SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11503R-2016

BETWEEN:

MICHAEL ELSDON Applicant

and

SOLICITORS REGULATION AUTHORITY LTD Respondent

Before:

Mr E Nally (in the chair)
Ms A E Banks
Mr R Slack

Date of Hearing: 03 August 2021

Appearances

The Applicant attended in person and represented himself.

Rory Mulchrone, barrister, of Capsticks LLP, St George's Road, London, SW19 4DR, for the Respondent.

MEMORANDUM OF APPLICATION TO APPLY FOR A RE-HEARING CONVENED REMOTELY

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1. This application proceeded under the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR 2007") as it pertained to a matter originally determined under those Rules.

Relevant Background

2. On 13 December 2016 the Applicant had been struck-off the Roll at the conclusion of a two day hearing which he had not attended and at which he was not represented. The matters found proved against the Respondent were as follows:

1. The Respondent transferred the sum of £39,962.03 from his client account to his office account on 30 November 2012 in respect of the estate of Mrs L (the "Estate") following an assessment by the court that the Respondent was only entitled to charge the Estate a total sum of £7,922.46, and thereby:

1.1 Failed to protect client monies and assets, contrary to Principle 10 of the SRA Principles 2011 ("the Principles"); and/or

1.2 Acted without integrity, contrary to Principle 2 of the Principles; and/or

1.3 Failed to act in the best interests of his client, contrary to Principle 4 of the Principles; and/or

1.4 Withdrew client money from his client account which was not properly required for a payment on behalf of the client, in breach of Rule 20.1(a) of the SRA Accounts Rules 2011 (the "SAR").

2. The Respondent failed to take any steps to repay the Estate the sum of £39,962.03 despite confirmation from the High Court on 31 July 2013 - per Roth J - and 15 November 2013 - per Peter Smith J - that the Respondent was only entitled to charge the Estate a total sum of £7,922.46, and thereby:

2.1 Failed to act in the best interests of his client, contrary to Principle 4 of the Principles; and/or

2.2 Acted without integrity, contrary to Principle 2 of the Principles; and/or

2.3 Failed to replace client monies improperly withdrawn from his client account promptly upon discovery, in breach of Rule 7.1 of the SAR.

3. From 19 January 2012 to 21 November 2012 the Respondent acted contrary to the instructions of his client and sought to adjust each beneficiary's share of the Estate to benefit himself, and thereby:

3.1 Acted where there was a conflict between himself and his client, contrary to outcome 3.4 of the Solicitors Code of Conduct 2011 ("SCC"); and/or

3.2 Acted without integrity, contrary to Principle 2 of the Principles.

4. [NOT PROVED]

5. The Respondent, having transferred £1,962 from client account to office account in respect of an unpaid professional disbursement, failed by the end of the second working day following receipt of the sum into his office account, either to pay the unpaid professional disbursement or to transfer a sum for its settlement to a client account, and thereby breached SAR Rule 17.1(b).

6. The Respondent advised Mr N and Mrs M that payment of a disbursement had been made when he knew that it had not, and therefore acted without integrity, contrary to Principle 2 of the Principles.

7. The Respondent charged his client €1,962 for a professional disbursement when he knew that the disbursement had not been paid, and further that he did not intend to pay the disbursement, and thereby:

7.1 Failed to protect client monies and assets, contrary to Principle 10 of the Principles; and/or

7.2 Acted without integrity, contrary to Principle 2 of the Principles.

8. The Respondent charged his client for his own costs of his defence of the detailed assessment of his costs to be charged to the Estate, and thereby:

8.1 Acted where there was a conflict between himself and his client, contrary to outcome 3.4 of SCC; and/or

8.2 Failed to protect client monies and assets, contrary to Principle 10 of the Principles; and/or 8.3. acted without integrity, contrary to Principle 2 of the Principles.

9. Between 7 April 2014 and 27 May 2014 the Respondent improperly withheld client monies when there was no legitimate reason to do so until his client agreed not to dispute his invoice dated 4 April 2014, and therefore:

9.1 Acted without integrity, contrary to Principle 2 of the Principles; and/or

9.2 Failed to act in the best interests of his client, contrary to Principle 4 of the Principles.

10. Between 7 April 2014 and 27 May 2014 the Respondent failed to return client monies to his client promptly as soon as there was no longer any proper reason to retain those client monies, and thereby:

10.1 Breached SAR Rule 14.3; and/or

10.2 Acted without integrity, contrary to Principle 2 of the Principles; and/or

10.3 Failed to act in the best interests of his client, contrary to Principle 4 of the Principles.

11. [NOT PROVED]

12. Between 17 February 2014 and 10 December 2014 the Respondent failed to pay any interest on client monies when it was fair and reasonable to do so in all the circumstances, and thereby breached SAR Rule 22.1.

13. [NOT PROVED]

14. [NOT PROVED]

15. In March 2014 the Respondent sought to prevent Hornbeam (the practices" accountants) from reporting breaches by the practices of the SAR to the SRA, and thereby:

15.1 Acted contrary to outcome 10.7 of the SCC; and/or

15.2 [NOT PROVED]

16. Dishonesty was alleged with respect to allegations 1 to 4, 6 to 10, 13 and 14. Proof of dishonesty was not an essential ingredient for proof of any of the allegations.

Application For Permission to Apply for a Re-hearing Out of Time

3. At the outset of the hearing the Chair made plain that (a) the Tribunal had read all of the documents filed and (b) that the approach to be taken was to hear and consider the Applicant's application for permission first which, if granted, would lead to his application for a re-hearing.

The Applicant's Submissions

4. Mr Elsdon submitted that the approach set out by the Chair was noted but asserted that this was "a complicated case as the reasons for seeking the extension of time [permission] was part of the reason for the application [for a re-hearing].

5. Mr Elsdon listed the "reasons" as:

- The Respondent's concealment in the original proceedings of a "Decision of the Chief Executive" of the SRA dated 30 January 2013. That decision related to the Applicant's application to the SRA for authorisation for practice as a licensed body, to be a Compliance Officer for Legal Practice, to be a Compliance Officer of Financial Administration and another matter which was not relevant for the present proceedings. The application was granted in its entirety.

- Concealment of a "very large number of documentary evidence".

- Concealment of evidence in relation to the matter files upon which the allegations were predicated.

- Breach of their own "Re-consideration Policy" when re-opening the investigation into Mrs L.

- Failure to disclose to the original Tribunal the fact that the Mrs L matter was originally investigated and closed.

- Lack of witness statements obtained in the investigation.

- Failure to interview him during the investigation.

- Failure of the Applicant to notify him of the actual allegations which had been referred to the Tribunal in its email of 17 September 2015.

- Devonshires Solicitors (instructed by the Respondent in the original proceedings) sent a "false document" to an email address that Mr Elsdon was not using.

6. Mr Elsdon submitted that, he did not attend the substantive hearing in December 2016 because of medical advice received subsequently. He asserted that he was, at the material time, trying to recover from health issues.

7. Mr Elsdon further submitted that he was not represented at the substantive hearing in December 2016 because he had been "made bankrupt by the SRA because of Devonshires legal costs and not because of his financial mismanagement".

8. Mr Elsdon stated that he received the Tribunal's judgment in respect of the substantive hearing whilst he was recovering in Malta in January 2017. Upon receipt he looked at the Tribunal's website and filed a statutory appeal against the findings with the Administrative Court. However, he used the wrong form but was not told by either the Court or Devonshires of that fact. Queries were raised with him regarding the court fee and both issues took "four months to resolve".

9. In March 2017 Mr Elsdon submitted that he had "financial issues to deal with".

10. In June 2017 Mr Elsdon stated that the Administrative Court claim form was served on Devonshires via email which "they denied receiving". He still had not been advised that he had used the wrong court form at that stage.

11. In December 2017 Mr Elsdon contended that the "SRA manipulated matters so that [he] had to attend a hearing [at the Administrative Court] in person for permission for judicial review [of the Tribunal's findings] when they [the SRA] knew I had used the wrong form". Mr Elsdon relayed that the "Judge agreed I had filed an appeal. The SRA barrister made up submissions and persuaded the Judge that I should not be allowed to proceed with the appeal."

12. In December 2018 Mr Elsdon submitted that he was endeavouring to appeal against the decision of Mr Justice Newey, in respect of the intervention application.

13. In 2019/2020 Mr Elsdon submitted that he "didn't know that [he] could apply for a re-hearing until after [he] had lodged the appeal as [he] thought that the Administrative Court refusal on the appeal was final. By chance it came up on [his] phone about the

Otobo v SRA [2016] EWHC 2924 appeal which showed [him] that [he] could make an application out of time [for permission for a re-hearing].” Mr Elsdon further submitted that it “took time to prepare [his application] carefully and it wouldn’t have been possible to do within 14 days.

14. Mr Elsdon contended that he was “aware of SRA v Ahmud 11955/2019 because it was very well publicised. He read that judgment and could see how much worse [his] case was than that. There may be more that the SRA have done that [he] doesn’t know about.”

15. Mr Elsdon stated that he had taken the Tribunal to other cases which demonstrated that the SRA had concealed evidence. For justice to be served in his case permission should be given for him to apply for a re-hearing out of time as “this was a campaign against [him] by the SRA to stop, ruin and destroy [his] credibility.”

16. The Tribunal enquired of Mr Elsdon why he had not made these assertions either in writing or in person during the substantive hearing proceedings. Mr Elsdon replied that he (a) asked Devonshires what the allegations against him were but they simply told him to look at the Rule 5 Statement, (b) it had “gone out of [his] mind that they had served a Rule 5 Statement and (c) it was hard “to out across the distressed state that he was in, [he] couldn’t open letters or open emails.”

17. The Tribunal enquired of Mr Elsdon where the 128 pages of documents that he asserted had been concealed appeared in the hearing bundle which exceeded 3000 pages and when did he became aware of those documents. Mr Elsdon replied that the SRA’s forensic investigator left them out of his report and as such he was not aware of the omission until September 2016 when he spent four months (up until December 2016) going through all of the documents and reconstituting his matter files. Mr Elsdon accepted that he had never filed the 128 pages that he referred to as having been concealed either in the substantive proceedings or in his present application.

The Respondent’s Position

18. Mr Mulchrone referred the Tribunal to the following documents which he submitted demonstrated the “flavour of the Applicant’s dealings with the Law Society”:

- The application.
- The Reply to the SRA’s Answer to the Application which was filed and served without permission.
- The underlying documents regarding the Applicant’s bankruptcy, which the Applicant asserts he has been discharged from, namely:
    - A chronology of events from 2014 – 2017.
    - The Bankruptcy Order dated 9 March 2016.
    - The Order of His Honour Judge McCahill QC dated 8 February 2017 which made plain that if Mr Elsdon wanted to rely on medical matters then medical evidence had to be filed with the Court.
    - The Order of Deputy District Judge Simpson dated 19 March 2017 with

regards to Mr Elsdon's non-compliance with the obligations placed on him under the Insolvency Act 1986.

- The Order of His Honour Judge Matthews dated 31 March 2017 which dismissed Mr Elsdon's applications for permission to appeal against two previous Orders made by District Judge Gamwell.
- The Order of His Honour Judge Matthews dated 23 May 2017 which dismissed Mr Elsdon's application against the civil restraint order imposed on him to be revoked and which further stated that the application was "totally without merit".
- The Order of His Honour Judge Matthews dated 27 July 2017 which struck out Mr Elsdon's claim.
- The Extended Civil Restraint Order issued against the Respondent by Mr Justice Mostyn dated 21 February 2018.

19. Mr Mulchrone reminded the Tribunal that the substantive hearing was heard on 12–13 December 2016 in respect of which there was a case management hearing on 29 July 2016. The Applicant did not attend on any of those dates and did not file an Answer to the Rule 5 Statement despite being given an extension to do so.

20. The decision by the Tribunal at the substantive hearing to proceed in the Applicant's absence was, Mr Mulchrone submitted, properly made and well-reasoned. Mr Mulchrone adopted and endorsed the same. With regards to the medical issues that the Applicant raised in the substantive proceedings Mr Mulchrone referred the Tribunal to the direction made at the case management hearing on 29 July 2016 that:

> "…If the Respondent [Mr Elsdon] wishes to make an application based on his medical conditions he must file and serve a report of an appropriately qualified medical consultant setting out a diagnosis and prognosis and indicating whether he is able to participate in these proceedings, whether he is able to comply with directions made and whether he is able to attend hearings and in each case, if not, when he is likely to be able to do so…"

21. That direction was not complied with, no medical evidence to support the Applicant's assertions had been filed or served and he did not renew his failed application to adjourn the substantive hearing.

22. The substantive hearing Order striking the Applicant from the Roll was filed with the Law Society on 13 December 2016 and he was notified of the same on 14 December 2016 via an email address that he continued to use to date.

23. Mr Mulchrone stated that, by virtue of Rule 19, the Applicant was entitled to apply for a re-hearing of the substantive matter, as he had not attended and was not represented, 14 days from receipt of the email attaching the final Order dated 14 December 2016. He therefore should have made the application by 28 December 2016. His application was dated 25 June 2021 some 4.5 years late which was extraordinary and inexplicable. Mr Mulchrone submitted that no explanation had been advanced by the Applicant for the delay beyond the fact that he was ignorant of the Rules and procedure which was surprising given that he had been a solicitor for 30 years who was demonstrably capable of litigating multiple claims against the Law Society during the intervening period.

24. Mr Mulchrone described the judgement produced after the substantive hearing as very lengthy, very detailed, considered, clear and cogent. The Applicant could have, and should have if he so desired, exercised his statutory right of appeal against that decision, which did not require permission, by 7 February 2017. He did not do so and instead erroneously sought to issue proceedings for judicial review permission for which was refused on 22 August 2017. It was of note that the Applicant did not appeal against that refusal.

25. Mr Mulchrone submitted that the present application was an attempt by the Applicant to revisit settled matters following a litany of spurious unsuccessful claims made against the Law Society in a "blatant attempt to manipulate the Tribunal's processes". The Applicant had not satisfied the requisite test for permission to be granted, namely that it would be "just" to do so in circumstances where he (a) voluntarily absented himself from the substantive proceedings, (b) never appealed the substantive findings, (c) failed to explain adequately or at all why he had not made the application for a re-hearing within the required time frame and (d) why it had taken 4.5 years to do so.

26. Mr Mulchrone invited the Tribunal to refuse the application for permission refuse the application and award costs in favour of the Respondent SRA.

The Tribunal's Decision

27. The Tribunal considered all the documents placed before it and listened carefully to the submissions of both parties in conjunction with the relevant Rules of the Solicitors (Disciplinary Proceedings) Rules 2007 namely:

28. Rule 19 of the SDPR 2007:-

> "**Re-hearing where respondent neither appears nor is represented**
>
> 19(1) At any time before the filing of the Tribunal's Order with the Law Society under rule 17 or before the expiry of the period of 14 days beginning with the date of the filing of the order, the respondent may apply to the Tribunal for a re-hearing of an application if—
>
> (a) he neither attended in person nor was represented at the hearing of the application in question; and
>
> (b) the Tribunal determined the application in his absence.
>
> 19(2) An application for a re-hearing under this Rule shall be made in the form of Form 7 in the Schedule to these Rules and shall be supported by a Statement setting out the facts upon which the applicant wishes to rely.
>
> 19(3) If satisfied that it is just so to do, the Tribunal may grant the application upon such terms, including as to costs, as it thinks fit. The re-hearing shall be held before a Division of the Tribunal comprised of different members from those who heard the original application."

29. The Applicant was clearly outside the 14-day period, that having expired on 28 December 2016.

30. Rule 21(1) and (2) of the SDPR 2007:-

> "21(1) Subject to the provisions of these Rules, the Tribunal may regulate its own procedure.
>
> 21(2) The Tribunal may dispense with any requirements of these Rules in respect of notices, Statements, witnesses, service or time in any case where it appears to be just so to do.

31. The test for the Tribunal was therefore whether it was just to grant the Applicant permission to make an application for a re-hearing out of time.

32. In his written application the Applicant had not addressed the issue of delay in making his application. In his oral submissions before the Tribunal, the Applicant asserted that the delay was due to (a) ignorance of the correct procedure, Rules and Tribunal practice and (b) medical advice he received at the material time. With regards to (a) the Tribunal rejected the assertion that a solicitor of his experience, well capable of conducting High Court litigation was ignorant of the correct procedure and further that even if he were, it did not justify permission being granted at this extreme distance of time, some 4.5 years after the event. With regards to (b) the Tribunal noted that no medical evidence had been filed at the material time and none in support of the present application.

33. The Applicant had placed much reliance on his contentions that the SRA had concealed evidence, not investigated properly and were essentially conspiring against him. The Tribunal rejected all of those assertions, found no evidence of "fraud" on the part of the SRA and further that the Applicant failed to demonstrate that there was or indeed may have been.

34. Otobo, that the Applicant had taken the Tribunal to, whilst relevant to the question of whether it was just to allow an application for a rehearing, undermined as opposed to supported the Applicant's application. The facts of Otobo were strikingly similar to the present facts in that in that it involved a failed application for judicial review and other litigation embarked upon by the solicitor, failure to comply with the requirements of Rule 19 and reliance on medical issues absent any medical evidence. The High Court dismissed the appeal and upheld the Tribunal's substantive decision regarding proceeding in absence.

35. Ahmud, that the Applicant had taken the Tribunal to, was not relevant given the Tribunal's findings above that there had been no concealment of evidence, no fraud and no inadequacies in the SRA's investigation in the substantive proceedings. The Applicant's assertions in that regard amounted to unsubstantiated allegations and assertions unsupported by evidence or fact.

36. The Applicant's application for leave to apply for a re-hearing was entirely without merit. The 4.5 year delay was inexplicable particularly given the extensive ancillary litigation that the Applicant had embarked upon against the Law Society all of which was found to have been entirely without merit and which resulted in an Extended Civil

Restraint Order being issued against him on 21 February 2018 by Mr Justice Mostyn for the following reasons:

> "…I am satisfied that an ECRO should be made in this case, to last for the full two years permitted, in the form annexed hereto. The claimant has made seven applications which have been certified as being totally without merit. I am wholly satisfied that if the ECRO is not made then it is highly likely that his conduct in making meritless applications will continue and that it is in the interests of justice, and the conservation of precious court resources, that he is restrained. My decision is reinforced by the claimant's skeleton argument which is unfocused, in many respects incoherent, and intemperate…"

37. The Tribunal concluded that it would not be just to allow him to apply for a re-hearing. The application for leave was therefore refused.

Costs

The Respondent's Submissions

38. Mr Mulchrone acknowledged that the Respondent had not filed a Statement of Costs which was an oversight and could be remedied if given time. He indicated that the costs claimed, absent a breakdown, was fixed in the sum of £2,500 for filing an Answer to the Application and attendance at the hearing.

The Applicant's Position

39. Mr Elsdon stated that he "could not understand the Tribunal's decision [on his application] or how the SRA was entitled to costs on how they had behaved" and that "to claim costs with such behaviour [was] astonishing".

The Tribunal's Decision

40. The Tribunal determined that in the absence of a Schedule of Costs having been served on the Applicant and filed at the Tribunal it would be unfair to award the same. The application for £2,500.00 on the part of the Respondent was therefore refused.

Order

41. The Tribunal ORDERS that the application of MICHAEL JOHN ELSDON former Solicitor, for leave to make an application for a re-hearing be REFUSED and it further makes NO ORDER FOR COSTS.

Dated this 31st day of August 2021
On behalf of the Tribunal

E Nally
Chair