

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12311-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

PETER MAXFIELD MARTIN

Respondent

Before:

Mr P Lewis (in the chair)

Ms A E Banks

Dr S Bown

Date of Hearing:

27 June 2022

Appearances

Louise Culleton, barrister of Capsticks LLP for the Applicant

Steve Roberts of Richard Nelson LLP for the Respondent

JUDGMENT ON A REMITTED APPEAL – SANCTION ONLY

Allegations

1. The Allegation against Mr Maxfield Martin was that:
 - 1.1 He suggested in an email of 1 October 2018 to Gomer Williams & Co Limited (“the Firm”) that they withdraw the allegation they had made about him to the Law Society on 31 August 2018, whilst referring to reporting alleged breaches by the Firm of the Civil and Criminal Contacts and in so doing he breached any or all of Principles 2 and 6 of the Principles.

Procedural Background

2. Mr Maxfield Martin had faced two other allegations at a hearing before the Tribunal in 2021. The Tribunal had found those allegations, together with the allegation set out above, proved and this had resulted in Mr Maxfield Martin being suspended for a period of 12 months commencing on 28 July 2021. That sanction was a single sanction addressing all the allegations before the Tribunal at that stage.
3. Mr Maxfield Martin appealed against the Tribunal’s findings in respect of the two other allegations and against sanction. On 17 February 2022, Mr Maxfield Martin’s appeal against the findings in respect of the two other allegations was successful. The Tribunal’s order was set aside and sanction in respect of the remaining allegation was remitted to the Tribunal for re-determination.
4. The Tribunal was therefore only required to consider sanction in respect of the single allegation, the High Court having ordered that each party bear their own costs of the remitted hearing.

Documents

5. The Tribunal considered all of the documents in the case which were contained within an agreed electronic bundle on CaseLines.

Factual Background

6. Mr Maxfield Martin was admitted to the Roll on 15 July 1989. At the material time he worked as a solicitor at Gomer Williams & Co Limited (the Firm) from their office at 19 John Street, Llanelli, SA15 1UP. From 5 September 2014 to August 2017 he was an employee at the Firm after which he continued to work at the firm on a consultancy basis until 14 September 2018.
7. Mr Maxfield Martin had become an accredited member of the Mental Health Panel of Solicitors in June 2015. The Firm had a mental health Legal Aid contract and he was the Legal Aid Supervisor for this work. In order for the Firm’s Legal Aid contract to be renewed in this area of work Mr Maxfield Martin needed to be re-accredited. He submitted this application on 25 June 2018. It was the circumstances of the submission of this application that was the subject of the two other allegations faced by Mr Maxfield Martin.

8. Mr Maxfield Martin was dismissed on 14 September 2018. In an email to Mr Jones and Ms Phillips-James, both of whom were directors at the Firm dated 1 October 2018, he stated the following, in respect of a complaint they had made against him to the Law Society:

“I am now obliged to submit my appeal in relation to my MH reaccreditation to the Law society in early October, I have taken legal advice and in furtherance of my appeal will be completely frank with the Law society about matters pertaining to the operation of both the Civil and Criminal Contracts at Gomer Williams. In relation to the Civil Contract these primarily centre on the fundamental breach in relation to 2.10(a) and (b). There are a number of other breaches cited including 26.1 and 26.2.

In relation to the Criminal Contract, amongst other areas, my comments will focus on the LAA audit on the 13th March. It is clear that during this process that material misrepresentation [sic] were made to Mr Hawkes [LAA auditor] in relation to 6.23 of the contract specification - the 14 hour rule - and the list of court duty slots it was represented that I had conducted. I imagine Mr Hawkes and the LAA will also be interested to read the rather injudicious comments made on the Crime Legends What's AP group on 13th March 2018 both before and after the audit. These are all downloaded and exhibited.

I have also had prepared and have signed affidavits in relation to these matters which will be sent to the SRA and LAA should my appeal to the Law Society Reaccreditation Assessor fail.

I have been well advised as to the censure I may receive from the SRA for my implied collaboration in these deceits but should my appeal fail then I would have lost my livelihood in any event. All this could have been avoided but for your peculiar intervention in my reaccreditation process. I remain somewhat baffled by your motivation for doing this and would suggest that in all the circumstances Gomer Williams would be better served by immediately withdrawing the allegation made to the Law Society on the 31st August. Perhaps on the basis of a simple misunderstanding. I will be submitting my appeal to the Law Society together with supporting documentation on the 5th October.

Peter Maxfield-Martin”

9. In his response to the Explanation with Warning letter, Mr Maxfield Martin had stated as follows:

“I do not accept that I sought to coerce Gomer Williams into withdrawing their report to The Law Society. I do, however, accept that the language and content of my email of 1 October 2018 was ill advised and intemperate. To put this into context/found myself in a position where I believed that I was being unjustifiably attacked and my professional standing undermined as a result of the breakdown in my relationship with the firm over a period of many months.”

10. He went on to say:

“I apologise for the content of my email of 1 October 2018 and accept that it falls short of the justifiably high standard of professional behaviour that are expected of all solicitors. In mitigation I would simply point out that this was an internal exchange of emails in the context of a dispute between myself and the firm and did not in any way affect the relationship of either myself or the firm with any clients or the wider public.”

11. The Tribunal had made the following findings in respect of this allegation at the 2021 hearing:

“38.3 The Tribunal noted that the Respondent did not dispute sending the email and he frankly admitted that it should not have been sent. The Tribunal noted that the email included the following passage that clearly engaged issues of professional misconduct:

“I remain somewhat baffled by your motivation for doing this and would suggest that in all the circumstances Gomer Williams would be better served by immediately withdrawing the allegation made to the Law Society on the 31 August. Perhaps on the basis of a simple misunderstanding.”

38.4 This passage clearly linked the issue of the allegation made to the Law Society by the firm with the Respondent’s decision as to whether to report the various alleged breaches he had referred to earlier in his email. The Tribunal found the factual basis of Allegation 1.2 proved on the balance of probabilities.

Principle 2

38.5 The Tribunal found on the balance of probabilities that the Respondent had demonstrated a lack of integrity when sending this email. The Tribunal did not expect him to be a ‘paragon of virtue’ - it recognised that he was in a difficult situation and that this was an emotional response. It was, however, entirely inappropriate to explicitly invite the firm to withdraw the allegation in the way that he did.

38.6 The email was not merely intemperate, which would be a matter of tone, but was threatening. It contained an explicit threat in direct response to the complaint to made to the Law Society. The email ended with a suggestion that the firm withdraw that complaint in order to avoid the Respondent referring to other alleged breaches. This implied that, if true, the Respondent was prepared to cover-up a duty to report wrongdoing. The Tribunal noted that the Respondent had given a date when he would submit his appeal against the Law Society decision, which was no doubt intended to give firm a deadline by which to adopt his suggestion. The Tribunal accepted that the Respondent had been angry and had not gone through with his threat, but the sending of the email in these

circumstances amounted to a lack of integrity and the breach of Principle 2 was therefore proved.

Principle 6

38.7 The breach of Principle 6 was proved on the balance of probabilities as a matter of logic given the Tribunal's findings as set out above."

Previous Disciplinary Matters

12. There was no record of any previous disciplinary findings by the Tribunal, prior to the 2021 hearing.

Mitigation

13. Mr Roberts referred the Tribunal to the email from the Law Society in which Mr Maxfield Martin had been notified of the complaint and submitted that the contents of the complaint had not been accurate, as was clear from the Tribunal's findings in 2021. This was the backdrop to the email subsequently sent by Mr Maxfield Martin, at a time when he felt a great deal of anger and fear. His fears about the loss of his livelihood had proved justified. Mr Roberts reminded the Tribunal that Mr Maxfield Martin had not followed through on his threats and the sending of the email could be described as a "moment of madness".
14. Mr Roberts told the Tribunal that following Mr Maxfield Martin's suspension, he had lost his job and faced financial ruin. Despite this, Mr Maxfield Martin had secured employment as a Covid-19 testing supervisor and had spent the winter months working outdoors on the minimum wage. Following the successful appeal on 17 February 2022, Mr Maxfield Martin had immediately applied for the return of his Practising Certificate. The SRA took until 17 March 2022 to grant this application, following repeated chasing. Mr Maxfield Martin had not returned to practise until 1 April 2022. Mr Maxfield Martin was now rebuilding his career and his client base. He estimated that it would take 18 months to return his career to where it had been before these proceedings.
15. Mr Roberts submitted that there were no aggravating features in this case. There were significant mitigating features including an element of deceit by the firm, intentionally or otherwise. This was a single episode in a previously unblemished career and Mr Maxfield Martin had demonstrated significant insight. He had been fully co-operative with the investigation. Mr Roberts submitted that taking all the factors into account, the Tribunal should make no order and that to give any other order would diminish reputation of profession.
16. Mr Roberts referred the Tribunal to two updated character references submitted for this hearing.

Sanction

17. The Tribunal had regard to the Guidance Note on Sanctions (June 2022). The Tribunal assessed the seriousness of the misconduct by considering the Mr Maxfield Martin's

culpability, the level of harm caused together with any aggravating or mitigating factors.

18. In assessing culpability, the Tribunal found that the motivation at the time Mr Maxfield Martin sent the email was to threaten the Firm into withdrawing the complaint. However the Tribunal accepted that he was angry and fearful at the time he sent it and he did not follow through on his threat, even though the Firm did not withdraw the complaint. There was not breach of trust and the email was not planned. Mr Maxfield Martin was very experienced and had direct control over his email. The Tribunal assessed the overall culpability as low.
19. There was no harm caused to any individuals and the investigation proceeded regardless. There was always some harm caused to the reputation of the profession when a solicitor sought to have a professional complaint withdrawn by means of an email such as this.
20. The Tribunal did not identify any aggravating factors. There were mitigating factors present in this case, including Mr Maxfield Martin's genuine insight, his full co-operation with the SRA and the proceedings, and that it was a single episode in a previously unblemished career. The Tribunal was satisfied that there would be no repeat of this conduct.
21. The Tribunal found that making 'no order' or imposing a Reprimand would ordinarily be insufficient to reflect the seriousness of the misconduct. The Tribunal had found breaches of Principles 2 and 6 proved and the reputation of the legal profession required this to be marked by way of a greater sanction. The Tribunal determined that the seriousness of the misconduct was such that the appropriate sanction was a financial penalty. The Tribunal considered the level of the fine with reference to the Indicative Fine Bands. The misconduct was moderately serious and therefore within Level 2, but at the lowest end. The Tribunal determined that the appropriate sanction would have been a fine of £2,001.00.
22. Before finalising the sanction, however, the Tribunal considered the particular circumstances of this case and the personal mitigation that was present. The most obvious factor was that Mr Maxfield Martin had been suspended for 6 months and 20 days between the Tribunal's original Order and the successful appeal. The Tribunal recognised the impact that this suspension had had on Mr Maxfield Martin in terms of his finances and his professional career. Taking those matters into account, the Tribunal concluded that it would be disproportionate and not in the interests of justice to impose a sanction. The Tribunal therefore decided that the appropriate course of action was to make 'no order' in respect of sanction in the exceptional circumstances of this case.

Statement of Full Order

23. In respect of Allegation 1.2, which was remitted to the Tribunal on appeal, the Tribunal makes NO ORDER in respect of the Respondent Peter Maxfield Martin and it further makes no Order as to costs.

Dated this 7th day of July 2022
On behalf of the Tribunal

JUDGMENT FILED WITH THE LAW SOCIETY
07 JUL 2022

A handwritten signature in black ink, appearing to read 'P Lewis', with a stylized flourish at the end.

P Lewis
Chair