

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF JOHN DAMIAN GASKELL, solicitor (The Respondent)

Upon the application of Andrew John Bullock
on behalf of the Solicitors Regulation Authority

Mr J C Chesterton (in the chair)
Mrs J Martineau
Mrs L McMahon-Hathway

Date of Hearing: 14th July 2010

FINDINGS & DECISION

Appearances

Mr Andrew John Bullock of 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE for the Applicant.

The Respondent appeared in person.

The application was dated 7th December 2009.

Allegations

1. The Respondent made false and misleading statements to his colleagues in the course of his employment and had thereby failed to act with integrity and had behaved in a manner likely to diminish the trust the public placed in him or the legal profession in breach of the Solicitors Code of Conduct 2007 Rule 1.02 and Rule 1.06. It was alleged the Respondent had behaved dishonestly.
2. The Respondent failed to deal with the Solicitors Regulation Authority in an open, prompt and co-operative way contrary to Rule 20.05 (1) of the Solicitors Code of Conduct 2007.

The Respondent admitted the allegations.

Factual Background

1. The Respondent, born in 1965, was admitted as a Solicitor on 15th December 2003 and his name remained on the Roll of Solicitors.
2. At all material times, the Respondent was employed as a solicitor within the Legal and Democratic Services Division of Flintshire County Council.
3. In the course of his employment, the Respondent was given conduct of a file (known as “the B Farm File”), concerning the instigation of proceedings by Flintshire County Council against a Mr and Mrs H.
4. On the following dates, the Respondent made the following statements to Mr David Webster (the Internal Audit Manager of Flintshire County Council) in response to various enquiries by them concerning the progress of the proceedings against Mr and Mrs H:
 - (a) On or about 15th November 2007, the Respondent spoke to Mr Webster and told him that proceedings had been issued against Mr and Mrs H.
 - (b) On 29th April 2009 the Respondent again spoke to Mr Webster and told him that legal proceedings had been issued against Mr and Mrs H in November 2007.
 - (c) On 3rd June 2008, the Respondent wrote to Mr Webster stating that “the matter is ongoing. We have issued our claim and there has been some discussion regarding disclosure and case management. The matter has not yet been listed for a date for final hearing”. He confirmed that “we are going through due process and the listing of the hearing is with the Court” and indicated that “the final hearing may be in September since the matter is being contested”.
 - (d) On 4th December 2008, the Respondent spoke to Mr David Davies and told him that instructions in relation to the B Farm File had been sent to Counsel.
5. In fact, these various statements were untrue in that:-
 - (a) No proceedings had, in fact, been instigated by the Respondent against Mr and Mrs H.
 - (b) Consequently, as at 3rd June 2008 no discussions had taken place with Mr and Mrs H or their legal representatives concerning disclosure and case management; nor was the matter being listed by the Court.
 - (c) As at 4th December 2008, the Respondent had not sent instructions to Counsel in respect of the B Farm File.
6. The Tribunal reviewed all the documents submitted by the Applicant with included:-
 - (i) Rule 5 Statement, together with all attached documents.

- (ii) Further bundle of documents dated 11th February 2010.
- (iii) Schedule of Costs.

7. The Tribunal reviewed all the documents submitted by the Respondent, which included:-

- (i) Written submissions of the Respondent dated 14th July 2010, together with all enclosures.

Witnesses

8. No witnesses gave oral evidence.

Findings as to Fact and Law

9. The Tribunal found the allegations were proved, indeed they were admitted by the Respondent.

Mitigation

- 10. The Respondent referred the Tribunal to his written submissions dated 14th July 2010 which set out in detail his medical problems. He provided the Tribunal with a medical report from his General Practitioner confirming he was suffering from depression and on medication for this. There was a further medical report from Dr Hinds, Consultant Clinical Psychologist, which set out the details of the medical difficulties of the Respondent's daughter. The Tribunal were also referred to a reference concerning the Respondent's character.
- 11. The Respondent confirmed that at the time the conduct took place, his employers had not been aware of his depression and indeed, the depression came to light during disciplinary proceedings that were taken by his employers. The Chief Officer at the disciplinary hearing had recommended the disciplinary hearing should be postponed when it came to light that the Respondent was suffering from depression.

Costs Application

- 12. The Applicant provided the Tribunal with a Schedule of Costs and requested an order for his costs in the sum of £2,941.86.
- 13. The Respondent provided the Tribunal with a Statement of Means, giving details of his financial circumstances. He was unemployed and was the main carer for his children as his wife was the breadwinner of the family. He indicated any financial sanction imposed by the Tribunal would have an impact on his wife's limited earnings. The Respondent did not currently have a practising certificate.

Previous Disciplinary Sanctions Before the Tribunal

14. None

Sanction and Reasons

15. The Tribunal had listened carefully to the submissions of both parties and had considered all the documents provided in detail.
16. The Respondent had provided the Tribunal with a medical report which indicated he first attended his GP on 19th December 2008 complaining of stress, and shortly thereafter the Respondent was prescribed anti-depressants. Whilst the conduct complained of took place some months earlier, the Tribunal accepted that it took time to recognise mental illness. The Tribunal was particularly mindful that it was noted during the Respondent's disciplinary hearing with his employers on 20th April 2008 that he had attended counselling and the records of that hearing stated it was "not until December events that admitted needed help and sought treatment from Dr S" "should have gone to see her earlier. Dr Oliver suggested holding back on process". It was clear to the Tribunal that the Chief Medical Officer with the Respondent's employers, had recommended the disciplinary hearing should not proceed due to the Respondent's state of health. The Respondent had now been dismissed from his employment and indeed, did not have a practising certificate.
17. The Tribunal took note that the Respondent had been entirely open with the Tribunal, and it was to his credit that he had dealt with these proceedings with such frankness. There had been no loss to clients, the Respondent did not have a practising certificate and indeed, accepted he could not practice at the moment. He was not a risk to the public and he had gained nothing from his conduct.
18. The Tribunal considered the guidance provided by Sir Thomas Bingham MR in Bolton -v- the Law Society [1994] CA which stated:

"...often the order is not punitive in intention. In most cases the order of the Tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension The second purpose is the most fundamental of all; to maintain the reputation of the solicitors profession as one in which every member, of whatever standing, may be trusted to the ends of the earth."

The Tribunal were of the view that, taking into account the excellent reference provided, the medical reports and the fact that the Respondent had been open, honest and frank in his submissions, the public interest would be served by a period of indefinite suspension.

19. Accordingly, the Tribunal ordered that in this case it was proportionate to impose a penalty of indefinite suspension. To apply to be readmitted to the Roll of Solicitors, the Respondent would have to provide medical evidence in relation to his medical problem as detailed in the letter dated 16th April 2009 from Dr Stone, together with evidence that he was fit to practice again.

Decision as to Costs

20. The Tribunal ordered the Respondent pay the Applicant's costs in the sum of £2,941.86. The Respondent had provided the Tribunal with a statement of his means. He was no longer working and due to his mental health, it was likely he would be unemployed for some time. The Tribunal considered the case of Frank Emilian D'Souza -v- The Law Society [2009] EWHC 2193 (Admin) and the case of William Arthur Merrick -v- The Law Society [2007] EWHC 2997 (Admin). In all the circumstances, the Tribunal ordered that the Order for costs was not to be enforced without leave of the Tribunal.

Order

21. The Tribunal Ordered that the Respondent, John Damian Gaskell of 20 Cadwgan Avenue, Colwyn Bay, Conwy, LL29 9LT, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 14th day of July 2010 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,941.86, not to be enforced without leave of the Tribunal.

Dated this 19th day of October 2010

On behalf of the Tribunal

J C Chesterton
Chairman