

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12159/2021

BETWEEN:

JARED DONALD BAILEY

Applicant

and

SOLICITORS REGULATION AUTHORITY

Respondent

Before:

Mr W Ellerton (in the chair)

Mr P Lewis

Ms E Chapman

Date of Hearing: 27 April 2021

Appearances

Jared Donald Bailey, solicitor, of 122 Rainbow Road, Macclesfield, Cheshire, SK10 2PD, for the Applicant.

Simon Griffiths, solicitor, of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Respondent.

JUDGMENT ON THE APPLICATION TO REMOVE A CONDITION OF PRACTICE

Relevant Background

1. The Applicant was admitted to the Roll of Solicitors in October 1982. Between 3 July 2002 and 30 September 2012, the Applicant was a sole practitioner practising under the name JB Law (“the Firm”). The Tribunal adjudicated upon allegations levelled against the Applicant on 12 November 2015 namely that he:
 - “1.1 withdrew money from the client account other than in circumstances permitted by Rule 22(1) of the Solicitors Accounts Rules 1998 (“SAR 1998”) or Rule 20.1 of the SRA Accounts Rules 2011 (“SRA AR 2011”);
 - 1.2 caused or permitted a cash shortage on client account in breach of Rule 22(5) SAR 1998 or Rule 20.6 SRA AR 2011;
 - 1.3 failed to replace a cash shortage on client account promptly upon discovery in breach of Rule 7 SAR 1998 and Rule 7 SRA AR 2011;
 - 1.4 failed to keep accounting records properly written up in breach of Rule 32(1) and/or Rule 32(2) SAR 1998 or Rule 29.1 and/or Rule 29.2 SAR AR 2011;
 - 1.5 failed to perform client account reconciliations beyond September 2012 in breach of Rule 29.12 SAR AR 2011;
 - 1.6 By virtue of the foregoing, acted contrary to any or all of Rules 1.04 and 1.06 of the Solicitors Code of Conduct 2007 and/or any of the Principles 4, 6 and 10 of the SRA Principles 2011 and;
 - 1.7 failed to deliver accountant’s reports beyond that for the period ending 31 July 2011 in breach of Rule 32 SRA AR 2011.
2. Recklessness was cited as an aggravating feature in relation to Allegations 1.1, 1.2 and 1.4.”
2. Allegations 1.1, 1.2, 1.3, 1.4, 1.5, 1.6 and 1.7 were admitted by the Applicant and found proved beyond reasonable doubt. Allegation 2 was denied by the Applicant and found not proved. The relevant part of the sanction imposed for the present application was that the Applicant be subject to an indefinite condition that he:
 - “May not practice as a sole practitioner, Partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ADP).”
3. By way of an application dated 18 January 2021, the Applicant sought the removal of that condition.

Documents

4. The Tribunal reviewed all the documents filed by the parties which included:

Applicant

- Application dated 18 January 2021.
- Tribunal judgment in respect of the 12 November 2015 substantive hearing.
- Reply to the Respondent's Answer dated 3 March 2021 with exhibits:
 - Letter from employer (AC) dated 2 March 2021.
 - Character reference from employer (AC) dated 1 March 2021.
 - Character reference from GA dated 1 March 2021.
 - Character reference from MJ dated 28 June 2017.
 - Certificate of training "Solicitors Account Rules" dated 28 February 2021.
 - Certificate of training "SRA Standards and Regulations" dated 28 February 2021.

Respondent

- Answer to the Application dated 10 February 2021.

Witnesses

5. No oral witness evidence was heard by the Tribunal.

The Applicant's Application

6. Mr Bailey stated that prior to his appearance before the Tribunal in 2015, he had an unblemished record dating back to 1982. The admitted misconduct found proved occurred during a difficult period for him both personally and financially. His wife was in ill-health, he was supporting her and caring for their young child. That detrimentally impacted on the time he spent managing the Firm and resulted in him being adjudged bankrupt in 2014.
7. Prior to the Tribunal hearing in 2015, the Firm had been taken over by a small London based Firm and existed as a branch office in which he remained as a Consultant Solicitor until March 2016. Mr Bailey spent the remainder of 2016 attempting to establish an online business to generate contentious probate enquires that could then be referred to a firm of solicitors.
8. By early 2017 it was clear to Mr Bailey that the business could not financially sustain his family so he sought employment within a firm of solicitors. The condition on his practising certificate prevented him from gainful employment until March 2017 when he secured a locum role in a personal injury firm based in Preston. At the conclusion of that contract, he secured another short-term locum position based in Grange-over-Sands handling private client work until July 2017.
9. Mr Bailey's marriage ended around that time and he became primary carer for his child. He was offered and accepted a full-time position as an Assistant Solicitor in a Macclesfield based personal injury firm. He remains in that role to date but holds no financial duties or responsibilities on behalf of the firm.
10. Mr Bailey reminded the Tribunal that the condition on his practice had been in place for seven consecutive practising years during which time he had demonstrably shown that he did not pose a risk to the public. No regulatory concerns had been raised

against him since 2015. Mr Bailey stated that (a) he “wish[ed] to recover [his] pride and dignity” and (b) his child was presently 16 years of age and he hoped to support her financially through university.

11. Mr Bailey submitted that he had learned from his experience. The underlying misconduct was an isolated sequence of events caused by exceptional circumstances at the material time (both personal and financial) which was not reflective of his character.

The Respondent’s Answer

12. Ms Stockley opposed the Application on the ground that the Applicant had failed to adduce sufficient evidence to support his contention that the condition was no longer necessary and appropriate.
13. Ms Stockley submitted that whilst the Application had revisited the reasons advanced for the admitted misconduct, it did not (a) address future risk, (b) demonstrate why the condition is no longer necessary and appropriate, (c) enunciate any change in circumstances and/or (d) advance any remediation undertaken.
14. Ms Stockley contended that the Respondent would review its position if the Applicant was able to adduce evidence of remediation such as:
 - Training courses undertaken in relation to the SRA Code of Conduct and the SRA Accounts Rules 2019.
 - Further particulars as to the work undertaken in his current role.
 - Further particulars as to his future professional intentions.
 - Character references.

The Applicant’s Reply and Oral Submissions to the Tribunal

15. Mr Bailey reiterated that whilst he was not seeking to derogate from the seriousness of the misconduct found proved, the total shortfall on the client account was £14,423.53 over a three-year period. He reminded the Tribunal that his failures were found to have been “careless accounting and incompetence rather than deliberate; they had not been planned and were not in breach of trust”.
16. Mr Bailey referred the Tribunal to the letter from his employer dated 2 March 2021 which confirmed that he:
 - Mainly handled personal injury matters.
 - Was not involved in the management of the firm.
 - Had no access to the client or office account.
 - Did not handle client money.
 - Was not a member or director of the firm.
 - Was closely supervised by a Team Leader and via the firms Case Management System.

- Had the benefit of firm issued legal updates, access to Lawtel and attended “MBS” seminars in relation to civil litigation.
 - Had access to an in-house advocate of 27 years qualification as well as external counsel for advice/guidance.
 - Was integral in establishing a new department dealing with contentious probate work and attended a remote training session in that regard delivered by external counsel.
17. Mr Bailey further referred the Tribunal to the certificates received in respect of two training courses regarding the SRA Code of Conduct 2019 and SRA Accounts Rules 2019.
 18. Mr Bailey submitted that he had insight into his previous failings and had taken steps to remedy the same so as to ensure that the misconduct was not repeated. He contended that (a) the misconduct occurred eight to eleven years ago, (b) did not involve allegations of dishonesty, (c) there was no loss to any client and (d) recklessness was not found proved.
 19. Mr Bailey contended that in his various roles since the Tribunal’s findings there had been no regulatory concerns raised against him. He had complied with the condition to date and he believed he was regarded as upstanding, honest and of good repute.
 20. Mr Bailey accepted the sacrosanct nature of the client account and averred that his failures were as a result of the challenging personal circumstances that prevailed at that time. There was, he submitted, no risk of repetition of those failures.
 21. Mr Bailey stated that he was 63 years of age and held no ambition to run or manage his own business again. He was content in his current role and intended to remain in post until he considered retirement in four or five years’ time. He hoped to retire from the profession with a “clean” practising certificate.

The Respondent’s Submissions to the Tribunal

22. Mr Griffiths reiterated the Respondent’s opposition to the application. He submitted that the original misconduct related to nine unallocated transactions over three years which resulted in a shortfall in the client account. One of the unallocated transactions remained un-reconciled for three years after the Firm’s closure. Culpability for those failings fell solely on the Applicant who was the Sole Proprietor of the Firm.
23. Mr Griffiths contended that the Applicant still posed a risk to the public and the profession as the evidence that he relied upon to demonstrate remediation was insufficient, inadequate and failed to address the proven misconduct. There was no evidence of the Applicant’s experience of handling an Office or Client account. The letter from his employer confirmed that the Applicant had no access to the Office or the Client Accounts.
24. Mr Griffiths stated that the training courses that the Applicant had attended were only embarked upon because of the Respondent’s reply to his application which commented on the lack of training undertaken to remediate his failings. Mr Griffiths

noted, and invited the Tribunal to pay regard to, the fact that the SRA Accounts Rules 2019 course was a 30-minute session. Neither course sufficiently addressed the Applicant's previous misconduct.

25. Mr Griffiths submitted that the "mere passage of time" since the proven misconduct did not mitigate against incompetence found on the part of the Applicant. The risk to the public and the profession remained unchanged and should be met by the retention of the condition on the Applicant's practice.

The Applicant's Oral Submissions in Reply

26. Mr Bailey reiterated that the condition on his practice made it difficult for him to obtain alternative employment should he need to do so. He submitted that in his present role there was no opportunity to gain experience of financial management and transactions in any event.

The Tribunal's Decision

27. The Tribunal had due regard to the Applicant's rights to a fair hearing and 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 and to this end the Tribunal gave very careful consideration to all the material it had read and the submissions made by the Applicant and the Respondent during the course of the hearing.
28. The Tribunal considered that its primary function in an application of this nature was to protect the public and to maintain public confidence in the reputation of the legal profession.
29. The Tribunal accepted that the Applicant had complied with the condition imposed upon him in 2015 and that since then the Applicant had no subsequent disciplinary or regulatory issues raised or recorded against him. A substantial amount of time had elapsed since the proven misconduct and the findings made by the Tribunal in 2015.
30. The Tribunal observed that in 2015 the constitution of the Tribunal which had dealt with the matter, after hearing all the evidence, had not found the Applicant to have been reckless. He was found to have been careless and incompetent with regards to his failings as opposed to deliberate and planned.
31. The Tribunal noted that in his submissions the Applicant had focused very heavily on his desire to retire from practice with a "clean" practising certificate. Whilst the Tribunal understood that motivation, the Tribunal's primary consideration was to ensure that the public and the profession were protected from any further misconduct. The issue which fell to be considered by the Tribunal was whether the Applicant had demonstrated sufficiently that he had rehabilitated himself and remedied his previous failings. In determining that issue the Tribunal found:
 - i. The proven misconduct related to breaches of the Solicitors Accounts Rules, the Code of Conduct and the Principles which underpinned the profession.

- ii. The proven misconduct, whilst not at the higher end of the spectrum of seriousness, were by no means trivial and led to a shortfall in the Client Account of around £14,000.00.
 - iii. The training undertaken by the Applicant was a direct response to the criticism levelled at him by the Respondent in its Answer to the Application. They were not courses that the Applicant embarked upon of his own volition which would have demonstrated insight into the seriousness of his previous incompetence and carelessness. Neither course was of sufficient depth and detail to provide the Applicant with any demonstrable insight into his previous failings.
 - iv. Whilst the Applicant's employer was plainly supportive of him and commended his ability in his current role, it did not address the crux of the proven misconduct namely the Applicant's ability in respect of financial transactions between the Office and the Client account. It was his incompetence and carelessness in that regard which necessitated the imposition of the condition by the Tribunal in 2015. The employer did not and could not speak to the Applicants financial ability since 2015.
 - v. The time that had elapsed since the previous misconduct and the Application did not, in the Tribunal's view, militate against the incompetence and carelessness with which the Applicant handled client money. There was little if any evidence of sufficient steps having been taken by the Applicant to remedy those proven failings.
 - vi. The character references relied upon by the Applicant all spoke to his general character and ability as a solicitor. None of them addressed his ability to handle financial affairs, client money or office money. In short, they were generic references that lacked specificity as to the issues that fell to be determined by the Tribunal. Consequently, they were of limited assistance to the Tribunal.
32. Weighing all those factors in the balance, the Tribunal was not satisfied that the Applicant had demonstrated genuine insight into his previous failings. The Tribunal saw no evidence of the Applicant having taken it upon himself to address those previous failings. The Applicant had not discharged the burden on him to satisfy the Tribunal on a balance of probabilities that the previous misconduct would not reoccur if the condition on his practice was removed. Whilst the Tribunal accepted that the Applicant held no financial duties in his current role, if the condition on his practice was removed and he were to gain further employment (which included access to the firm's accounts) or re-visit his decision to set up his own firm in the future, the risk to the public and the profession would remain.
33. Accordingly, the Tribunal refused the Applicant's application.

Costs

The Respondent's Application

34. Mr Griffiths referred the Tribunal to the Respondent's Statement of Costs dated 20 April 2021 which claimed costs in the sum of £2,379.00. Mr Griffiths submitted that sum should be reduced to reflect the time the hearing had taken (one hour as opposed to six hours) as well as a reduction in the preparation time (four hours as opposed to six hours).
35. Mr Griffiths therefore applied for costs in the sum of £1,469.00.

The Applicant's Position

36. Mr Bailey "struggled to understand" the four hours claimed in preparation time and the six hours claimed in respect of perusing the papers. Mr Bailey contented that "it didn't take [him] that long" to prepare for the hearing.

The Tribunal's Decision

37. The Tribunal considered that the costs claimed were reasonable and proportionate to the application.

Statement of Order

38. The Tribunal ORDERS that the application of JARED DONALD BAILEY of 18 January 2021 for the variation of the conditions imposed by the Tribunal on 12 November 2015 be **REFUSED** and it further Orders that the Applicant do pay the costs of the response of the Solicitors Regulation Authority to this application fixed in the sum of £1,469.00.

Dated this 4th day of May 2021
On behalf of the Tribunal



W Ellerton
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
04 MAY 2021