



Neutral Citation Number: [2019] EWHC 222 (Admin)

Case No: CO/1932/2018

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 7 February 2019

**Before :**

**THE HONOURABLE MR JUSTICE PEPPERALL**

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**Between :**

**ANTHONY GALE**

**- and -**

**THE SOLICITORS REGULATION AUTHORITY**

**Appellant**

**Respondent**

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**The Appellant** appeared in person  
**David Collins** (of **Capsticks Solicitors LLP**) for the **Respondent**

Hearing date: 7 February 2019  
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**Approved judgment**

I direct that pursuant to CPR PD39A para. 6.1 no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

**MR JUSTICE PEPPERALL:**

1. Anthony Gale is an experienced and well-respected solicitor. He was admitted as a solicitor on 15 February 1990. He practises in residential conveyancing and was formerly a partner in the firm Maurice Smiths Solicitors. Between 1 March 2009 and 31 August 2015, he was that firm's Compliance Officer for Finance &

Administration (“COFA”) and its Nominated Money-Laundering Officer (“MLRO”).

2. On 6 May 2015, the Solicitors Regulation Authority (the “SRA”) received complaints from two clients in respect of five conveyancing transactions between 2005 and 2014. Mr Gale was subsequently summoned to appear before the Solicitors Disciplinary Tribunal. The case was heard in March 2018. By its decision dated 23 April 2018, the tribunal found a number of allegations of misconduct to have been proved against Mr Gale. It ordered him to pay a fine of £10,000 together with the SRA’s costs and imposed restrictions on his practising certificate.
3. Mr Gale now appeals against the sanction. He accepts the fine but argues that one of the restrictions imposed was unreasonable and disproportionate. He accepts that he should have been ordered to pay the SRA’s costs but challenges the assessment of his costs liability.

### **MR GALE’S MISCONDUCT**

4. There was no dispute before the tribunal as to the basic facts. Mr Gale had accepted instructions from C to act on behalf of C’s then wife, B, and his daughter, A, in five property transactions between 2005 and 2014:
  - 4.1 Mr Gale acted for both the lender and B in her purchase of properties 1 and 2 between June 2005 and January 2006. As to these transactions, Mr Gale failed:
    - a) to meet with B or obtain her instructions;
    - b) to obtain B’s identity documents;
    - c) to seek any evidence as to the source of the purchase monies totalling £28,179.20 received by his firm; and
    - d) to notify the lender that its charge was not registered between January and December 2006.
  - 4.2 Mr Gale acted for B in her re-mortgage of property 3 in May and June 2007. As to this transaction, he failed:
    - a) to meet with B or obtain her instructions;
    - b) to obtain properly verified identity documents from B;
    - c) to ensure that his correspondence (sent to a property at which he knew B did not live) had come to her attention; and
    - d) to confirm with B the account details to which, on C’s instructions, he sent £59,612.16 being the proceeds of the re-mortgage.
  - 4.3 Mr Gale acted for A in her joint purchase of property 4 between November 2012 and April 2013. As to this transaction, he failed:
    - a) to meet A or obtain her instructions;
    - b) to obtain A’s identity documents; and

- c) to seek any evidence as to the source of the funds totalling £39,500 received by his firm or the reason as to why £10,000 had been paid by a third party, AM.
- 4.4 Mr Gale acted in the transfer of property 5 by way of gift from B and F to A in 2014. As to this transaction, and despite knowing that the property was subject to a restriction under the Proceeds of Crime Act, he failed to obtain instructions from either A or B.
5. Upon these facts, the tribunal made three findings of misconduct:
- 5.1 First, Mr Gale had acted on the direction of a third party without obtaining or confirming his clients' instructions. His actions amounted to gross neglect and carelessness and breach of his duties to protect his clients, to act in their best interests, to maintain his independence, to provide a proper standard of work, not to compromise his good repute and to maintain the trust that the public places in the profession.
  - 5.2 Secondly, Mr Gale had acted without conducting due diligence on his clients or the transactions funds. He thereby failed to comply with his legal obligations under the Money Laundering Regulations 2003 and the Money Laundering Regulations 2007. His actions amounted to breach of his duties to act with integrity, to achieve effective management or carry out his role in the law firm effectively or in accordance with proper governance and risk management principles, to provide a proper standard of work and to maintain the trust that the public places in the profession.
  - 5.3 Thirdly, Mr Gale had failed either to register the lender's charges or inform the lender of such failure. Such failures amounted to breaches of his duties to act in the best interests of his client and to provide a proper standard of work.

## SANCTIONS

6. The tribunal considered Mr Gale's culpability, the level of harm caused and then the aggravating and mitigating features of his case. As to culpability, the tribunal found that Mr Gale had been "sloppy, lazy and careless." It added, at paragraph 33 of its decision:
- "The breaches were not planned but reflected a poor way of working. [Mr Gale] had been entrusted with the roles of COFA and MLRO and had breached that trust by his misconduct. He was very experienced and had direct control of the circumstances in which the breaches occurred. He had not misled the regulator and he had indeed been co-operative with the investigation."
7. The tribunal found that no harm had been caused to clients but observed that this was "fortunate" and that the potential for harm had been high. It added that the harm to the reputation of the profession was "significant" since the public would expect a solicitor to obtain and confirm proper instructions and to discharge his duties as COFA and MLRO.

8. The tribunal found that the misconduct was aggravated by the repeated breaches over 8 years, albeit in relation to one family's affairs. It found that Mr Gale knew or ought to have known that his failures were a material breach of his obligations. As to mitigation, the tribunal found that Mr Gale had a previously unblemished career and had assisted the regulator. It added, at paragraph 36:

“He had shown some genuine insight, though he had been naïve and his denials of many of the allegations showed his insight was still developing. He had been open and frank in his admissions to the factual basis of the allegations but had been slow to grasp the seriousness of the situation.”
9. The tribunal observed, at paragraph 39 of its decision:

“[Mr Gale] had made the mistake of accepting instructions from one member of a family and in doing so had lost sight of his obligations to individual clients.”
10. It therefore imposed a fine of £10,000 and restrictions preventing Mr Gale from practising as a sole practitioner (or sole manager or sole owner of an authorised or recognised body) and from acting as either a Compliance Officer for Legal Practice (“COLP”) or a COFA. It reasoned that such restrictions were “necessary for the protection of the public and to declare and maintain proper standards of conduct within the solicitors’ profession.” It was, it said, necessary to make clear to the profession “just how unacceptable the careless manner in which [Mr Gale] had dealt with these five transactions was.”
11. In addition, the tribunal ordered that Mr Gale should pay the SRA’s costs in the sum of £28,091.

## **GROUND 1: THE RESTRICTIONS**

### THE ARGUMENT ON THIS APPEAL

12. Mr Gale accepts the restriction preventing him from acting as either a COFA or a COLP. He argues that the further restriction preventing him from practising as a sole practitioner was both disproportionate and unnecessary.
13. Mr Gale submits that his failing was in not keeping proper records. While he accepts that he was lax and careless, he disputes that he acted flagrantly and argues that this was not a case of failing to consider matters correctly. Although the failings took place over a number of years, they involved one family that was very well known to him. Consequently, he argues that not only was no loss in fact suffered but the risk of loss had been minimal. Mr Gale argues that there is no future risk to the profession and relies on his long and hitherto unblemished career and the references that were provided to the tribunal.
14. Mr Collins, who appears on behalf of the SRA, submits that the court should afford the tribunal a wide ambit of discretion and should only interfere if satisfied that its decision was plainly wrong. He argues that the tribunal properly considered the

Guidance Note on Sanctions in the Solicitors Disciplinary Tribunal issued in December 2016 assessing Mr Gale's culpability, harm and the aggravating and mitigating features of the case. He argues that the tribunal was not plainly wrong to consider that Mr Gale's conduct gave rise to a future risk to the public or to the reputation of the profession. He stresses that the misconduct in this case happened over a period of 8 years and that for some of that time Mr Gale had been both his firm's COFA and MLRO, These failings had occurred despite Mr Gale's awareness of the relevant guidance and the importance of complying with the Money Laundering Regulations. Further, he points to the fact that the tribunal had found that Mr Gale had acted without integrity and that he had failed to maintain public confidence in the solicitors' profession.

15. Mr Collins challenges Mr Gale's submission as to harm. The potential for harm in this case was, he submits, high, including harm to the reputation of the profession in view of Mr Gale's failure properly to discharge his duties as both COFA and MLRO. Finally, he points to the tribunal's finding that Mr Gale's insight was still developing and observes that the liberty to apply provision means that Mr Gale can in time apply to the tribunal seeking the removal of the restrictions on his practising certificate.

#### ANALYSIS

16. In Fuglers v Solicitors Regulation Authority [2014] EWHC 179 (Admin), Popplewell J identified, at [28], three stages to the assessment of sanction:

“The first stage is to assess the seriousness of the misconduct. The second stage is to keep in mind the purpose for which sanctions are imposed by such a tribunal. The third stage is to choose a sanction which most appropriately fulfils that purpose for the seriousness of the conduct in question.”
17. The Guidance Note on Sanctions provides that the tribunal should assess seriousness by reference to the solicitor's culpability, the level of harm caused and the aggravating and mitigating features of the case. As set out above, this was the approach followed in this case.
18. In Bolton v. Law Society [1994] 1 W.L.R. 512 (CA), Sir Thomas Bingham MR (as he then was) explained the purpose of sanctions in a case against a solicitor, at pp.518B-519E. After referring to the almost invariable practice of the Solicitors Disciplinary Tribunal of striking off solicitors who have acted dishonestly, Sir Thomas observed, at page 518D:

“If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust.”
19. Sir Thomas continued at page 518F:

“It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention .... In most cases the order of the tribunal will be primarily directed to one or other of both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence ... 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. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession’s most valuable asset is its collective reputation and the confidence which that inspires.”

20. Section 47 of the Solicitors Act 1974 specifies a number of potential sanctions available to the tribunal upon a finding of misconduct. While the imposition of general restrictions upon the way in which a solicitor can practise is not explicitly listed as an available sanction in s.47, it is clearly implied by the power to make such order as the tribunal thinks fit: Camacho v. The Law Society [2004] EWHC 1675 (Admin).
21. The Guidance Note provides the following guidance on the use of restriction orders:
- “30 The Tribunal, exercising its wide power to ‘make such order as it may think fit’, may if it deems it necessary to protect the public, impose restrictions in the form of conditions upon the way in which a solicitor continues to practise. If the conditions are for an indefinite period it must be part of the order that the solicitor subject to the condition(s) has liberty to apply to the Tribunal to vary or discharge the conditions ....
- 31 Restricted practice will only be ordered if it is necessary to ensure the protection of the public and the reputation of the legal profession from future harm by the respondent.
- 32 A Restriction Order may be for either a finite or an indefinite period.
- 33 If the Tribunal makes an order for an indefinite period, it will specify as part of the order that the respondent may apply to the Tribunal to vary or rescind the restrictions either at any time or after the lapse of a defined period.”

22. On an appeal pursuant to s.49 of the Solicitors Act 1974, the court should not lightly interfere with the decision of the Solicitors Disciplinary Tribunal. First, the appeal is by way of review and not re-hearing. The discretion as to sanction is therefore reposed in the tribunal and not the court. Secondly, the court should accord deference to the evaluative decision of the specialist tribunal.
23. In the exceptional case of Bawa-Garba v. The General Medical Council [2018] EWCA Civ 1879, Dr Bawa-Garba had been convicted of gross negligence manslaughter following her failure to diagnose and treat septic shock secondary to pneumonia. The Medical Practitioners Tribunal found that her fitness to practise was impaired and suspended her from practice for 12 months. Allowing the GMC's appeal, the Divisional Court quashed the suspension and directed that Dr Bawa-Garba's name should be erased from the medical register. The Court of Appeal (Lord Burnett CJ, Sir Terence Etherton MR and Rafferty LJ) allowed Dr Bawa-Garba's further appeal holding that the Divisional Court had been wrong to interfere with the sanction imposed by the specialist tribunal. In a joint judgment, the appeal court described, at [61], the tribunal's decision on sanction as "an evaluative decision based on many factors." There was, the court observed, "limited scope" for an appellate court to overturn such decisions. They added, at [67]:
- "That general caution applies with particular force in the case of a specialist adjudicative body, such as the Tribunal in the present case, which (depending on the matter in issue) usually has greater experience in the field in which it operates than the courts ... An appeal court should only interfere with such an evaluative decision if (1) there was an error of principle in carrying out the evaluation, or (2) for any other reason, the evaluation was wrong, that is to say it was an evaluative decision which fell outside the bounds of what the adjudicative body could properly and reasonably decide."
24. While a decision of the Solicitors Disciplinary Tribunal is somewhat closer to home for a judge than one of the Medical Practitioners Tribunal, it remains true to observe that the SDT is a specialist adjudicative body that has greater experience in the field of regulating the solicitors' profession than the courts. Its decision on sanction is an evaluative decision that should be accorded respect and the court should only interfere with its decision in the circumstances identified by the Court of Appeal in Bawa-Garba.
25. Here, the tribunal undertook a careful assessment of culpability, harm and the aggravating and mitigating features of this case. Its assessment was neither wrong in principle nor plainly wrong. The tribunal accepted that no harm had in fact occurred, but I reject Mr Gale's submission that it was wrong to regard the potential for harm to have been high. Indeed, in my judgment, the tribunal's assessment that Mr Gale's insight as to the seriousness of his failings is still developing was borne out by his written and oral submissions on this appeal. I do not accept that this was merely a failure of record keeping; Mr Gale's failings were more fundamental in acting for clients without seeking or obtaining their direct instructions and in failing to comply with proper money laundering checks.

26. While this case does not involve any allegation or finding of dishonesty, the tribunal did find that Mr Gale had failed to act with integrity in failing to conduct due diligence on his clients or the transactions funds and in his breach of his legal obligations under the money laundering legislation. The tribunal was therefore right to consider whether some sanction beyond a financial penalty was required both to prevent further similar failings and to maintain the reputation of the profession.
27. The tribunal undertook a careful evaluation of the case and of the need for restrictions in order both to prevent future failings and to maintain public confidence in the profession. Its reasoning betrays no error of principle. Further, its assessment that it should impose restrictions on Mr Gale preventing his practising as a sole practitioner and acting as either a COLP or a COFA was not plainly wrong. Indeed, I go further. On the facts of this case, I consider that the restrictions imposed were obviously justified and appropriate.

## **GROUND 2: COSTS**

### THE COSTS DECISION

28. The SRA sought costs of £30,091 comprising investigation costs of £7,780, legal costs of £18,500 plus VAT and disbursements of £111.
29. The tribunal found that the investigation costs were reasonable for the investigation of a serious complaint. As to the legal costs, Capsticks Solicitors LLP acts for the SRA in these cases on a fixed-fee basis. Capsticks' fee in this case was £18,500 plus VAT. While the firm did not charge the SRA by the hour, it nevertheless provided a schedule showing the actual work done.
30. The tribunal recited Mr Gale's challenge to Capsticks' fees at paragraph 43 of its decision. It then explained its decision on the legal costs at paragraph 45:

“The time spent on case preparation was on the high side by around 20 hours and the time spent preparing for the hearing was also high by around 10 hours. The Tribunal also reduced the time spent at the hearing by 7 hours.”
31. The tribunal concluded that the appropriate level of costs was £28,091.

### THE ARGUMENTS ON THIS APPEAL

32. It is common ground before me that, since the tribunal allowed the investigation costs in full, the reduction of £2,000 made by the tribunal must have been made from the legal costs.
33. Mr Gale, whose principal firepower on this appeal was directed to this costs issue, takes four points:
  - 33.1 First, he argues that the tribunal should have ordered a detailed assessment of the costs bill.



- 33.2 Secondly, he complains that a discount of only £2,000 was made to reflect the tribunal's reduction of 37 hours. Since the fixed fee of £18,500 plus VAT was incurred for a total of 136.1 hours work, a rateable reduction in the fixed fee should have led to a reduction in the costs liability of around £6,035. This was, Mr Gale submits, the approach taken by other constitutions of the tribunal when assessing Capsticks' fixed fees.
- 33.3 Thirdly, he argues that Capsticks' use of four fee earners (two partners, Mr Collins and a paralegal) was unreasonable and involved inevitable and unnecessary duplication of work.
- 33.4 Fourthly, Mr Gale challenges the tribunal's award of the investigation costs. This case, he argues, involved consideration of six routine conveyancing files. The time taken both initially and after his interview with the SRA on 29 July 2016 was, he argues, disproportionate to the complexity of the issues.
- 33.5 Fifthly, relying on Solicitors Regulation Authority v. Anderson Solicitors [2013] EWHC 4021 (Admin), Mr Gale argues that the tribunal provided inadequate reasoning for its decision on costs. The award of costs was, he submits, "completely wrong" and out of all proportion to the complexity of a case in which the hearing bundle ran to 251 pages.
34. Mr Collins reminds me that the tribunal's power to award and assess costs is wide and unfettered. The court should, he submits, afford a high degree of discretion to the tribunal's decision. In response to each of Mr Gale's arguments, Mr Collins makes the following submissions:
- 34.1 Detailed assessment: The tribunal had a broad discretion either to assess costs summarily or refer the bill for detailed assessment. It was not plainly wrong to assess the bill summarily, particularly given that neither party sought a detailed assessment.
- 34.2 Capsticks' costs:
- a) Given that Capsticks acted on a fixed-fee basis, there was no direct correlation between hours and the fee charged. The issue for the tribunal was not what reduction to make to reflect its decision to reduce the costs claim by 37 hours but rather what was the reasonable amount to award the SRA in respect of 99 hours' work.
  - b) Here, the reduction of £2,000 was made entirely against Capsticks' fees. Accordingly, one can calculate that a little over £20,000 (including VAT) was allowed for legal costs which, Mr Collins calculates, is equivalent to allowing a rate of £173 plus VAT per hour.
  - c) Such rate compares favourably with the guideline rate of £217 per hour that Mr Gale promoted as a reasonable hourly rate in his statement in support of this appeal and with Mr Gale's own hourly rate as shown on his schedule of costs for this hearing.
- 34.3 Investigation costs: Mr Collins observes that the specialist tribunal was alive to Mr Gale's challenge but that it was best placed to assess the reasonableness of the investigation costs,
- 34.4 Adequacy of reasons: Mr Collins submits that the requirement for reasons is limited on a summary assessment. Citing English v. Emery Reimbold & Strick

Ltd EWCA Civ 605, [2002] 1 W.L.R. 2409, he argues that all that is required is that the nature of the costs award can be understood.

### ANALYSIS

35. Rules 18(1)-(3) of The Solicitors (Disciplinary Proceedings) Rules 2007 provide:
- “(1) The Tribunal may make such order as to costs as the Tribunal shall think fit including an order--
    - (a) disallowing costs incurred unnecessarily; or
    - (b) that costs be paid by any party judge to be responsible for wasted or unnecessary costs, whether arising through non-compliance with time limits or otherwise.
  - (2) The Tribunal may order that any party bear the whole or a part or a proportion of the costs.
  - (3) The amount of costs to be paid may either be fixed by the Tribunal or be subject to detailed assessment by a Costs Judge.”
36. As Mr Darryl Allen QC sitting as a Deputy High Court Judge observed in Shah v. Solicitors Regulation Authority [2017] EWHC 3657 (Admin) at [25], rule 18 confers a wide and unfettered discretion upon the tribunal as to the making of a costs order, the question of referral for detailed assessment and as to the amount of any order made upon a summary assessment.
37. In English v. Emery Reimbold & Strick Ltd, Lord Phillips MR held, at [116]:
- “In general the question of what costs order is appropriate is one for the discretion of the judge and an appellate court will be slow to interfere in its exercise.”
38. In my judgment, this court should be particularly slow to interfere in a tribunal’s decision as to whether it should fix costs or refer the bill for detailed assessment by a costs judge. The total sum sought by the SRA was £30,091. It was the sort of costs bill that is routinely assessed summarily. In my judgment, it was entirely within the tribunal’s discretion to choose whether to assess these costs itself or refer the matter to a costs judge. It is quite hopeless to contend that there was some error of law in the tribunal’s decision to fix costs in this case; indeed, neither party even asked the tribunal to refer the bill for detailed assessment.
39. The Court of Appeal considered the need for reasoned rulings on costs in English v. Emery Reimbold & Strick Ltd. Lord Phillips MR held that the reasons for a costs award must be apparent, either from the reasons or by inference from the circumstances in which costs are awarded. He observed, at [28]:
- “It is, in general, in the interests of justice that a judge should be free to dispose of applications as to costs in a speedy and uncomplicated way.”

40. As to the assessment of costs, an appeal was successful in Solicitors Regulation Authority v. Anderson Solicitors [2013] EWHC 4021 (Admin) where a tribunal summarily assessed a costs bill at £80,000 with scarcely any reasoning. As Treacy LJ observed at [95], the issue in that case was the magnitude of the costs award which could not be sustained given the sparsity of the tribunal's reasoning. Such decision is, however, unusual and an appeal court will not lightly interfere with a lower court or tribunal's summary assessment of costs.
41. In this case, the tribunal set out its approach to the assessment of costs between paragraphs 42 and 46 of its decision. It considered briefly the parties' rival submissions and made clear, albeit succinct, rulings reducing the claim for time costs by about 37 hours.
42. The tribunal could have helpfully gone on to explain that its task was not to scale down the fixed fee but to assess the reasonable costs that should be awarded for the 99 hours' work that it regarded as having reasonably been undertaken on the case. Despite its failure to state this in terms, that was not only obviously the right approach but, in my judgment, was plainly implicit from its award of costs. Had it added that step in its reasoning then it would have been clear that it was allowing legal costs at an average rate of £173 plus VAT (or thereabouts) per hour. (I say thereabouts because Mr Collins' calculation does not allow for the disbursements and I calculate that the costs were in fact awarded on the basis of an hourly rate of £170 plus VAT.)
43. As to the SRA's own investigation costs, I agree with Mr Collins that the tribunal has far greater experience than this court as to the level of such costs that it would expect to see. The tribunal considered Mr Gale's objection and ruled that the costs were in this case reasonable.
44. For these reasons, I do not consider that the tribunal's summary assessment of costs was either wrong in principle or plainly wrong.

#### CONCLUSION

45. This appeal is therefore dismissed.