IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT
[2018] EWHC 1502 (Admin)

CO/5864/2017

Royal Courts of Justice

Thursday, 7 June 2018

Before:

MRS JUSTICE CHEEMA-GRUBB

B E T W E E N :

ROY HEADLAM — Appellant

- and -

BAR STANDARDS BOARD — Respondent

MR W CLEGG QC appeared on behalf of the Appellant.

MR G BOYLE QC (instructed by the Bar Standards Board) appeared on behalf of the Respondent.

J U D G M E N T

MRS JUSTICE CHEEMA-GRUBB:

1 This is an appeal against a barrister's suspension from practice imposed after adverse findings in disciplinary proceedings for professional misconduct on his part, in his giving, by way of charity, substantial sums of money to a lay client for her own ungoverned, personal needs, in late 2013/early 2014.

2 Roy Headlam is a senior junior barrister practising from Furnival Chambers in London. He specialises in criminal law and, as character references placed before the Panel of the Bar Tribunals and Adjudication Service and this court demonstrate, he has a reputation at the Bar as a skilled and honest lawyer.

3 On 12 December 2017 he was sentenced to a six-month suspension from practice imposed on each of three charges, Charges 1, 5 and 6, on a charge sheet. A right of appeal to this court has been conferred by the Council of the Inns of Court pursuant to s.24 Crime and Courts Act 2013. The appeal is governed by CPR 52.11, which provides that such an appeal is limited to a review of the decision of the Tribunal. The court will allow an appeal where the decision of the Tribunal was wrong or unjust because of a serious procedural or other irregularity in the proceedings in the Tribunal, CPR 52.11(3). That means that I should allow this appeal if I conclude that the Tribunal Panel erred in law, erred in fact, or erred in the exercise of a discretion. As to the latter, I should only conclude that the Panel erred in the way it exercised discretion if it exceeded the generous ambit within which reasonable disagreement is possible.

4 The appellant faced seven charges:

Charge 1 was contrary to para.307 of the Code of Conduct and alleged that he behaved in a way which failed to maintain his independence by giving a female client, whom I shall call "X", in criminal proceedings a sum or sums of money between £200 and £300 during the period that he represented her. This was alleged to have taken place between November 2013 to January 2014.

Charge 2 was withdrawn.

Charge 3 was contrary to para.301(a)(iii) of the Code of Conduct, and alleged that he had behaved in a way which was likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute by giving client X a sum or sums of money, the same sum or sums of money referred to in Charge 1. This charge was found not to be proved.

Charge 4 was withdrawn.

Charges 5, 6 and 7 were proved. Charge 5 alleged that, contrary to the core duty CD4, the appellant had behaved in a way which failed to maintain his independence by giving client X a cheque in the sum of £2,000 on or about 6 January 2014 during a period that he represented her.

Charge 6 was also found proved, contrary to Core Duty CD5 by the appellant behaving in a way which was likely to diminish the trust and confidence which the public place in the profession. This charge also referred to the cheque for £2,000.

Charge 7 was contrary to para.301(a)(i) of the Code of conduct and alleged that he had engaged in conduct which was dishonest or otherwise discreditable to a barrister

by making false claims in a letter responding to the Bar Standards Board complaint in this matter, including: not having spare funds to pay a financial penalty of £300.

Charge 8 was not proved but it had alleged that, contrary to Core Duty CD3 in the Code of Conduct, he had failed to act with honesty and integrity in that having paid the client X a cheque of £2,000 he had failed to inform the Bar Standards Board that, amongst other things, he had the means to pay an outstanding sum that was due.

Charge 9 was admitted by the appellant that, contrary to Core Duty CD9, he had failed to be open and cooperative with his regulatory body and failed to cooperate with the Bar Standards Board during the period of the end of November 2015 to 7 October 2016 in relation to investigations into his conduct.

5 In very brief summary, the client X referred to in the charges I have recited above, was a criminal client with drug problems. The appellant first appeared on her behalf on 28 August 2013, she was accused of robbery and convicted in April 2014, after a trial in the Crown Court.

6 Following a hearing before a five-person Disciplinary Tribunal on 28/29 September 2017 the Panel gave its decision and reasons on 12 December 2017. The appellant was suspended from practice for a period of six months concurrent in respect of Charges 1, 5 and 6, reprimanded in respect of Charge 7, and fined £1,250 in respect of Charge 9. The Panel said that by giving a substantial amount of money to someone who was, and continued after the gifts to be, a client in serious criminal proceedings the appellant had exposed himself to the risk of being compromised and involved in the client's personal affairs, and was no longer at arm's length. His conduct in respect of those matters was so serious as to

undermine the public confidence in the profession and a signal needed to be sent to him, the profession and the public that such behaviour is unacceptable.

7 The appellant appeals against the decision on sanction in respect of Charges 1, 5 and 6. The decision of the High Court in this matter is final, as this is not a disbarring case.

8 The grounds upon which he argues that the Tribunal fell into error when ordering suspension from practice is that the order of suspension was unjust, disproportionate and excessive, in particular because his actions were motivated by charity. The Panel found that he had been manipulated by his client. Furthermore, he was particularly vulnerable himself at that time and he had not deliberately intended to breach the rules governing the profession. Finally, that these incidents were isolated lapses in a long, otherwise creditable, career.

9 The respondent opposes the appeal and submits that it is misconceived in the sense that suspension from practice was entirely just and proportionate because the Tribunal Panel, a specialist, experienced body with a range of professional and lay backgrounds to call on, had proper regard to the circumstances both of the giving of the money and the appellant's situation. Furthermore, the order was in line with relevant sentencing guidance and cannot be said by this court to be clearly inappropriate. Accordingly, the case reveals no error justifying the High Court's interference with the decision of the Tribunal. Mr Boyle QC has referred me to the leading authority in this field, *Salisbury v The Law Society* [2008] EWCA Civ 1285 where, delivering judgment for the court, Jackson LJ stated in relation to a Solicitors Disciplinary Tribunal adjudication, [para. 30]:

> "The correct analysis is that the Solicitors Disciplinary Tribunal comprises an expert and informed tribunal, which is particularly well placed in any case to assess what measures are required to deal with

> defaulting solicitors and to protect the public interest. Absent any error of law, the High Court must pay considerable respect to the sentencing decisions of the tribunal. Nevertheless if the High Court, despite paying such respect, is satisfied that the sentencing decision was clearly inappropriate, then the court will interfere. . ."

and he submits that this is not such a case.

10 Mr Boyle has also referred me to the Sentencing Guidance (Version 2) in force from April 2013, which was applied in this case. Guidance regarding suspension from practice is found at paras. 6.5 and 6.6. Suspension may be appropriate, according to that guidance, where a barrister's behaviour "is so serious as to undermine the public confidence in the profession". Paragraph 6.6 describes the factors that the Panel should take into account when considering how serious an offence of misconduct actually is. Mr Boyle submits that three of those factors apply in this case. First, the seriousness of the breaches, secondly, a lack of insight and understanding of the impact of the appellant's actions and their consequences, and finally, the fact that this was not a single incident.

11 Mr Boyle also submitted in writing that the personal circumstances of the appellant at the time that these offences were committed, in that he was impecunious and otherwise vulnerable, aggravates the offences rather than mitigating the breaches. Indeed, if, as the Panel found, the appellant was manipulated by a mercenary lay client that also, he submits, makes the matter worse.

12 At the relevant time the appellant was in the grip of what his head of chambers, Mr Oliver Blunt QC, described as: "A perfect storm of health, marital and financial problems, exacerbated by the cross fertilisation of stress between the three elements." He had suffered identifiable strokes in December 2010 and January 2011. Medical investigations revealed that he had been sustaining damage from strokes as far back as 2005. The consequences

included vertigo, blurred vision, slurring of his words and unsteadiness. He had suffered a breakdown of his marriage, and bankruptcy due to failure to make provision for tax liabilities. These are all matters of which the Panel was entirely aware.

13 On his behalf, Mr Clegg QC, has sought to develop his written submissions on the grounds of appeal and to characterise the gravamen of the misconduct found proved in a way different to that reached by the Panel. He suggests that as there is no prohibition in the Code of Conduct on a barrister giving charity to a lay client the real error was in the appellant continuing to act for her thereafter. He should have returned his brief to represent X as soon as he decided he would give her some money as an act of charity. Although that was an error and it was repeated, there is no suggestion, and this point was confirmed by Mr Boyle, that the appellant misconducted himself in any way in his performance in the trial concerned itself. There was no actual impact on the propriety or fairness of the proceedings. Mr Clegg submits this is a powerful feature in mitigation and goes to the heart of the offence itself.

14 Mr Boyle disagrees with this description of the offences and argues that what the Tribunal found was objectionable conduct by act rather than omission. When pressed for the nature of the diminution in public confidence in the legal profession or the way in which giving charity to a client may bring the profession into disrepute he relied on the possibility that members of the public would gain an impression that barristers might pay for recommendations to other suspects for a choice to be represented by that barrister, or for repeat engagement by the suspect concerned. Even though the Tribunal did not find that this was the appellant's motive in this case. Certainly, as a matter of common sense, the impression contended for may well be given in a case where that was proved to be the motive, but Mr Boyle's point plainly has less strength insofar as penalty is concerned, in a case where the Panel accepted that the appellant acted out of foolish charity rather than any motive to gain for himself.

15 I turn briefly then to the Sentencing Guidance to which I have already referred. There is, unsurprisingly, no specific guidance for these circumstances. It is instructive, however, to consider the Purposes and Principles of Sentencing set out at s.3 of the Guidance, on p.7. At 3.1 the Guidance states:

> "The purposes of applying sanctions for breaches of the Code are:
>
> a) To protect the public and consumers of legal services;
>
> b) To maintain high standards of behaviour and performance at the Bar;
>
> c) To promote public and professional confidence in the complaints and disciplinary process."

At 3.2 the Guidance provides:

> "The primary purpose of imposing sanctions is to protect the public. This is of paramount importance and should be the fundamental guiding factor when considering what sanctions to impose. However, in fulfilling the other purposes it is also important to avoid recurrence of the behaviour by the individual as well as provide an example to other barristers in order to maintain public confidence in the profession. Decision makers must take all of these factors into account when determining the appropriate sanction to be imposed in an individual case. Decision makers should also bear in mind that sanctions are not intended to be punitive in nature but nevertheless may have that effect."

3.3 deals with the question of deterrence, and the last sentence there reads:

> ". . . A deterrent sentence would be most applicable where there is evidence that the behaviour in question seems to be prevalent in relation to numbers of barristers within the profession."

Unsurprisingly, there is no suggestion that what this appellant did is prevalent behaviour. Unsurprisingly, the Sentencing Guidance goes on to outline the importance of proportionality when considering sanction. At 3.4 the Guidance reads:

"In deciding what sanctions (if any) to impose, the decision maker should ensure that the sanctions are proportionate, weighing the interests of the public with those of the practitioner. Proportionality is not a static concept and will vary according to the nature of the breach and the background of the individual barrister. . ."

16 At 3.5 the Sentencing Guidance sets out a number of features which should be taken into account when deciding whether a sanction imposed is proportionate to the seriousness of the breach of the Code, and it is appropriate to just set those out in this judgment. These include the following:

"• the seriousness of the breach;

• whether the breach may have an impact on the general reputation of the Bar;

• whether the breach was intentional;

• whether the breach has lasting consequences;

• any aggravating or mitigating factors relevant to the conduct in question . . ."

An Annex to the Sentencing Guidance sets out the possible mitigating and aggravating features:

"• the personal circumstances of the individual barrister;

• the previous professional history of the barrister, in particular whether the barrister is of previous good professional standing; and

• to a limited and cautious extent, any character references or testimonials provided by the barrister."

17 In sentencing the appellant the Tribunal indicated that his previous good character was taken into account as a mitigating feature, and the only aggravating feature it found was that his conduct was capable of undermining the profession in the eyes of the public. I have already

described that, in my view, the respondent struggled somewhat to demonstrate how, in the particular circumstances of this case, anyone who learned of it would be given the impression that barristers would be willing to pay money for referrals, the Panel having decided that in this appellant's case the payments he made, or the sums he paid, were as genuine, if highly ill-advised, charity. In addition, of course, the Panel said as part of its reasoning:

> "Either Mr Headlam was manipulated by client [X] and careless and naïve in his behaviour and its potential consequences, or he is lying about the motive for the gifts."

The Panel did not decide that he was lying.

18 Having considered the brief reasoning provided by the Panel for its conclusion as to appropriate sanction, it is striking that the Panel did not explain why six months' suspension was appropriate in a case lacking dishonesty and otherwise bearing the features I have described, such as the vulnerability of the appellant and the manipulation of the lay client. I bear in mind that the appellant is now back in regular practice and enjoying success. A suspension for six months will cause, I have been told, a financial loss to him of £80,000.

Decision

19 Axiomatically this is an unusual case. Neither Mr Clegg nor Mr Boyle has been able to find any like previous example. Bearing in mind the strict test required for an appellant to succeed at this stage, and giving due respect to the expertise and nature of the Panel that considered his case, in my judgment, a six-month suspension from practice was clearly inappropriate and a disproportionate response to the disciplinary offences he had been found to have committed. This was not, in my judgment, a case requiring a signal to the public or

the profession, and the barrister himself has expressed remorse, and plainly has a clear understanding of the errors of judgment inherent in his conduct.

20 The striking feature that the penalty does not take properly into account is the fact that, far from the conduct being dishonest, it was a genuine, if entirely ill-judged charitable action at a time when the appellant himself was vulnerable and, indeed, described by the Panel as having been manipulated by his client. While the public may be surprised if not bemused to hear that an experienced professional criminal practitioner could be persuaded to give money, which he could ill-afford, to a suspect in a criminal case as an act of charity, if the underlying findings of the Tribunal, namely, that it could not reject the explanations put forward for his behaviour the profession's integrity and standing is unlikely to be significantly damaged. The appellant believed, so the Tribunal accepted that X was a young woman who had profound personal difficulties and who claimed to be seeking to make a real change in her life for the better. She asked him for money for the simple necessities of life and in order to pursue her education. Whilst it is quite plain that this kind of character weakness is capable of bringing the profession into disrepute to some extent, the public being entitled to consider that professional criminal lawyers are robust and resilient, objective and professional in all their dealings, in my judgment the Panel failed to consider the proportionality of a suspension of six months in relation to the gravamen of the misconduct.

21 I accept Mr Clegg's submission that, as Charges 1 and 5 set out, the appellant's conduct was inconsistent with his maintaining the proper distance required of a criminal barrister and so undermined his independence. He was properly convicted. If he had returned his brief to represent his client once he had decided to help her charitably it is unlikely that any mistake would have been made.

22 Accordingly, this is a clear example of one of those rare cases in which the Tribunal failed in the exercise of its discretion because in reaching a sentencing decision it failed to properly assess the nature and gravity of the faults it had found proved. In the absence of specific guidance for this particular conduct it did not achieve what paragraph 3.5 of the guidance requires it to achieve in order to pass a sentence that is proportionate to the seriousness of the breach of the Code. By focusing on what it called the 'astonishing' amount of money which the appellant could not afford to give, rather than the failure to maintain his independence by returning his brief for the criminal proceedings the Tribunal punished the appellant disproportionately and thereby fell into error. The court is persuaded to quash the order of suspension in respect of Charges 1, 5 and 6. I have considered whether a shorter period of suspension is the appropriate sanction or a lesser penalty should be substituted and I have decided that in the circumstances a total fine of £5,000 is the appropriate sanction. It will be made up of £2000 fine on Charge 1, £2000 fine on Charge 5 and £1000 fine on Charge 6 and that is what I impose in place of suspension on those charges. The other orders will remain as before.

CERTIFICATE

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This transcript has been approved by the Judge.