

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12395-2022

BETWEEN:

MELANIE CLAIRE HAMMOND

Applicant

and

SOLICITORS REGULATION AUTHORITY LTD

Respondent

Before:

Mr W Ellerton (Chair)

Mrs L Boyce

Dr S Bown

Date of Hearing:

14 December 2022

Appearances

The Applicant was in person

Rebecca Edmonds, solicitor of 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, Ms Hammond, applied to remove a condition on her practice which had been imposed by the Tribunal in 2014 following certain findings it had made.
2. The Solicitors Regulation Authority Limited (“the SRA”), the Respondent, initially opposed the application, however, on receipt of Ms Hammond’s further submissions, Ms Edmonds for the Respondent indicated that the application was no longer opposed.
3. The Tribunal granted the application and removed the sole condition on Ms Hammond’s practice and it made an agreed order for costs in the Respondent’s favour.

Documents

4. The Tribunal considered all the documents in the case which were contained in an agreed electronic bundle.

Factual Background

5. The Applicant is a solicitor, admitted to the Roll on 15 February 2001. Between 1 September 2010 and 13 August 2012, the Applicant was a Partner and owner of a three-partner law firm, Frank Howard Solicitors (the “Firm”).
6. The Firm was intervened into on 30 August 2012. By order dated 13 August 2012, the Applicant was adjudged bankrupt and as such her practising certificate was suspended.
7. There was a hearing before the Tribunal from 9 to 11 December 2014 where there was also a second respondent.
8. The allegations against Ms Hammond were made in a Rule 5 Statement dated 3 June 2013 (*Rule 5 of the Solicitors (Disciplinary Proceedings) 2007*) that she:

“Allegation 1.1

Used, or permitted the use of, the client account of the Firm inappropriately by utilising it as a banking facility for a client contrary to Rule 15 note (ix) of the Solicitors Accounts Rules 1998 (“SAR 1998”);

Allegation 1.2

Provided services to a client other than those a recognised body is permitted to provide contrary to Rule 14 of the Solicitors Code of Conduct 2007 (“SCC 2007”);

Allegation 1.3

Failed to maintain accounting records which were in compliance with Rule 32 of the Solicitors Account Rules 1998 (“SAR”) and/or when such non-compliance related to a period after 6 October 2011, Rule 29 of the SRA Accounting Rules 2011 (“AR 2011”).

Allegation 1.4

Failed, upon discovering the accounting record breaches, to remedy the consequent breaches in her capacity as Partner of the Firm contrary to Rule 7 of the SAR 1998 SRA and/or where such breaches occurred after 6 October 2011, Rule 7 of the AR 2011.

Allegation 1.5

Had acted in a way that was likely to diminish the trust the public placed in her or the legal profession contrary to Rule 1.06 of the Solicitors Code of Conduct (“SCC 2007”) and/or when such conduct related to a period after 6 October 2011, Principle 6 of the SRA Principles 2011 (“the Principles”).

Allegation 1.6

Failed to notify the SRA promptly that she, and thereby the Firm, were in serious financial difficulty contrary to outcome 10.3 of the SRA Code of Conduct 2011 (“the 2011 Code”).

Allegation 1.7

Failed to ensure that a proper standard of service was provided contrary to Principle 5 of the Principles. This related to failure to progress cases and respond to client chasers and complaints.

Allegation 1.8

Failed to deal with the Legal Ombudsman in an open, timely and cooperative manner in breach of Principle 7 of the Principles.”

9. The Applicant made admissions in relation to allegations 1.3, 1.4, 1.6, 1.7 and 1.8. She contested allegations 1.1, 1.2 and 1.5.
10. The Tribunal was satisfied that the admissions had been properly made and that, on the evidence, those allegations had been proved to the requisite standard, namely, beyond reasonable doubt (*the standard of proof then in use by the Tribunal*).
11. The Tribunal found proved to the same standard, allegation 1.5 which had been contested by Ms Hammond.
12. The Tribunal did not find proved to the requisite standard allegations 1.1 and 1.2.
13. Essentially, the Tribunal found that there had been a failure to keep proper books of account. The Tribunal found that she had a degree of culpability as she was involved in the management of the practice although she was not liable for the breaches simply by virtue of being a partner of the firm.
14. Ms Hammond took on work whereby she acted for a business, STS, who said they planned to purchase timeshares from individuals who deposited money with the Firm, the Firm was then entitled to a percentage of this money in respect of fees. No timeshare purchases ever took place. She allowed herself, the Firm and the profession to be associated with the scheme which had many of the hallmarks of a scam. She failed to make adequate enquiries or refuse the relationship in a timely manner.

15. The Tribunal found that she was naïve rather than complicit in any wrongdoing, but her actions showed she had not acted in accordance with the high standards expected of the profession.
16. The Tribunal ordered:
 - That Ms Hammond be subject to a condition (“the condition”) that she: “May not practise as a sole practitioner, partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS)’ and;
 - She do pay a fine of £5,000 (reduced from £12,000 due to her means) and costs of £25,333, such costs not to be enforced without the permission of the Tribunal.
 - The condition was imposed for an indefinite period and both parties were granted liberty to apply to the Tribunal to vary the condition.
17. Ms Hammond was currently discharging the costs at the rate of £400pm and as at 14 December 2022 there remained £1,933 outstanding of the principal debt. The payments were up to date.
18. Her practising certificate has the following condition on it: “May not act as a manager or owner of any authorised body.”

Submissions by the Applicant

19. Ms Hammond requested that the Tribunal remove the condition it had imposed upon her in 2014.
20. In her written evidence she referred back to mitigation which had been before the Tribunal in 2014 that she was normally very cautious and that she was ashamed and embarrassed about her conduct which had resulted in the imposition of the fine and the condition. She said she had not been reckless or dishonest (and no such findings were made by the Tribunal), however, she had permitted herself to be manipulated by STS at a time when she was vulnerable. There had been chaos around her and no one to help. The fact that she was in a vulnerable position was partly of her own making as she took on ownership of the Firm when she had no previous experience of being a principal in a Firm and had only 9 years’ post qualification experience.
21. Ms Hammond said that since that time 8 years had elapsed in which she had learned from her experience and she had become extremely cautious regarding the type of work she now took on, her approach to risk generally, to her employers, her clients, and the public and in her approach to client care.
22. She said she had endeavoured to keep herself fully up to date with changes in the law and legal practice and regularly attended seminars, online training, and she had reflected on her professional practice.

23. She was working as a locum conveyancing solicitor, and this was an area of work she enjoyed and in which she had built up a reputation for being thorough and conscientious. Being a locum also had the advantage of regularly using different case management systems and thereby keeping up to date with technological developments, changes in the application of risk management by firms, and opportunities to be mentored by senior members of the legal profession.
24. While she fully accepted the imposition of the condition against her practising certificate, she said that it had impacted upon her personally and in her daily work as a conveyancing solicitor. Whenever she attended a new assignment the existence of the condition had to be declared, and she then had to recount the reasons for its imposition. In addition, whenever a conveyancing transaction was completing law firms were required to conduct a search via “Lawyer Checker” and this revealed the condition on her practising certificate. The search result was then recorded on the transaction file. This was a cause of further embarrassment and distress as she was again obliged to explain the reason for the imposition of the condition to personnel from other firms.
25. Ms Hammond said that it was now 8 years since the order was made at the Tribunal in 2014 and 10 years since the condition was placed on her practising certificate. She submitted to the Tribunal that she had not received any complaints during the last ten years and that she had worked hard to regain and rebuild the confidence that she and others had in her.
26. In response to written submissions from the Respondent opposing the application, she submitted further reasons to support her application in which she set out that there had been no previous matters in which findings had been made against her, and there had been no concerns of misconduct since the Tribunal hearing in December 2014.
27. She also provided a detailed list of training she had undertaken as the Respondent had not been satisfied that the information, she had given initially, was adequate to determine whether she had fulfilled the requirement to keep herself fully updated, particularly in anti-money laundering, solicitors accounts rules and client care and complaints handling which were key problem areas identified in the Tribunal judgment.
28. With respect to her continued training Ms Hammond said that she had strived to keep as up to date with developments in the law as possible and in her application she had provided details of recent courses she had attended in the CPD year. She evidenced relevant training in the areas of anti-money laundering, solicitors accounts rules and client care and complaints handling as follows:
 - 10 May 2016 - Conveyancing Quality Scheme update. AML and Client Care. Provider: The Law Society
 - 23 November 2017 - Annual Licensed Conveyancers Conference, Stoke – compliance, AML and risk awareness updates, Client Care updates
 - 02 April 2018 - Conveyancing Quality Scheme 2018 update – risk and compliance. Provider: The Law Society. Content: CQS authorisation examined course on all issues surrounding risk and compliance in legal practice

- 06 May 2019 - Conveyancing Quality Scheme 2018 update – Risk and Compliance. Provider: The Law Society. Content: CQS authorisation examined course on updated risk and compliance issues
 - 08 to 12 July 2019 - Client care and Solicitors Accounts Rules induction training – WS Strategic Ltd, Sheffield. An in-depth induction training course prior to joining the firm as a Consultant.
 - 20 January 2020 - Elite Conveyancing group client care and complaints handling conference. Workshops, group meeting and conference to discuss best practice
 - 19 April 2020 - Conveyancing Quality Scheme. AML update webinar. March 2019. Riliance Training Excellence
 - 19 March 2020 - Conveyancing Quality Scheme. ID Verification Awareness Training Course. Riliance Training Excellence
 - 19 March 2020 - Conveyancing Quality Scheme. Practical Cyber Security Awareness. Riliance Training Excellence
 - 25 May 2020 - Conveyancing Quality Scheme. AML Update – Completion by Post. Riliance Training Excellence
 - 19 April 2020 - Conveyancing Quality Scheme. AML Update Webinar – March 2019. Riliance Training Excellence
 - 19 April 2020 - Conveyancing Quality Scheme. AML Update Webinar – July 2019. Riliance Training Excellence
 - 19 April 2020 - Conveyancing Quality Scheme. AML Update Webinar – November 2019. Riliance Training Excellence.
 - 19 April 2020 - Conveyancing Quality Scheme. AML Update Webinar – 5th Money Laundering Directive. Riliance Training Excellence
 - 19 April 2020 - Conveyancing Quality Scheme. AML Update – February 2020. Riliance Training Excellence
 - 19 April 2020 - Conveyancing Quality Scheme. GDPR All Staff. Riliance Training Excellence
 - 15 April 2021 - Legal AML webinar. Provider: The Access Group. Content: Full update on current AML issues and practical recommendations
29. She said she had endeavoured to keep fully up to date with training and personal development. So far as the “*key problem areas identified in the Tribunal judgment*” were concerned, she said that she had always ensured that she followed best practice. As a locum or employee, she knew to immediately raise any issues or concerns with

her supervisors, the COLP or COFA in the firm concerned, and to the supervising partners.

30. She had made full and frank admissions regarding her shortcomings, and she had had time to reflect upon and learn from her mistakes. She said that she took great care in any matters involving the accounts rules and she had undertaken additional training and sought guidance in these areas as a direct result of her past experiences.
31. She believed that her further work experience, with highly qualified professionals in highly accredited firms, had enabled her to gain practical experience of the qualities required as a partner in legal practice.
32. She had had invitations to become a partner or manager in the firms where she had worked in recent years, and whilst she did not have any immediate plans to become a partner or manager of a firm, the existence of the condition upon her practising certificate prevented her from even considering it as an option or having any choice or control over her future.
33. Ms Hammond said that she fully accepted that the rules breaches were far from trivial. In 2014 she had submitted to the Tribunal that when she joined the firm, three of the previous partners remained with the firm as well as the existing cashier. She was not made aware of any issues at the time. She had instructed an independent firm of accountants to review the accounts and no issues were highlighted.
34. The previous partners left the practice, and two further partners joined her. Around this time her mother was terminally ill with breast cancer and then her father was diagnosed with terminal prostate cancer. By that time problems with the previous partners had come to light and this had been taking up most of her time to the extent that she was working very long hours before returning home to care for her parents.
35. Ms Hammond said that she recruited an experienced qualified cashier (a Member of the Institute of Legal Cashiers and Administrators) via a legal recruitment agency, who joined the firm in February 2011. She appeared to be very efficient. It later transpired however that she had made errors in her work which she did not correct.
36. The errors had been made between approximately February and September 2011. Those discrepancies between cash held and balances recorded were the result of the cashier's errors and not any shortage of client money, as the forensic report recognised. The cashier was dismissed as soon as the errors came to light, and before the first investigation by the SRA's Forensic Investigator. A fully qualified accountant was appointed to replace her and instructed to immediately give a full overview of the position.
37. Once the extent of the task became apparent Ms Hammond sought the assistance of two qualified Consultant Legal Cashiers in order that the errors could be corrected as a priority. Considerable work had to be put into correcting the errors to ensure the accuracy of the records. This required the checking of every transaction back to February 2011 and the correct re-entry of many. It proved to be extremely time consuming, and she was concerned that it had to be addressed immediately to ensure that there were no cash shortages and above all that there was no risk to clients.

38. Ms Hammond said that as soon as she became aware that there were mistakes, they were immediately addressed. The accounting errors were not repeated over a number of years as they were found to have occurred between February and September 2011 and steps were taken immediately upon discovery to correct them.
39. Ms Hammond said she had worked hard to understand what she could have done differently to prevent this from happening and to recognise her shortcomings. She recognised that it was her responsibility to report her concerns immediately to the SRA immediately rather than to attempt to put things right singlehandedly, for example by appointing qualified staff and trying to solve everything herself.
40. It was certainly never her intention to put clients of the firm or members of the public at risk or to damage the reputation of the profession in any way and she accepted that her actions at the time were naïve. Her appearance before the Tribunal changed the way she considered taking on new matters. It had made her very risk averse, and she found herself asking why certain clients had come to her. She questioned their intentions more closely and took her obligations regarding identification matters and sources of funds very seriously.
41. She regularly sought a second opinion when her instinct told her that a transaction was not the sort of matter she should take on. Whilst there had never been any allegation of dishonesty against her, Ms Hammond said she took great care when preparing financial statements and invoices for clients, and in checking the source of funds and bank account details before passing them to a partner for approval and authorisation. In her work as a locum Solicitor and whilst in employment, there had been no repetition of her previous conduct and she had been able to gain some perspective.
42. Client care had always been at the forefront of her practice, and she prided herself upon offering the best possible service to her clients. She regularly checked that her clients understood the advice given and provided updates throughout their transactions. Ms Hammond had no qualms about promptly raising issues with colleagues and law firm partners.
43. She said that she had been open and frank with agencies and employers about her appearance before the Tribunal, the condition imposed upon her practising certificate and the reason for imposition.
44. It was her intention to work in a firm again, perhaps in training and mentoring and eventually to head up and manage a department again, but she had no immediate plans to do so.
45. Ms Hammond pointed to a number of character references from past employers which all attested to her exemplary character in the years since the Tribunal's order and demonstrated that she was no longer a risk to the reputation of the profession or to members of the public.
46. In all the circumstances Ms Hammond submitted that the need to safeguard the public and maintain the reputation of the profession no longer applied and that the condition on her practise was no longer necessary and she asked that she be given a chance to move forward.

The Respondent's Position

47. Ms Edmonds confirmed that the Respondent did not oppose Ms Hammond's application.

Determination of the Tribunal

48. The Tribunal considered the application and the supporting documentation filed by Ms Hammond, the Answer filed by the Respondent and the later indication by Ms Edmonds that it no longer opposed the application in the light of Ms Hammond's more detailed representations.
49. It had regard also to the Guidance on Other Powers of the Tribunal (6th Edition), published in March 2022 as far as it was relevant to the present application.
50. Paragraph 5 of that Guidance sets out the factors which the Tribunal would consider in determining a period of indefinite suspension and this had useful parallels to conditions imposed on a solicitor's practice.
51. The Tribunal observed that its task was to weigh up the individual circumstances put forward by the Applicant as against the public interest and the need to safeguard members of the public and maintain the reputation of the profession. The Tribunal noted that the restriction was not intended to be punitive rather it was a measure to protect the public and the reputation of the profession from future harm.
52. The Fundamental question therefore was whether the condition on Ms Hammond's practice was still necessary to protect the public or the reputation of the profession from any further misconduct.
53. The Tribunal took note of the details of the original order made by the Tribunal in 2014 and the seriousness and the circumstances of the misconduct leading to the imposition of the condition. The Tribunal also took careful note of the steps Ms Hammond had taken since the imposition of the order to allay the legitimate concerns of the profession and the public.
54. Whilst the original breaches had no doubt been serious, dishonesty and lack of integrity had not been alleged and there was no evidence of any further misconduct on Ms Hammond's part. There was convincing evidence that the condition had been complied with.
55. With respect to the level of insight, the Tribunal considered this to be very high and genuine. She had been open and honest to those with whom she worked as a locum, as indeed she was required to be, and she had reflected deeply on the causes of the misconduct and about ways she could overcome and address such issues in the future. She was now much more careful, risk averse and sensibly sought out advice when it was necessary to do so.
56. Ms Hammond had produced solid character references which spoke to the quality of her work and the careful approach she now took.

57. With respect to her work experience, this had been ongoing ever since the imposition of the order. Ms Hammond was now 8 years' more experienced as a solicitor and she was clearly very capable in her chosen area of work.
58. Ms Hammond had produced a wealth of detail regarding the training courses she had attended, and it was clear that she had attended courses relevant to the issues which had caused the Tribunal concern in 2014. She had therefore attended a good number of courses regarding anti-money rules laundering procedures and solicitors' accounts.
59. Regarding the timing of the application, it could not be said that Ms Hammond had made the application too soon or prematurely. She had waited 8 years before making her application and she had used the intervening period wisely to ensure she had strengthened the areas of weakness in her practice identified by the Tribunal when it made its order in 2014.
60. The evidence of rehabilitation was strong, and this was underlined by her conduct since the imposition of the order, her character evidence and the information that she had reflected upon her experience and that she had not sought to minimize her earlier conduct.
61. Ms Hammond had clearly taken the matter very seriously and it was to her credit that she had diligently repaid the original costs order at a rate of £400 per month so that the costs order was now effectively discharged.
62. The Tribunal recognised that it needed to evaluate the risk Ms Hammond still posed. However, it 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 condition to which Ms Hammond had been subject.
63. Therefore, based on the detailed and convincing evidence which had been placed before it, 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 Hammond to restrict her practice. It would therefore order the condition to be removed.
64. Ms Hammond is reminded that she must apply directly to the SRA to lift the condition from her Practising Certificate.

Costs

65. The parties agreed that Ms Hammond would pay the Respondent's costs in the sum of £1,500.00

Statement of Full Order

66. The Tribunal Ordered that the application of MELANIE CLAIRE HAMMOND (previously Cosgrove) for the removal of the condition imposed by the Tribunal on 11 December 2014 (Ref:11155-2013) 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 £1,500.00.

Dated this 3rd day of January 2023
On behalf of the Tribunal

A handwritten signature in black ink, appearing to read 'W Ellerton', written over a horizontal line.

W Ellerton
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
03 JAN 2023