

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11410-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

JOHN ANTHONY CONNOLLY

Respondent

Before:

Mr S. Tinkler (in the chair)

Mr K. W. Duncan

Mr M. C. Baughan

Date of Hearing: 12 November 2015

Appearances

Mr Alastair Willcox, Solicitor employed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant

The Respondent did not appear and was not represented

JUDGMENT

Allegations

1. The allegations against the Respondent, John Anthony Connolly were that
 - 1.1 He had breached all or alternatively any of the following Principles: Principles 1, 2 and 6 of the SRA Principles 2011 in that he had been convicted of the following criminal offences:
 - 1.1.1 Two counts of fraud contrary to sections 1 and 2 of the Fraud Act 2006; and
 - 1.1.2 That he used a motor vehicle on a road or other place when there was not in force in relation to that use such a policy of insurance or such a security in respect of third party risks (as complied with the requirements of Part VI of the Road Traffic Act 1988) contrary to section 143 of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.
 - 1.2 It was also alleged that the Respondent had breached Principle 7 of the SRA Principles 2011 as he had failed to cooperate with his regulator because he had not provided a substantive response to a formal letter from the SRA which asked him to provide an explanation for his misconduct.

Documents

2. The Tribunal reviewed all the documents including;
 - Rule 5 Statement dated 9 July 2015 with exhibit AHJW1
 - Skeleton argument on behalf of the Applicant dated 9 November 2015
 - E-mail from Mr Willcox of the Applicant to the Respondent dated 27 May 2015
 - E-mail from the Respondent to Mr Willcox dated 28 May 2015
 - E-mail from Mr Willcox of the Applicant to the Respondent dated 17 August 2015
 - E-mail from Mr Willcox to the Respondent dated 17 September 2015
 - E-mail from the Respondent to Mr Willcox dated 18 September 2015
 - Further e-mail from Mr Willcox to the Respondent dated 18 September 2015
 - Further e-mail from the Respondent to Mr Willcox dated 18 September 2015
 - E-mail from Mr Willcox to the Respondent dated 19 October 2015
 - E-mail from Mr Willcox to the Respondent dated 2 November 2015
 - Bankruptcy order on Creditor's petition in respect of the Respondent dated 4 August 2015
 - Applicant's schedule of costs dated 2 November 2015

Respondent

- None save as listed above

Preliminary Issue

3. The Respondent was not present. For the Applicant, Mr Willcox submitted that the Rule 5 Statement had been certified and sent to the Respondent along with notice of hearing (by way of standard directions) on 14 July 2015 to an address at which it was known the Respondent had been receiving correspondence. On 18 September 2015, the Respondent e-mailed Mr Willcox which indicated that he had received the papers. Subsequently directions had been agreed between the parties and a Memorandum of those directions dated 24 September 2015 included the date and time for the substantive hearing. Mr Willcox submitted that on 19 October and 2 November 2015 he had sent e-mails to the Respondent asking whether he intended to attend the hearing. There had been no response and Mr Willcox asked the Tribunal to exercise its power under the Solicitors (Disciplinary Proceedings) Rules 2007 (“SDPR”) and proceed to hear the application in the absence of the Respondent. Rule 16(2) provided:

“If the Tribunal is satisfied that notice of the hearing was served on the Respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing.”

4. Mr Willcox also referred to Rule 10 relating to service of documents. He submitted that the initial letter dated 14 July 2015 enclosing the Rule 5 Statement and other documents would be deemed to have been served on the Respondent on 16 July 2015 by virtue of Rules 10(4) and 10(5). The Tribunal could be satisfied that it was reasonable to expect that the documents had been received by the Respondent. Mr Willcox further pointed out that the Respondent would not be prejudiced by such a decision because Rule 19 provided that where a Respondent neither attended in person nor was represented at the hearing of an application and the Tribunal determined the application in his absence he could (within set time limits) apply for a rehearing. Mr Willcox also referred the Tribunal to the case of R v Hayward, Jones and Purvis [2001] QB 862, CA which listed the criteria to which the Tribunal should have regard in making its decision and which had been broadly approved by the House of Lords. Mr Willcox submitted that the Respondent had been notified of the hearing and served and therefore his absence from the Tribunal was voluntary and he had waived his right to appear. He also submitted that it was in the public interest that the matter should be dealt with within a reasonable period of time and that there was no indication that delaying the matter would improve the Respondent’s position. While being aware of the care with which it had to exercise its discretion in such circumstances, the Tribunal determined that the Respondent had been properly served with notice of the proceedings and noted that the hearing was commencing some two hours after the earliest start time of which he had been notified and so he had had every opportunity to arrive in time. The Tribunal was satisfied that recently there had been no engagement from the Respondent and the clear conclusion to be drawn was that he had decided not to attend. The Tribunal would therefore proceed in his absence and without his being represented.

Factual Background

5. The Respondent was born in 1968. He was admitted to the Roll of Solicitors in 1997. He did not hold a current practising certificate but remained on the Roll. His last position as a solicitor concluded on 6 November 2009.
6. According to the Prosecution Case Summary from the fraud proceedings in which the Respondent was the defendant, following a petition by a trade creditor on 15 February 2013, the Respondent was made bankrupt on 27 March 2013 at the Kendal County Court.
7. Despite his bankruptcy, the Respondent wished to carry on with the lifestyle to which he was accustomed.
8. Unable to obtain credit (beyond £500) without disclosing his status, the Respondent approached two old acquaintances, namely a Mr JS and a Mr JC, to discuss lending him money. However the Respondent failed to disclose his status to each of these individuals and did not tell the truth regarding the reasons for wanting the monies and the reasons why he needed the monies at that time.

Allegation 1.1

9. The Pre-Sentence Report gave summaries of the facts of the two offences of fraud:

Mr JS

10. The Respondent approached Mr JS for a loan in the sum of £25,540 on 11 September 2013 by telephone. He had worked with Mr JS between 1998 and 2000. Mr JS was the godfather of one of the Respondent's children but had not seen him for a number of years. The reason the Respondent gave for wanting the loan was that his law firm was suffering cash flow problems and a client of the law firm had issued bankruptcy proceedings against him and the matter was to be heard on 17 September 2013. In reality the Respondent had not held a practising certificate since 2009. The real reason for wanting the money was to pay his children's school fees. Mr JS agreed to lend the Respondent £25,540. The Respondent said that he would pay the money back as soon as his parents returned from holiday, indicating that he would have asked them but they were not contactable. On this basis Mr JS agreed to give him the money interest-free on the understanding that it would be paid by 30 September 2013. Although promises were made, the money was never returned.
11. At the Liverpool and Knowsley Magistrates' Court on 27 November 2014, the Respondent pleaded guilty to one count of fraud (contrary to sections 1 and 2 of the Fraud Act 2006) in relation to this matter. On 22 December 2014, the Respondent was sentenced to five months imprisonment (suspended for two years), ordered to pay a victim surcharge in the sum of £80, costs in the sum of £750 and also to carry out 150 hours of unpaid work. He was also made the subject of a supervision requirement.

Mr JC

12. Mr JC had met the Respondent at University and was a close friend but had not seen him for three years. On 25 February 2014, Mr JC received an e-mail from the Respondent and on telephoning him, was told that the Respondent had been the victim of credit card fraud in South Africa and that he needed to borrow funds. Again when questioned he said that his parents could not help as they were travelling but assured Mr JC they would repay the loan on their return. Mr JC duly paid £1,000 into an account belonging to the Respondent's wife which was used immediately to repay a family member of the Respondent. Mr JC tried unsuccessfully to recover the money and when it was not repaid, found out about the Respondent's bankruptcy and made a complaint to the Official Receiver.
13. At the Liverpool and Knowsley Magistrates' Court on 27 November 2014, the Respondent pleaded guilty to one count of fraud (contrary to sections 1 and 2 of the Fraud Act 2006) in relation to this matter. He was sentenced on 22 December 2014 to one month's imprisonment suspended for two years (to run consecutively to the offence relating to Mr JS detailed above) and ordered to carry out 150 hours of unpaid work. He was also made the subject of a supervision requirement.

Allegation 1.2

14. At 10 a.m. on 26 March 2014, the Respondent was found to be driving a motor vehicle at a time when there was not in place any motor insurance covering his use of that vehicle.
15. The matter went before the Carlisle Magistrates' Court for sentencing on 31 October 2014. The Respondent was fined, ordered to pay a victim surcharge of £60 and ordered to pay costs in the sum of £85. A collection order was also made and the Respondent's driving licence was endorsed with eight penalty points. The DVLA had also been notified.

The Applicant's Investigation

16. On 10 February 2015, a Supervisor in the employment of the Applicant's supervision department with conduct of this matter wrote to the Respondent requesting an explanation for a number of breaches of the SRA Code of Conduct 2011 which he had identified.
17. The Respondent replied by e-mail on 12 February 2015, indicating that he had "had a brief chance to consider the allegations" and requesting an extension of the date by which he had been asked to send his response to the Applicant to close of business on 13 March 2015, so as to give him time to locate the relevant paperwork, some of which he said was in storage at the time. The Supervisor agreed to extend the deadline as requested but no response was received.
18. On 5 May 2015, an Authorised Officer of the Applicant made the decision to refer the Respondent's conduct to the Tribunal.

Witnesses

19. None.

Findings of Fact and Law

20. 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.

21. **Allegation 1.1: He [the Respondent] had breached all or alternatively any of the following Principles: Principles 1, 2 and 6 of the SRA Principles 2011 in that he had been convicted of the following criminal offences:**

1.1.1 Two counts of fraud contrary to sections 1 and 2 of the Fraud Act 2006;

- 21.1 Principle 1 required that a solicitor must uphold the rule of law and the proper administration of justice; Principle 2 required a solicitor to act with integrity; and Principle 6 required a solicitor to behave in a way that maintained the trust the public placed in them and in the provision of legal services. For the Applicant, Mr Willcox also relied on Rule 15(2) of the SDPR which stated:

“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.”

Mr Willcox referred the Tribunal to the Memoranda of Conviction exhibited to the Rule 5 Statement which summarised the facts of the offences set out in the background to this judgment, to the Prosecution Case Summary in respect of the fraud convictions and the Pre-Sentence Report.

- 21.2 The Tribunal had regard to the submissions for the Applicant and the evidence and found that the Respondent had by his convictions breached Principles 1, 2 and 6 and that allegation 1.1 (1.1.1) was proved to the required standard.

22. **Allegation 1.1.2: That he [the Respondent] used a motor vehicle on a road or other place when there was not in force in relation to that use such a policy of insurance or such a security in respect of third party risks (as complied with the requirements of Part VI of the Road Traffic Act 1988) contrary to section 143 of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.**

- 22.1 For the Applicant, Mr Willcox again relied on Principles 1, 2 and 6 and Rule 15(2) of the SDPR in respect of the Memorandum of Conviction entered in the register of the North Cumbria Magistrates' Court. He referred the Tribunal to the Incident Report of

the Cumbria Constabulary in respect of this motoring offence and to the Postal Requisition sent to the Respondent. On 31 October 2014, the Respondent had been convicted in his absence.

- 22.2 The Tribunal had regard to the submissions for the Applicant and the evidence and found that the Respondent had by his conviction breached Principles 1, 2 and 6 and that allegation 1.1 (1.1.2) was proved to the required standard.
23. **Allegation 1.2: It was also alleged that the Respondent had breached Principle 7 of the SRA Principles 2011 as he had failed to cooperate with his regulator because he had not provided a substantive response to a formal letter from the SRA which asked him to provide an explanation for his misconduct.**
- 23.1 For the Applicant, Mr Wilcox relied on the facts as set out in the Rule 5 Statement. Principle 7 required a solicitor to “comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and cooperative manner”. Mr Willcox referred the Tribunal to the formal Explanation With Warning letter sent by the Applicant to the Respondent on 10 February 2015 by the Supervisor who was responsible for the investigation of the Respondent’s conduct. The letter set a deadline of 26 February 2015 for a response. The Respondent sent an e-mail to the Supervisor on 12 February 2015 seeking an extension and the deadline was extended but it was then not complied with. Mr Willcox submitted that the Respondent was a regulated person and had clearly breached Principle 7. The letter of 10 February 2015 had been sent in accordance with Rule 5(1) of the SRA Disciplinary Procedure Rules giving the Respondent the opportunity to explain his misconduct and as required by Rule 5(2)(a) warned the Respondent of the possibility of disciplinary proceedings but he made no reply by either the first deadline of 26 February 2015 or the extended deadline of 13 March 2015. Mr Willcox submitted that this was a very serious case involving two criminal convictions for fraud, the motoring offence and failure to cooperate with the regulator.
- 23.2 The Tribunal had regard to the submissions for the Applicant and the evidence and found allegation 1.2 proved to the required standard.

Previous Disciplinary Matters

24. None.

Mitigation

25. The Respondent was not present and had offered no mitigation.

Sanction

26. The Tribunal had regard to its Guidance Note on Sanctions which set out that the most serious misconduct involved dishonesty, whether or not leading to criminal proceedings and criminal penalties. This was a very serious matter in which the Respondent had been convicted of two counts of dishonesty in terms of fraud as well as of other allegations. A finding that an allegation of dishonesty had been proved would almost invariably led to striking off, save in exceptional circumstances.

Mr Willcox had submitted that exceptional circumstances such as were referred to in the case of SRA v Sharma [2010] EWHC 2022 (Admin) had not been established here. The Respondent's criminal convictions were aggravating factors and the Tribunal noted with particular concern that the frauds had been perpetrated against personal friends of the Respondent causing them significant financial loss. The Respondent had taken advantage of the individuals at the time without any conscience. The Respondent had departed to a considerable extent from the standards set for solicitors in the case of Bolton v The Law Society [1994] 1 WLR 512 of "complete integrity, probity and trustworthiness". The Tribunal also took notice of the lesser motoring offence and failure to co-operate with the Applicant. The Tribunal recognised that the Respondent had failed to provide a response to his regulator but questioned whether in the light of the seriousness of the criminal offences, bringing allegation 1.2 added significantly to the application. No exceptional circumstances had been put forward by the Respondent and the Tribunal found there to be none so that striking the Respondent off the Roll would be the appropriate sanction.

Costs

27. Mr Willcox applied for costs in the amount of £1,916.65. He submitted that the costs schedule had been e-mailed to the Respondent on 2 November 2015 with a letter drawing to his attention the case of Davis v McGlinchey [2011] EWC 232 (Admin) and that it was incumbent upon him before the hearing to give advance notice to the Applicant and the Tribunal if he would contend either that no order should be made against him, or that it should be limited in amount by reason of his own lack of means. It was also pointed out to the Respondent that he should supply the Applicant and the Tribunal in advance of the hearing the evidence upon which he relied. The Respondent had also been directed by the Tribunal to file such evidence by a set date. He had not done that or responded to the schedule of costs. As to the detail of the schedule, Mr Willcox suggested that the time estimate for the hearing could be reduced. However Mr Willcox's train travel had been claimed at only one third of the cost on the basis that he was also travelling to London for two other matters but in fact only one other matter was involved and the claim should increase from one third to one half of the total travel expenses. The Tribunal noted that the skeleton argument provided by Mr Willcox (detailing the procedural history of the matter) was helpful in terms of the Respondent's absence from the hearing but questioned whether the two-page summary of the facts leading to the allegations added value. As to the Respondent's ability to pay costs, Mr Willcox submitted that he understood from colleagues in the Applicant's costs recovery department that the Respondent had again been adjudged bankrupt on 4 August 2015. On the basis of the decision in the case of Bloom & Others v The Pensions Regulator & Others [2013] UKSC 52, the decision to refer the matter to the Tribunal having been made before the Respondent was adjudged bankrupt, the costs in the matter would fall into the latest bankruptcy and Mr Willcox therefore asked for an enforceable order for costs in favour of the Applicant. The Tribunal summarily assessed costs in the amount of £1,700 and on the basis of Mr Willcox's submissions made an enforceable order.

Statement of Full Order

28. The Tribunal Ordered that the Respondent, JOHN ANTHONY CONNOLLY, 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 £1,700.00.

Dated this 21st day of December 2015

On behalf of the Tribunal

S. Tinkler
Chairman