

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11413-2015

BETWEEN:

PETER JOHN CALE

Applicant

and

SOLICITORS REGULATION AUTHORITY

Respondent

Before:

Ms A. E. Banks (in the Chair)

Mr R. Nicholas

Mrs V. Murray-Chandra

Date of Hearing: 28 January 2016

Appearances

The Applicant represented himself.

Robin Horton, Solicitor employed the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Respondent.

**JUDGMENT ON APPLICATION TO DETERMINE
INDEFINITE PERIOD OF SUSPENSION FROM PRACTICE**

Documents

1. The Tribunal reviewed all the documents including;

Applicant

- Application and Witness Statement dated 25 June 2015;
- Copy of Western Daily Press Notice dated 8 October 2015;
- Copy of Law Society Gazette Notice dated 12 October 2015;
- Psychiatric Report prepared by Dr Angela Rouncefield dated 23 September 2011 (“the 2011 Report”);
- Psychiatric Report prepared by Dr Angela Rouncefield dated 27 October 2015 (“the 2015 Report”);
- Letter from Dr Rachel Roberts dated 22 April 2015;
- Certificate of membership of Institute of Professional Willwriters valid until 30 April 2015
- Judgment of SDT Case No: 10461-2010;
- Applicant’s comments on the Outline Submissions of the Respondent;

Respondent

- Outline submissions of the Respondent dated 2 October 2015;
- Respondent’s Statement of Costs dated 20 January 2016.

Factual Background

2. The Applicant was born in 1947 and was admitted to the Roll on 1 July 1977. The Applicant had practised as a sole practitioner at Cale Palmer (“the Firm”) until 18 January 2008, the when the firm closed.
3. On 13 October 2011 in proceedings No 10461-2010 the Tribunal found the following allegations proved, having been admitted by the Applicant who was at that stage the Respondent;
 - 3.1 Acted in breach of section 34 of the Solicitors Act 1974 and the Rules made thereunder in that he failed to deliver his accountant’s report for the following periods;
 - 3.1.1 The 12 months ending 31 May 2008 (report due by 30 November 2008 “the first report”);
 - 3.1.2 The six months ending 30 November 2008 (report due by 31st of January 2009 “the second report”);
 - 3.1.3 The six months ending 31 May 2009 (report due by 31st of July 2009 “the third report”);
 - 3.2 Acted in breach of Rule 20.05 of the Solicitors Code of Conduct in that he failed to respond to correspondence from the Legal Complaints Service and the Solicitors Regulation Authority (“the SRA”).

4. At the conclusion of the hearing the Tribunal ordered that the Applicant be suspended from practice as a solicitor for an indefinite period to commence on 13 October 2011 and further ordered that he do pay the costs of and incidental to the application and enquiry fixed in the sum of £6,248.54. The Tribunal's decision and reasons for their sanction was as follows;

“The Tribunal had found all of the allegations against the Respondent substantiated and gave the Respondent credit for having admitted the allegations in full. The Tribunal had listened very carefully to the representations by Mr Hudson for the Applicant and Ms John on behalf of the Respondent. The Tribunal recognised the extreme effect which the Respondent's medical condition had upon him and had some sympathy with this. The medical reports of Dr Rouncefield had been of great assistance. It was evident that the Respondent was incapable of undertaking even the simplest tasks and this had clearly impacted upon the Respondent's ability to comply with his professional obligations. Whilst it was acknowledged by the Tribunal that the Respondent was no longer practising, the Tribunal determined that the Respondent was not fit to practise. The Tribunal had a duty to protect the public and the reputation of the solicitors' profession. It was essential that the sanction imposed by the Tribunal honoured that duty whilst at the same time being reasonable and proportionate. In all circumstances the Tribunal decided it was reasonable and proportionate to suspend the Respondent indefinitely from practice as a solicitor.”

Applicant's Submissions

5. The Applicant referred to the Tribunal's Guidance Note on Sanctions (4th Edition) and the circumstances in which an indefinite suspension should be imposed contained therein. He submitted that compelling mitigation existed at the time the suspension was imposed. He was suffering from a major depressive illness but there was a realistic prospect that he would recover and respond to re-training. The basis of the application now before the Tribunal was that he had recovered from his illness and his circumstances were such that it would not adversely affect the reputation of the profession nor be contrary to the interests of the public for the suspension to be lifted.
6. The Applicant's depression had started following his acquittal at trial of allegations of mortgage fraud in 1990. There had been no diagnosis however until Dr Rouncefield had prepared the 2011 Report. In the intervening years the Applicant had faced two sets of proceedings before the Tribunal, the second of which resulted in his indefinite suspension. When he had been working, and therefore been busy, the symptoms had not been excessively severe. However in 2008 he had closed his firm and was subsequently made redundant due to the recession. The resultant unemployment significantly exacerbated the symptoms. At all material times therefore he had been suffering from an undiagnosed, and therefore untreated, mental illness.
7. The position was now much improved, as concluded by Dr Rouncefield in the 2015 Report, stating “It is my opinion that Peter John Cale is not suffering from any form of mental illness at the present time and that he is fit for the form of employment that he proposes to pursue”. The Applicant's General Practitioner, Dr Roberts, had deemed him to be fit for work. The Applicant told the Tribunal that he had not

required medication since February 2015 and that his health was good. Upon questioning from the Tribunal the Applicant said that he recognised the importance of the need to return to Dr Rouncefield if he started to feel unwell again. He was able to identify early signs of the illness returning and take appropriate action.

8. The Applicant told the Tribunal that the recovery of his health meant that he was able to undertake re-training. This meant re-education and not simply meeting his Continuing Professional Development (“CPD”) requirements. If he were to apply for a Practising Certificate it would be at least six months before it was granted and that would afford him sufficient time to bring himself up to date with the law. This would include professional training.
9. The Applicant became a member of the Institute of Professional Willwriters (“IPW”) in 2014, having undergone training, with a view to moving into this area of work. The attraction of this was that the Applicant would not need to employ anyone to work with him and he would be able to commit as much or as little time as he felt suitable. Due to the indefinite suspension, the IPW would not allow him to represent himself as a member until such time as it was lifted. He was therefore unable to pursue this line of work at present. The Applicant confirmed, in response to questions from the Tribunal, that this work would not involve the winding up of estates or the handling of client money.
10. The Applicant told the Tribunal that he would have no objection to restrictions being placed on any Practising Certificate he may hold in the future. He did not want to practise without thorough training and he had no intention of working for anyone other than himself or handling client money.

Respondent’s Submissions

11. The Respondent commended the Applicant for his submissions and recognised that it was a major step for him to appear before the Tribunal as his own advocate. The Respondent was neutral in respect of the application. The Applicant had now been suspended for four years for accounts breaches and failure to answer correspondence at a time when he was not well. None of the matters which had brought him before the Tribunal, either in 2009 or 2011, had resulted in any loss to a client. There had been no complaints from clients about the standard of service they received. The breaches had all been admitted and there was no concern about his morals or his ability as a solicitor.
12. The Respondent invited the Tribunal to consider imposing restrictions on the Applicant’s Practising Certificate that would prevent him being a sole practitioner or partner or holding client money.

Findings of Fact and Law

13. The Tribunal had due regard to the Applicant’s rights to a fair hearing and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It was necessary to consider – and to record in this Judgment – certain matters concerning the Respondent’s health as these were directly relevant to the application. However, the

details are only recorded to the extent they are essential to understand the Tribunal's reasoning. The Tribunal was satisfied that the application had been made correctly and that the advertisements placed were sufficient to comply with the formal requirements.

14. The Tribunal had regard to the Guidance Note on Sanctions (4th Edition) and considered the submissions of the Applicant and Respondent together with the evidence provided in support of the application. It noted the comments and reasons given by the Tribunal that imposed the indefinite suspension.
15. In considering the application the Tribunal had regard to the following factors;
 - a) The period elapsed since the suspension was imposed;
 - b) Evidence of rehabilitation, in this case particularly the Applicant's health condition;
 - c) The Applicant's future employment intentions.
16. The Tribunal considered carefully the circumstances of the breaches that resulted in the imposition of the suspension. The Applicant had now been suspended from practice for more than four years for misconduct that did not include dishonesty or lack of integrity, having admitted all the allegations. He had not caused loss to any client - indeed there had been no complaints from clients about any aspect of the handling of their matters. In the circumstances the application was not premature.
17. The Tribunal had particular regard to the reports of Dr Rouncefield. The 2011 Report had found "It is my opinion that these failures relate directly to his suffering from Major Depressive Disorder and that if he did not suffer from this illness, he would not be standing before this Tribunal. His failures are not due to his wilful neglect but to a disability that has prevented him from fulfilling his professional obligations". The 2015 report found a marked improvement in the Applicant's health. Dr Rouncefield wrote "I examined Peter John Cale for an hour and was unable to elicit any signs or symptoms of mental disorder. It is indeed pleasing to see him so well". The Tribunal accepted this medical evidence and was satisfied that the Applicant was not only in significantly better health than he had been when the suspension was imposed, but that he now had insight into the warning signs of any deterioration in the future. He was able to identify the possible triggers and address them appropriately. He had not required medication for almost a year, he was fit to work and he had presented his case well to the Tribunal. The significant and sustained improvement in the Applicant's health meant that the public was protected as the circumstances behind the misconduct had been fully and successfully addressed.
18. The Tribunal was impressed with the Applicant's efforts to return to work as a will-writer and his attitude towards re-training. It was not his intention to undertake work beyond will-writing. If he did wish to return to practice in the future he would have to apply for a Practising Certificate and this would require him to undertake sufficient training in order to satisfy the Solicitors Regulation Authority.

19. Taking into account all the circumstances the Tribunal was satisfied that the lifting of the indefinite suspension would not adversely affect the reputation of the legal profession nor be contrary to the interests of the public.
20. The Tribunal determined that it was necessary to place restrictions on any Practising Certificate as suggested by both parties in order to protect the public and the reputation of the legal profession from any future harm. The restrictions would also offer a degree of protection to the Applicant himself as it would prevent him finding himself in a similar situation in the future. The Tribunal decided that he should not practise as a sole practitioner, partner or member of a Limited Liability Partnership, Legal Disciplinary Practice or Alternative Business Structure and he should not handle client money.

Costs

21. The costs were agreed between the parties in the sum of £2,049.00 and the Tribunal were satisfied that it was appropriate to make the order that the Applicant pay the Respondent's costs in that sum.

Statement of Full Order

22.
 1. The Tribunal Ordered that the application of Peter John Cale, for the determination of the indefinite suspension be **GRANTED** and it further Ordered that he do pay the costs of the response of the Solicitors Regulation Authority to this application fixed in the sum of £2,049.00.
 2. The Applicant shall be subject to conditions imposed by the Tribunal as follows:
 - 2.1 The Applicant may not:
 - 2.1.1 Practise as a sole practitioner, partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS); or
 - 2.1.2 Hold client money.
 3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

Dated this 16th day of February 2016

On behalf of the Tribunal

A.E. Banks
Chairman