

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11218-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

GARETH RICHARD ARNOLD

Respondent

Before:

Mr S. Tinkler (in the chair)

Mr K. W. Duncan

Mr S. Hill

Date of Hearing: 24 June 2014

Appearances

Ms Kiran Sidhu, solicitor, of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent, Mr Gareth Richard Arnold, was not present or represented.

JUDGMENT

Allegations

1. The allegations made against the Respondent, Gareth Richard Arnold, in a Rule 5 Statement dated 13 January 2014, were that by virtue of his conviction for the offences described at paragraph 2 below:
 - 1.1 He breached Principle 2 of the SRA Principles 2011, which required that he act with integrity; and
 - 1.2 He breached Principle 6 of the SRA Principles 2011, which required that he behaved in a way that maintained the trust the public placed in him and in the provision of legal services.
2. In the Crown Court at Swansea on 8 October 2013 the Respondent was, upon his own confession, convicted on indictment of 5 counts of fraud contrary to s.1 of the Fraud Act 2006 and was sentenced to 4 years imprisonment.

Documents

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

Applicant:-

- Application dated 13 January 2014
- Rule 5 Statement, with exhibit "SM1", dated 13 January 2014
- Statement of costs

Respondent:-

- Respondent's letter to the Tribunal 22 April 2014

Preliminary Matter – Proceeding in the absence of the Respondent

4. The Tribunal noted that the Respondent was not present or represented and therefore considered whether the matter should proceed in his absence.
5. The Tribunal reviewed the correspondence, which included the notification of listing and the Memorandum dated 15 April 2014 (following a Case Management Hearing on 8 April 2014) which was sent to the Respondent on 16 April 2014. The Tribunal noted in particular the Respondent's letter to the Tribunal dated 22 April 2014. This letter read:

"Further to your letter dated 16th April 2014. I confirm that I accept the allegations and the case brought against me. Further, I accept and agree that I should be struck off the roll of solicitors. My actions were abhorrent and there is no defence or excuse I can offer. I will regret what I did every day for the rest of my life.

I am not sure of the procedure within the Tribunal and am not in a position to look up the rules. However, if possible, I would request that this matter be

fast-tracked to a final resolution as swiftly as possible. I confirm that I have no further representations to make.

Whilst I appreciate that it will have no bearing whatsoever, I am truly sorry for my actions and the embarrassment it has caused to the profession along with the hurt I have caused to my victims and my family.”

6. The Tribunal was satisfied that the Respondent was aware of the proceedings and the hearing date. Further, the Respondent had made admissions and the Tribunal was satisfied that he did not intend to appear or make further representations. In the circumstances, it was just and proportionate to proceed in the Respondent’s absence. The Tribunal noted that it was for the Applicant to prove its case to the highest standard, and in the Respondent’s absence the Tribunal would take particular care to consider the case scrupulously.

Factual Background

7. The Respondent was born in 1972 and was admitted as a solicitor in 2003. His name remained on the Roll of Solicitors at the date of the hearing.
8. The Respondent was employed as a consultant by Sheehans of 40-41A Alfred Street, Neath, West Glamorgan SA11 1EH from January 2010 to December 2011 and thereafter as managing partner at AM Law Limited for an unknown period from January 2012 onwards.
9. A certified copy of a certificate of conviction showed that on 8 October 2013 the Respondent was convicted on his own admission upon indictment of 5 counts of fraud, contrary to s1 of the Fraud Act 2006. On 4 counts, the Respondent was sentenced to 40 months imprisonment (concurrent) and on 1 count to 8 months imprisonment (consecutive) such that the overall sentence was 4 years imprisonment.
10. Dishonesty was the mens rea of the offence of fraud. The trial Judge’s sentencing remarks were available to the Tribunal and included the following comments:

“It was, both in your capacity as a solicitor and as a deputy appointed by the Court of Protection, as gross a breach of trust as can be imagined...”

“Public confidence in the Court of Protection and in solicitors, who as you well know are officers of this court, will inevitably be dented by what you did. That monies have been recovered is, in my view, no mitigation for you at all...”

“This, in my view, does not fit easily into any of the categories in the guidelines. It has hallmarks of confidence fraud and is theft in breach of trust. This involved in excess of £200,000 dishonestly obtained by you, in breach of an extremely high degree of trust, and in the case of Mr McC, an exceptional degree of vulnerability on the part of the victim.”
11. On 18 September 2013 a duly authorised officer of the Applicant, in exercise of the powers delegated to him, considered the conduct of the Respondent and decided to

refer his conduct to the Tribunal. It was noted that this date pre-dated the conviction. The Tribunal was informed that there had been a forensic investigation and it was that process which had led to the decision to refer the Respondent to the Tribunal. Following the conviction, it was decided to proceed on the basis of the conviction rather than on the detailed forensic investigation report.

Witnesses

12. There were no witnesses of fact.

Findings of Fact and Law

13. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights 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.

14. **Allegation 1 - By virtue of his conviction for the offences described at paragraph 2 below:**

1.1 He breached Principle 2 of the SRA Principles 2011, which required that he act with integrity; and

1.2 He breached Principle 6 of the SRA Principles 2011, which required that he behaved in a way that maintained the trust the public placed in him and in the provision of legal services.

Allegation 2 - In the Crown Court at Swansea on 8 October 2013 the Respondent was, upon his own confession, convicted on indictment of 5 counts of fraud contrary to s.1 of the Fraud Act 2006 and was sentenced to 4 years imprisonment.

- 14.1 The Respondent admitted the allegations in his letter to the Tribunal dated 22 April 2014, which is set out at paragraph 5 above.

- 14.2 The Solicitors (Disciplinary Proceedings) Rules 2007 at Rule 15(2) state:

“A conviction for a criminal offence may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based shall be admissible as conclusive proof of those facts save in exceptional circumstances.”

- 14.3 The Tribunal was satisfied on the production of the certified copy of the certificate of conviction that the Respondent was guilty of the offences listed in that certificate. It also noted the trial Judge's sentencing remarks. These remarks included the following, which explained something of the circumstances of the conviction:

“During the course of 2012 acting in your capacity of a solicitor and also in the capacity of a deputy appointed by the Court of Protection, you cynically

and ruthlessly stole £174,000 from the account of a quintessentially vulnerable individual in Mr McC. You knew full well that he needed that money to make his shattered life as comfortable as such compensation could make it. You were entrusted to look after that money, to look after his interests, but you decided that that money, rather than being spent on him and his needs, was better spent by you on expensive cars, an extravagant lifestyle and to impress your girlfriend with your largesse. That this would have a financially devastating effect on Mr McC and his already broken life appears to have been of little, in any consequence to you; neither was the inevitable emotional impact upon him, as if he did not have enough burdens now to carry.

... Had it not been for the dogged courage of his social worker you may well have got away with it. As it was, when she informed the court fund office and an interim order was made transferring the deputyship to the local authority, you brazenly applied for and, incredibly, received the balance in the fund of £131,000, effectively clearing or cleaning Mr McC out. He had nothing left, as you had ensured, and due to his condition, no means of earning money in the future...

The Solicitors Regulation Authority have paid out a large sum of money, which has the effect, among other things, of increasing the premiums for the overwhelming majority of honest solicitors...

In an entirely separate act of flagrant dishonesty, you also defrauded another client of yours, a Mr T. That was for £30,000 in connection with his conveyancing transaction. Once again, it left havoc in its wake..."

- 14.4 The Tribunal found the convictions and the underlying facts, including defrauding two clients (one of whom was particularly vulnerable) of substantial sums of money, were proved to the highest standard. There could be no doubt in these circumstances that the Respondent had failed to act with integrity and had behaved in a way which would undermine the trust the public would place in him and in the provision of legal services. The allegations had been proved, in all respects, to the highest standard.

Previous Disciplinary Matters

15. There were no previous matters in which findings had been made against the Respondent.

Mitigation

16. The Tribunal noted what the Respondent had said in his letter of 22 April 2014, set out in full at paragraph 5 above.
17. The Respondent had admitted that he had no defence or excuse, and had accepted that his actions were abhorrent. He had accepted that he would be struck off the Roll of Solicitors and had stated that he was truly sorry for his actions.

Sanction

18. The Tribunal had regard to its Guidance Note on Sanctions (September 2013).

19. The offences for which the Respondent had been convicted, and sentenced to four years imprisonment, were offences of dishonesty. The Respondent had admitted, and the Tribunal had found proved, that the Respondent had committed these offences which offences were of the utmost seriousness. The Respondent had acted with a complete lack of integrity and had damaged the reputation of the profession. The Tribunal noted in particular that the Respondent had taken advantage of two of his clients, one of whom was especially vulnerable.
20. The normal and necessary sanction where a solicitor had acted dishonestly (which was clearly the case here because of the nature of the convictions) was an order for striking off. Here there were no exceptional circumstances which suggested any other sanction could possibly be appropriate. Indeed, the Respondent's conduct was at the higher end of the spectrum of improper conduct. The only proportionate and just sanction in this case was to impose an order striking the Respondent from the Roll of Solicitors.

Costs

21. The Applicant made an application for the Respondent to pay the costs of the proceedings, as set out in a schedule of costs which totalled £2,211.32.
22. Ms Sidhu submitted that in proceeding on the basis of the conviction, rather than the full forensic investigation report, the Applicant had prosecuted the case in the most proportionate way possible consistent with its duty to protect the public.
23. It was noted that the Respondent had not submitted any information concerning his means (including any assets) although he had been ordered to do so by 27 May 2014 if he wanted his means to be taken into account with regard to sanction and/or costs. That order was set out in the Memorandum dated 15 April 2014. It was also noted that the trial Judge had referred to some monies being recovered (albeit the trial Judge did not consider that to be a mitigating factor in relation to the offences). Ms Sidhu did not have any information on whether the Respondent had paid some compensation to the victims and/or had any assets and did not have any information on any sums paid out by the Compensation Fund.
24. The Tribunal reviewed the costs schedule and determined that most of the costs claimed (for preparation of documents and attendance at the Tribunal) were generally reasonable, both as to the rate claimed and the time spent. The Tribunal noted that the Applicant had pursued the case proportionately, by proceeding on the basis of the Respondent's convictions which reduced the complexity of the case and the time required to deal with it.
25. However, The Tribunal noted that in its list for the day it had a total of 8 matters being 6 Case Management Hearings ("CMH") and 2 substantive matters, of which this was one. One of the matters was to take place by telephone. It was noted that in the seven in which advocates would appear, the Applicant had instructed one external advocate (on a CMH) and that 5 different advocates from the Applicant had (or would) attend. All of the "internal" advocates were based in Birmingham

26. The Tribunal wished to make it clear to the Applicant, in relation to all of the cases listed for the day, that it had a duty to ensure that no individual Respondent should be unduly prejudiced by claims for costs where it may well have been possible for the Applicant to instruct just one advocate for the day. This case had not been complex, and it was not anticipated that any of the other cases would be unduly complex.
27. The Tribunal noted that the Applicant had claimed £171 in travel expenses for today, for this hearing, together with 6 hours travel and waiting, at a total of £390. Had the Applicant consolidated its representation for the day it would have been able to seek just one set of travel expenses and one set of travel and waiting time to be apportioned between a number of cases. Accordingly, the Tribunal determined to reduce the allowance for travel expenses and travel/waiting time to £150 for this case (as it would for other cases in the list for the day). Taking into account this deduction and all other relevant factors, the Tribunal summarily assessed the reasonable costs of the case at £1860.32.
28. The Tribunal had not been provided with any information by the Respondent concerning his means, and in particular any assets he might own. There was no basis, therefore, either to reduce the costs payable or to place any restriction on the Applicant's ability to seek to enforce the costs order. Accordingly, the Tribunal ordered that the Respondent should pay the reasonable costs of the case, assessed at £1860.32.

Statement of Full Order

29. The Tribunal Ordered that the Respondent, GARETH RICHARD ARNOLD, 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 £1860.32.

DATED this 3rd day of July 2014
On behalf of the Tribunal

S. Tinkler
Chairman