

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11792-2018

BETWEEN:

PHILIP WHITCOMB

Applicant

and

SOLICITORS REGULATION AUTHORITY

Respondent

Before:

Mr E. Nally (in the chair)

Mr P. Booth

Mrs C. Valentine

Date of Hearing: 22 May 2018

Appearances

The Applicant appeared in person.

Mark Gibson, solicitor employed by the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RL, for the Respondent.

**JUDGMENT ON AN APPLICATION
TO REMOVE RESTRICTIONS**

Application

1. On 22 May 2013, the Applicant admitted, and the Tribunal found proved allegations that he had:
 - Actioned and/or permitted transfers of money from client account office account in respect of fees without sending a bill of costs to clients, or otherwise providing them with written notification of costs incurred, contrary to Rule 19 of the Solicitors Accounts Rules 1998 and Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007; and
 - As an Attorney, but without the knowledge, and thereby consent, of his client, he withdrew funds from a client's personal bank account in settlement of the Firm's fees, in circumstances where neither the relevant bills nor any other costs information has been delivered to the client contrary to 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007.
2. Having found the matters proved, the Tribunal ordered that the Applicant be suspended from practice as a solicitor for the period of three years save that the period of suspension be suspended subject to the following conditions:

“The [Applicant] may not:

Practise as a sole practitioner, partner, member or manager of a Recognised Body, Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS); or

Hold client money.

For the avoidance of doubt the [Applicant] may only work as a solicitor in employment approved by the Solicitors Regulation Authority.

The [Applicant] do attend an approved SRA Accounts Rules 2011 course within twelve months from 22 May 2013.”

The Applicant was also ordered to pay costs in the sum of £17,000, such costs not to be enforced without leave of the Tribunal.”

3. By way of an application dated 27 February 2018, the Applicant applied to remove the restriction imposed on his practising certificate.

Documents

4. The Tribunal reviewed all the documents submitted by the parties which included:
 - Application of 27 February 2018 and statement of the Applicant (undated)
 - two letters of reference from the Applicant's employer dated 8 November 2016 and 26 February 2018 respectively
 - Further references

- The Decision of the Authorised Officer of the SRA granting him a practising certificate free of conditions dated 26 February 2018
- The Tribunal's judgment dated 1 July 2013
- The Respondent's written submissions

Factual Background

5. The Applicant was born in 1973 and was admitted as a solicitor in September 2000. His name remained on the Roll of solicitors and he had a current practising certificate subject to the restrictions placed upon his practice by the Tribunal.
6. In June 2014 he joined his current employer and was a senior solicitor in their Private Client team. The partners at his current employer had been fully supportive of the Applicant. The Tribunal was referred to a reference dated 8 November 2016 in which the Partner and Head of Wills, Tax & Trusts stated that she did not believe that the Applicant posed a risk to clients or the public. The Applicant's work had been praised by colleagues and external professionals. Since joining the Firm his character and conduct had been first class. He was a popular member of staff and had made a positive contribution to the team and the firm as a whole. He had undertaken a Solicitors Accounts Rules course, acknowledged his past mistakes and taken steps to ensure there would be no re-occurrence.
7. The Managing Partner (EW) of his current employer provided a reference dated 26 February 2018 in which he supported the removal of the remaining conditions on the Applicant's practising certificate. Notwithstanding the Applicant's past conduct, it was believed that he posed no risk to the public or to the confidence the public placed in the SRA to regulate the profession having regard to the following factors :
 - The original breaches were over 8 years ago and the Applicant had learnt from the errors of the past;
 - With the accounting practices, supervision and supervisory arrangements at the firm, the same or a similar situation would not arise;
 - EW's involvement with a large number of the Applicant's clients gave him confidence in the legal advice given by the Applicant;
 - Over the past 12 months the Applicant had greater responsibility for client matters, and EW remained fully confident that the Applicant did not pose a threat to the public; and
 - The Applicant's own character and conduct.
8. EW stated that he held the Applicant in such regard that he would consider putting the Applicant's name forward for consideration of partnership once the Tribunal removed the conditions it had imposed.
9. The Applicant submitted that the circumstances that had resulted in his appearance before the Tribunal in 2013 were unique; it had been a painful lesson, but he had learnt from that experience. He was now much more open in discussing any issues

arising on files and where appropriate, to pass/delegate files to colleagues rather than attempting to do it all himself.

10. The Applicant submitted that he was now more acutely aware of the Professional Conduct Rules and the Solicitors Accounts Rules and ensuring that his work was, at all times, compliant with those Rules. He had attended a training course on the Solicitors Accounts Rules as required, and took an active interest in developments and changes to the Rules. He had also become an advocate of education and guidance on compliance to his colleagues, not only in using himself as an example of what could happen when one did not think about the Rules, but also in talking through any queries his colleagues had.
11. He had refined his working practices to ensure the provision of high levels of services to clients and to avoid any risk of breaching the Rules. The supervisory regime adopted at the firm meant that any risk to the public or any misconduct would become quickly apparent. Had there been any concerns about his practice, the firm would not be supporting his application for the removal of the conditions imposed by the Tribunal.
12. The Applicant submitted that he was proud to be a member of the profession and that he would continue to strive to ensure that his conduct was of the highest professional standards. He acknowledged and accepted the seriousness of his previous misconduct which was reflected in the sanction imposed by the Tribunal. He had taken positive steps to learn from his mistakes and to ensure that there would be no repeat such that there was no continued risk to the public or the reputation of the profession.
13. The Respondent opposed the application to remove the condition that the Applicant may not practise as a sole practitioner. Whilst it may be correct that in firms with numerous partners and systems there may be arrangements in place to prevent a similar situation arising, this would not necessarily be the case if the Applicant was able to practise as a sole practitioner. There was no guarantee that he would put in place accounting systems to prevent and mitigate the risk of further misconduct occurring as equivalent levels of supervision and supervisory arrangements would not, by definition, be in place were he to operate as a sole practitioner. The Respondent submitted that the condition that the Applicant should not practise as a sole practitioner remained necessary and was proportionate to the risks posed.
14. The Respondent was neutral in respect of the application to remove the other conditions for the following reasons:
 - 14.1 The Applicant had a clear regulatory history since the Tribunal's decision of 22 May 2013, with no regulatory issues being identified;
 - 14.2 The matters for which the Applicant appeared at the Tribunal took place over 8 years ago;
 - 14.3 The Applicant had provided a certificate of attendance dated 21 March 2014 of his attendance on a course entitled "SRA Accounts Rules for Solicitors: A Practical Guide to Compliance".

15. The Respondent submitted that the principles to which the Tribunal should have regard in considering the application were similar to those in an application for restoration to the Roll or an application to determine an indefinite suspension. The Tribunal was referred to Bolton v The Law Society [1994] 1WLR 512, Ebhogiaye v SRA [2013] EWHC 2445 (Admin) and Camacho v Law Society [2004] EWHC 1675 (Admin). Mr Gibson submitted that those cases made it clear that conditions and restrictions on practice such as those the Tribunal had imposed on the Respondent were for the protection of the public and to maintain public trust in the profession.
16. The Applicant confirmed that he had no objection to a condition preventing him from being a sole practitioner.

Witnesses

17. None.

Previous Disciplinary Matters

18. The Applicant appeared at the Tribunal on 22 May 2013 (Case No. 11095-2012). On that occasion he was suspended for 3 years, that suspension being suspended subject to conditions, the removal of which formed the basis of these proceedings.

The Tribunal's Decision

19. The Tribunal had regard to the Guidance Note on Sanctions (5th Edition), and its Guidance Note on Other Powers of the Tribunal (1st Edition). The Tribunal's overriding objective, when considering the application was whether it was necessary to continue to impose the restrictions so as to protect the interests of the public and the reputation of the profession.
20. The Tribunal considered the application in detail, including the references written on the Applicant's behalf. The Tribunal noted the circumstances the Applicant was facing at the time of his misconduct. The Tribunal also considered the seriousness of that misconduct and the sanction imposed by the Tribunal.
21. The Tribunal was mindful that the conduct complained of had taken place in 2010. The Applicant had been in employment since that time and had also been subject to the conditions on his practising certificate imposed by the SRA and the restrictions imposed by the Tribunal throughout that time. There had been no regulatory concerns regarding the Applicant's conduct since the restrictions had been imposed. This was an important consideration.
22. The Applicant had demonstrated insight and remorse into his conduct and had taken positive steps in educating himself and others to ensure compliance with the rules. The Tribunal considered that it was to the Applicant's credit that he had been paying the costs of the previous proceedings, particularly as the order imposed was one that could not be enforced without the leave of the Tribunal. It was also to his credit that he had delayed making the application and had not applied at the first possible opportunity.

23. The Tribunal noted the internal procedures at the Applicant's current firm, and the limited scope for him to repeat his misconduct in that environment. The Tribunal shared the Respondent's concern about allowing the Applicant to be a sole practitioner. The risk profile for sole practitioners was inherently greater. The Tribunal considered that if the Applicant were able to practise as a sole practitioner, or was the sole signatory to any client account, there was a risk that his previous misconduct could be repeated. The Tribunal considered that it was necessary for the protection of the public and the reputation of the profession to continue to impose restrictions on the Applicant's practising certificate, namely that he may not practise as a sole practitioner or be a sole signatory on any client account. All other conditions imposed by the Tribunal on 22 May 2013 could be and were removed.
24. The Tribunal did not consider that it was necessary for the conditions to remain in place indefinitely, and that the imposition of the conditions for a period of 2 years was appropriate. This gave the Applicant the opportunity to demonstrate that he was now responsible enough to manage client monies in accordance with the rules. The Tribunal considered that at the end of that period, there would no longer be sufficient risk from the Applicant to the public or the reputation of the profession such as to justify the imposition of conditions continuing to be necessary.

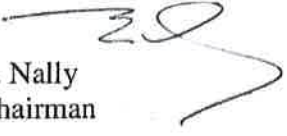
Costs

25. Mr Gibson made an application for costs in the sum of £1,732.00. The Applicant did not object to the quantum. The Tribunal determined that the costs claimed were appropriate and proportionate and ordered that the Applicant pay the amount claimed.

26. Statement of Full Order

1. The Tribunal Ordered that the conditions imposed by the Tribunal on PHILIP DAVID WHITCOMB, solicitor, on 22 May 2013 be varied and that he be subject to the conditions set out in paragraph 2 below for the fixed period of 2 years commencing on 22 May 2018, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,212.90.
2. The Respondent shall be subject to conditions imposed by the Tribunal as follows:
 - 2.1 The Respondent may not:
 - 2.1.1 Practise as a sole practitioner;
 - 2.1.2 Be a sole signatory on any client account.

Dated this 13th day of June 2018
On behalf of the Tribunal


E. Nally
Chairman

Judgment filed
with the Law Society
on 12 JUN 2018