

SOLICITORS DISCIPLINARY TRIBUNAL

On 13 February 2013, the Tribunal directed that the pending suspension order be immediately discharged, the Respondent, Paul Henry Sherriff, having provided documentary evidence to the Tribunal of his compliance with paragraph 59 of this Judgment. The order for costs set out in paragraph 59 remains in force.

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10918-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

PAUL HENRY SHERRIFF

Respondent

Before:

Mr I. R. Woolfe (in the chair)

Mr S. Tinkler

Mr D. Gilbertson

Date of Hearing: 2nd October 2012

Appearances

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

Ms Emma Brooks, solicitor of Richard Nelson Solicitors, Priory Court, 1 Derby Road, Nottingham, NG9 2TA for the Respondent

JUDGMENT

Allegations

1. The allegations against the Respondent were that:
 - 1.1 He failed to deliver Accountant's Reports for Paul Sherriff & Co Solicitors for the periods:
 - 1.1.1 from 1 January 2007 to 31 January 2008;
 - 1.1.2 for the year ended 31 January 2009;
 - 1.1.3 for the year ended 31 January 2010; and
 - 1.1.4 for the year ended 31 January 2011
- in breach of section 34 of the Solicitors Act 1974 and Rule 35 of the Solicitors' Accounts Rules 1998.

Documents

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

Applicant:

- Application dated 24 January 2012;
- Rule 5 Statement and exhibit "JBW1" dated 24 January 2012;
- Schedule of Costs dated 26 September 2012

Respondent:

- Testimonials
- Correspondence – various dates

Factual Background

3. The Respondent was admitted as a solicitor on 15 December 1978 and does not hold a current practising certificate. He practised on his own account as Paul Sherriff & Co from 14 July 1987 until 20 April 2007. On 1 May 2007 his sole practice was incorporated into the practice of P Solicitors. He was a partner with P Solicitors from 1 May 2007 until 10 September 2008.
4. A case worker of the Applicant wrote to the Respondent on 20 January 2010 and reminded him that there were outstanding accountant's reports for his former firm of Paul Sherriff & Co.
5. On 8 September 2010 P Solicitors confirmed that although the practice of Paul Sherriff & Co had been incorporated into P Solicitors on 1 May 2007, the client account monies totalling £78,154.48 had not been transferred until 31 January 2008. P Solicitors also confirmed that there was a client designated deposit account

("DDA") which contained approximately £2,500 to £3,000 held in the name of Paul Sherriff & Co which had not been transferred to P Solicitors.

6. On 20 September 2010 the case worker of the Applicant asked the Respondent to comment upon the statement by P Solicitors that he still held client monies. The Respondent replied by email dated 6 October 2010 and explained that the funds were intended for the payment of estate agent fees but the client had refused to authorise payment and had subsequently emigrated without a forwarding address. The Respondent stated that the account had been dormant for many years and the funds were not and never had been client monies.
7. There had been a further exchange of emails between the case worker and the Respondent on 6 and 11 October 2010 regarding the status of the funds. On 17 December 2010 the Respondent stated by email that he had sought legal advice and that it supported his view that the DDA did not contain client funds.
8. On 28 January 2011 an Adjudicator ordered that the Respondent should either apply for a waiver or deliver the outstanding accountant's reports within twenty-eight days or his conduct would be referred to the Tribunal.
9. The Respondent appealed against the Adjudicator's Decision. He asserted that he had submitted an accountant's report for the period to 31 January 2008 and submitted a letter from his accountants dated 29 March 2011 which confirmed that in their view the monies were not client monies. The Applicant stated it had not received an accountant's report from the Respondent's accountants for the year ended 31 January 2008, as of 6 January 2012.
10. A decision was made by an Adjudicator's Sub-Committee on 30 March 2011 to stand the matter over for twenty-eight days for further information to be provided by the Respondent.
11. The Respondent provided further information by email dated 4 May 2011 which included a bank statement for the DDA and a further letter from his accountants dated 28 April 2011.
12. The Respondent's appeal was further considered by the Committee on 9 June 2011 and was dismissed. The Respondent was directed to apply for a waiver or deliver up the outstanding accountant's reports within twenty-eight days failing which he would be referred to the Tribunal.
13. A copy of the Decision was sent to the Respondent on 10 June 2011 by post. No response was received. A reminder letter was sent on 28 July 2011 by post and no response was received to that.
14. The Respondent contacted the Applicant regarding a separate matter by email dated 16 November 2011. The Respondent stated that he had not had any contact with the Applicant since his email dated 4 May 2011 and that he was not aware of the decision of the Committee dated 9 June 2011 which had been posted to his last known address.

15. The Applicant wrote to the Respondent on 28 November 2011 by email and provided copies of earlier correspondence. The Respondent was invited to provide the outstanding accountant's reports or apply for a waiver within twenty-eight days (by 29 December 2011). The Respondent was reminded that the accountant's report for the year ended 31 January 2011 was also due and outstanding.
16. The Respondent did not respond to the letter dated 28 November 2011. A reminder letter was sent to the Respondent dated 5 January 2012 to which there was no response.

Witnesses

17. The Respondent gave evidence to the Tribunal regarding his means.

Findings of Fact and Law

18. **Allegation 1.1 He failed to deliver Accountant's Reports for Paul Sherriff & Co Solicitors for the periods:**
 - 1.1.1 from 1 January 2007 to 31 January 2008;**
 - 1.1.2 for the year ended 31 January 2009;**
 - 1.1.3 for the year ended 31 January 2010; and**
 - 1.1.4 for the year ended 31 January 2011**

in breach of section 34 of the Solicitors Act 1974 and Rule 35 of the Solicitors' Accounts Rules 1998.

Submissions on behalf of the Applicant

19. Ms Willetts referred the Tribunal to the Rule 5 Statement dated 24 January 2012 upon which she relied. She confirmed that the Respondent had admitted the allegations as pleaded.
20. The Respondent had practised on his own account as Paul Sherriff & Co from 14 July 1987 to 30 April 2007 and on 1 May 2007 his practice had been incorporated into the practice of P Solicitors where he had been a partner from 1 May 2007 until 10 September 2008.
21. The client monies of £78,154.48 had not been transferred to P Solicitors until 31 January 2008, some eight months after the merger and a client DDA had not been transferred to P Solicitors; the account contained approximately £2,500 to £3,000. The Respondent had still been under an obligation to deliver an accountant's report to 31 August 2008 which had never been done.
22. Ms Willetts referred the Tribunal to a letter to the Applicant's case worker dated 8 September 2010 from P Solicitors, which stated:

“...he [the Respondent] did not totally transfer over his client monies until 31 January 2008 and this was by way of cheque which we paid in to the value of £78,154.48.

We understand that there is a clients [sic] designated deposit account held with Bank of Scotland under Paul Sherriff & Co's name which holds approx [sic] £2,500 - £3,000 but as no-one at P's is a signatory on that account, although we have tried, we are unable to find out what these monies are for, nor have we been able to ascertain from Mr Paul Sherriff as to what these monies are. There are no accounts records which we have been given which refer to this money at all..."

23. By email dated 6 October 2010 the Respondent wrote to the case worker and stated:

"...

Turning to the question of the "designated deposit account" I suspect that the incorrect title of this account has contributed to the confusion here. The designation here was intended to be in favour of the Solicitors [sic] Benevolent Association...In summary, the account has been dormant for many years and was, unfortunately and inadvertently, overlooked on incorporation, More importantly however the funds in this account are **NOT** [emphasis added] and never have been client monies".

24. In a further email dated 17 December 2010 the Respondent stated:

"...

As you are aware it is my firm contention that this account is **NOT** [emphasis added] client monies and, accordingly, is not subject to the Accountant's Report Rules.

...Specifically I have consulted Mr JA, Senior Partner of A & Co Solicitors... Mr A advised me that it was his settled opinion that the account in question is **not** [emphasis added] client monies".

Ms Willetts told the Tribunal that had been the Respondent's stance until very recently.

25. The matter was referred to an Adjudicator and her Decision dated 28 January 2011 stated:

"3. I expect Mr Sherriff, within 28 days of the date of the letter notifying him of this decision, either to apply for a waiver under the provisions of Rule 22(1)(h) to pay the money to charity, or alternatively, to deliver the outstanding accountant's reports for Paul Sherriff & Co for the period 1 January 2007 to 31 January 2008; for the year ended 31 January 2009 and for the year ended 31 January 2010, failing which I direct that the conduct of Mr Paul Henry Sherriff is referred, without further notice, to the Solicitors Disciplinary Tribunal".

26. The Respondent appealed the Decision and maintained that the accountant's report for the year ended 31 January 2008 had been submitted by his accountants. Ms Willetts said that it had never been received or seen by the Applicant to date or lodged subsequently by the Respondent.

27. The Respondent appealed the Adjudicator's Decision which was stood over for the Respondent to provide further information. By email dated 4 May 2011 the Respondent wrote again to the case worker and stated:

“ ...

1. The account in question is a “Bank of Scotland Professionals’ Account (Undesignated)”

...

5. The funds in the account, as was previously confirmed to the SRA by the reporting accountants, comprised those for payment of an Estate Agents [sic] commission account (where the firm in question had closed); unpaid fees for a disbarred counsel who could not be traced and a developer's retention for a road agreement and bond”.

28. Ms Willetts referred the Tribunal to the exhibited bank statements for the account which was entitled “Professionals’ Account Client Interest Summary” for the periods 1 June 2007 to 30 September 2008 and referred to “Paul Sherriff & Co Undesignated Client Account”. Ms Willetts said that no further statements had been provided by the Respondent either during the investigation or once the Tribunal proceedings had been issued.

29. The Panel of Adjudicators Sub-Committee met on 9 June 2011 and their Resolution stated:

- “4. From the above, the Committee agreed that Mr. Sherriff has provided no persuasive argument or evidence at all that the monies remaining in the deposit account are not client monies. Indeed, the Committee were satisfied that Mr. Sherriff's statement as to what the monies were comprised of (as set out in 3 (vi) above) together with the description of the statements (as set out in 3 (i) to (iii) above) give a clear indication that these monies were originally obtained from clients to cover payment of requisite outgoings and/or disbursements when Mr. Sherriff's firm was acting for such clients. The fact that Mr. Sherriff was unable to pay out these monies for the reasons expressed does not negate the fact that these were client monies”.

30. Ms Willetts said that the Sub-Committee dismissed the Respondent's appeal but allowed him a further period of twenty-eight days from notification of their decision within which to either apply for a waiver or deliver the outstanding accountant's reports. The Decision was sent to the Respondent on 10 June 2011 but there appeared to have been an issue with regard to his having received it as the Respondent wrote on 16 November 2011 and said that he had had difficulties with his post and had not heard further from the Applicant. The Applicant therefore sent a further letter dated 28 November 2011 enclosing all previous correspondence together with the Decisions. No reply was received from the Respondent.

31. Ms Willetts told the Tribunal that a reminder had been sent dated 5 January 2012 and no response had been received from the Respondent.

32. Ms Willetts said that there had been inaction on the part of the Respondent to deal with the matter; he should have either applied for a waiver or have paid the monies over to charity, neither of which he did. It was not possible to say what had happened to the monies or where they were and Ms Willetts submitted that this was a serious case having regard to the public interest since it involved client monies, the whereabouts of which were unknown and which had not been adequately protected by the Respondent.
33. Ms Willetts suggested that the case might be one requiring a conditional order if the Tribunal were minded such that any sanction be dependent upon the Respondent providing evidence of the monies existence by way of bank statements/bank account, applying for a waiver and making application to pay the monies over to charity.

Submissions on behalf of the Respondent

34. Ms Brooks informed the Tribunal that the Respondent had believed there was no issue regarding delivery of the accountant's report for the year ended 31 January 2008 which he insisted had been delivered. There appeared to be some confusion as to whether it was still a live issue. The Respondent had informed the Applicant that an accountant's report had been filed, and asked the Applicant to confirm if it was still missing, and the Applicant had failed to reply that request. The Respondent had therefore concluded that the Applicant had received the accounts, and the only outstanding question was whether the accounts were complete or not, depending on the status of the DDA. The Respondent was willing to obtain evidence from his accountants that the accounts had been filed. In response to a question from the Tribunal, Ms Brooks acknowledged that the Undesignated account [the DDA] had existed from June 2007 and it was now admitted should have been included in the accounts. The Respondent accepted that the accounts had therefore been incomplete and in relation to allegation 1.1 that he had failed to file a complete accountant's report for that period.
35. Ms Brooks told the Tribunal that it had still not been possible to resolve what had happened to the Undesignated account. The Respondent had conceded that it contained client monies and that it was a matter which should and could have been resolved some time ago. It had not been resolved because for some considerable time the Respondent had been adamant that the monies were not client monies as evidenced by his correspondence with the Applicant. He had sought advice from another solicitor and from his accountants and both had advised him that the monies in the Undesignated account were not client monies; he had accepted and believed that, wrongly as it turned out.
36. Ms Brooks said that the Respondent had very recently instructed her firm and had begun to make efforts to trace the money in order to seek a waiver. Ms Brooks referred the Tribunal to the recent email correspondence between the Respondent and the Halifax which stated:

“As requested, here is a factual documentation of the process we have had to undertake to collect the information for you regarding the above Client account.

...

The Colleague from Business banking came back to me with details she had received after talking with several colleagues and said that all accounts with the above name and corresponding address had been closed in November 2008.

This information I then passed on to you via email. At which point you asked for some further info [sic] regarding who the accounts were paid to”.

37. Ms Brooks said that the matter had been passed by the Halifax to Lloyds TSB and the Respondent was now waiting to hear further from them. The Respondent was very surprised by the response he received from the Halifax as he had believed the account to be still open but dormant. He had spoken to the Halifax during the course of the hearing but had been told that there was nothing further they could do and it had been suggested that the Respondent attend at the branch to make further enquiries. The Respondent acknowledged that this was very unsatisfactory. He had not sought an adjournment as he accepted that the delays were as a result of his own inaction.

The Tribunal's Findings

38. The Tribunal applied its usual standard of proof namely beyond reasonable doubt. The Tribunal had read carefully all of the documents to which it had been referred.
39. The Tribunal had found the allegations proved. It noted that the Respondent had admitted all of the allegations.
40. It was important that solicitors filed accountant's reports to enable their regulator, the Applicant, to ensure that client monies were adequately protected and that the relevant rules were being complied with.
41. The Respondent had not been proactive in dealing with his obligations to file his accountant's reports and appeared to have only taken steps to do so once he became aware of the seriousness of his lack of activity, which had resulted in his referral to the Tribunal.

Previous Disciplinary Matters

42. The Respondent had previously appeared before the Tribunal under matter number 4947/1984 3720.

Mitigation

43. The Respondent qualified in 1978 and had owned his own firm for approximately twenty years. Although he had then merged his firm with another practice, it had not proved successful and he had left. He had experienced personal difficulties at the same time which had proved very distressing for the Respondent.
44. As a result of his personal difficulties, the Respondent had suffered significant financial difficulties and had been declared bankrupt. His practising certificate had been suspended and the Respondent was now unemployed. Ms Brooks told the Tribunal that the Respondent had no property and was renting accommodation and was in receipt of benefits.

45. In evidence, the Respondent told the Tribunal that he was in receipt of Jobseekers Allowance and Housing Benefit. He was also receiving a small pension of approximately £340 per month from a previous short-lived teaching career although he had lost half of its value following a matrimonial settlement. The Respondent said that he had no other income.
46. The Respondent informed the Tribunal that the bankruptcy proceedings had been issued against him by his former matrimonial solicitors due to a debt owed to them of approximately £60,000. He gave evidence that his total debts were approximately £220,000. His property was on the market but he said that he would not benefit from the sale as his Trustee in Bankruptcy would receive any sale proceeds. In cross-examination, the Respondent confirmed that he had credit card debts of approximately £100,000 and a business and personal overdraft of £60,000. He owned no other properties and had no interest in any other assets.
47. The Respondent had approximately £3,000 in savings.
48. Ms Brooks submitted that the Respondent's personal circumstances went some way to explain why he had been so inactive. The Respondent conceded that he had also been stubborn regarding the Undesignated client account and whether the monies constituted client monies. He acknowledged that he should have dealt with matters sooner and had instead relied on incorrect advice.
49. The Respondent was still bankrupt and had not applied to discharge his bankruptcy although he could do so. He wished to practise again in the future and he could apply for a practising certificate if he applied to discharge his bankruptcy.
50. Ms Brooks referred the Tribunal to the testimonials which had been provided and asked the Tribunal to take these into account when considering sanction. She said that they acknowledged the pressure which the Respondent had been under and why he had acted so out of character.

Sanction

51. The Tribunal had found all of the allegations proved.
52. The Tribunal noted that the principal issue was the Undesignated client account, the whereabouts of which were still unknown and that was of significant concern. In addition, as a consequence of the Respondent refusing to accept that the funds were client money, the Respondent had not filed his accountant's reports for the relevant years and had thereby failed to comply with his professional obligations.
53. To a great extent, the Tribunal found that the Respondent had been the author of his own misfortune and had he only complied with the Adjudicator's Decisions and applied for a waiver, these proceedings could perhaps have been avoided. The Tribunal noted that Respondent had acted on independent advice, albeit that he now accepted that the advice was wrong.
54. The Tribunal was most concerned to see that the Respondent take steps to trace and locate the Undesignated client monies and take appropriate steps to then deal with

those monies, if he failed to take those steps an order of indefinite suspension would be imposed. The Tribunal was mindful however that the monies might not ultimately be traceable, even if the Respondent made strenuous efforts, and therefore allowed for the Respondent to apply back to the Tribunal before 3 December 2012 to vary the order of suspension if he could not trace and deal with those monies.

55. In making its order, the Tribunal had taken note of the Respondent's previous appearance before it but did not consider that it needed to affect the order made. The previous proceedings had taken place many years previously, were of a fundamentally different nature and were not now relevant.

Costs

56. Ms Willetts said that she had sent the Schedule of Costs to the Respondent as at 26 September 2012 and that she sought an order for costs of £7,786.20.
57. Ms Brooks referred the Tribunal to the Respondent's evidence as to his means; he had a small amount of savings but was unemployed and had very limited financial resources.
58. The Tribunal ordered the Respondent to pay the Applicant's costs summarily assessed in the sum of £7,000, not to be enforced without leave of the Tribunal.

Statement of Full Order

59. Unless by 3 December 2012 the Respondent, Paul Henry Sherriff, solicitor, has traced the client monies, now or formerly in the undesignated client account, applied for and obtained a waiver under Rule 20.1(k) of SRA Accounts Rules 2011, and paid such monies to a charity in accordance with the authority of the SRA then the Respondent shall be suspended from practice as a solicitor for an indefinite period. If the Respondent is unable to trace such client monies before 3 December 2012 and he applies to the Tribunal to vary this Order then the Order of suspension shall itself be suspended pending hearing of such application.

The Tribunal further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,000.00 inclusive of VAT and disbursements, such costs not to be enforced without leave of the Tribunal.

Dated this 22nd day of October 2012
On behalf of the Tribunal

I. R. Woolfe
Chairman