

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11492-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

STEPHEN WILLIAM CLIMO

Respondent

Before:

Mr R. Hegarty (in the chair)

Mr P. Jones

Mr M. R. Hallam

Date of Hearing: 29 July 2016

Appearances

Shaun Moran, Solicitor of Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegation against the Respondent made by the Applicant was that he had breached Principles 1, 2 and 6 of the SRA Principles 2011 (“the Principles”) in that he had been convicted of the following criminal offences:-
 - 1.1 One count of fraud by false representation
 - 1.2 Three counts of fraud by abuse of position; and
 - 1.3 One count of theft.

Documents

Applicant

- Rule 5 Statement and exhibit ‘PL1’ dated 3 March 2016.
- Certified Certificate of Conviction dated 19 February 2016
- Crown Court Record Sheet dated 11 September 2015
- Sentencing Remarks Transcript dated 11 September 2015
- Memorandum of an entry entered into the register of the Worcestershire Magistrates’ Court LJA 1894 – printed 20 April 2016
- Witness Statement of Keith Parsons, Process Server dated 14 June 2016
- Costs schedules dated 3 March 2016 and 19 July 2016

Respondent

- Letter from the Respondent to the SRA dated 17 June 2016
- Letter from the Respondent to the SRA dated 25 July 2016
- Letter from the Respondent’s GP ‘To Whom It May Concern’ dated 11 July 2016
- Personal Financial Statement dated 25 July 2016

Preliminary Matter- Application to Proceed in the Absence of the Respondent

2. The Applicant applied to proceed in the absence of the Respondent under Rule 16 (2) of the Solicitors (Disciplinary Proceedings) Rules 2007 (“SDPR”). The Applicant’s case was that the Respondent had been properly served and was aware of the hearing date. He had chosen not to attend. The Tribunal had before it the witness statement from the process server confirming service.
3. The Respondent had submitted a letter from his GP under cover of letter dated 25 July 2016. This letter asked that consideration be given to postponing the hearing. However, the Respondent had not applied for an adjournment. The Applicant had asked the Respondent to confirm his position in respect of whether he was seeking an adjournment but had not received a reply. The Respondent’s letter of 17 June 2016 referred to him not being able to address the issue of the current proceedings “until now”. It also stated that the Respondent knew he should be removed from the profession and was happy to abide by the Tribunal’s decision.

4. Mr Moran drew the Tribunal's attention to the principles (laid down in the context of criminal proceedings) by the Court of Appeal in R v. Hayward, Jones & Purvis QB 862 [2001], as qualified and explained by the House of Lords in R v. Jones [2002] UKHL 5; [2003] 1 AC 1. Mr Moran submitted that these guidelines were more usefully set out for application in a regulatory context in the case of General Medical Council v. Adeogba [2016] EWCA Civ 162. Adeogba set out the factors that the Tribunal should consider when deciding whether or not to proceed in the Respondent's absence including whether or not the Respondent had had proper notice of the hearing and whether in all the circumstances it was fair to the Respondent and the regulator to proceed in absence.
5. The Tribunal considered the guidance in Adeogba. The Respondent had been personally served. The Respondent had not applied for an adjournment. His letter of 17 June 2016 made reference to the hearing on 29 July 2016 and the Respondent not feeling mentally able to attend. The Tribunal was satisfied that the Respondent had had notice of this hearing and had voluntarily absented himself. The Tribunal considered that if it adjourned the hearing the Respondent was not likely to attend the adjourned hearing. He had not taken part in the proceedings. On that basis, the Tribunal agreed to proceed in the absence of the Respondent.

Factual Background

6. The Respondent was born in 1964. He was admitted to the Roll of Solicitors in September 2000. At the material time the Respondent carried on practice as a solicitor at G S & O Solicitors ("the Firm") in Worcestershire. The Respondent did not hold a current practising certificate.
7. The SRA received reports dated 16 and 22 June 2015 with enclosures from the Compliance Officer Legal Practice at the Firm. These reports detailed that the Respondent was an associate solicitor at the Firm from 21 July 2010 to 18 June 2015 and he predominantly dealt with private client matters. The misconduct reported occurred in connection with a number of probate/trust files. The Firm reported that the Respondent misappropriated monies from five of the Firm's clients in the sum of £13,229.27.
8. On discovering certain issues arising out of Mrs W's client matter the Firm undertook a review of the Respondent's files and suspended him pending a disciplinary hearing at the Firm. The Firm's notes of the disciplinary meeting held on 18 June 2015 included a number of admissions made by the Respondent. The notes recorded that the Respondent stated that "he had got into financial difficulties by way of pay day loans which were paid off and left him short and he could not get through the month".
9. The Respondent's employment at the Firm was terminated on 18 June 2015. Payments totalling £13,229.27 had been repaid to the clients affected. The Firm had largely made the reimbursements. The Firm reported the matter to the police.
10. On 14 August 2015 the Respondent was convicted on his own confession at Worcester Magistrates Court of one count of fraud by false representation; three counts of fraud by abuse of position and one count of theft. The convictions related to

the Respondent's conduct during his employment at the Firm. The Respondent was committed to Worcester Crown Court for sentencing.

11. At the hearing before His Honour Judge RJ Rundell ("the Judge") at Worcester Crown Court on 11 September 2015 the Respondent was sentenced to twenty months imprisonment in respect of each of the five offences with the prison terms to run concurrently. Further, in relation to the conviction for fraud by false representation, the Respondent was ordered to pay a victim surcharge of £120.
12. The sentencing remarks on 11 September 2015 included the following observations by the Judge:-

"The family solicitor is trusted by the public, by clients and by colleagues and it is important that that is the position. He is dealing with clients' money and in that respect solicitors are expected to be scrupulously honest. In acting in the way you have, you have let yourself down, your family and friends and your colleagues". (Paragraphs B and C of the Sentencing Remarks)

"Over the course of some three to four years you took money from a number of clients. I don't consider it an answer to say that detection was inevitable in due course. If you had thought that, you would not have started." (Paragraph D Sentencing Remarks)

"You took, from clients, something in the region of £13,000. In the overall scheme of things, that might be thought to be relatively modest but the loss to the firm and the impact on your firm was huge, both in financial terms, particularly having regard to the time taken to investigate your dishonesty, and in terms of the firm's reputation in the eyes of the public. For that reason I consider this case as significantly more serious than the simple theft of £13,000". (Paragraphs E and F Sentencing Remarks)

"In terms of culpability, you are high up the scale, having regard to the period concerned, the number of clients and grave breach of trust involved". (Paragraph G Sentencing Remarks)

13. On 27 October 2015, a supervisor in the employment of the Applicant's supervision department wrote to the Respondent requesting an explanation for his conduct. The Respondent did not respond to this letter and on 22 December 2015 an authorized officer of the Applicant made the decision to refer the Respondent's conduct to the Tribunal.
14. On 17 June 2016 the Respondent wrote to the Applicant. In that letter the Respondent stated "As to the allegations laid out in your letter of 27th October 2015, I admit and agree that I have breached the rules and principles referred to therein. I also agree with the information set out in the same letter in respect of my conduct whilst at (the Firm)."

Witnesses

15. None.

Findings of Fact and Law

16. 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.
17. **Allegation 1 - The Respondent had breached Principles 1, 2 and 6 of the Principles in that he had been convicted of the following criminal offences:- one count of fraud by false representation; three counts of fraud by abuse of position; and one count of theft.**

Applicant's Case

- 17.1 The Rule 5 statement set out five matters in which the Respondent misappropriated monies from the Firm's clients. In the case of Mrs W she instructed the Firm to prepare a new will and lasting power of attorney. The Respondent attended her residential address on a number of occasions. During the course of his attendances with Mrs W he received two cheques, one for £2,000.00 dated 5 September 2014 and one for £700.00 dated 9 April 2015. Both cheques were made payable to the Respondent personally. The Respondent paid these cheques into a bank account which he held jointly with his wife and retained the funds for his own purpose.
- 17.2 The Firm was instructed to administer the estate of Mrs J. In May 2015, the Respondent was given a debit card for a bank account held by the deceased together with the pin number. The Respondent failed to inform the bank of Mrs J's death, and subsequently made unauthorized withdrawals from this account, during May 2015, in the sum of £2,400.00.
- 17.3 In respect of Mr W, a partner at the Firm held a power of attorney over Mr W's financial affairs. That partner delegated authority to the Respondent to withdraw money from a bank/building society account to pay Mr W's nursing home fees. The Respondent admitted to withdrawing £7,829.27 from the account for his personal benefit.
- 17.4 The Firm was instructed to prepare a will for Miss B. On 6 August 2014 the Respondent attended Miss B's residential address to execute the will. During this meeting the Respondent received £300.00 in cash from Miss B in respect of an invoice rendered by the Firm. The Respondent failed to pay this money into the Firm's bank account until May 2015, some nine months later.
- 17.5 The Firm was also instructed to prepare a will for Mrs N. On 1 April 2015, the Respondent attended Mrs N's residential address in relation to the preparation of the will. Mrs N paid cash following an invoice rendered by the Firm. The Respondent failed to pay this money into the Firm's bank account.
- 17.6 Principle 1 of the Principles states that "You must uphold the rule of law and the proper administration of justice". Principle 2 states that "You must act with integrity". Principle 6 states that "You must behave in a way that maintains the trust the public places in you and in the provision of legal services".

- 17.7 The Respondent had pleaded guilty to the five offences he had been charged with and had received a twenty month custodial sentence in respect of each offence. Rule 15 (2) of the SDPR states that “A conviction for a criminal offence may be proved by the production of the 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.”
- 17.8 The Applicant submitted that on that basis the allegation against the Respondent was proved. The Applicant drew the Tribunal’s attention to the Sentencing Remarks of the Judge, particularly in terms of the loss to the Firm and its reputation in the eyes of the public.

The Tribunal’s Findings

- 17.9 In reaching its decision on whether or not it found the allegation proved the Tribunal did not consider the admission by the Respondent in his letter of 17 June 2016. The Tribunal had before it the Certificate of Conviction in relation to the five specified offences. There were no exceptional circumstances before the Tribunal. The Tribunal accepted the Certificate of Conviction as evidence that the Respondent was guilty of the offences in question.
- 17.10 The Tribunal found that the Respondent had breached Principle 1 of the Principles. He had not upheld the rule of law and the proper administration of justice. He had taken money from the Firm’s clients that did not belong to him.
- 17.11 In respect of the alleged breach of Principle 2, the Applicant had not referred the Tribunal to any particular definition of integrity. In Scott v Solicitors Regulation Authority [2016] EWHC 1256 (Admin) Sharp LJ endorsed the approach adopted in SRA v Chan and Ali [2015] EWHC 2659, where Davis LJ said that “As to want of integrity, there have been a number of decisions commenting on the import this word as used in various regulations. In my view, it serves no purpose to expatiate on its meaning. Want of integrity is capable of being identified as present or not, as the case may be, by an informed tribunal or court by reference to the facts of a particular case.” The Tribunal was satisfied that on the facts of this particular case the Respondent had not acted with integrity. This was a case where integrity was clearly identifiable as not being present in breach of Principle 2.
- 17.12 The Tribunal was satisfied that the Respondent had not behaved in a way that maintained the trust the public placed in him and in the provision of legal services. The Applicant had drawn the Judge’s Sentencing Remarks to the Tribunal’s attention. These made specific reference to the fact that the family solicitor is trusted by the public, by clients and by colleagues and that in behaving in the way he had the Respondent had let himself, his family friends and colleagues down. The Judge had considered the matter more serious because of the damage to the Firm’s reputation in the eyes of the public. The Respondent’s actions were in breach of Principle 6.
- 17.13 The Tribunal found the allegation proved beyond reasonable doubt.

Previous Disciplinary Matters

18. None.

Mitigation

19. The Respondent had not formally submitted any mitigation to the Tribunal. He had submitted a personal financial statement dated 25 July 2016. By way of mitigation, the Tribunal took into account the Respondent's letter of 17 June 2016 to the SRA. In that letter, the Respondent wholly and unreservedly apologized for his conduct which he understood fell far below that expected from a member of the profession. The Respondent stated that he deeply regretted any upset, embarrassment and stress caused to the profession, his former Firm and its partners and staff. He also expressed his deepest and sincere apologies to his former clients, who despite his actions, he was proud to serve and advise. The Respondent stated that he was unable to explain his conduct of the reasoning behind it. Whilst raising some health issues, the Respondent accepted that he should not be allowed to practice any longer.
20. The Respondent was unable to work and his only income was Employment Support Allowance. The Respondent had a half share in his matrimonial home which had been sold in July 2016. According to the Respondent, the Crown Court confirmed that his share of the equity from the sale of the property was £20,000.00 and they had made an order under the Proceeds of Crime Act for him to pay the sum of £14,600.00

Sanction

21. The Tribunal referred to its Guidance Note on Sanctions (4th Edition) when considering sanction.
22. The Tribunal considered that the Respondent's culpability was extremely high, right at the top end of the scale. His motivation was greed and personal gain. The misconduct was clearly planned. The Respondent acted in breach of a position of trust and the Tribunal considered this could not be worse as he had taken advantage of those wishing to make wills, the estate of someone who died and a person for whom the Firm held a power of attorney. The Respondent had direct control of and responsibility for the circumstances giving rise to the misconduct. The Respondent was a man of maturity, he had a level of experience and was well aware of what he was doing and the harm it would cause.
23. Every time a solicitor takes money that belongs to a client this has an effect on the public's trust in solicitors and harms the reputation of the legal profession. In this particular instance the Respondent had taken money in breach of a position of trust. Literally, in the three cases where the Respondent had been instructed to make wills, the person sitting in front of the clients had taken money from them. The impact of the Respondent's misconduct upon the public and the reputation of the legal profession was therefore high. The Respondent must have realized the harm his misconduct would cause or the harm that might reasonably foreseeably have been caused by his misconduct. His actions were blatant and inexplicable.

24. The Respondent had been convicted of one count of fraud by false representation, three counts of fraud by abuse of position and one count of theft. The Tribunal noted that dishonesty had not been alleged in these proceedings. However, by their nature the offences involved dishonesty. The Respondent's misconduct was deliberate, calculated and repeated. It continued over a period of time. The Respondent concealed his wrongdoing until he was found out. The Respondent knew or ought reasonably to have known that the conduct complained of was in material breach of his obligations to protect the public and the reputation of the legal profession. He had taken advantage of vulnerable people. These were all aggravating factors.
25. In considering whether there were any mitigating factors, relevant to sanction, the Tribunal took into account the following information. The Firm, rather than the Respondent, had largely made the reimbursements for the losses. The Respondent had not voluntarily notified the regulator of the facts and circumstances giving rise to the misconduct. The Firm had reported it to the Applicant. The misconduct was neither a single episode nor one of very brief duration. The misconduct did not result from deception or otherwise by a third party. There was no evidence of genuine insight by the Respondent on the basis of the facts found proved. The Respondent had made admissions as part of the disciplinary process but had not engaged with these proceedings. The Tribunal concluded that there were no mitigating factors.
26. The Tribunal considered the range of sanctions available to it commencing with No Order. However, given the seriousness of the misconduct found proved the Tribunal quickly moved through the range of sanctions including Reprimand, Fine and Suspension.
27. The Respondent had admitted and been convicted of five counts in the Criminal Court and had received a custodial sentence. His conduct was a complete departure from the required standards of a solicitor and the seriousness of the misconduct itself was very high. The Tribunal regarded the breach of the heavy obligation to safeguard client money as extremely serious. Here the Respondent had misappropriated client funds. The seriousness of the misconduct was at the highest level and the Tribunal considered that a lesser sanction than striking the Respondent's name off the Roll of Solicitors was inappropriate. There was nothing before the Tribunal by way of personal mitigation or exceptional circumstances to justify a lesser sanction. The protection of the public and the protection of the reputation of the legal profession required the Respondent to be Struck Off the Roll of Solicitors.

Costs

28. The Applicant had applied for its costs supported by a schedule totalling £4,384.60. The hearing had lasted less than the half day time estimate in that schedule and Mr Moran accepted that the time for attendance at the hearing should be reduced. The costs had been increased due to the need to personally serve the Respondent. In addition, Worcester Crown Court had been less than forthcoming in respect of the provision of some of the evidence leading to an increase in costs.
29. The Tribunal considered the Applicant's costs schedule and considered that the Respondent should pay the Applicant's costs in the sum of £4,254.60. Before finalising the amount of costs payable by the Respondent, the Tribunal took into

account the Respondent's financial statement. The Tribunal did not consider that it was appropriate, in all of the circumstances, to reduce the amount of costs and ordered that the Respondent do pay the Applicant's costs in the sum of £4,254.60.

Statement of Full Order

30. The Tribunal Ordered that the Respondent, Stephen William Climo, 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 £4,254.60.

Dated this 9th day of August 2016

On behalf of the Tribunal

R. Hegarty
Chairman