

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10611-2010

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

LENNOX ANDREW MANIFOLD

Respondent

Before:

Mr A G Gibson (in the chair)

Mr R Prigg

Mr S Hill

Date of Hearing: 3rd November 2011

Appearances

Mark Barnett, solicitor, of Solicitors Regulation Authority, Ipsley Court, Berrington Close, Redditch, Worcestershire, B98 0TD for the Applicant.

The Respondent appeared in person.

JUDGMENT

Allegation

1. The allegation against the Respondent was that on 18 December 2009, at the Crown Court at Bristol he was convicted upon indictment of 14 counts of conspiracy to obtain property by deception, in breach of Rule 1.06 of the Solicitors Code of Conduct 2007 (“SCC”).

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent, which included:

Applicant:

- Application dated 1 September 2010;
- Rule 5 Statement with Exhibit “CF1” dated 1 September 2010;
- Rule 7 Statement with Exhibit “CF2” dated 15 September 2011.

Respondent:

- Respondent's Statement dated 3 November 2011.

Preliminary Matter (1)

3. Mr Barnett sought the Tribunal's permission to amend two paragraphs within the Rule 5 Statement. At paragraph 2 of that statement it was stated that the Respondent had been admitted as a solicitor on 2 April 2004. In fact, he had been admitted on 2 April 1996. Further, there was a typographical error at paragraph 5 where the word “expect” was used instead of the word “except”.
4. The Respondent accepted that he had been admitted in 1996, and that no prejudice would be caused by making the amendments requested. Accordingly, the Tribunal gave permission for the Respondent's date of admission to be amended and for correction of the typographical error at paragraph 5 of the Rule 5 Statement.

Preliminary Matter (2)

5. Mr Barnett sought the Tribunal's permission to include within the proceedings the Supplementary Statement dated 15 September 2011. This statement had been filed outside the 12 month time limit provided in Rule 7(2) of the Solicitors (Disciplinary Proceedings) Rules 2007. The Tribunal was told that the Statement contained no additional allegation, but did include some further information which could assist the Tribunal in its deliberations. It was submitted that there was no material prejudicial to the Respondent.
6. Mr Barnett apologised for the late preparation and filing of this statement. The SRA had been aware at the end of May that the Respondent's appeal against conviction had been determined on 31 March 2011, so there was a period of approximately 3 months within which the Statement could and should have been prepared. The time limit had

simply been overlooked and the Statement had been dealt with as soon as Mr Barnett had realised the position.

7. The Respondent agreed that the Supplementary Statement and its exhibit contained no prejudicial material: indeed, it could be helpful for the Tribunal to consider the documents in the exhibit. However, the Respondent was concerned at the length of time which had passed.
8. The Tribunal determined that there was nothing to the Respondent's prejudice contained within the Rule 7 Statement and it would be helpful to the Tribunal to consider and refer to that Statement and the exhibit. Accordingly, the Tribunal would give permission for the Rule 7 Statement to be included in the proceedings outside the usual time limit for filing and service.

Factual Background

9. The Respondent was born in 1961 and was admitted as a solicitor in 1996. On 17 December 2008 his Practising Certificate for the year 2007/2008 was terminated and on 3 June 2009 his name was removed from the Roll of Solicitors. At the time of the convictions the Respondent had ceased to practise as a solicitor. He was, until 30 September 2008 a partner in a firm of solicitors in Birmingham.
10. Following his convictions on 18 December 2009 the Respondent was sentenced on 18 February 2010 to a total of 54 months' imprisonment.
11. The Respondent had appealed against both his conviction and sentence. His appeal was determined by the Court of Appeal on 31 March 2011. The Court of Appeal, Criminal Division, dismissed the Respondent's appeal against conviction but accepted that a sentence of imprisonment of four and a half years was "manifestly excessive" and substituted a term of imprisonment of 36 months.
12. A decision was made by an authorised officer at the Solicitors Regulation Authority ("SRA") to refer the Respondent's conduct to the Tribunal on 20 May 2010.

Witnesses

13. None.

Findings of Fact and Law

14. **Allegation 1. The allegation against the Respondent was that on 18 December 2009, at the Crown Court at Bristol he was convicted upon indictment of 14 counts of conspiracy to obtain property by deception, in breach of Rule 1.06 of the Solicitors Code of Conduct 2007 ("SCC").**
 - 14.1 The Respondent accepted that his convictions stood. However, the Respondent did not admit the allegation, which was therefore considered by the Tribunal as if denied.
 - 14.2 The Tribunal noted that the Respondent had maintained his innocence throughout. He had appealed against his conviction and sentence. The Respondent also told the

Tribunal that he was gathering fresh evidence with a view to taking the matter before the Criminal Cases Review Commission.

- 14.3 Nevertheless, the convictions stood. The offences had all occurred whilst the Respondent was on the Roll of Solicitors and had occurred in the period January 2001 to August 2006. The convictions were all for essentially similar matters, namely that the Respondent had countersigned passport applications in relation to persons in respect of whom he had declared that he knew the person on the photograph, for the purposes of tying in the identity of the person in the photograph with the person making the application. The applications were false and the prosecution had alleged that he knew that the person in the photograph was not the person in respect of whom the passport application was made. Whilst the Respondent had asserted in the course of his criminal trials that he knew the person who produced the form and photograph, and that any mistake had been purely accidental, it appeared that the jury had not accepted this contention.
- 14.4 This Tribunal could not go behind a conviction which clearly stood. The convictions had been subject to appeal, and that appeal had not been successful.
- 14.5 The offences were ones of dishonesty. The Tribunal took account of the trial judge's sentencing remarks. In particular, the Tribunal noted the following comments:

“... a counter signatory remains key evidence of identity, particularly in the case of a first application for a passport. And that is because it is a fundamental safeguard to ensure that British passports are only issued to those that come from bona fide applicants. And it seems to me that the officials in that Agency are entitled to rely on the word and signature of a solicitor of the Supreme Court. I am bound to say the way you dealt with those applications that you countersigned made a mockery of that safeguard.”

The trial judge had further commented that the Respondent's offences:

“were deliberate, they were calculated and they were above all persistent, lasting over five years”.

- 14.6 The Tribunal found, so that it was sure, that where a solicitor had been convicted of an offence of dishonesty (in this case facilitating the issue of passports which should not have been issued), and had been sentenced to a significant period of imprisonment, it was inevitable that the trust the public would place in the Respondent and/or the legal profession would be diminished. Accordingly, the Respondent's actions had led to a breach of Rule 1.06 of the SCC, and accordingly the allegation had been proved.

Previous Disciplinary Matters

15. None.

Mitigation

16. The Respondent maintained that he had not committed the offences of which he had

been convicted, and that he was wholly innocent. It had never been suggested that he had received any financial gain from countersigning the passport applications in question. The Respondent was gathering further evidence, with the help of his solicitors, with a view to referring his case to the Criminal Cases Review Commission. The Respondent recognised that he had been through an appeal process, which had not been successful, but he continued to believe that he was the victim of a serious miscarriage of justice.

17. The Respondent told the Tribunal that the SRA had been aware that he had been charged with a number of offences from about November 2007. The police had informed the SRA and the Respondent had been aware that he was duty bound to make sure that the SRA was notified. Nevertheless, the SRA took no action with regard to the Respondent's Practising Certificate, e.g. to impose conditions on it.
18. As the charges against him had generated adverse publicity for him and for his firm, the Respondent had left his partnership and ceased practising in 2007. As he had left the firm, it had been able to continue to operate. It may not have done so had he tried to stay as the firm's insurance premiums would have increased significantly. His former firm continued to operate and the two trainee solicitors who had been under the Respondent's supervision both went on to complete their training contracts and qualify, and had thereafter secured good positions in large high street law firms.
19. The Respondent's decision to leave the firm and cease practising had cost him a great deal. However, he had done this of his own free will so as not to affect his colleagues. He had not renewed his Practising Certificate and when invited by the SRA to indicate if he wanted to stay on the Roll had not responded, which had led to his name being removed.
20. The Respondent submitted that being a solicitor and acting as a countersignatory on a passport application was no more significant than a countersignatory being, for example, a civil servant or doctor. The Respondent accepted that both the trial judge and the Court of Appeal judges had been against him on that point and had seen the role of solicitors as more significant.
21. Since being charged the Respondent had undergone a number of significant difficulties. He was presently unemployed. The Respondent had incurred substantial debts in employing private investigators to find relevant witnesses concerning his case. He had suffered from acute depression since 2007/2008 and it was only quite recently that his medication had been reduced. His depression was at its worst throughout the criminal trial process.
22. The Respondent had used his time in prison productively. For example, he had helped inmates with writing letters and carrying out some legal research for them. He had not been given any reprimands or encountered any problems. Indeed, he had been given positions of responsibility. The Respondent had been kept away from those that he cared for, in particular family members, whilst in prison.
23. The Respondent was concerned that the SRA had taken action only quite recently. He understood the reasons behind their application but believed that he had something to offer, and he would like to return at some point to the profession which he loved. The

Respondent had already been away from the profession for five years and it would be hard for him to retrain and return to the profession.

24. The Respondent accepted that the public needed to be protected. He submitted that there was no danger to the public if a solicitor in his position returned to the Roll but were to have appropriate conditions attached to his practising certificate. For example, there could be conditions specifying what types of work he could undertake and with whom.

Sanction

25. The Tribunal considered carefully the Respondent's mitigation as he set it out both orally and in his Statement.
26. The Respondent was not on the Roll of Solicitors and so could not be struck off, suspended, fined etc. The only Order which the Tribunal could consider making was that asked for by the SRA, which was an Order prohibiting the restoration of the Respondent's name to the Roll except by Order of the Tribunal, pursuant to Section 47(2)(g) of the Solicitors Act 1974 (as amended).
27. In considering whether to make such an Order, the Tribunal had to have regard both to the need to protect the public, which the Respondent had addressed in his mitigation, and also to protect the reputation of the profession.
28. In this regard, the Tribunal noted the remarks of Lord Justice Moses on the hearing of the Respondent's appeal against conviction and sentence. In particular, the Tribunal noted the passage at paragraphs 36 and 37 of the Judgment of the Appeal Court, where it is stated:

“Mr Webster [for Mr Manifold] submitted: the reason why sentences of the level of 3 years are passed is because people trusted to countersign the photographs for passports are of a particular status, that this appellant did so, not as part of his work as a solicitor although because he was a solicitor. Thus the fact that he was a solicitor made no difference.

We do not agree. The fact that he was a solicitor is of great significance - it might not have any greater effect on the success or otherwise on the passport application any more than that of a civil servant or anyone else - but for a solicitor to be prepared to be dishonest is a matter of great consequence.”

29. It was clearly the case that where a solicitor had been convicted of an offence of dishonesty, this was of great consequence and would lead to an order that a solicitor would be struck off, save in the most unusual and exceptional circumstances. Making such an order was not open to the Tribunal in this case as the Respondent was not on the Roll. However, in order to protect the reputation of the profession it was necessary to make the order that the Respondent should not be restored to the Roll except by order of the Tribunal. Should he be successful in having his conviction overturned at some point, he would no doubt apply to the Tribunal for restoration. However, as matters stood the convictions had been upheld on appeal and the only

appropriate order which could be made in the circumstances was that which the SRA sought.

Costs

30. The Applicant sought an order that the Respondent should pay its costs set out in a Schedule of Costs in the sum of £1,643.80. That Schedule had not been seen by the Respondent before the day of the hearing.
31. The Tribunal was told that after discussions between the parties it had been agreed that the Respondent would pay the Applicant's costs in the sum of £1,500. The Tribunal noted that the issue of how and whether that Costs Order would be enforced was a matter for the SRA and Respondent, and not the Tribunal. The SRA were aware that the Respondent was unemployed and so was unlikely to be able to make any immediate offer of payment.
32. The Tribunal considered that the costs claimed and agreed between the parties were reasonable and that it was appropriate to order the Respondent to pay the costs as agreed.

Statement of Full Order

33. The Tribunal Ordered that the Respondent, Lennox Andrew Manifold, former solicitor, be Prohibited from having his name restored to the Roll of Solicitors except by Order of the Tribunal and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,500.00.

DATED this 30th day of November 2011
on behalf of the Tribunal

A G Gibson
Chairman