

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11065-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

COLIN HARRISON

Respondent

Before:

Mrs K. Thompson (in the chair)

Mr A. G. Gibson

Mrs S. Gordon

Date of Hearing: 11th April 2013

Appearances

Robin Horton, solicitor of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent appeared and was represented by Mr Robin Havard, partner, Morgan Cole LLP, Bradley Court, Park Place, Cardiff CF10 3DP.

JUDGMENT

Allegations

1. The allegation against the Respondent, Colin Harrison, was that:-
 - 1.1 He has acted in a way that is likely to diminish the trust the public places in a solicitor in breach of Rules 1.02 and 1.06 of the Solicitors' Code of Conduct 2007, by virtue of his conviction on 20 April 2011 for perverting the course of justice.

Documents

2. The Tribunal reviewed all the documents submitted by the parties, which included:

Applicant:

- Application dated 26 September 2012;
- Rule 5 Statement dated 21 September 2012 together with Exhibit RH1;

Respondent:

- Large bundle of testimonial letters;

Factual Background

3. The Respondent was born in May 1946 and was admitted as a solicitor on 15 June 1976.
4. At all material times the Respondent practised as the senior partner in Granville-West Chivers & Morgan. He had retired from the practice and no longer had any connection with it.
5. The Respondent co-owned several properties occupied by tenants. On 11 November 2009, the Respondent, having learned that a tenant had been found dead and that the cause of death was suspected to be carbon monoxide poisoning, created a back-dated fax of instruction to letting agents to check the properties utility supplies.
6. A post-mortem revealed that the tenant died of natural causes.
7. On 20 April 2011 the Respondent was found guilty of doing acts tending and intended to pervert the course of public justice. He was sentenced to 6 months imprisonment, suspended for 12 months, ordered to perform 200 hours of community work and fined £1000 with a victim surcharge of £15.
8. In his sentencing remarks, the judge commented that "offences such as these strike at the very heart of our system of justice" and that the Respondent's fax made "distasteful [ly] reading", as it referred to the tenant as still being alive.
9. On 21 April 2011 the Respondent reported his conviction to the SRA. On 29 November 2011 the Court of Appeal refused the Respondent's application for leave to appeal against his conviction.

Witnesses

10. Mr Allan Sharpe, a pharmacist of Blackwood, Gwent gave sworn oral evidence which was restricted to the Respondent's character and mitigation on his behalf.

Findings of Fact and Law

11. The Tribunal had due regard to the Respondent's right to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

12. **Allegation 1.1: He has acted in a way that is likely to diminish the trust the public places in a solicitor in breach of Rules 1.02 and 1.06 of the Solicitors' Code of Conduct 2007, by virtue of his conviction on 20 April 2011 for perverting the course of justice.**

- 12.1 The Respondent admitted the allegation.

- 12.2 Mr Horton told the Tribunal that dishonesty was not being alleged against the Respondent and that the allegation was based upon his conviction for perverting the course of justice. The Respondent had acted in a "moment of madness". In Mr Horton's submission his behaviour and conviction brought into question his integrity and undermined public confidence in the profession.

- 12.3 Mr Horton took the Tribunal through the facts of the case. The Judge's sentencing remarks indicated that the matter was serious. The Respondent, having learned that his tenant had been found dead in his house set about trying to distance himself from any liability as landlord. The utilities had not been checked for 18 months. The Judge went on to say:

"in that knowledge you created a false back-dated letter that very afternoon. A letter which purported to instruct Parkmans to take over management of the house from earlier that week. And in that letter you instruct the letting agents to arrange for the usual tests for gas and electricity to be carried out. The letter frankly quite distastefully reading as though your tenant was still alive..."

- 12.4 The Judge also identified aggravating features:

"the aggravating features which I identify, which have to be reflected in the sentence I am about to pass, that you are a solicitor, expected to behave by the highest professional standards, and yet you deliberately sought to mislead the police that afternoon. Your behaviour involved your creating a false document, and both by what you have said and by that letter you were seeking to shift responsibility or at the very least share responsibility with the employees of Parkmans. And your behaviour took place as against the background of your tenant, Mr T having been found dead. And it being an enquiry into an unexplained death with all options being considered by the police as of that Wednesday afternoon."

- 12.5 The Judge went on to say that he accepted that the Respondent had been a man of previous exemplary character and that he was:

“rightly described in my judgement by the author of the presentence report as “a pillar of society”. That is, of course up until the time you committed this offence.”

In Mr’s Horton’s submission, if proved, the level of sanction imposed by the Tribunal would have to take into account, in particular, the ability of the profession as a whole to serve society. The conviction may make no difference, in this particular Respondent’s case, to local opinion about him.

- 12.6 The Tribunal found the allegation against the Respondent to have been substantiated beyond a reasonable doubt on the facts and documents before them, indeed it had been admitted by the Respondent.

Previous Disciplinary Matters

13. None.

Mitigation

14. Mr Havard said that the Respondent apologised for his appearance before the Tribunal. He also apologised to his family and colleagues for his behaviour. What had occurred had had a profound effect on both him and his family.
15. Together with one of his partners in Granville-West Chivers & Morgan, the Respondent had built up a buy to let business of 16 properties. These properties were managed by the letting agents Parkmans, who ensured compliance with the necessary statutory requirements. There was one exception, the property in question, which fell outside the arrangement. This property had been bought in late 2005 and was in the names of their wives. Mr T already lived at the property as a sitting tenant and he had a history of arrears. In 2009 an agreement was reached whereby Mr T would pay the rent and arrears and the tenancy would be converted into an assured shorthold tenancy as an alternative to possession proceedings.
16. The Respondent’s main concern had been for any liability that might fall upon his and his partner’s wives. His reaction was to create the back-dated letter. In that letter he had asked Parkmans to put the property into the buy to let portfolio and within the hour he had also misled the police as to what he knew about Mr T. Ultimately the back-dated letter had made no difference as the letting agents could not take responsibility for the property until a gas certificate had been produced; responsibility could not therefore actually have been shifted to the letting agents.
17. The Respondent had received strong legal advice to defend the criminal proceedings and this had led to two trials as no decision could be reached in the first trial.
18. The Respondent would soon be 67. He had left school at the age of 16 to support his widowed mother and had started his working life as a clerk at a solicitors firm. He had worked hard to qualify as a legal executive and then to be a solicitor by attending night school. He had qualified in 1976 and had been made a partner in the firm. In

2006 he became senior partner and specialised in property and probate matters. He had an extraordinary reputation in the local area and a huge following.

19. In Mr Havard's submission this case was not about concerns over client work or client money. His client had been a man of the highest integrity; upon his conviction he had resigned and had not done any legal work for the last two years.
20. The Respondent had been for 20 years the vice-chair of governors at a local school from which he had now resigned. He was also a member of the management committee at his church and did a lot of charitable work, including work overseas. He had been a member of the Rotary Club for 30 years and although he had offered to resign the other members had refused to accept his resignation.
21. The Tribunal had before them a considerable number of personal testimonials which had been written for the criminal trial, as well as a smaller contemporaneous bundle. These testimonials included one from a Mr Allan Sharpe who also gave sworn oral evidence on behalf of the Respondent. In his evidence, Mr Sharpe said that he adopted and confirmed the letter that he had written in 2011 for the Respondent's criminal trial and he stood by every word of it. He had known the Respondent since 1970 on a professional and social basis and as a member of the Rotary Club. When he had offered to resign from the Rotary Club after his conviction, the members had not accepted his resignation.
22. Mr Sharpe had accompanied the Respondent on journeys taking medical aid to Croatia during the war in the Baltic States. The Respondent had been adept at getting sponsorship and products for use there. He exhibited a concern for the refugees and victims and had visited unofficial refugee camps whilst he was there. The Respondent was very generous and good-natured and in Mr Sharpe's opinion was a hard working asset to the community; his loss as a solicitor was a great loss and the community shared his distress. Mr Sharp had noticed a great change in the Respondent since his conviction.
23. Mr Sharpe concluded by saying that it was a privilege to call the Respondent a friend and he respectfully recommended him to the Tribunal.
24. In Mr Havard's submission it was not necessary in the public interest for the Tribunal to strike off the Respondent; neither was it proportionate as no dishonesty had been alleged. Mr Havard asked the Tribunal to take note of some further sentencing remarks of the Judge at the criminal trial:

“in terms of the consequences of your acts of course it was a very short lived period in which you sought to deceive the police.”

“... It is also clear to me that you did regret what you did almost immediately afterwards. And I agree... that it is unlikely that you would have seen this through. To summarise I really agree with Mr Fahm of the Joint Committee for Ethnic Minorities in Wales in his letter to the Court dated 2 May, when he, after detailing the assistance you have offered over the years, concludes that what you did was completely out of character and represented an aberration in the life of a most respected and trusted man.”

“to a real extent there is punishment because of the publicity that this offence will attract and the loss of your character. You are now suspended from acting as a solicitor, that is something which of course I have regard to. I do sentence you on the basis that you panicked that afternoon, and in panic you acted in an extraordinary fashion.”

“and I have come to the conclusion that exceptionally so as to reflect your age, your otherwise exemplary character, and particularly the fact that this offence was short lived, and that ultimately the consequences were not serious as regards any other individual, it is possible to draw back from an immediate custodial sentence, and pass a suspended sentence instead.”

25. Mr Havard also asked the Tribunal to take particular note of what was said at paragraph 13 of the Tribunal’s Guidance Note on Sanctions (“the Guidance Note”). Whilst it was not disputed that the offence was serious, in looking at the harm caused there was ultimately none. The motivation for the misconduct had been his concern for his and his partner’s wives and what he had done had been done spontaneously and in a panic. This had been an aberration and no harm had been caused. Any suggestion of lack of integrity on the part of the Respondent had to be viewed in that light.
26. Mr Havard then took the Tribunal through the aggravating and mitigating factors at paragraph 16 and 17 of the Guidance Note. In terms of aggravating factors, no dishonesty had been alleged, although the misconduct had involved the commission of a criminal offence. The misconduct was neither premeditated nor repeated and in fact the Respondent had reported it himself to the SRA. The Respondent ought to have known that the conduct complained of was in material breach of his obligation to protect the public and the reputation of the profession but he had panicked. In addition, the Respondent had not been before the Tribunal before.
27. In terms of mitigating factors Mr Havard asked the Tribunal to take into account that the Respondent accepted responsibility for his acts and that he himself had volunteered the information concerning his conviction to the SRA. What had occurred was of brief duration in an unblemished career of 48 years. He understood that what he had done was wrong and he had made admissions before the Tribunal today.
28. Mr Havard asked the Tribunal to conclude that there was no requirement to strike off the Respondent.

Sanction

29. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.
30. The Tribunal had listened very carefully to what had been said by the parties and by Mr Sharpe. It had also paid close attention to all of the documentation that had been put before it, including the many personal testimonials provided for the Respondent.
31. The Tribunal had considered all of the available sanctions in this case. It had learned of the Respondent’s previous exemplary character, of his charitable work and of the high regard with which he was held in his local community. The Tribunal regarded

this case as a sad one, where a solicitor, due to what had been variously described as an aberration and a moment of madness had lost his good name and now had a criminal conviction.

32. However, the Tribunal had heard of the Respondent's conviction and of the surrounding circumstances. The function of the Tribunal was to protect the public from harm, to sustain public confidence in the integrity, trustworthiness and honesty of the profession and to preserve the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. The Tribunal was mindful of what had been said by Sir Thomas Bingham, the then Master of the Rolls, in the case of Bolton v The Law Society [1994] 1 WLR 512 concerning sanction. He had identified that there was a reason for a penalty to be imposed, that was:

“... 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... A profession's most valuable asset is its collective reputation and the confidence which that inspires.”

33. The Tribunal had heard the reasons why the Respondent had behaved as he had and noted the support he had from within his own community. However, the Respondent had been convicted of doing acts tending and intended to pervert the course of public justice, including the creation of a falsely dated document which was intended to deceive those who would investigate an incident. The wider public would not be privy to the detailed personal information about the Respondent that had been put before the Tribunal, it would only see a solicitor who had been convicted of the offence of doing acts tending and intended to pervert the course of public justice. The collective reputation of the profession as a whole was more important than the personal fortunes of one individual solicitor. Accordingly, having regard to the need to preserve public confidence in the solicitors reputation as a whole, the Tribunal determined that the Respondent should be struck off the Roll of Solicitors.

Costs

34. Costs were agreed between the parties in the total sum of £2, 993.48.

Full Order

35. The Tribunal Ordered that the Respondent, Colin Harrison, 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 sum of £2,993.48

Dated this 9th day of May 2013
On behalf of the Tribunal

K. Thompson
Chairman