SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11543-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

OMAR MOHAMMED KHAN Respondent

Before:

Miss T. Cullen (in the chair)
Mr A. G. Gibson
Mr P. Hurley

Date of Hearing: 9 February 2017

Appearances

Mark Gibson, solicitor of 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 Allegation against the Respondent was:

1.1 By virtue of his conviction for conspiring to supply a controlled drug of Class A – Cocaine, the Respondent:

- Failed to uphold the rule of law and the proper administration of justice and therefore breached Principle 1 of the SRA Principles 2011;
- Failed to act with integrity and therefore breached Principle 2 of the SRA Principles 2011;
- Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services and therefore breached Principle 6 of the SRA Principles 2011.

In a letter to the Tribunal received on 22 September 2016, the Respondent stated he accepted the allegations.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 16 August 2016 together with attached Rule 5 Statement and all exhibits
- Applicant's Statement of Costs dated 17 January 2017
- Email dated 7 October 2016 from the Applicant to the Tribunal

Respondent:

- Letter from the Respondent to the Tribunal received on 22 September 2016

Service of Proceedings

3. The Respondent was not present at the hearing. He was currently in prison. The Tribunal considered carefully all the documents before it. The Tribunal had written to the Respondent by recorded delivery on 24 August 2016 notifying him of the date of the substantive hearing. That letter had been delivered on 25 August 2016. On 22 September 2016, the Tribunal had received a letter from the Respondent stating he would not be able to attend the hearing on 9 February 2017.

4. In the circumstances, the Tribunal was satisfied the Respondent had been properly served with notice of this hearing, indeed he had made reference to it in his letter to the Tribunal received on 22 September 2016.

Proceeding in Absence

5. Mr Gibson, on behalf of the Applicant, submitted the Tribunal should proceed with this hearing in the Respondent's absence as the Respondent had indicated, in his letter to the Tribunal received on 22 September 2016, he would not be attending. Mr Gibson reminded the Tribunal that the Tribunal office had written to the Respondent on 10 October 2016 asking him to clarify whether he wished to apply for an adjournment of the hearing on 9 February 2017. No response had been received to that letter.

6. Mr Gibson further submitted that the Applicant did not consider the Respondent's letter to the Tribunal received on 22 September 2016 to be an application for an adjournment. Mr Gibson had sent an email to the Tribunal on 7 October 2016 explaining the Applicant's position and confirming that any such application was opposed in any event.

7. The Tribunal was mindful that it should only decide to proceed in the Respondent's absence having exercised the utmost care and caution. The Respondent had written to the Tribunal in a letter received on 22 September 2016 in which he had simply stated he could not attend the hearing on 9 February 2017 as he would still be incarcerated. He had not requested an adjournment and nor had he responded to the Tribunal's letter to him dated 10 October 2016.

8. Furthermore, the Tribunal noted that in the Respondent's letter to the Tribunal received on 22 September 2016, the Respondent had provided a response to the allegations. He had stated he could not afford a legal representative and had referred the Tribunal to his written mitigation which was contained in the Applicant's documents.

9. The Tribunal was satisfied the Respondent had chosen not to attend the Tribunal hearing. There was no information as to whether the Respondent had contacted the Prison Governor to request leave to attend the hearing. The Respondent had provided his mitigation in writing which would be taken into account by the Tribunal in due course. This would ensure there was no prejudice to him.

10. The Tribunal concluded the Respondent was content to allow these proceedings to continue in his absence and indeed, noted he had indicated in his letter to the Tribunal received on 22 September 2016 that he accepted all the allegations. The Respondent had not requested an adjournment and it was unlikely he would attend on a future date if the hearing was to be adjourned.

11. This was a case involving a conviction relating to the supply of a controlled Class A drug which was a serious matter. Taking into account the circumstances of this case, the Tribunal was satisfied that it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence, and that matters should be concluded without any further delay.

Factual Background

12. The Respondent, born in 1984, was admitted to the Roll of Solicitors on 1 February 2012. He did not hold a current practising certificate.

13. On 18 March 2016, the Respondent was upon his own confession convicted on indictment at the Nottingham Crown Court of conspiring to supply a controlled drug of Class A – Cocaine.

14. On 15 April 2016, the Respondent was sentenced at the Nottingham Crown Court to three years of imprisonment and ordered to pay a victim surcharge of £120.

Witnesses

15. No witnesses gave evidence.

Findings of Fact and Law

16. The Tribunal had carefully considered all the documents provided, and the submissions of the Applicant. The Tribunal confirmed the allegation had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering the allegation.

17. **Allegation 1.1: By virtue of his conviction for conspiring to supply a controlled drug of Class A – Cocaine, the Respondent:**

- **Failed to uphold the rule of law and the proper administration of justice and therefore breached Principle 1 of the SRA Principles 2011;**
- **Failed to act with integrity and therefore breached Principle 2 of the SRA Principles 2011;**
- **Failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services and therefore breached Principle 6 of the SRA Principles 2011.**

17.1 The Tribunal had been referred to a letter from the Respondent to the Tribunal received on 22 September 2016 in which he had stated:

> "My response to the allegations put forward by the Solicitors Disciplinary Tribunal are not going to be disputed as I accept all the allegations that are against me…."

17.2 The Tribunal had before it a Certificate of Conviction from the Crown Court at Nottingham dated 29 April 2016 which confirmed that on 18 March 2016, the Respondent upon his own confession had been convicted upon indictment of "Conspire to supply a controlled drug of Class A – Cocaine". The Certificate also confirmed the Respondent had been sentenced on 15 April 2016 to three years imprisonment and to pay a victim surcharge of £120.

17.3 The Tribunal was satisfied that in light of the Respondent's conviction, he had failed to uphold the rule of law and the proper administration of justice. He had supplied a controlled drug to a third party and had thereby failed to act with integrity. The Tribunal was satisfied his conduct in doing so had not maintained the trust the public placed in him or in the legal profession as this was conduct that did not meet the standards required from solicitors. The Tribunal found the allegation proved both on the Respondent's admissions and also on the Certificate of Conviction.

Previous Disciplinary Matters

18. None.

Mitigation

19. The Respondent had provided mitigation in his letters to the SRA dated 4 June 2016 and in his letter to the Tribunal received on 22 September 2016. In the first letter dated 4 June 2016, the Respondent had explained the circumstances which had led to his conviction in some detail. He explained that he had "stupidly" started to misuse cocaine himself and had built up a drug debt to a co-defendant. This had caused him to work longer hours. The Respondent stated that he became unwell in 2015 and provided details of his ill health. As his health deteriorated, the Respondent stated he made a conscious decision to stop using cocaine in November 2015 and he informed his co-defendant of this. He stated he also told his co-defendant that he would repay any debt owed. The Respondent stated that at that time he had had two grams of cocaine in his possession and he had asked his co-defendant to collect these from him so that he could reduce his "drug debt".

20. The Respondent stated his co-defendant indicated the two grams of cocaine would be collected later. However on 19 November 2015, the Respondent stated his co-defendant telephoned him and asked him to:

> ".....drop 1 gram of the cocaine I had left to his friend who was not far from where I lived."

21. The Respondent went on to say:

> "I initially prefussely [sic], relentlessly and repeatedly refused to carry this out. However I became involved through pressure, coercion and intimidation falling short of duress to carry this out and I accept without thinking and stupidly engaged in the supply of 1 gram of cocaine to another on the 19th Nov 2015. I further accept that I engaged in the same activity on the 20th Nov 2015 I supplied the remaining 1 gram of cocaine I had left to another."

22. The Respondent stated he was disgusted and ashamed of his actions and submitted these were isolated incidents for which he was sentenced at the lowest category. The Respondent expressed his remorse and explained that the consequences of the conviction had been devastating for him, affecting both his personal life and his work.

23. The Respondent stated he was proud of his status as a solicitor, which he had worked extremely hard to achieve, having come from a humble and underprivileged background. He had initially qualified as a barrister and then subsequently as a solicitor. The only thing he had left in his life now was his career practising as a solicitor.

24. The Respondent sought not to be removed from the Roll of Solicitors as he stated this would have a devastating and crippling effect on him and his family. He submitted his actions had been stupid, careless and isolated. The Respondent requested the appropriate sanction be a fine, conditions on his practising certificate or a suspension for a period of time which would allow him to prove he had made a stupid and reckless mistake which would not be repeated.

25. In his letter to the Tribunal received on 22 September 2016, the Respondent again requested a second chance, submitting a suspension would be an appropriate sanction. He apologised for his actions and assured the Tribunal that his conduct would never be repeated.

Sanction

26. The Tribunal had considered carefully the Respondent's correspondence. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also 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.

27. The Tribunal considered the Respondent had been culpable for his actions which had caused harm to the reputation of the solicitors' profession. He had involved himself in the supply of cocaine which was illegal conduct over which he had direct control.

28. The Tribunal considered the aggravating and mitigating factors in this case. The Respondent had a criminal conviction, his actions had been deliberate and he ought reasonably to have known they were in breach of his obligations to protect the public and the reputation of the profession. These were all aggravating factors.

29. The Respondent did have a previously unblemished record and he had co-operated with the regulator, having made admissions to his behaviour both in the Crown Court and in the disciplinary proceedings. He had expressed insight, remorse and had apologised for his conduct. These were mitigating factors.

30. The Tribunal considered the remarks of the Sentencing Judge, who had concluded the Respondent's case was in many respects a tragedy. The drugs had been supplied to undercover officers and the Sentencing Judge commented the Respondent had:

> "...by your criminal behaviour and utter stupidity, thrown it all away.....
>
> .....And your rehabilitation is going to be one fraught with difficulties, given everything that you've thrown away by the commission of these offences. But the fact that you are a barrister and a solicitor, and a Master of Laws and a Batchelor of Laws does not in any way reduce your liability for

> this offending. If anything, it makes it slightly worse, because although you earned those qualifications through hard work and determination the fact that you acquired them should have acted in your case as a real deterrent to involve yourself in this sort of activity....."

31. The Tribunal considered carefully all the sanctions available to it and took into account the Respondent's mitigation. The misconduct in this case was serious and had led to a criminal conviction with a custodial sentence which led to the Tribunal concluding that it was not appropriate to make No Order or impose a Reprimand. Furthermore, the Tribunal did not consider a fine would be a sufficient sanction to reflect the seriousness of the misconduct and the damage caused to the reputation of the profession. Imposing conditions on the Respondent's practising certificate was not appropriate as it would be difficult to formulate appropriate workable conditions which would adequately address criminal misconduct.

32. The Tribunal then considered whether to impose a Suspension. The fact that the Respondent had received a custodial sentence was an indication of the gravity of his actions. The Tribunal was of the view that the Respondent's conduct which led to his conviction was so serious that it would undermine public confidence in the profession if he were to be suspended. Whilst that conduct may not be repeated in the future, there was a need to protect the reputation of the legal profession and uphold professional standards. The Tribunal concluded that the appropriate and proportionate sanction in this case, in order to maintain public confidence in the profession, was to strike the Respondent's name off the Roll. Accordingly, the Tribunal Ordered the Respondent to be struck off the Roll of Solicitors.

Costs

33. Mr Gibson, on behalf of the Applicant requested an Order for his costs and provided the Tribunal with a breakdown of those costs which came to a total of £1,932.32. He accepted some reduction would need to be made to those costs as the actual hearing had taken less time than anticipated. Further his preparation time for the hearing had been claimed at 3 hours whereas it had only taken him 1½ hours to prepare.

34. The Respondent in his letter to the Tribunal received on 22 September 2016 explained he had no income, or savings and it was likely that when he was released from prison he would be claiming state benefits.

35. The Tribunal had considered carefully the matter of costs. Some reductions needed to be made to the costs schedule as indicated by the Applicant. The Tribunal, having made deductions for the time claimed for preparation and attendance at the hearing, assessed the total costs at £1,337.32 and Ordered the Respondent to pay this amount.

36. In relation to enforcement of those costs, the Tribunal noted the Respondent was currently in prison. The Tribunal had particular regard for the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:

> "If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he

lacks the means to meet an order for costs in the sum at which they would otherwise arrive."

37. In this case the Respondent had not provided any documentary evidence of his income, expenditure, capital or assets and therefore it was difficult for the Tribunal to take a view of his financial circumstances. The Tribunal was mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay those costs in light of his current situation and the fact that he had now been deprived of his livelihood as a result of the Tribunal's Order. However, in the absence of a Statement of Means, it was not clear whether the Respondent had any assets although he had informed the Tribunal in his letter that he did not. The Respondent was relatively young and the Tribunal considered he should be able to gain some form of employment on his release from prison. The Tribunal did not therefore consider it necessary to impose any restriction on the enforcement of costs.

Statement of Full Order

38. The Tribunal Ordered that the Respondent, OMAR MOHAMMED KHAN, 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 £1,337.32.

Dated this 2nd day of March 2017
On behalf of the Tribunal

T Cullen
Chairman

Judgment filed
with the Law Society
on 07 MAR 2017