

The Respondent's Appeal against the Tribunal's decision lodged with the High Court (Administrative Court) was discontinued.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11554-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

CAROLINE JORDAN
(ALSO KNOWN AS CAROLINE JOSEPH)

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 appeared and was represented by Peter Wareing, Counsel, of Hermitage Chambers, 26 Hermitage Road, Poole, BH14 0QQ.

JUDGMENT

Allegations

1. The Allegation against the Respondent was:
 - 1.1 By virtue of her conviction on indictment of one count of being knowingly concerned in the fraudulent evasion of VAT contrary to section 72(1) of the Value Added Tax Act 1994:
 - The Respondent failed to uphold the rule of law and the proper administration of justice in breach of Principle 1 of the SRA Principles 2011; and/or
 - The Respondent failed to act with integrity in breach of Principle 2 of the SRA Principles 2011; and/or
 - The Respondent failed to behave in a way that maintained the trust the public placed in her and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011.

Documents

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

Applicant:

- Application dated 14 September 2016 together with attached Rule 5 Statement and all exhibits
- Applicant's Supplementary Bundle which included the Respondent's documents
- Statement of Nigel Walker, Process Server, dated 15 November 2016
- Bankruptcy Search dated 10 January 2017

Respondent:

- Letter dated 21 January 2017 from Jobcentre Plus to the Respondent

Factual Background

3. The Respondent, born in February 1972, was admitted to the Roll of Solicitors on 15 June 2001. She did not hold a current practising certificate.
4. At all material times the Respondent practised as a partner at Hanover Solicitors, 14 Basil Street, Knightsbridge, London, SW3 1AJ ("the firm").
5. On 3 November 2015, the Respondent was convicted upon her own confession at the Kingston-Upon-Thames Crown Court of one count of being knowingly concerned in the fraudulent evasion of duty contrary to Section 72(1) Value Added Tax Act 1994.

6. On 12 February 2016, the Respondent was sentenced at the Kingston-Upon-Thames Crown Court to 21 months imprisonment suspended for 24 months and she was required to carry out unpaid work for 240 hours before 11 August 2017. She was also ordered to pay £1,500 towards the prosecution costs within 2 months.
7. The conviction followed an investigation by HM Revenue and Customs (“HMRC”) which found the Respondent had charged the firm’s clients for VAT but retained those sums which were due to HMRC.

Witnesses

8. The following witnesses gave evidence:
 - The Respondent, Caroline Jordan

Findings of Fact and Law

9. The Tribunal had carefully considered all the documents provided, the Respondent’s evidence and the submissions of both parties. 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.
10. **Allegation 1.1: By virtue of her conviction on indictment of one count of being knowingly concerned in the fraudulent evasion of VAT contrary to section 72(1) of the Value Added Tax Act 1994:**
 - **The Respondent failed to uphold the rule of law and the proper administration of justice in breach of Principle 1 of the SRA Principles 2011; and/or**
 - **The Respondent failed to act with integrity in breach of Principle 2 of the SRA Principles 2011; and/or**
 - **The Respondent failed to behave in a way that maintained the trust the public placed in her and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011.**
- 10.1 Mr Gibson, on behalf of the Applicant, referred the Tribunal to the remarks of the Sentencing Judge which provided the background to the conviction. Between 1 August 2007 and 31 March 2013, over a period of 5½ years, the Respondent had been knowingly concerned in the fraudulent evasion of VAT in respect of tax from Hanover Property Lawyers, later trading as the firm, Hanover Solicitors. As a result, she had received benefits to which she was not entitled of over £90,000. The Sentencing Judge had stated:

“The Crown has accepted that you were not fraudulent from the outset, but that there came a point in time when you knowingly perpetrated fraud and you did so over a significant period of time.”

- 10.2 Mr Gibson submitted the Respondent had not appealed the conviction or the sentence. He submitted that whilst dishonesty was not alleged, fraudulent evasion of VAT was a dishonest act and was conduct which breached Principles 1, 2 and 6 of the SRA Principles 2011.
- 10.3 The Respondent gave evidence before the Tribunal. She stated Hanover Property Lawyers carried out conveyancing work and she had employed a paralegal to assist with this due to the volume of work. However there had been a number of complaints about the paralegal and this had led to the firm being placed on a solicitors blacklist on a notorious website. The Respondent, whose background was in personal injury work, was concerned about the firm's reputation and the adverse publicity received so she decided to change the name of the practice to Hanover Solicitors which would also allow her to deal with other areas of practice.
- 10.4 The Respondent stated she had spoken to HMRC to explain her practice was changing name and request the same VAT number be transferred to the new firm. She stated she was told to complete a form confirming the practice was still trading, which she did. The Respondent stated she had called HMRC twice and received conflicting advice. She was told by one person that a new VAT number would be required for the new firm, whereas another person stated the same VAT number could be used.
- 10.5 The Respondent stated she had engaged an accountant, KL, at the time to deal with matters for her but their relationship broke down and they were "at loggerheads". She wanted to change accountants but could not afford to pay the fees of her existing accountant. The Respondent stated KL had told her he could deal with solicitors' accounts and that he was an ex-employee of HMRC. He had assured her he would "sort it all out". The Respondent thought he had been a qualified accountant but it transpired he was not. She stated she "gave everything" to KL and told him to let her know "how much I owe". The Respondent stated:
- "I was never 100% sure what the situation would be."
- 10.6 When KL informed her of the amount she needed to pay, the Respondent did not have the money and requested him to organise a payment plan for her. During this period the Respondent stated she was suffering from various personal and health issues and referred the Tribunal to copies of her medical records. The Respondent stated the effect of her ill health had clouded her judgment and she had passed a lot of her work to an unqualified person to carry out. She stated she was not aware that VAT needed to be paid as the practice was not registered. She had been juggling clients with managing her personal problems. The Respondent stated she had wanted to defend the criminal charge against her, but after discussing matters with her family and being informed "it was a test of strict liability" which would be heard by a jury, she pleaded guilty to the offence.
- 10.7 The Respondent said she realised that she had ultimate responsibility and the VAT had to be paid back. She had sold a property to raise funds to do so. The Respondent stated she had expected a payment plan to be put in place by KL but no such plan was produced either by him or by HMRC. Once he had advised her to register and pay VAT she had done so but she had still owed "the back VAT".

- 10.8 On cross-examination, the Respondent stated she was not involved in billing or the administrative side of the practice as she had someone else doing this work for her. She stated she did not even know if VAT was mentioned on the bills. She stated she was not producing bills herself and did not pay any attention to them until KL told her there was an issue. She could not recall how many bills had been sent and stated she did not pay any attention to what was on the actual bills as she was focusing on completion statements. The Respondent made reference to “an audit by the SRA” which had not raised any concerns. The Respondent accepted she had not written to HMRC over the 5½ year period concerning the VAT and stated she had left it to KL to sort out.
- 10.9 The Respondent could not recall the precise date she had engaged the services of KL but thought it was in 2011/2012. She stated she only became aware that VAT was payable after he started working for her. She accepted she had not paid any VAT until 2013 and that all outstanding VAT had been repaid by November 2015, which was two months before her Crown Court hearing. The Respondent stated that from 2011 until November 2015 she had been trying to sell a property in order to pay the outstanding VAT but had been unable to do so due to the recession. Her intention had been to pay a “bulk sum”. She had been unable to re-mortgage the property and stated that as soon as the property was sold she repaid £30,000 to HMRC. The Respondent stated she had another property which she managed to sell when the property market improved and she paid off more of the VAT from that. The Respondent stated that if a payment plan had been put in place, the repayments would have been sorted much sooner.
- 10.10 The Respondent accepted she had not run her firm in accordance with the law. On questioning from the Tribunal the Respondent stated she did not know whether VAT was being charged on the firm’s bills or not.
- 10.11 Mr Wareing, on behalf of the Respondent, submitted the Respondent was not a fundamentally dishonest woman. She had always intended to repay the VAT and had expected a payment plan to be put in place. She had put properties on the market and eventually sold them. Mr Wareing pointed out the Respondent had a partner at the firm and that partner continued to practise whilst only the Respondent had been pursued by the Crown Prosecution Service and the SRA. Mr Wareing submitted the Respondent had “inadvertently tripped on the skirts of propriety” and that she had not acted with a lack of integrity. She had tried to do the right thing by setting up a payment plan and she did eventually repay all the VAT, even though the liability for it fell on both partners of the firm.
- 10.12 Mr Wareing submitted this had been an offence of strict liability where VAT payable had not been paid. He submitted the only crime the Respondent had committed was to take her eye off the ball. She had not known VAT was outstanding and the Tribunal was reminded she had had personal issues as well as health problems over a long period at that time.
- 10.13 The Tribunal considered carefully the documents before it, the Respondent’s evidence and the submissions of both parties. Rule 15(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 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.”

10.14 As such, the Tribunal would not, and could not, go behind the Certificate of Conviction from the Kingston-Upon-Thames Crown Court dated 9 March 2016. That Certificate confirmed that on 3 November 2015, the Respondent upon her own confession had been convicted upon indictment of:

“Count 1 – Being knowingly concerned in the fraudulent evasion of duty Contrary to Section 72(1) Value Added Tax Act 1994.”

The Certificate also confirmed the Respondent had been sentenced on 12 February 2016 to 21 months imprisonment suspended for 24 months and she had to carry out unpaid work for 240 hours before 11 August 2017. In addition she was ordered to pay a contribution towards the prosecution costs of £1,500. The Tribunal accepted the Certificate of Conviction as conclusive evidence that the Respondent had been convicted as set out.

10.15 The Respondent had given evidence before the Tribunal but the Tribunal did not find her to be a wholly credible witness. Notwithstanding her health and personal problems, the Tribunal found it difficult to believe her explanation that she was not involved with the billing at the firm and did not know whether VAT was mentioned on bills of costs sent to clients. Nor did the Tribunal believe her explanation that she had not paid any attention to the firm’s bills of costs. This was an integral part of any solicitors practice enabling partners to establish the level of income coming into the firm and it was not credible that she paid no attention to those bills.

10.16 The Tribunal was satisfied that in light of the Respondent’s conviction, evidenced by the Certificate of Conviction, she had failed to uphold the rule of law and the proper administration of justice. If the Respondent had paid her VAT as required by the law, she would not have been convicted. She had accepted on cross-examination that she had failed to run her firm in accordance with the law. The Tribunal was satisfied the Respondent had breached Principle 1 of the SRA Principles 2011.

10.17 In relation to the breach of Principle 2 of the SRA Principles 2011, the Tribunal was satisfied that a person acting with integrity would not have become knowingly involved in the fraudulent evasion of VAT. Furthermore, a partner in a solicitor’s firm should know whether or not that firm is liable for paying VAT. The Tribunal did not accept the Respondent’s evidence that she did not know this. Furthermore, the conviction specifically involved knowledge on the part of the Respondent. The Tribunal took into account the remarks of the Sentencing Judge who had stated that whilst the Crown Prosecution Service accepted the Respondent had not been fraudulent from the outset, there had come a point in time when she had knowingly perpetrated fraud over a significant period of time. The Tribunal concluded the Respondent had breached Principle 2 and had acted with a lack of integrity.

- 10.18 The Tribunal had been provided with a copy of number of newspaper articles publicising the Respondent's conviction which made specific reference to her position as a solicitor. These articles were indicative of the public interest in the Respondent's conviction and the public dismay of her behaviour. It was quite clear from those articles that the Respondent's conduct had not maintained the trust the public placed in her or in the provision of legal services. Furthermore, the Tribunal was satisfied that being convicted of an offence involving the fraudulent evasion of VAT did damage the trust the public would place in the Respondent and in the provision of legal services. The Respondent had breached Principle 6 of the SRA Principles 2011. The Tribunal found the allegation proved in full.

Previous Disciplinary Matters

11. None.

Mitigation

12. Much of the Respondent's mitigation had been provided during the course of her evidence and the submissions made by Mr Wareing. The Tribunal was asked to take into account the Respondent's medical issues at the material time and also bear in mind that her partner at the practice had not had any action taken against her. Mr Wareing submitted it would not be fair if the Respondent was the only partner in a two partner firm who was held responsible for the non-payment of VAT.
13. Mr Wareing submitted the ultimate sanction should be reserved for those who had been intentionally dishonest and that in this case the appropriate sanction would be to suspend the Respondent for a brief period of time.

Sanction

14. The Tribunal had considered carefully the Respondent's evidence and submissions. 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 her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
15. The Tribunal bore in mind the Respondent had gained a substantial benefit from the evasion of VAT as she had received the funds and not paid them to HMRC when she should have done. She was an experienced solicitor, having been qualified for over 15 years, and was entirely culpable for her actions which had caused harm to the public purse, as the VAT was not paid when it was due, as well as harm to the reputation of the solicitors' profession.
16. The Tribunal considered the aggravating and mitigating factors in this case. The Respondent had a criminal conviction which by its nature involved fraud, her actions had been repeated over a long period of time and she ought reasonably to have known they were in breach of her obligations to protect the public and the reputation of the profession. The Respondent had not shown any insight and in fact had exhibited a disinclination to take responsibility for her actions instead blaming others and the lack

of a payment plan for the circumstances she found herself in. These were all aggravating factors.

17. The Respondent did have a previously unblemished record and she had made good the losses by repaying all the VAT due, albeit many years after it should have been paid. These were mitigating factors.
18. The Respondent had asked the Tribunal to take into account her ill health and personal circumstances at the time and whilst the Tribunal accepted the Respondent had some difficulties, it also noted these had all been referred to in the pre-sentencing report and had been taken into account by the Sentencing Judge. In relation to her submissions about being held solely responsible for the failure to pay VAT while her former partner continued to practise freely, that was not a matter the Tribunal could concern itself with as it was an issue for the regulator.
19. The Tribunal considered the remarks of the Sentencing Judge, who had stated:

“By reason of your frauds, you received benefits to which you were not entitled of over £90,000. The integrity of the VAT system depends upon the honesty of those registered for VAT and you cheated the system.

VAT fraud is serious and costs the UK millions annually. Whilst there is no individual victim as such, VAT fraud has an impact on communities and tax payers by reducing the amount of public monies available.

Further, VAT fraud is difficult to uncover and costly to investigate and prosecute. You perpetrated fraud over a long period of time. At the very least, for part of the time knowing full well the harm you were causing and knowing full well that harm when [sic] beyond the financial consequences of your fraud....”
20. The Tribunal considered carefully all the sanctions available to it. The misconduct in this case was serious and had led to a criminal conviction with a suspended custodial sentence which led the Tribunal to conclude that it was not appropriate to make No Order or impose a Reprimand. Neither did the Tribunal 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.
21. 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 whilst also reflect the serious nature of the conviction.
22. The Tribunal then considered whether to impose a Suspension. The Tribunal took into account the case of Bolton v The Law Society [1994] 1 WLR 512 and the comments of Sir Thomas Bingham MR who had stated:

“It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness... Any solicitor who is shown to have discharged his professional duties with

anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal....”

23. It was a very serious matter for a solicitor to be convicted of fraud and the Tribunal took into account the VAT had not been paid over a 5½ year period which was a long period. The Tribunal had not found the Respondent to be a credible witness and found it difficult to believe that her conduct had not been deliberate. The Respondent had not shown any genuine insight and had still not accepted responsibility for her actions, continuing to blame others and the lack of a payment plan. In light of this, the Tribunal was satisfied that a suspension was not a sufficient sanction to reflect the seriousness of the misconduct, or to protect the public and the reputation of the legal profession.
24. The Tribunal concluded that the appropriate and proportionate sanction in this case, in order to protect the public and the reputation of the profession, was to strike the Respondent’s name off the Roll. Trust was a fundamental tenet of the solicitors’ profession and it would not be acceptable for a solicitor convicted of the fraudulent evasion of VAT to be allowed to continue to practise. Accordingly, the Tribunal Ordered the Respondent be struck off the Roll of Solicitors.

Costs

25. Mr Gibson, on behalf of the Applicant requested an Order for his costs in the sum of £3,582.36 and provided the Tribunal with a breakdown of those costs. The Respondent had been declared bankrupt on 15 June 2016. Mr Gibson submitted that because these proceedings had been issued after the date of her bankruptcy, any Order for costs would not fall into the bankruptcy debts. Mr Gibson submitted this was a matter for the SRA to deal with at the appropriate time and there should be no restriction on the enforcement of costs. He accepted the Respondent was currently receiving state benefits and did not own any property.
26. The Respondent provided the Tribunal with evidence that she was receiving state benefits.
27. The Tribunal had considered carefully the matter of costs and was satisfied the costs claimed were reasonable, particularly in light of the difficulties relating to the service of proceedings which had required personal service to be effected on the Respondent. The Tribunal Ordered the Respondent pay the Applicant’s costs in the sum of £3,582.36.
28. 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. The Tribunal noted the Respondent was currently declared bankrupt and receiving state benefits. She was due to be discharged from bankruptcy in June 2017. The Tribunal was of the view that the Respondent was relatively young and should be able to gain some form of alternative employment notwithstanding her health issues. The Tribunal did not therefore consider it necessary to impose any restriction on the enforcement of costs.

Statement of Full Order

29. The Tribunal Ordered that the Respondent, CAROLINE JORDAN (also known as CAROLINE JOSEPH), solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,582.36.

Dated this 2nd day of March 2016

On behalf of the Tribunal

T. Cullen
Chairman