

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10912-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

BENJAMIN JASON CORNELIUS

Respondent

Before:

Mrs E. Stanley (in the chair)

Mr J. Astle

Mr M. Palayiwa

Date of Hearing: 18th September 2012

Appearances

Mr Ian Jones, Solicitor employed by the Solicitors Regulation Authority, Ipsley Court, Berrington Close, Redditch, Worcestershire, B98 0TD for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent, Benjamin Jason Cornelius, were that he had behaved in a way that was likely to diminish the trust the public placed in him or the legal profession in breach of Rule 1.06 of The Solicitors Code of Conduct 2007 and had acted in breach of Rules 1.01 and 1.02 of The Solicitors Code of Conduct 2007 by virtue of his conviction and imprisonment in the Crown Court at Cardiff.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 12 January 2012 with exhibit;
- Letter from Mr Jones to the Respondent dated 13 September 2012;
- Email from the Respondent to Mr Jones dated 16 September 2012;
- Schedule of Costs dated 24 May 2012.

Respondent

- Letter from the Respondent to the Clerk to the Tribunal (undated), received on 6 September 2012;
- Medical report dated 28 August 2012 from the Respondent's GP.

Preliminary Issues

3. The Respondent was not present but in his letter received at the Tribunal on 6 September 2012, he asked for his absence to be excused. He enclosed a letter from his GP dated 28 August 2012 explaining his current health issues. He also informed the Tribunal that he had instructed solicitors in respect of a potential negligence claim against his former solicitors for the advice given in respect of a guilty plea in criminal proceedings and that papers had also been passed to Leading Counsel in respect of a potential appeal against conviction. The matter had previously been listed for a substantive hearing before the Tribunal on 28 May 2012 but had been adjourned because Mr Jones for the Applicant had been unwell and unable to attend. Ms Wingfield of Penningtons LLP had appeared in his place at short notice and applied for an adjournment. The Tribunal had also received information from solicitors acting for the Respondent (neither those who had acted in the criminal proceedings nor those whom the Respondent now advised that he was instructing) informing the Tribunal about the advice that the Respondent was taking in respect of his criminal conviction. Directions were given that, inter-alia, the substantive hearing was to be re-listed on the first open date after two months.
4. In his recent, undated, letter the Respondent said:

“I would be grateful if my attendance could be excused at the disciplinary tribunal on the above date. For health reasons, I ...do not feel mentally strong enough to attend. Please would you deal with the proceedings in my absence.

...

If successful in any future appeal, I would respectfully ask you to reconsider my position and would ask that the potential appeal be noted.

...

For the record, I will abide with and respect any decision made by the Tribunal.”

5. For the Applicant, Mr Jones reminded the Tribunal that the Respondent had been convicted in March 2011 of various criminal offences and the Rule 5 Statement was originally drafted based on those facts. Mr Jones was subsequently contacted by the solicitors acting for the Respondent in the criminal proceedings who advised that he, the Respondent, was awaiting a decision in relation to an appeal made in respect of all but one of the offences. Mr Jones confirmed that, in March 2012, the appeal had been successful in respect of all the convictions appealed. Mr Jones was in possession of a copy of the judgment of the Court of Appeal but had not submitted it to the Tribunal in case it should be prejudicial to the Respondent. He had however written to the Respondent on 20 March 2012 inviting him to lodge the appeal judgment with the Tribunal if he so wished. It was Mr Jones's understanding, having read the judgment, that the appeal had succeeded on the basis of a direction given by the trial judge to the jury in respect of all the offences appealed which were interlinked and stood or fell together and the Court did not consider that a retrial would be appropriate. Mr Jones confirmed that he was confident that the Respondent had received his letter. He had been corresponding with the Respondent, at the Respondent's request, care of his father's address and had not been asked to use a different one although he now understood that the Respondent had moved to a new address which the Tribunal was using in correspondence. However, the Respondent had responded to letters sent to his father's address subsequently. At the hearing on 28 May 2012, directions had been given that the Respondent was to provide the Tribunal and the Applicant with a copy of Counsel's advice in relation to his appeal and any further medical evidence on which he wished to rely in relation to his ability to participate in these proceedings by the date of the adjourned hearing. So far as Mr Jones was aware, the direction relating to Counsel's advice had not been complied with but he understood that the Tribunal had received a medical report along with the undated letter from the Respondent received on 6 September. Mr Jones had also written to the Respondent on 13 September 2012 and received an e-mail reply from the Respondent on 16 September 2012, a copy of which he provided to the Tribunal. In it, the Respondent referred to having sent two letters, one of which Mr Jones believed to have been the Respondent's recent letter to the Tribunal. In his letter of 13 September, Mr Jones had reminded the Respondent of the substantive hearing and also had re-sent the costs schedule which he had sent to the Respondent prior to the 28 May hearing. The Tribunal was satisfied that the Respondent had been served with notice of the hearing in accordance with the Solicitors (Disciplinary Proceedings) Rules 2007 and having regard to the information provided by Mr Jones and in the Respondent's recent letter, the Tribunal determined that it would exercise its power under Rule 16(2) to hear and determine the application notwithstanding that the Respondent had failed to attend in person and was not represented at the hearing.
6. The Tribunal also noted that as set out in his letter of 20 March 2012 to the Clerk to the Tribunal, Mr Jones would proceed for the Applicant relying solely on the one

remaining conviction which had not been subject to the appeal; that of doing an act tending and intended to pervert the course of public justice. He asked that the Tribunal disregard all the references to the quashed convictions in the Rule 5 Statement and in the Judge's sentencing remarks.

Factual background

7. The Respondent was born in 1973 and admitted in 1999. His name remained on the Roll of Solicitors.
8. At the material time, the Respondent was a member in the firm of William Parry & Co Limited ("the firm") in Swansea.
9. At the Crown Court at Cardiff the Respondent was, on 14 March 2011, convicted of doing an act tending and intended to pervert the course of public justice. He was sentenced to eight months imprisonment. The Respondent had pleaded guilty and admitted the charge.

Findings of Fact and Law

10. **The allegations against the Respondent, Benjamin Jason Cornelius, were that he had behaved in a way that was likely to diminish the trust the public placed in him or the legal profession in breach of Rule 1.06 of The Solicitors Code of Conduct 2007 and had acted in breach of Rules 1.01 and 1.02 of The Solicitors Code of Conduct 2007 by virtue of his conviction and imprisonment in the Crown Court at Cardiff.**
- 10.1 For the Applicant, Mr Jones informed the Tribunal that the Respondent did not presently have a practising certificate; he had not applied for one. He had been the subject of a criminal conviction on 14 March 2011 and received a custodial sentence of eight months. He had been immediately released having regard to time already spent in custody. Mr Jones referred the Tribunal to the copy of the Certificate of conviction in the exhibit to the Rule 5 Statement. He advised the Tribunal that the background to the conviction was as follows; the Respondent had been arrested on 20 October 2009 and served with a Restraint Order under the Proceeds of Crime Act 2002. The order prohibited him from dealing with his assets amongst which was a motor vehicle valued in the region of £85,000. In June 2010, the Respondent had been charged with various offences and in October 2010 he had applied, pursuant to the Restraint Order, for permission to sell the vehicle. It was then discovered that he had in fact already sold it and proceeds in the sum of £89,200 were being held by a friend of the Respondent. The friend in question said that he had acted on the instructions of the Respondent and that he still held the proceeds of sale so that these funds were then recovered. Mr Jones referred the Tribunal to the Judge's sentencing remarks where these related to this particular conviction. On 18 March 2011 when passing sentence the Judge had said:

"Reckless, because you were prepared to ignore rules and take chances in pursuit of it [an opportunity to make money]. The latter quality reasserted itself when you arrange the sale of that motor car, in breach of the restraining order. Nobody is allowed to breach an order of the court. You were, and for

the time being remain, an officer of the court, so the contempt that you displayed is aggravated.

...

A member of the public who breaches a court's restraining order can only properly be punished by a custodial sentence. You, as an officer of the court, can expect no different..."

- 10.2 Mr Jones informed the Tribunal that the offence of which the Respondent had been convicted was a common law offence that could be tried only on indictment and that the CPS guidance indicated that it was reserved for serious cases of interference with the administration of justice. He further submitted that it was a serious matter for any solicitor to breach a court order and even more so where what he had done was to place assets outside the reach of a potential confiscation order for the benefit of victims of crime. Mr Jones submitted that the Respondent's intent to pervert the course of public justice constituted an offence of dishonesty.
- 10.3 The Tribunal had considered the evidence, the submissions of Mr Jones and the contents of the recent letter from the Respondent. It was satisfied to the required standard ie beyond reasonable doubt, that the Respondent's conviction and imprisonment were such that they were likely to diminish the trust the public placed in the Respondent or the profession (Rule 1.06) and that he had failed to uphold the rule of law and the proper administration of justice (Rule 1.01) and had failed to act with integrity (Rule 1.02). The Tribunal found allegation 1 to have been proved.

Previous disciplinary matters

11. None

Mitigation

12. In his recent letter to the Tribunal the Respondent had asked for his current health issues to be taken into account. He also said:

"I accept I pleaded guilty to the charge of perverting the course of justice; however, this was on the advice of my former solicitors....

...

I can assure the Tribunal that I have learnt a lesson the hard way and can only hope that there is finally some light at the end of the tunnel.

May I take this opportunity to apologise for my conduct and any disrepute I may have brought the profession."

13. The Respondent had also provided the Tribunal with information about his current family situation. As to his financial position, the Respondent had been invited by Mr Jones to provide the Tribunal with information about his means. In his recent letter the Respondent also said that he had been advised by his current legal team that he could expect further proceedings against him under the Proceeds of Crime Act legislation to recover in excess of £80,000 from him. Paperwork to this effect had

been served upon his present solicitors. In an e-mail to Mr Jones dated 16 September 2012, in addition to referring to his present state health, the Respondent had said:

“I can only say I'm heavily in debt after this awful experience and would humbly ask a reasonable time to pay any costs the Tribunal see fit. I have not received a salary since I stopped working in June 2009... I currently owe my father alone in excess of £75,000 which I hope to repay if the family home is sold.”

Sanction

14. The Respondent was subject to a criminal conviction which the Tribunal accepted involved an element of dishonesty and which it regarded as very serious. The Tribunal had not been made aware of any exceptional circumstances such as would justify any sanction other than striking the Respondent off the Roll of Solicitors.

Costs

15. For the Applicant, Mr Jones applied for costs in the amount of £2,624.74. He was only claiming costs up to and including the hearing on 28 May 2012. On that day he had been scheduled to attend another hearing at the Tribunal and so had halved his travelling time and travel costs. The hearing had been adjourned due to his illness and he did not consider it fair that he should seek to claim any additional costs and so was not claiming for his attendance today. In his recent letter, the Respondent asked that the Tribunal consider the fact that the more serious criminal allegations against him had been overturned by the Court of Appeal and to reflect this fact when considering any order for costs. In his 16 September email to Mr Jones, the Respondent had said:

“I have no issue as to your costs just a reasonable time to pay them please.”

16. The matter of payment was one to be resolved between the Respondent and the Applicant. The Tribunal awarded costs in the sum sought.

Statement of Full Order

17. The Tribunal Ordered that the Respondent, Benjamin Jason Cornelius, Solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the agreed sum of £2,624.74.

Dated this 2nd day of October 2012
On behalf of the Tribunal

Mrs E. Stanley
Chairman