

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12276-2021

BETWEEN:

DAMIAN JOHN SUMMERSCALES

Applicant

and

SOLICITORS REGULATION AUTHORITY LTD

Respondent

Before:

Mrs C Evans (in the chair)

Mr R Nicholas

Mr P Hurley

Date of Hearing:

17 February 2022

Appearances

The Applicant was in person

Josh Bold. solicitor of Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR instructed by the Solicitors Regulation Authority Limited of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Respondent

**JUDGMENT ON AN APPLICATION TO REMOVE
CONDITIONS**

Executive Summary

1. The Applicant Mr Summerscales applied to remove conditions from his practice which had been imposed by the Tribunal in 2018. The Respondent, the Solicitors Regulation Authority Limited (“the SRA”) supported the application which the Tribunal granted with agreed costs awarded to the SRA.

Determination of the Tribunal.

Documents

2. The Tribunal considered all the documents in the case which included:

Applicant

- Statement of the Applicant Mr Summerscales dated 29 November 2021
- Form of application dated 22 November 2021
- Order of the Tribunal in case no 11791-2018 dated 31 October 2018
- Statement of Mr Summerscales dated 3 June 2021 in support of his application to the SRA for conditions on his Practising Certificate to be removed
- Decision of an Authorised Officer of the SRA dated 21 July 2021 to grant Mr Summerscales a Practising Certificate free from conditions

Respondent

- SRA’s Answer dated 17 December 2021 with attachments
- Statement of Costs dated 10 February 2022

Factual Background

3. Mr Summerscales was admitted as a solicitor in February 1988. He joined the firm of Redferns in 1992 and became a partner in 2004. From 14 November 2012 he was the firm’s Compliance Officer for Legal Practice (“COLP”).
4. The SRA intervened into the firm in November 2016 following difficulties arising after Redferns took in a third partner.
5. Mr Summerscales appeared before the Tribunal as the Second Respondent in case number 11791-2018. The matter was disposed of by way of an Agreed Outcome.
6. Mr Summerscales admitted that during his period of acting as a partner in Redferns:

“from 2014 - 2016, he did not maintain proper controls over the accounting systems;

between October 2015 and 28 November, he failed to prepare any or any adequate client account reconciliation statements every five weeks;
from January 2014, he caused or allowed suspense accounts to be used inappropriately;

from January 2016, he failed to keep proper accounting records to show accurately the position with regard to the money held for each client and trust;

And as a consequence, he breached: 7.5.1. Rules 1.2 (e), 1.2 (f), 29.1, 29.2, 29.12, Rule 29.25 of the SAR 2011; 7.5.2. Principles 6 and 8 of the SRA Principles 2011”

7. Mr Summerscales put forward mitigation which was recorded in the Agreed Outcome as follows:

- “(i) he had no knowledge of any of the matters referred to in the FI [Forensic Investigation] report until the SRA commenced their inspection in August 2016;
- (ii) he did not know dishonesty had been alleged against the Third Respondent until the intervention;
- (iii) he accepts that he failed in his duty as COLP but that this was not deliberate;
- (iv) he had a poor understanding of the responsibilities of the COLP and did not appreciate the importance of reporting material failures to the SRA;
- (v) he deeply regrets the failures on his part which were part of the SRA investigation into the Firm.”

It was stated in the Agreed Outcome that throughout the SRA’s investigation Mr Summerscales had cooperated with the SRA.

8. The Tribunal considered that Mr Summerscales had lesser culpability than the First Respondent and approved the proposed outcome that he pay a fine of £10,000 and a contribution to costs in the sum of £15,100.
9. The Tribunal has the power to impose conditions upon practice which is quite separate from the power of the SRA to impose conditions upon Practising Certificates. The Tribunal further Ordered that Mr Summerscales should be subject to conditions imposed by the Tribunal as follows:

“The Second Respondent may not:

- Be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration;
- Hold, receive or have access to client money;
- Be a signatory on any client account or office account or have the power to authorise electronic transfers from any client account or office account;

- Apply to the Tribunal to vary or rescind the restrictions within the period of 3 years.”

10. In January 2017, when it lifted the suspension upon his Practising Certificate which had been activated when Redferns was intervened into, the SRA had imposed its own conditions upon Mr Summerscales’ Practising Certificate as follows:

“May act as a solicitor only as an employee whose role has first been approved by the Solicitors Regulation Authority.

May not act as a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) or for any authorised body or authorised non-SRA firm.

Do not hold, receive, or have access to client money, or act as a signatory to any client or office account, or have the power to authorise electronic transfers from any client or office account.

Shall immediately inform any actual or prospective employer of these conditions and the reasons for their imposition.”

The conditions were imposed upon Mr Summerscales’ Practising Certificate for 2017/2018.

11. Mr Summerscales joined Lacey’s Solicitors LLP as an Associate in February 2017. His employment there was approved by the SRA. He had remained in full time employment with Lacey’s for the five years preceding the hearing of this application. In December 2020, he was promoted to Senior Associate leading a small team within the family law department which included supervision responsibilities.

12. On 23 November 2018, an Authorised Officer of the SRA removed the condition relating to approved employment, on Mr Summerscales’ Practising Certificate but imposed a condition preventing him from being an owner or manager of an authorised body. His 2018/2019 and 2019/2020 Practising Certificates were granted with the following conditions:

“The Applicant is not a manager or owner of an authorised body.

The Applicant may not act as a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) for any authorised body.

The Applicant does not hold or receive client money, or act as a signatory to any client or office account or have the power to authorise transfers from any client or office account.”

13. On 23 October 2020, Mr Summerscales applied to the SRA for the removal of conditions upon his Practising Certificate. The SRA decided on 21 July 2021 to issue an unconditional Practising Certificate for the year 2020/2021 and an unconditional Practising Certificate was also issued for 2021/2022.

Witnesses

14. There were no witnesses.

Submissions by the Applicant

15. Mr Summerscales referred to his statement in support of the application to remove the conditions from his practice with supporting documentation including emails which had been sent to the SRA when he applied for removal of conditions from his Practising Certificate. These were from Mr Talbot, senior partner in the firm of Lacey's with confirmation of support for removal of conditions and a lengthy email from Mr Maddocks, Finance Director at Lacey's who referred to a lot of the training that Mr Summerscales had been undertaking over the five years which he had been with the firm. Mr Summerscales had also attached his training record. He hoped that that documentation would largely speak for itself.

Submissions for the Respondent

16. Mr Bold for the Respondent the SRA, first referred to two minor housekeeping issues in the documentation submitted by the SRA in response to Mr Summerscales' application. Reference was made to two guidance documents issued by the Tribunal in December 2020. These were the 4th edition of the Guidance Note on Other Powers of the Tribunal and the 8th edition of the Tribunal's Guidance Note on Sanctions. Paragraph 33 of the latter contained exactly the same wording as the 9th and more recent edition of that Guidance issued in December 2021. The wording of the 5th edition of the Guidance Note on Other Powers of the Tribunal at paragraph 5 also issued in December 2021 was relevant to an application to remove conditions. Mr Bold submitted that it also had identical wording to its predecessor save that an additional bullet point had been added which was not relevant to the application before the Tribunal at this hearing.
17. Mr Bold referred to the four key points which he submitted the Tribunal needed to consider in determining the application. Taking these in turn, Mr Bold submitted regarding a change in circumstances, this was demonstrated in a number of ways: Mr Summerscales immediately sought employment with another firm in the aftermath of the intervention where he had remained since. He had complied with the conditions imposed by the SRA since 2017. Further during this time he had been employed as an Associate and then a Senior Associate with what appeared to be a valid aspiration to become a partner at the same firm due to his performance and work. Mr Bold submitted that those points taken together demonstrated a change in circumstances in Mr Summerscales professional career.
18. Secondly, Mr Bold submitted that the passage of time meant the conditions were no longer appropriate; Mr Summerscales had had approximately five years of conditions on his Practising Certificate without issue, properly monitored by the firm he worked at whilst being allowed to show his compliance. Taking all that into account it was the SRA's view that the amount of time passed meant the conditions were no longer appropriate.

19. Thirdly Mr Bold submitted that it was not contrary to public interest to remove the conditions imposed by the Tribunal in 2018. The Tribunal would see that the SRA's Authorised Officer who determined that it was now time to remove the conditions imposed by the SRA detailed their reasons including notably that Mr Summerscales admitted the misconduct as put in the allegations and no dishonesty was alleged in the individual matter against him. The reasons also demonstrated the progression of Mr Summerscales' rehabilitation and showed that he had now mitigated the risk relevant to the restrictions imposed by the SDT as was needed. Finally for any conditions to be necessary, they had to be reasonable and proportionate and targeted at a specific risk. The Authorised Officer decided that the evidence before them demonstrated no conditions would be targeted to an identified risk which Mr Bold submitted was a credit to Mr Summerscales.
20. Mr Bold further submitted that Mr Summerscales remained in full time employment with no regulatory issues. Practical steps had been taken to update his knowledge on compliance even in the areas where the conditions/restrictions currently stopped him from acting. He had become a valued member of staff at Lacey's with supporting evidence from the firm in terms of the references from a senior partner and Finance Director. Mr Summerscales had shown insight into his previous misconduct and worked hard. Mr Bold submitted that he could only echo the reasons supplied by the Authorised Officer of the SRA and those in the SRA's Answer to the application for the removal of the conditions imposed by the Tribunal. Mr Summerscales thanked Mr Bold for his fair and positive comments.

Determination of the Tribunal

21. The Tribunal considered the application and the supporting documentation filed by Mr Summerscales and the Answer filed by the SRA and its supporting documentation along with the submissions by Mr Summerscales and for the SRA. It had regard particularly to the Guidance on Other Powers of the Tribunal 5th edition issued in December 2021 as far as relevant. Paragraph 5 of that Guidance set out the factors which the Tribunal would consider in determining a period of indefinite suspension which had useful parallels to conditions imposed on a solicitor's practice.
22. The Tribunal took note of the details of the original order of the Tribunal leading to the imposition of the conditions with regard to the seriousness and circumstances of the misconduct and the steps the Tribunal regarded as being relevant in supporting an application. The original breaches had a degree of seriousness but no dishonesty had been alleged. The Tribunal had determined that Mr Summerscales' culpability was less than that of the First Respondent and the matter had been disposed of by way of a fine.
23. Evidence must be provided to establish any training undertaken by the applicant or that they had kept their legal knowledge up to date in their area of practice. The Tribunal had been provided with evidence of the training which Mr Summerscales had undertaken. This was supported by the detailed email provided by Mr Maddocks the Finance Director about the training system at the firm and by Mr Summerscales' training record.
24. The Tribunal also had to consider evidence of any employment together with safeguards and supervision which have been put in place by the applicant's employer.

Mr Summerscales had been in employment with Lacey's initially as required with the approval of the SRA for five years beginning even before the earlier Tribunal hearing took place. Mr Maddocks had provided a detailed account of the systems at the firm which regulated Mr Summerscales' work and ensured that the conditions upon his practice were adhered to. Mr Talbot a senior partner of the firm along with Mr Maddocks had supported Mr Summerscales' application to the SRA for removal of the conditions upon his Practising Certificate and endorsed both what Mr Summerscales said "as to as to his position at the firm both now and possibly for the future" and endorsed what he said about compliance generally within the firm.

25. The Tribunal had to consider evidence of genuine reformation of character of the applicant including evidence of insight into the nature and effects of the misconduct and steps taken by the applicant to ensure that the wrongdoing does not reoccur. The Tribunal considered that Mr Summerscales had shown genuine insight into the misconduct which led to the conditions being imposed upon his practice. It noted that there had been no regulatory issues during his time at Lacey's and Mr Maddocks' detailed email concluded "I would add that apart from one or two breaches of the old 14 day rule - i.e. monies must be transferred out of client account within 14 days of a bill being issued and those monies therefore becoming office monies - which, whilst they were technical breaches, are considered to be minor as long as they are not systematic, I have not had any issue with you (sic) compliance with the accounts rules throughout your time at Lacey's...."
26. As to the length of time since the conditions were imposed, the Tribunal which had imposed the conditions had set out that Mr Summerscales was not to be permitted to apply to vary or rescind them for three years. That period of time had expired some months ago.
27. As to whether the Tribunal which made the original order, having paid due regard to its inability to fetter the discretion of any future Tribunal considering an application, indicated that it had in mind the possibility of an eventual termination of the conditions, this was clear from the three-year limit referred to above.
28. The Tribunal did not consider, based on the evidence before it, that there was any continuing risk to the public or that the public would harbour concerns about the propriety of the removal of the conditions. There was convincing evidence that the conditions had been complied with. There was also evidence that the costs imposed by the earlier Tribunal had been discharged by Mr Summerscales. In the decision to lift the conditions upon his Practising Certificate, the Authorised Officer of the SRA stated that Mr Summerscales had paid an agreed sum of £15,000 of the costs ordered by the Tribunal of £15,100 and he had no outstanding costs liability to the SRA. He had produced detailed evidence of compliance from Mr Maddocks when he applied to the SRA to lift the conditions on his Practising Certificate and this had been unreservedly supported by a senior partner of the firm.
29. As to the regulator's response to the application, the SRA concluded in its Answer:

"The Respondent submits that the Applicant has shown insight into his behaviour and remediation. The Applicant submitted extensive evidence to the Authorised Officer which informed her decision. Based upon that evidence, she

considered that the conditions were no longer necessary, reasonable, or proportionate. That position is echoed in this Answer and the Respondent supports the Applicant's application to remove the restrictions on his practice."

30. Based on the detailed and convincing evidence which had been placed before it and following the Tribunal's Guidance Note on Sanctions 9th edition paragraph 33 the Tribunal determined that it was no longer necessary to ensure the protection of the public and the reputation of the legal profession from future harm by Mr Summerscales to restrict his practice. It would therefore order the conditions be removed.

Costs

31. The parties had agreed that Mr Summerscales would pay the SRA's costs in the sum of £725 against an amount claimed by the SRA of £1,079.

Statement of Full Order

32. The Tribunal Ordered that the application of DAMIAN JOHN SUMMERSCALES for the removal of the conditions imposed by the Tribunal on 31 October 2018 be **GRANTED** and it further Ordered that the Applicant do pay the costs of the response of the Solicitors Regulation Authority Ltd to this application fixed in the agreed sum of £725.00.

Dated this 16th day of March 2022
On behalf of the Tribunal



C. Evans
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
16 MAR 2022