as at 31 January 2010. The Respondent had agreed this. The cash shortage had been rectified by 31 March 2010. The Tribunal considered that the duty to remedy breaches promptly would normally imply that appropriate action was taken within a matter of days rather than weeks.

16.3 Further, the Tribunal noted that the last client account reconciliation which had taken place before the investigation began was for the period ended 31 July 2009. Failures to keep books of account properly written up at all times and carry out reconciliations of the client account at least every five weeks, as detailed further below, were also breaches which the Respondent had failed to remedy promptly on discovery. The Respondent had been aware from at least September 2009 that reconciliations were not being produced.

17. Allegation 1.3. Contrary to Rule 32(1) of the SAR he failed to keep his books of account properly written up at all times.

17.1 The Respondent admitted this allegation, which the Tribunal found to have been substantiated on the facts and documents.

17.2 Postings to client ledgers were in arrears during Autumn 2009, although it appeared that the Respondent had not been aware of this until around Christmas 2009. The Respondent's bookkeeper, Mr D, had apologised to the Respondent explaining that he had "overwritten" some of the data. The loss of accounting data had required the re-posting of all entries from April 2009 onwards. The Tribunal noted that most solicitor accounts software packages were difficult to overwrite and that normally data would be backed up each day, as a matter of routine.

18. Allegation 1.4. Contrary to Rule 32(7) of the SAR he failed to carry out reconciliations of his client account in accordance with the requirements of the said Rule.

18.1 This allegation was admitted by the Respondent and the Tribunal found it to have been substantiated on the facts and documents.

- 18.2 As at February 2010, when the SRA investigation began, the last available client account reconciliation was for the period to 31 July 2009. Solicitors are required to carry out reconciliations at least every 5 weeks. Such reconciliations will identify any shortfalls or other problems with the accounts so that the solicitor can investigate and put right promptly any breaches of the SAR which may have occurred. The Respondent knew that no reconciliations were being produced for his approval from at least September 2009. This allegation was closely linked to allegations 1.2 and 1.3.
19. **Allegation 1.5. He did not provide his professional indemnity insurers with his full regulatory history, thereby failing to act with integrity in breach of Rule 1.02 of the SCC.**
- 19.1 This allegation was admitted by the Respondent and the Tribunal found it to have been substantiated on the facts and documents.
- 19.2 On 18 September 2009 the Respondent signed an insurance proposal form, being the firm's application for insurance for the 2009/2010 indemnity year.
- 19.3 Question 7(a) on that proposal form asks, "Has the practice or any prior practice or any present or former principals, partners, consultants and employees thereof: (a) been the subject of an OSS/CCS/LCS investigation that has been upheld, or any investigation or intervention by any regulatory department of the Solicitors Regulation Authority or any other recognised body?" The Respondent ticked the "No" box in response to this question.
- 19.4 For the five years prior to the completion of this form the Respondent had a total of 13 separate findings and adjudications made in respect of himself and/or his practice. This included six findings of inadequate professional service, a severe reprimand and two reprimands for Practice Rules and SCC breaches.
- 19.5 The Respondent submitted that as at the time he completed the form he had not seen a letter concerning a referral to this Tribunal. However, even if the Respondent were not aware of that referral, he must have known about the earlier findings and decisions and he had accepted, rightly that he should have ticked the "Yes" box on the form and provided full information to the insurers.
20. **Allegation 1.6. He failed to deliver his accountant's reports for the periods ended 31 March 2009 and 31 March 2010.**
- 20.1 The Respondent admitted the allegation, which the Tribunal found substantiated on the facts and documents. The Respondent was in breach of Rule 35 of the SAR.

Previous Disciplinary Matters

21. The Tribunal was informed of one previous matter in which findings were made against the Respondent under matter number 10160/2008, the hearing in which case took place on 22 April 2010.
22. On that occasion the Tribunal had found proved five allegations, which the Respondent had admitted. Those allegations related to a delay in complying with an undertaking; failure to comply with an Adjudicator's decision; failure to deal with the

SRA and the Legal Complaints Service in an open, prompt and cooperative way, failing to act in the best interests of his clients by failing to deal with the administration of an estate; and failure to comply with a further Adjudicator's decision. The Respondent had been fined £8,000 on that occasion and ordered to pay costs in the sum of £4,161.00.

Mitigation

23. The Respondent referred to his letter of 11 December 2010 which dealt with his comments and mitigation in respect of the breaches of the SAR.
24. The Respondent told the Tribunal he had been in practice for almost 40 years and had been a partner or principal of a firm for about 30 years. He had never before been in a situation where his practice's accounts were in disarray, as had been the case recently. He was unhappy that he had allowed himself to get into this mess.
25. The Respondent told the Tribunal that he had for a number of years engaged an accountant as accounts manager. Following his retirement he had engaged a reliable lady, who worked under the supervision of the accountant. When this accounts manager left the Respondent had engaged Mr D who was an experienced accounts manager and appeared to have a good knowledge of the SAR. To the Respondent's cost and embarrassment he now doubted Mr D's knowledge of the SAR. In particular, he was concerned that Mr D had been arranging lump sum transfers from client to office account and that these transactions, it appeared, had led to a cash shortage on client account. On becoming aware of the problems with his accounts the Respondent had re-engaged his original accountant who had dealt with rectifying matters as quickly as possible. The Respondent had raised with the SRA's Investigation Officer the possibility of replacing the shortfall by not taking/transferring various sums in costs which were properly due, and the Respondent had been surprised that he had been criticised in the report for this course of action. The cash shortage had in any event been rectified before the end of March 2010.
26. The Respondent recognised that it was his responsibility to deal with his firm's accounts. He had been too reliant on his firm's bookkeeper. He had learned his lesson, although it was rather late.
27. The Respondent told the Tribunal that due to cashflow and financial difficulties he had ceased practice in October 2010. He was reliant on other funds to support himself. All of his files had been transferred to other firms and it was possible that some further costs would be paid to him in due course.
28. The Respondent told the Tribunal that the accountant's reports had not been filed as he owed his firm's accountants professional fees and they would not undertake further work without payment.
29. The Respondent regretted that what was said on the insurance proposal form in September 2009 had been in any way misleading. He told the Tribunal that he had always before given any necessary details, on an extra sheet where required. The Respondent acknowledged that he should have looked at the proposal form more carefully before completing it. The Respondent accepted that he should have

indicated on the form that there were investigatory or disciplinary matters, and gone on to give full details to the proposed insurer. However, he had read the form as requiring information about specific investigations or interventions rather than complaints. The Respondent told the Tribunal that at the time he completed the proposal form he was unaware of the referral to the Tribunal which had led to his appearance on 22 April 2010.

Sanction

30. The Tribunal noted that this was not a case in which the Respondent had been dishonest. However, so far as the statement on the insurance proposal form was concerned, solicitors should be aware that they had an obligation to inform prospective insurers of any relevant circumstances which might affect the insurer's decision to give cover and the premium at which that cover would be given.
31. The breaches of the SAR were serious. The accounts rules were intended to protect the public. This Tribunal had a duty to protect the public and the reputation of the solicitors' profession.
32. The Tribunal noted the previous findings against this Respondent. He had been fined a substantial amount on that occasion. This indicated that the Tribunal which sat on 22 April 2010 had taken the allegations, which had been proved and admitted, very seriously. The Tribunal noted that at paragraph 34 of the findings and decision document dated 26 May 2010, the earlier Tribunal had warned the Respondent that should he appear again before the Tribunal on similar charges, it was likely that it would be less sympathetic.
33. The current allegations, and findings which had been made, were in themselves serious. The Respondent had not supervised his firm's bookkeeper sufficiently and this was a matter of great concern. It was important for the protection of the public that solicitors complied with the SAR and that they did not mislead their insurers. The Respondent could not hand over the running of his firm's accounts to a bookkeeper and thereby avoid liability: as the principal of the practice he was responsible for any breaches of the SAR.
34. In the light both of the current findings, and of the Tribunal's previous findings and decision, the appropriate penalty was that the Respondent should be suspended from practice indefinitely.

Costs

35. The Applicant applied for costs in the sum of £10,021.29, which figure had been agreed by the Respondent. The overall costs figure included investigation costs of £8,262.29 and legal costs of £1,759.00.
36. The Tribunal noted the Respondent's agreement to pay the costs and considered the sum claimed to be appropriate and was therefore content to order the Respondent to pay the costs of £10,021.29.

Statement of Full Order

37. The Tribunal Ordered that the Respondent, Michael Edward French, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 21st day of February 2011 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,021.29.

Dated this 29th day of March 2011
On behalf of the Tribunal

D J Leverton
Chairman