

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF RACHEL JANE SINCLAIR, (The Respondent)

Upon the application of Stephen John Battersby
on behalf of the Solicitors Regulation Authority

Ms A Banks (in the chair)
Mr K W Duncan
Mr M C Baughan

Date of Hearing: 9th September 2010

FINDINGS & DECISION

Appearances

Stephen John Battersby, solicitor of Jameson Hill, solicitors, 72-74 Fore Street, Hertford, Herts, SG14 1BY, appeared on behalf of the Applicant, the Solicitors Regulation Authority ("SRA").

The Respondent did not appear and was not represented. Mr Battersby reported that she had not engaged with the disciplinary proceedings but he had been able to contact her by telephone and she indicated that she would send an email to the Tribunal. The Respondent's email arrived at the Tribunal at 2.00pm and was placed before the Tribunal. It is hereunder referred to as "the Respondent's email".

The application to the Tribunal was made on 5th March 2010.

Allegations

The allegations were that the Respondent:

- (i) that she did fail to take prompt and proper action to ensure compliance with Court directions in cases of which she had conduct contrary to Solicitors Practice Rule 1 1990 and Rules 1.01, 1.04, 1.05, 1.06 and 11.02 of the Solicitors Code of Conduct 2007 ("SCC").
- (ii) that she did fail to act with frankness and good faith towards colleagues, legal representatives of other parties and others, contrary to Solicitors Practice Rule 1 of 1990 and Rules 1.02, 1.03, 1.04, 1.05 and 1.06 SCC.

- (iii) that she did cause misleading and inaccurate information to be provided to the Court, contrary to Solicitors Practice Rule 1 1990 and paragraph 21.01 of the Guide to the Professional Conduct of Solicitors and Rules 1.02, 1.06 and 11.01 SCC.

The allegations were put forward on the basis that the Respondent acted dishonestly although dishonesty was not a necessary element of any of the allegations.

Factual Background

1. The Respondent, born in 1979, was admitted as a solicitor on 1st July 2004. At the times material to this application she was working as a locum solicitor for Lancashire County Council ("LCC"). She remained in that position undertaking work in the child protection team from 26th March 2007 until 12th November 2007 when LCC dispensed with her services.
2. A local authority has a statutory duty to protect the interests of children within its jurisdiction and will often apply to the Court for orders to protect children in need. A care order gives the local authority parental responsibility for the child and often operates to remove the child from the care of its parents. Such cases are extremely sensitive and of the utmost importance to the welfare of the children involved. It is crucial that the Court is provided with the best information to allow it to make an informed decision. The Court usually gives directions as to steps which must be taken and reports that must be obtained.
3. A number of cases had been allocated to the Respondent for which she was responsible. Under the supervision of Mr IMF, another solicitor in the child protection team.
4. It was the Respondent's case (set out in correspondence) that she worked in extreme conditions, with a high workload and almost complete lack of supervision. Her desk was not in the main part of the department and she sat with another locum. LCC was LEXCEL accredited and it was said that the Respondent did not complain of being overworked. Mr IMF had signed off the Respondent's case reports but confirmed that he had not checked her files. In some of the copy case reports before the Tribunal the Respondent had recorded that Court directions had not been complied with. The Respondent had explained in correspondence that she might not have complied with Court directions but she had never intentionally failed to comply and had not formulated an intention to mislead the Court. She might not properly have checked her files owing to pressure of work and a lack of support and supervision.
5. On 13th December 2007 the Designated Family Judge for Lancashire, Her Honour Judge Watson, delivered a judgment in which she was severely critical of the conduct of LCC in a number of care and supervision cases. She referred to six cases, the common feature of which was that they had been dealt with by the Respondent. Amongst the Judge's concerns were that reports and other material which LCC had been directed to obtain, had not been produced within the time specified and that the Court had been misled about the obtaining of this material. The Judge pointed out that it was crucial that the Court be provided with such material.
6. Following complaint by LCC to SRA about the Respondent's conduct, an SRA Investigation Officer prepared a Report dated 7th September 2009 which was before

the Tribunal. The Applicant acknowledged that there had been unexplained delay when the SRA on 8th September 2009 wrote to the Respondent seeking an explanation of her conduct.

7. The misconduct alleged against the Respondent was broadly similar in the six child care cases and full details were before the Tribunal. By way of example the Tribunal sets out what happened in one of those cases.
8. The file was allocated to the Respondent on 18th April 2007. There was a directions hearing before a District Judge on 30th May 2007 in which he made directions, some of which required action by LCC. The Respondent was informed of these directions on 31st May 2007 by the clerk who had attended the hearing with counsel. An attendance note dated 7th June 2007 recorded that the Respondent spent an hour noting and diarising the relevant dates. On 14th June 2007 the Respondent received an email from a colleague giving her details of the health visitors from whom reports were to be obtained.
9. The District Judge had required reports from the health visitors and the Educational Welfare Service to be filed by 10th July 2007 and for antecedents for all relevant adults and school attendance records to be produced by the same date. Such information had not been provided by the time the case next came before the Court on 19th July 2007. On this date, LCC was granted an extension of time for filing the records and reports to 16th August 2007. On 15th August counsel informed the Court that they were "actively being chased", and a further extension was granted until 14th September 2007.
10. An inspection of the file revealed no evidence that requests had been made for the material required or that it was "actively being chased". An email of 23rd August 2007 from the Respondent to the police appeared to be the first request to them to provide information.
11. At a hearing before the Court on 29th November 2007 (after the Respondent had left her post at LCC) it was revealed to the District Judge that directions had not been complied with. Forms had been completed by the Respondent in respect of renewals of Interim Care Orders before being signed by her supervisor. From these forms, it appeared that none of the steps required to be taken by LCC was outstanding. As a result of this, the Court was misled. A check of the LCC computer system showed that the letter which the Respondent appeared to have sent to the police on 23rd August had not in fact been sent.
12. The Tribunal reviewed the following documents submitted by the Applicant:

The documents attached to his originating statement.
13. The Tribunal reviewed the following documents submitted by the Respondent:

The Respondent's email.

Witnesses

14. There were no oral witnesses.

Findings as to Fact and Law

15. The Tribunal found the allegations to have been substantiated. However the Tribunal took into account the Respondent's explanations. The Tribunal was not satisfied by the evidence before it that the Respondent had been closely and carefully supervised by her employer and, bearing in mind the Respondent's young age and inexperience, the Tribunal concluded that the Applicant had not discharged the high standard of proof that was required for him to prove that the Respondent had acted dishonestly.

Mitigation

16. In her email the Respondent said that had she been in a position to contest the proceedings she would have done so but she had been unemployed for eleven months and at the time of writing the email she was five months pregnant with her first child. She would not be returning to employment in the foreseeable future. She had no income of her own whatsoever and was completely and financially dependent on her husband.
17. The Respondent had denied the allegations that she was dishonest. As stated in her previous correspondence the situation had arisen owing to the extreme conditions, workloads and almost complete lack of supervision that she experienced at LCC.
18. The Tribunal was invited to take into account the fact that she had cooperated at every stage possible but owing to her circumstances and her earlier decision to leave the profession permanently, she had chosen not actively to contest the case.

Costs

19. The Applicant sought the costs of and incidental to the application and enquiry in the sum of £6,236.68. The Respondent had made no submissions on the question of costs.

Previous disciplinary proceedings before the Tribunal

20. None.

Sanction and Reasons

21. The Tribunal had found the allegations to have been substantiated but in the light of the Respondent's submissions had concluded that the Respondent at the material time had been a young and relatively inexperienced solicitor, who had not been given the substantial support and supervision by LCC that such an inexperienced solicitor would require in sensitive childcare proceedings where the outcomes were extremely important for vulnerable children.
22. The Tribunal noted that Mr IMF had signed off the Respondent's reports but had made it plain that he had not checked the Respondent's files. The Tribunal had further noted that in her reports the Respondent had made it plain that there were cases in which the Court's directions had not been complied with. The Tribunal noted the assertion that the SRA had conducted an investigation into the supervision given by

LCC and had expressed itself satisfied, but the Tribunal for the reasons stated before nevertheless considered that the Respondent had not been given the specific individual level of supervision and support that she herself required.

23. The Tribunal accepted that the Respondent's actions had been the result of inexperience, overwork and muddle. She had not formulated any intention to deceive the Court or anyone else and in such circumstances applying the test in Twinsectra v Yardley an ordinary member of the solicitors' profession would not consider that the Respondent had acted dishonestly but rather had been foolish to continue to work in the circumstances in which she did and had been overwhelmed by her work load and the nature of the work in the absence of necessary support.
24. The Tribunal found that the Respondent in not complying with Court directions and in not making it plain to her employer that she had failed to comply and required assistance with her workload, she had not behaved in the way that a solicitor would be expected to behave. The Tribunal found the allegations to have been substantiated but had not made a finding of dishonesty. In all of the circumstances of this case the Tribunal concluded that it was appropriate and proportionate to Order that the Respondent be suspended from practice as a solicitor for the period of six months to commence on 9th September 2010.

Costs

25. The costs sought by the Applicant were modest and the Tribunal Ordered that such costs were to be paid by the Respondent but having heard her representations about her lack of income Ordered that the Costs Order was not to be enforced without the prior consent of the Tribunal.

Order

26. The Tribunal Ordered that the Respondent, Rachel Jane Sinclair of 30 Brantwood Drive, Leyland, Lancashire, PR25 3PF, solicitor, be suspended from practice as a solicitor for the period of six months to commence on the 9th day of September 2010 and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,236.68 such order not to be enforced without the prior consent of the Tribunal.

DATED this 13th day of October 2010
on behalf of the Tribunal

Ms A Banks
Chairman