

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11758-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

STEPHEN CHARLES PICKARD

Respondent

Before:

Ms T. Cullen (in the chair)

Mr B. Forde

Mrs L. Barnett

Date of Hearing: 20 February 2018

Appearances

Jonathan Leigh, solicitor, employed by the 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 allegations against the Respondent made by the Solicitors Regulation Authority (“SRA”) were that on 1 November 2016 he was convicted upon indictment of:
 - (a) Dishonestly making a false representation to make gain for self/another or cause loss to other/expose other to risk (x3); and
 - (b) Conceal/disguise/convert/transfer/removed criminal property

And thereby failed to:

 - 1.1 uphold the rule of law and the proper administration of justice in breach of Principle 1 of the SRA Principles 2011 (“the Principles”); and/or
 - 1.2 act with integrity in breach of Principle 2 of the Principles; and or
 - 1.3 behave in a way that maintains the trust the public places in him and in the provision of legal services in breach of Principle 6 of the Principles.

Documents

2. The Tribunal reviewed all the documents submitted by the parties, which included:
 - Notice of Application dated 1 December 2017
 - Rule 5 Statement and Exhibit JRL1 dated 1 December 2017
 - Applicant’s Schedule of Costs dated 12 February 2018

Preliminary Matter

3. The Respondent did not attend and was not represented. Mr Leigh submitted that he had been represented in these proceedings. Ms Proctor (the Respondent’s solicitor in his criminal proceedings) had confirmed in correspondence that the Respondent was aware of the proceedings and did not dispute the matters.
4. On 2 February 2018, Ms Proctor emailed the Tribunal in the following terms:

“[The Respondent] is a currently serving prisoner (sic), he does not wish to make any representations at the tribunal and does not seek to challenge the findings proposed. This is not a matter for which [the Respondent] can secure public funding and he is currently in the process of POCA proceedings. I am not in a position to make formal representations at any tribunal.

Can you I ask (sic) that the matter is simply dealt with in our absence?”
5. Mr Leigh applied for the case to proceed in the Respondent’s absence, pursuant to Rule 16(2) of the Solicitors (Disciplinary proceedings) Rules 2007 (“SDPR”), which provided that:

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

6. Mr Leigh submitted that it was clear from the email of 2 February 2018 that the Respondent did not intend to attend the proceedings and did not object to the matter proceeding in his absence.

The Tribunal’s Decision

7. The Tribunal found that the Respondent had been properly served with the proceedings and notice of the hearing. He was aware of the proceedings and could have attended by way of video-link, notwithstanding his incarceration. The email from Ms Proctor of 2 February 2018 requested that the matter proceed in his absence. The Tribunal was satisfied that in this instance the Respondent had chosen voluntarily to absent himself from the hearing. It was in the public interest and in the interests of justice that this case should be heard and determined as promptly as possible, given the serious nature of the allegations and the underlying facts. There was nothing to indicate that the Respondent would attend if the case were adjourned. In light of these circumstances, it was just to proceed with the case, notwithstanding the Respondent’s absence.

Factual Background

8. The Respondent was born in 1959 and admitted to the Roll of Solicitors in February 1986. He did not hold a current practising certificate.
9. The certificate of conviction provided by Leeds Crown Court showed that the Respondent was convicted on 1 November 2016 of the matters detailed at 1(a) and (b) above. He was sentenced on 10 November 2016 to a total of 8 years’ imprisonment.
10. During his sentencing remarks HHJ Kearn QC found that the Respondent had used his profession to fend off enquiries from disappointed investors who were seeking their money back, and that one of the fraud victims trusted the Respondent’s status as a solicitor. HHJ Kearn QC also found that the Respondent, together with others, had put together a scheme to convince investors to pay money so that it could be invested into a Ponzi Private Placement Programme fraud (“PPP”). The PPP “was all lies, the scheme never existed ... [the Respondent] knew this was being offered.” As regards his role in relation to one of the schemes, HHJ Kearn QC determined that the Respondent was “there in order to let people know that it was genuine and a good investment. In order to do that you lent your professional name and that of your solicitors firm at the time ... to the scheme, providing due diligence and your personal friendship [with the main defendant] as a confidence building incentive for people who were interested in the investment”. The Respondent had also lied about the length of time he had known the main defendant and how many successful deals had been done. The Respondent was said to have “provided respectability through your then solicitors firm whose name you have dragged through the mire. You were essential to the scheme also in order to claim to provide full and proper due diligence

and to give a history to the trading ... without this [various schemes] could not have worked”.

11. HHJ Kearn QC determined that of the four defendants, the Respondent was the second most responsible as he was the “right-hand man” and “lieutenant” of the main defendant, by whom he was paid. The Respondent had high culpability because of his position as a solicitor and the sustained length of the fraud as well as other factors. When considering the mitigation advanced on behalf of the Respondent, HHJ Kearn QC remarked: “Of course you cannot go back into being a solicitor given these convictions.”

Witnesses

12. None.

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 - On 1 November 2016 the Respondent was convicted upon indictment of (a) Dishonestly making a false representation to make gain for self/another or cause loss to other/expose other to risk (x3); and (b) Conceal/disguise/convert/removed criminal property. He thereby failed to:**
 - 1.1 **uphold the rule of law and the proper administration of justice in breach of Principle 1 of the Principles; and/or:**
 - 1.2 **act with integrity in breach of Principle 2 of the Principles; and or:**
 - 1.3 **behave in a way that maintains the trust the public places in him and in the provision of legal services in breach of Principle 6 of the Principles.**
- 14.1 Mr Leigh submitted that the professional obligation of a solicitor to uphold the rule of law and the proper administration of justice required them, amongst other things, to abstain from criminal behaviour at all times. The Respondent had been convicted of serious criminal offences, including dishonesty. A solicitor acting with integrity would not engage in the criminal activity of which the Respondent was convicted. The Respondent could properly be said to have lacked moral soundness, rectitude and steady adherence to an ethical code. His conviction undermined the reputation of the profession and thus also undermined the trust the public placed in solicitors and the provision of legal services. The Respondent’s criminal activity was publicised locally, nationally and internationally. That publicity included the use by the Respondent of his status as a solicitor in perpetrating the frauds. Mr Leigh submitted that the Respondent’s conduct was in clear breach of Principles 1, 2 and 6 as alleged.

- 14.2 In an email dated 18 January 2018 sent to the SRA from Ms Proctor, it was stated that, amongst other things: “I visited [the Respondent] yesterday in custody and discussed with him the SDT paperwork. He does not wish to contest the action and accepts the case against him.”
- 14.3 Further, in the 2 February 2018 email to the Tribunal, Ms Proctor stated that “[the Respondent] does not wish to make any representations at the tribunal and does not seek to challenge the findings proposed.”
- 14.4 The Tribunal accepted those emails as confirmation that the Respondent did not dispute the allegations or the facts in this matter.
- 14.5 The Tribunal had due regard to Rule 15(2) of the SDPR which stated that:
- “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.”
- 14.6 A certified copy of the certificate of conviction was provided by Leeds Crown Court dated 27 February 2017. The Tribunal determined that the findings of fact upon which those convictions were based were admissible as conclusive proof of those facts pursuant to Rule 15(2). There were no exceptional circumstances such that those findings should not be admitted.
- 14.7 The Tribunal found that having been convicted of the matters detailed in paragraph 1(a) and (b) above, it was evident that the Respondent had failed to uphold the rule of law and the proper administration of justice in breach of Principle 1. No solicitor acting with integrity would knowingly encourage members of the public to invest in schemes that were fraudulent, nor would they advertise their status as a solicitor to assist in the commission of criminal offences. By doing so the Respondent had failed to act with integrity and had diminished the trust the public placed in him as a solicitor and in the provision of legal services. The Tribunal noted that the fraudulent schemes involved substantial sums of money, and that many members of the public had lost significant amounts of money and faced personal misery and financial ruin.
- 14.8 Accordingly, the Tribunal found allegations 1.1, 1.2 and 1.3 proved beyond reasonable doubt.

Previous Disciplinary Matters

15. None.

Mitigation

16. None.

Sanction

17. The Tribunal had regard to the Guidance Note on Sanctions (December 2016). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.
18. The Tribunal found that the Respondent's misconduct had been motivated by his greed and desire for personal financial gain. He had been a willing participant in the commission of criminal offences which involved defrauding members of the public out of large amounts of money. His actions were planned and were in direct breach of his position as a trusted solicitor. He was in direct control of his actions and was fully responsible for his misconduct. The Tribunal determined that the Respondent was entirely responsible for his misconduct, which it assessed as being extremely serious.
19. The Respondent had caused significant harm both to the reputation of the profession and to members of the public. The Tribunal accepted the observations of HHJ Kearn QC, namely that the Respondent's participation in the fraudulent schemes had "left people suffering from stress-related illnesses, anxiety, clinical depression, feeling suicidal, having to change their lifestyles, worrying about their houses and some selling their homes". His misconduct had been hugely impactful on those members of the public that had been the victims of the fraudulent schemes. Further, the matter had been reported locally, nationally and internationally. Headlines such as "Another lawyer helps fraudsters by giving credibility to their scam" undoubtedly harmed the reputation of the profession. The Tribunal determined that the Respondent's misconduct had caused colossal harm to members of the public and the reputation of the profession.
20. His misconduct was aggravated by his commission of, and conviction for criminal offences which included dishonesty and resulted in a total custodial sentence of 8 years. His misconduct was deliberate, calculated and repeated and continued over a period of time. The Tribunal determined that the Respondent knew that his actions were in material breach of his obligation to protect the public and the reputation of the profession.
21. Having regard to the seriousness of the misconduct and the risk to the public and the reputation of the profession, the Tribunal considered that the Respondent should be removed from practice immediately; any lesser sanction would be inappropriate and would not reflect the seriousness of his misconduct. Whilst dishonesty had not been alleged, the Respondent had been convicted of offences involving dishonesty. He had lent his name to fraudulent schemes to give them credence. He had actively participated in those frauds. Such a solicitor could not stay on the Roll. Indeed, that had been the view of HHJ Kearn QC who stated that: "Of course you cannot go back into being a solicitor given these convictions." The Tribunal determined that the only proportionate and appropriate sanction in all the circumstances was to strike the Respondent off the Roll.

Costs

22. Mr Leigh applied for costs in the sum of £2,439.60. This reflected a reduction of £130 due to the shortened hearing time. The Respondent had failed to submit any evidence in relation to his means, and no submissions were made as regards the quantum of costs, or the Respondent's ability to pay. The Tribunal considered that the costs claimed were reasonable and proportionate, and ordered that costs be paid in the amount claimed.

Statement of Full Order

23. The Tribunal ORDERED that the Respondent, STEPHEN CHARLES PICKARD, 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 £2,439.60.

Dated this 22nd day of February 2018

On behalf of the Tribunal



T. Cullen
Chair

Judgment filed
with the Law Society
on 23 FEB 2018