

IN THE MATTER OF JAMES JEREMY RUSSELL DIRKS, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. K. W. Duncan (in the chair)
Miss T. Cullen
Mr. S. Marquez

Date of Hearing: 2nd June 2009

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Johanna Davies, Solicitor of Bevan Brittan LLP, Kings Orchard, 1 Queen Street, Bristol, BS2 0HQ on 28th May 2008 that James Jeremy Russell Dirks of 17 – 19 Mill Road, Salisbury, ST2 7RT might be required to answer the allegations contained in the statement that accompanied the application and that such Order might be made as the Tribunal should think right.

The allegation was that James Jeremy Russell Dirks (the Respondent) was guilty of conduct unbecoming a solicitor in that on 19th June 2007 he had been convicted in the North West Hampshire Magistrates Court of one count of driving whilst disqualified contrary to section 103 (1) (b) of the Road Traffic Act 1988 and one count of using a vehicle whilst uninsured contrary to section 143 (2) of the Road Traffic Act 1988.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS when Johanna Davies appeared as the Applicant and Richard Griffiths QC appeared on behalf of the Respondent, who was present.

The evidence before the Tribunal included details of the convictions and the Judgment of 3rd August 2007 on appeal.

At the conclusion of the hearing the Tribunal made the following Order:-

The Tribunal Orders that the Respondent James Jeremy Russell Dirks of 17 – 19 Mill Road, Salisbury, SP2 7RT solicitor, do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,750.00.

The facts are set out in paragraphs 1 - 12 hereunder:-

1. The Respondent, born in 1955 was admitted as a solicitor in 1981.
2. The Respondent has not worked as a solicitor since November 2004 and his name was removed from the Roll on 25th June 2007 after he failed to complete the appropriate forms to remain on the Roll. The Respondent has, however, indicated, by letter dated 17th October 2007, that he intends to re-apply for admission to the Roll at a future date.
3. On 19th June 2001 the Respondent had been convicted for driving whilst in excess of the legal alcohol limit and had been disqualified from driving for a period of 14 months.
4. On 19th August 2004, the Respondent had been convicted in the New Forest Magistrates Court for driving whilst in excess of the legal alcohol limit and had been disqualified from driving for a period 36 months. The Respondent had been advised by letter dated 17th October 2007 that this had been his third period of disqualification since 2001 as he had also previously been disqualified from under the totting up provisions for a 6 month period ending April 2004.
5. The Respondent had explained (by letter dated 17th October 2007) that on 11th June 2007 he had driven from Sparsholt towards Salisbury in a car which he had borrowed from a friend. The Respondent had confirmed that during this journey he had been stopped by a police officer for using a mobile phone whilst driving.
6. On stopping the Respondent, the police officer had discovered that the Respondent was currently disqualified from driving and had also been driving an uninsured vehicle. The Respondent had subsequently been arrested.
7. The Respondent had appeared before the North West Hampshire Magistrates Court on 19th June 2007 and had been convicted of 1 count of driving whilst disqualified contrary to section 103 (1) (b) of the Road Traffic Act 1988 and 1 count of using a vehicle whilst uninsured contrary to section 143 (2) of the Road Traffic Act 1988.
8. On the first count the Respondent had been sentenced to a Community Order of 150 hours and had been disqualified from driving for a further period of 8 months and his driving licence had been endorsed. On the second count the Respondent had been sentenced to a Community Order of 150 hours and his licence had been endorsed. The Community Orders had been concurrent.
9. The Solicitors Regulation Authority (SRA) had been informed of the convictions by the Hampshire Constabulary by letters dated 10th July and 2nd August 2007.

10. The Respondent had appealed against the sentence and the appeal was subsequently heard in the Winchester Crown Court on 3rd August 2007. His appeal was however dismissed.
11. In dismissing the Respondent's appeal, the presiding judge had commented:-

“...three times you, as a professional man, would have listened to Magistrates telling you that now you are disqualified for a period of time and if you drive whilst disqualified it is a very serious offence and you may well go to prison, and the court cannot ignore two excess alcohol offences, amongst others.”
12. The SRA had raised the allegation with the Respondent by letter dated 31st July 2007 and his response was contained in his letter dated 17th October 2007.

The Submissions of the Applicant

13. The Applicant explained that whilst the Respondent's name had been removed from the Roll on 25th June 2007, the Respondent had indicated that he intended to apply for re-admission to the Roll at a future date. In the circumstances an application was made for an Order pursuant to section 47(2)(g) of the Solicitors Act 1974 to prohibit the restoration of the Respondent's name to the Roll except by Order of the Tribunal. While the allegations and the underlying facts were admitted, the Applicant submitted that given the Respondent's lack of regard to previous criminal sanctions it was important for the Tribunal to maintain a degree of control over his restoration to the Roll. The Applicant also applied for costs.

The Submissions of behalf of the Respondent

14. Mr Griffiths QC gave the Tribunal details of the Respondent's professional history and of his commitment to and involvement in the provision of legal aid. He also explained the Respondent's personal difficulties. Leading Counsel expressed concern at the length of time the proceedings against the Respondent had been pending. The SRA had raised the allegation with the Respondent in July 2007 and the matter was being heard almost 2 years later. The Respondent had regained his driving licence in February 2008. He was anxious to be restored to the Roll but had been unable to move forward because of these proceedings. Mr Griffiths QC referred to the letter in support of the Respondent from Lamb & Smart Solicitors who had used him to assist in the conduct of several High Court commercial cases. Leading Counsel stressed that the Respondent had not lost touch with working as a solicitor. Mr Griffiths QC acknowledged that while the Respondent had let himself down badly in 2004, he was not a dishonest man. The Tribunal was also given details of the Respondent's financial circumstances.

The Evidence of the Respondent

15. In evidence before the Tribunal the Respondent explained that he had not been able to afford to renew his practising certificate following the closure of his firm. His firm's closure had not resulted in any claims and the Respondent had been able to refer clients to Lamb & Smart Solicitors where the Respondent had acted as a clerk. In re-examination he confirmed that he had been on the Roll at the time of the offence in

June 2007. In response to a question from the Tribunal, the Respondent explained that he no longer had the personal problems that had led to the allegation and that if restored to the Roll he would try to find a position as a commercial litigator but he did not wish to set up as a sole practitioner.

The Decision of the Tribunal

16. Having considered all the evidence and the helpful submissions of both the Applicant and of Counsel on behalf of the Respondent, the Tribunal determined that no Order under section 47 (2) (g) of the Solicitors Act 1974 should be made. The Tribunal stressed that all cases involving criminal convictions would be considered on their own particular facts. The Tribunal considered that the Respondent's situation presented some unusual features in that there had been no dishonesty. The Tribunal did not consider that in practising the Respondent would present any danger to the public. The Tribunal acknowledged that the Respondent had dealt with the consequences of the penalties imposed upon him by the Criminal Courts. The Respondent had not been able to practise for the last 2 years pending the proceedings before the Tribunal. The Tribunal considered that the Respondent had suffered a sufficient penalty and it did not believe that in the exceptional circumstances of the particular case, the reputation of the Profession would suffer if the Respondent was allowed to practise again. However, the Tribunal recommended that any practising certificate granted to the Respondent should be subject to a condition that the Respondent work only in approved employment, so as to avoid the Respondent being subject to the particular stress of sole practice. The Tribunal was satisfied that the Respondent should pay the costs of the Application which had been properly brought by the SRA.
17. Having considered the evidence as to the Respondent's means, the Tribunal was satisfied that given his future earning prospects, a costs Order was appropriate. Costs of £4,382.94 had been sought by the Applicant and the Tribunal had assessed costs of £3,750.00 as reasonable. Further, the Tribunal had noted the SRA's usual practise of seeking to recover costs by way of agreed instalments over a suitable period.

Dated this 21st day of December 2009
On behalf of the Tribunal

K W Duncan
Chairman