

**SOLICITORS DISCIPLINARY TRIBUNAL**

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10728-2011

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

DAVID JULER HAWKER

Respondent

---

Before:

Mr A N Spooner (in the chair)

Mr L N Gilford

Mr R Slack

Date of Hearing: 11th October 2011

---

**Appearances**

Jayne Willetts, Solicitor Advocate of Jayne Willetts & Co., Cornwall House, 31 Lionel Street, Birmingham B3 1AP for the Applicant.

Mr David Juler Hawker, the Respondent, appeared in person.

---

**JUDGMENT**

---

## **Allegations**

1. The allegations against the Respondent were that:-
  - 1.1. He practised without indemnity insurance in breach of Rules 4, 5 and 10 of the Solicitors Indemnity Insurance Rules 2009 (“SIIR”);
  - 1.2. He failed to deliver an Accountant’s Report for the year ending 31 December 2008 in breach of Section 34 of the Solicitors Act 1974 (as amended);
  - 1.3. He failed to account to his client (Mr F) for damages of £15,000 in breach of Rules 1(c) and 1(d) of the Solicitors Practice Rules 1990 (“SPR”) and Rules 1.04 and 1.06 of the Solicitors Code of Conduct 2007 (“SCC”);
  - 1.4. He failed to deal with the Legal Complaints Service (“LCS”) and with the Solicitors Regulation Authority (“SRA”) in an open, prompt and co-operative way in relation to a client complaint (Mr F) in breach of Rule 20.05 SCC;
  - 1.5. He failed to account to his client (Mr B) for a payment on account of costs of £10,000 in breach of Rules 1(c) and 1(d) of the SPR and Rules 1.04 and 1.06 SCC;
  - 1.6. He failed to deal with the LCS and with the SRA in an open, prompt and co-operative way in relation to a client complaint (Mr B) in breach of Rule 20.05 SCC;
  - 1.7. He failed to comply with the direction of an Adjudicator dated 28 January 2010 made pursuant to Schedule 1A of the Solicitors Act 1974 in breach of Rule 1.06 SCC.

## **Documents**

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

### **Applicant:**

- Application dated 23 March 2011;
- Rule 5 Statement dated 23 March 2011 and exhibit JBW1;
- Bundle of correspondence;
- Schedule of costs dated 5 October 2011.

### **Respondent:**

- Practice Standards Report for Raffan Hawker.

## **Factual Background**

3. The Respondent was born on 24 May 1952 and admitted as a solicitor on 15 July 1977. His name remained on the Roll of Solicitors. He practised on his own account

at Raffan Hawker, 37 Clarence Street, Southend on Sea, Essex SS1 1BH (“the firm”) until the firm closed on 8 October 2009.

4. The Respondent was made the subject of a bankruptcy order in the Southend County Court on 5 October 2009. By his own admission, the last date that the Respondent undertook any work reserved to a solicitor was 8 October 2009.
5. At the commencement of the 2009/2010 indemnity year on 1 October 2009, the Respondent had neither applied to the manager of the Assigned Risks Pool nor obtained qualifying insurance on the open market for the firm.
6. On 4 January 2010, a proposal form was sent to the Respondent by the manager of the Assigned Risks Pool for the 2009/2010 indemnity year. Reminder letters were sent to the Respondent on 17 February and 26 March 2010 but there was no reply. The manager of the Assigned Risks Pool did not receive a completed proposal form for run off cover from the Respondent.
7. On 4 March 2010 the Respondent wrote to the Applicant confirming that he did not obtain qualifying insurance prior to October 2009 because he could not afford to do so and explaining that he had no funds. The Respondent wrote to the Applicant again on 14 July 2010 acknowledging that he had breached Rules 4, 5 and 10 of the SIIR 2009 and confirming that the evidence that was required in respect of his application to the Assigned Risks Pool would follow by the end of the month.
8. The Accountant’s Report for the firm for the year ending 31 December 2008 was due to be delivered on or before 30 June 2009. It was not delivered by 30 June 2009 and remained outstanding.
9. By way of a letter dated 21 May 2010, the Applicant reminded the Respondent that he had not filed a “Cease to Hold” Accountant’s Report.
10. A complaint was made by a former client Mr F to the LCS via his solicitors Irwin Mitchell. The Respondent had acted for Mr F in connection with a personal injury claim that was settled in 2005 for £115,000 plus costs. The client had received payment from the Respondent of £100,000 but had not been paid the balance of £15,000.
11. The LCS wrote to the Respondent on 17 June 2010 regarding the complaint. The Respondent did not reply. The LCS wrote again to the Respondent on 9 July 2010 and 27 July 2010. The Respondent did not reply to either letter.
12. On 26 August 2010 the LCS closed its file and referred the matter to the SRA for further investigation. On 28 September 2010, Irwin Mitchell Solicitors on behalf of Mr F wrote to the SRA providing further information and submitting an application to the Compensation Fund.
13. On 9 November 2010 the Applicant wrote to the Respondent regarding the failure to co-operate with the LCS. There was no response. Further letters were sent by the

Applicant on 14 December 2010 and 3 January 2011. The Respondent did not reply to either letter.

14. On 25 March 2009, a former client Mr B complained to the LCS that the Respondent had failed to account for £10,000 paid on account of costs and had failed to provide adequate costs information.
15. On 28 January 2010, an Adjudicator made findings of inadequate professional service and resolved that:
  - The Respondent was to pay £400 compensation to Mr B;
  - His fees would be limited to £2,350 inclusive of VAT on condition that he submitted a bill to Mr B within 14 days of the Adjudicator's decision failing which the fees would be reduced to nil;
  - There was to be a refund of monies held on account to Mr B of £7,650 and if he failed to submit the bill to Mr B within 14 days then also to refund a further payment of £2,350.
16. The Adjudicator's decision was served on the Respondent by way of letters dated 8 February and 23 February 2010. On 20 May 2010 the Applicant wrote to the Respondent seeking his explanation regarding the complaint made by Mr B. There was no reply.
17. A reminder letter was sent to the Respondent on 7 June 2010 and he replied by telephone on 15 June 2010. An extension of time was granted for his reply to 29 June 2010. The Respondent wrote to the Applicant on 18 June 2010 confirming that he would deal with the matter by end of June but nothing was received. The Applicant wrote to the Respondent on 1 July 2010 reminding him of his professional obligation to reply. There was no response.

#### **Witnesses**

18. None.

#### **Findings of Fact and Law**

19. **Allegation 1.1. He practised without indemnity insurance in breach of Rules 4, 5 and 10 of the Solicitors Indemnity Insurance Rules 2009 ("SIIR");**
- 19.1 It was the Applicant's case that the Respondent had practised without professional indemnity insurance from the start of the indemnity year on 1 October 2009 until the date of closure of his legal practice on 8 October 2009. Ms Willetts submitted on behalf of the Applicant that the Respondent should have applied to the Assigned Risks Pool but did not do so. A proposal form had been sent to him on 4 January 2010 but he did not complete this. She also referred to the fact that run off cover for

the firm was required following its closure on 8 October 2009 but an application for run off cover had not been received by the manager of the Assigned Risks Pool.

19.2 The Tribunal considered that the allegation was substantiated on the facts and documents before it and indeed the allegation was admitted by the Respondent.

20. **Allegation 1.2. He failed to deliver an Accountant's Report for the year ending 31 December 2008 in breach of Section 34 of the Solicitors Act 1974 (as amended);**

20.1 Ms Willetts submitted on behalf of the Applicant that the Accountant's Report for the year ended 31 December 2008 had been due to be delivered within the usual six month period which was by 30 June 2009. The report remained outstanding. Ms Willetts also commented that the Respondent had failed to file a cease to hold Accountant's Report but this was not the basis of the allegation.

20.2 The Tribunal found the allegation substantiated on the facts and documents before it and indeed the allegation was admitted by the Respondent.

21. **Allegation 1.3. He failed to account to his client (Mr F) for damages of £15,000 in breach of Rules 1(c) and 1(d) of the Solicitors Practice Rules 1990 ("SPR") and Rules 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC");**

**Allegation 1.4. He failed to deal with the Legal Complaints Service ("LCS") and with the Solicitors Regulation Authority ("SRA") in an open, prompt and co-operative way in relation to a client complaint (Mr F) in breach of Rule 20.05 SCC;**

21.1 The Respondent had acted for a client Mr F in connection with a personal injury claim that was settled in 2005 for £115,000 plus costs. It was the Applicant's case that Mr F had received payment from the Respondent of £100,000 but the balance of £15,000 had been retained by the Respondent.

21.2 The client Mr F had instructed solicitors to make a complaint to the LCS and to pursue a negligence claim against the Respondent. Ms Willetts told the Tribunal that no dishonesty was alleged against the Respondent. The allegation was based on the fact that the Respondent had failed to account to his former client for the £15,000.

21.3 Ms Willetts told the Tribunal that the Respondent had not replied to correspondence from the LCS dated 17 June and 9 July 2010. The LCS had closed their file and referred the matter to the SRA who had then contacted the Respondent. The Applicant had written to the Respondent on 9 November 2010, 14 December 2010 and 3 January 2011 but the Respondent had failed to reply. The client had eventually received £15,000 from the compensation fund.

21.4 The Tribunal found the allegation substantiated on the facts and documents before it. The Respondent had admitted the allegation but stated in correspondence to Ms Willetts on 9 May 2011 that there was an "issue" with regard to the balance of £15,000.

22. **Allegation 1.5. He failed to account to his client (Mr B) for a payment on account of costs of £10,000 in breach of Rules 1(c) and 1(d) of the SPR and Rules 1.04 and 1.06 SCC;**

**Allegation 1.6. He failed to deal with the LCS and with the SRA in an open, prompt and co-operative way in relation to a client complaint (Mr B) in breach of Rule 20.05 SCC;**

**Allegation 1.7. He failed to comply with the direction of an Adjudicator dated 28 January 2010 made pursuant to Schedule 1A of the Solicitors Act 1974 in breach of Rule 1.06 SCC.**

- 22.1 These allegations related to a complaint made to the LCS by Mr B that the Respondent had failed to account for £10,000 paid on account of costs and had failed to provide adequate costs information.
- 22.2 It was the Applicant's case that the Respondent had failed to account for the £10,000. An Adjudicator had made findings of inadequate professional service and had decided that the Respondent should pay £400 compensation to Mr B and had also made further directions regarding the Respondent's costs. Ms Willetts told the Tribunal that the compensation payment could be dealt with by a solicitor's professional indemnity insurers but insurers would not deal with a refund of costs. The Respondent had failed to comply with the Adjudicator's decision dealing with the refund of costs and Ms Willetts was seeking an order on behalf of the Applicant that the direction of the Adjudicator dated 28 January 2010 should be treated for the purposes of enforcement as if it were contained within an order made by the High Court pursuant to paragraph 5(2) of Schedule 1A of the Solicitors Act 1974.
- 22.3 Ms Willetts told the Tribunal that the Respondent had failed to deal with the LCS and she referred the Tribunal to the formal decision of the Adjudicator which confirmed that the Respondent had not made any comments in relation to the LCS Report. The matter had then been referred to the SRA who had opened a file and sent correspondence to the Respondent regarding the complaint. The Respondent had disregarded those letters. He had telephoned and asked for an extension of time but had failed to provide a substantive response.
- 22.4 Miss Willetts stated that the allegations regarding the client Mr B had arisen from financial difficulties at the firm. Client money had been obtained and had not been dealt with promptly. The problem had been compounded by the Respondent's failure to reply to the LCS and SRA.
- 22.5 The Tribunal found the allegations substantiated on the facts and documents before it and indeed the Respondent admitted the allegation.

### **Previous Disciplinary Matters**

23. None.

## Mitigation

24. The Respondent stated that he fully accepted the allegations that had been fairly put before the Tribunal. He wanted to stress to the Tribunal that there was no question of dishonesty on his part. He said that his problems had arisen from financial difficulties that he had faced within his firm.
25. The Tribunal was told that the Respondent had introduced whatever funds he had into his practice during 2007 and had built up a number of departments. One of the departments had specialised in remortgage work and had been supervised by a salaried partner. The Respondent stated that he was not a conveyancer and had relied on his partner to supervise the work. He said that the department had been a total failure and had cost him and the practice a great deal of money. He had been forced to sell the office building and move to rented premises. A large capital gains tax liability had arisen following the sale and he had been coming to arrangements with the Inland Revenue to pay the liability in instalments. In addition, his insurance premium for the indemnity year 2009/2010 had soared. He said that he could possibly have dealt with payment to the Inland Revenue and his insurance premium at the old rate but could not manage the increased premium. He realised that if he did not pay the Revenue then he would go bankrupt but equally if he did not have professional indemnity insurance then he would go bankrupt anyway as he would be unable to practice.
26. The Respondent explained that he had decided to enter into negotiations with another practice in order to sell his firm. Negotiations had lasted for a couple of months and his main concern had been to make sure that his staff would be covered. He had not sought a position himself in the firm.
27. The notice of the bankruptcy hearing had been sent to the Respondent in the post. Unfortunately the Respondent had misread the date as 8 October rather than 5 October. At the same time, the negotiations in relation to the sale of the practice broke down as the new firm was concerned about professional indemnity issues arising from becoming a successor practice. In view of this, the Respondent had to close his practice on 8 October and the bankruptcy order meant that his practising certificate was suspended. He kept the office open and operated a skeleton staff in order to let clients know the position and to enable them to collect their files.
28. He had been advised by a locum on 5 October that there had been an exchange of contracts on a conveyancing transaction which was scheduled to complete on 8 October. He had explained the situation to the SRA and the Official Receiver. He said that the funds involved in the transaction were enormous and it would have been very damaging to the client if the transaction had not completed and so he had carried out this one piece of professional business on 8 October. He referred to his telephone conversation with the SRA on 20 October 2009 in which he had confirmed that the last date on which he had carried out any work as a solicitor was 8 October 2009. He had told the SRA that he had been advised by the Trustee in Bankruptcy/Official Receiver to carry on with the conveyancing transaction. This was the explanation for his failure to practice without professional indemnity insurance in place.

29. In relation to the allegation that he had failed to account to his client Mr F for damages of £15,000, the Respondent acknowledged that this was a serious matter. The Respondent told the Tribunal that he should have obtained his records which would have explained why the money had allegedly not been remitted to the client. The Tribunal asked the Respondent to give his explanation in relation to this matter as he had indicated in previous correspondence that he had an issue with the payment to the client. The Respondent explained that the firm would have been entitled to the £15,000. The client had agreed that the firm could keep the money as the Respondent had funded the case initially. The Respondent explained that he had not put that explanation forward previously as he had wanted to obtain his back-up records to confirm this. He acknowledged that he could have made the situation clearer to the SRA but he conceded that he had “buried my head in the sand”.
30. In relation to the allegations concerning the client Mr B, the Respondent explained that he had been instructed by Mr B in relation to a variety of matters which had involved extensive work. One of the matters on which he had been instructed was to act for Mr B’s daughter. He had completed that matter but the daughter had subsequently decided that she was not happy with the outcome and had asked her father to become involved. This had led to the breakdown in the relationship between Mr B and the Respondent. Mr B had then suggested that the scope of work carried out by the Respondent was more limited than what had actually taken place. The Respondent admitted that he had failed to provide proper client care information setting out the terms of the retainer.
31. He acknowledged the decision made by the Adjudicator but explained that the bankruptcy order had meant that he had no funds with which to discharge the liability. The Respondent acknowledged that he had failed to explain the situation to the Adjudicator and put this down to the fact that he had again buried his head in the sand. He also pointed out that the bankruptcy and loss of his professional career had created stress for him personally and financially. He had found it very difficult to cope. He acknowledged that with hindsight it would have been beneficial to have retained somebody to act on his behalf to deal with these matters but he had no funds with which to pay for professional advice and he did not want to ask for charity as he had felt too embarrassed.
32. The Respondent told the Tribunal that following his bankruptcy, he knew he had to have some form of income and he had set up Hawker Consulting in order to offer company and commercial advice. This had been getting off the ground but in March 2010 his former client Mr B had approached the local press and a lengthy article had been published. The Respondent described the article as “vicious” and said that whatever hope he had of being able to earn an income as a consultant had been ruined with the publication of this article.
33. In relation to his current circumstances, the Respondent told the Tribunal that he had not been in employment until about three months ago and had been living off the charity of friends and family. His bankruptcy had been discharged after twelve months and three months ago he had been approached by someone to join him in a business venture which involved him acting as an “in-house” lawyer within a corporate structure. He had been working informally for the last three months and

had not received a salary. He hoped that he would become a director and minority shareholder of the company and receive a salary in the region of £35,000 per annum.

34. The Respondent confirmed that he was now aged 59 and would like to be able to practise as a solicitor again before the end of his working life. He said that his role as a solicitor had always meant a lot to him. He was keenly aware of his failings and had to take responsibility for these. He accepted the need for rehabilitation. He fully accepted the need to pay and comply with the Adjudicator's award. He also wished to pay for the outstanding Accountant's Reports to be filed and he wanted to resolve the issue regarding run off indemnity insurance cover. He told the Tribunal that he needed to earn enough money to deal with these matters.
35. The Respondent was married with adult children. He told the Tribunal that the last couple of years had been difficult. He felt that he had let the profession and his family down. All of his money had been ploughed into the firm. He pointed out that times had been lean for some years for sole practitioners. He had put money into the business against the wishes of his wife and this had caused difficulties between them.
36. He asked the Tribunal to note that he had always sought to be a good solicitor as far as his clients were concerned and he referred the Tribunal to the report that he had received following a visit by the Practice Standards Unit to his firm in May 2004. The report had indicated that the firm had a "strong service ethic". The Respondent stated that he was not a competent businessman and administrator and he deeply regretted his failings. He hoped that he would be able to earn enough in the future to be able to maintain his modest lifestyle and to repay his debts. He asked that the Tribunal did not impose the ultimate sanction against him.

### **Sanction**

37. The Tribunal noted that there were a number of serious allegations which appeared to originate from the financial difficulties of the practice. Issues regarding failure to have professional indemnity insurance, the failure to provide Accountant's Reports, deal with the LCS and SRA and to comply with an Adjudicator's Award formed the cornerstone of professional practice. The Tribunal also noted that the Respondent had not given a satisfactory explanation as to why he had failed to account to his client Mr F for damages. The Respondent had accepted that he must sort out outstanding matters regarding his Accountant's Report, indemnity insurance and failure to pay the Adjudicator's award.
38. Having considered all the circumstances and the range of sanctions available, the Tribunal decided that the Respondent should be suspended for an indefinite period. The Tribunal considered that in any application that the Respondent may make in the future to bring his period of suspension to an end, the Tribunal would need to be satisfied that he had dealt with outstanding matters.
39. The Tribunal further ordered that the direction of the Adjudicator dated 28 January 2010 in respect of inadequate professional service should be treated for the purposes of enforcement as if it were contained in an order of the High Court pursuant to paragraph 5(2) of Schedule 1A of the Solicitors Act 1974.

### **Costs**

40. The Applicant's claim for costs was £6,591.26. Ms Willetts explained that there had been no forensic investigation in this matter and costs were limited to the internal costs of the SRA and the costs of preparing for the case today.
41. Ms Willetts told the Tribunal that there was one claim against the compensation fund regarding the complaint from Mr F.
42. Ms Willetts asked the Tribunal not to make a deferred order for costs as this would mean that there would be no obligation on the Respondent to provide financial information to the SRA. The result of this would be that the SRA would have no ability to recoup its costs. She submitted that if a costs order was made today, the Costs Recovery Unit would send out a financial questionnaire to the Respondent and could review the recovery of costs over time.
43. The Respondent stated that if he was to have any prospect of obtaining another practising certificate then he accepted that he would have to deal with outstanding financial issues and he was striving to do so in any event. In view of this, he agreed to pay the Applicant's costs. The Tribunal further ordered that the Respondent should pay the Applicant's costs fixed in the agreed sum of £6,591.26.

### **Statement of Full Order**

44. The Tribunal Ordered that the Respondent, DAVID JULER HAWKER solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 11th day of October 2011 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the agreed sum of £6,591.26.

The Tribunal further Ordered that the Direction of the Adjudicator of the Solicitors Regulation Authority dated 28 January 2010 made in respect of inadequate professional service be treated for the purposes of enforcement as if it were contained in an Order of the High Court pursuant to paragraph 5(2) of Schedule 1A of the Solicitors Act 1974.

Dated this 17<sup>th</sup> day of November 2011  
On behalf of the Tribunal

A N Spooner  
Chairman