

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11787-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

AZHAR ISLAM KHAN

Respondent

Before:

Mr J. P. Davies (in the chair)

Mrs A. Kellett

Mrs N. Chavda

Date of Hearing: 30 October 2018

Appearances

Inderjit Johal, barrister, employed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent represented himself.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority (“SRA”) were that on 31 January 2017 he was convicted of cheating the public revenue and of two counts of being knowingly concerned in fraudulent evasion of tax 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 13 February 2018
 - Rule 5 Statement and Exhibit JRL1 dated 13 February 2018
 - Respondent’s Answer to the Rule 5 Statement (undated) and supporting documents
 - Applicant’s Schedule of Costs dated 23 October 2018

Preliminary Matters

Respondent’s Application to Adjourn the Substantive Hearing

3. In an application dated 14 October 2018, the Respondent applied to vacate the substantive hearing listed on 30 October 2018 on the basis that he had applied to the Court of Appeal for permission to appeal against his conviction out of time. The application was still awaiting consideration. As the allegations he faced were based on his conviction, the hearing should be adjourned until after the determination by the Court of Appeal.
4. The Applicant opposed the application. The Respondent was convicted in January 2017. The application had been with the Court of Appeal for 5 months with no timeline as to when it would be considered. Further, should the Respondent be successful in his appeal, Rule 21(5) of the Solicitors (Disciplinary Proceedings) Rules 2007 (“SDPR”) provided the procedure for the revocation of a finding based on a criminal conviction that was subsequently quashed. The Respondent had indicated that if his appeal to the single Judge was unsuccessful, he intended to renew his appeal to the full court. It was submitted that it was in the public interest for these matters to be decided now rather than adjourning the hearing for an indefinite period.
5. The Tribunal considered the application on the papers. The Tribunal noted that the application for permission to appeal out of time had not been filed by the Respondent until some 16 months after his conviction. Rule 21(5) of the SDPR was created to cover the situation that the Respondent faced. The Tribunal determined that the

Respondent had provided no compelling reasons to adjourn the hearing given the protection afforded to him by Rule 21(5) of the SDPR. Accordingly the application to adjourn was refused.

6. On the morning of the hearing the Respondent renewed his application on the same grounds. The Applicant opposed the application for the reasons detailed above. The Tribunal was satisfied that the Respondent had provided no new or additional reasons for the application. Accordingly, the oral application to adjourn was refused.

Application to Adduce Additional Evidence

7. The Respondent applied to adduce additional evidence. The Applicant did not object as the additional evidence upon which the Respondent sought to rely did not introduce any new evidence. The Tribunal determined that in the circumstances it was in the interests of justice to allow the Respondent to rely on the additional evidence. Accordingly, the application was granted.

Factual Background

8. The Respondent was born in 1971 and was admitted to the Roll of Solicitors in October 2001. He was the Principal and owner of his firm City Law Solicitors (and City Law Solicitors Ltd) (“the Firm”) from May 2005 to October 2016.
9. On 31 January 2017, the Respondent was convicted at Harrow Crown Court of one offence of cheating the public revenue and two offences of knowingly being involved in the fraudulent evasion of tax. The offence of cheating the public revenue arose from the Respondent's failure to declare his income from his Firm. The offences of knowingly being involved in the fraudulent evasion of tax related to his failure to declare income from two rental properties.
10. On 24 February 2017 he received a total sentence of 18 months imprisonment and was disqualified under Section 2 of the Directors Disqualification Act 1984 for a period of 4 years, such Order to take effect from 17 March 2017.
11. Following a successful appeal of his sentence on 9 May 2017, the total sentence was reduced from 18 months to 9 months imprisonment.

Witnesses

12. The following witness gave oral evidence:
 - Ashar Islam Khan – Respondent
13. The written and oral evidence of the witness is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

14. 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. The Tribunal considered all the evidence before it, both written and oral together with the submissions of both parties.
15. **Allegation 1 - On 31 January 2017 he was convicted of cheating the public revenue and of two counts of being knowingly concerned in fraudulent evasion of tax and thereby failed to: uphold the rule of law and the proper administration of justice in breach of Principle 1 of the Principles and/or act with integrity in breach of Principle 2 of the Principles; and/or 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.**

Applicant's Submissions

- 15.1 The Applicant relied on the certified Certificate of Conviction from Harrow Crown Court which confirmed that the Respondent was convicted of the matters detailed above. Cheating the public revenue and evading tax were both offences involving fraud.
- 15.2 HHJ Anderson when sentencing the Respondent for the offence of cheating the public revenue stated that he was sure that the Respondent was prone to "quite deliberate and wrongful instances where you recorded personal expenditure as business expenses..." As regards the offences of evading tax, HHJ Anderson stated that it was "of course quite clear that [the Respondent] knew full well at all times that [he] had responsibility for accounting for the rents received from [his] properties..."
- 15.3 The Respondent's conviction for serious criminal offences involving fraudulently evading legal requirements to pay tax was clearly in breach of Principle 1 which required that he abstain from criminal behaviour at all times. A solicitor acting with integrity would not engage in serious criminal activity. In so doing the Respondent could properly be said to lack moral soundness, rectitude and steady adherence to an ethical code. Such conduct diminished the trust the public placed in him and in the provision of legal services. The nature of the offences of which the Respondent was convicted were such as to undermine public trust. It was clear throughout the trial that the Respondent was a solicitor.
- 15.4 Mr Johal referred the Tribunal to Rule 15(2) of the SDPR which states:
- "A conviction for a criminal offence may be proved by the production of a certified copy of the certificate of conviction relating to that 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".

15.5 The Tribunal was referred to Smith v Linskill (a Firm) [1996] 2 All ER 353 where Sir Thomas Bingham the then Master of the Rolls observed when considering the possibility of a wrongful conviction that “by giving a criminal defendant a right of appeal; by providing a relatively low standard of proof the admission of fresh evidence on appeal; by empowering the appellate court to order a new trial ...” the defendant was afforded protection from a wrongful conviction. In Shepherd v Law Society [1996] EWCA Civ 977 Lord Taylor who cited Bingham MR stated:

“Public policy requires that, save in exceptional circumstances, a challenge to a criminal conviction should not be entertained by a Disciplinary Tribunal for the reasons [detailed by Bingham MR] ...”

15.6 Mr Johal submitted that Shepherd made clear that the Respondent would need to provide significant fresh evidence or other exceptional circumstances in order to go behind his conviction. No additional fresh evidence had been identified. The “malicious pursuit” of him by the police and the mala fides that he attributed to the police and the Applicant were not circumstances that would allow the Tribunal to disregard the Respondent’s convictions. The Tribunal ought to rely on the conviction when considering the allegations.

Respondent’s Submissions

15.7 The Respondent accepted that he had been convicted of the offences detailed in the Certificate of Conviction. He explained that there was a history to his conviction which involved constant pursuit of him by the police. From 2009 the police had tried constantly to put him out of business and tried to obtain convictions against him. They had resorted to trying to induce him into committing criminal offences but had been unsuccessful. Having been charged with perverting the course of justice, the Respondent applied for that matter against him to be discharged as there was no case to answer. That application was successful. In 2015 he was prosecuted for mortgage fraud. He was acquitted after trial. The Respondent submitted that it was important to note that other solicitors and barristers involved were not charged, but were prosecution witnesses.

15.8 The Respondent submitted that he had been targeted by the police who were working with the Applicant. He had provided documents to the Applicant only to find those documents served by the police. This, it was submitted, was evidence of collusion between the police and the SRA. The circumstances surrounding his investigation and conviction were exceptional and should be taken into account by the Tribunal when considering the allegations he faced. They were not separate instances but a continuous targeting of the Respondent with all investigations led by the same DC.

15.9 Further, the Respondent had been granted core participant status in the Undercover Policing Inquiry in the miscarriage of justice category.

15.10 The Respondent denied that he had acted in breach of the Principles as alleged or at all. He had been a solicitor since 2001 and at no stage had he acted without integrity. Whilst the public may be aware of his conviction, that knowledge did not bring the profession into disrepute, nor did it diminish trust in him or in the profession.

The Tribunal's Findings

- 15.11 The Tribunal noted that the Respondent did not dispute the fact of his conviction or the accuracy of the Certificate of Conviction; it was his case that the conviction was unsafe. The Tribunal noted that the Respondent, in his grounds of appeal, referred to evidence that was not before the Court. When asked by the Tribunal to clarify the status of that evidence, the Respondent explained that the evidence and witnesses had been available to give evidence at the time of his trial but did not do so on the advice of his then legal team. He was also prepared to give evidence at his trial but did not do so on legal advice.
- 15.12 During his evidence, the Respondent confirmed that there was no entrapment by officers, undercover or otherwise in relation to the conviction. He explained that having failed to obtain a successful conviction on other matters they “got me” on something else. The attitude of the police was that they needed “to get this over the line somehow or other”. The Tribunal noted that the Respondent did not suggest that officers had fabricated any evidence as regards his conviction. Nor had he served or provided any of the evidence which he submitted rendered his conviction unsafe as “this was a matter for the Court of Appeal to decide”.
- 15.13 Having considered all the evidence provided by the Respondent both oral and written, the Tribunal was not persuaded that the circumstances in which the Respondent came to be convicted at Harrow Crown Court on 31 January 2017 were exceptional such that it could go behind the conviction. The Tribunal considered the findings of Linskill and Shepherd. The onus was on the Respondent to provide the Tribunal with sufficient compelling information such as would cause it to determine that the conviction could not be relied upon. As detailed above, the Respondent had not provided the Tribunal with significant fresh evidence nor had he described exceptional circumstances.
- 15.14 The Tribunal considered that the convictions for fraudulent conduct, namely cheating the revenue and tax evasion clearly demonstrated that the Respondent had failed to uphold the rule of law in breach of Principle 1. Accordingly, it found allegation 1.1 proved beyond reasonable doubt.
- 15.15 In engaging in dishonest criminal conduct the Respondent had failed to adhere to the ethical standards of the profession; no solicitor acting with integrity would evade tax or cheat the revenue. The conviction was demonstrable of the Respondent's failure to act with integrity in breach of Principle 2. Accordingly, the Tribunal found allegation 1.2 proved beyond reasonable doubt.
- 15.16 The Respondent's criminal conduct evidently failed to maintain the trust placed in him and in the provision of legal services by the public in breach of Principle 6. Members of the public would not trust a solicitor who had been convicted of offences involving fraud. Accordingly, the Tribunal found allegation 1.3 proved beyond reasonable doubt.

Previous Disciplinary Matters

16. No previous findings at the Tribunal.

Mitigation

17. The Respondent reminded the Tribunal of the course of conduct of the police from 2009 onwards and their targeted campaign against him. The Respondent accepted that the most serious misconduct involved dishonesty, and that usually cases involving dishonesty resulted in a solicitor being struck off the Roll. However, taking into account the unusual circumstances leading to his conviction, the Respondent submitted that notwithstanding his conviction for dishonesty offences, a strike off was not warranted in his case. The police had pursued the Respondent since 2009 in order to secure a conviction against him. Having failed on the first two attempts, they were successful on the third. The pursuit of him was exceptional such that the Tribunal could properly depart from the norm and impose a sanction other than striking him from the Roll.
18. The Respondent had no previous disciplinary history before the Tribunal and throughout his career he had tried to ensure that he maintained the reputation of the profession. He had worked hard to qualify and was proud to be a solicitor, as was his family. He had very little when he qualified as a solicitor and worked hard to grow his practice. The actions of the police had led to his having to close his firm. Whilst his conviction was for dishonesty, he had not misappropriated client money.
19. The campaign against him had had a detrimental effect on his health. He had learnt from his mistakes. He had spent time in prison and was now in front of the Tribunal. The Respondent was saddened by his appearance before the Tribunal and at having to make submissions in relation to being struck off the Roll.
20. The Respondent submitted that a suspension was an appropriate sanction when taking into account all of his circumstances. This would give him the opportunity to return to the profession at some time in the future. It would also allow him to provide for his family. He had not been working as a solicitor for some time and had not applied for a practising certificate.

Sanction

21. The Tribunal had regard to the Guidance Note on Sanctions (5th Edition). 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.
22. The Tribunal considered that the Respondent was completely culpable for his misconduct and as such his culpability was high. It noted in particular the remarks of HHJ Anderson when sentencing the Respondent. The Tribunal found that the Respondent's motivation was for personal gain; in cheating the revenue and evading tax he was able to increase his personal assets. The Tribunal considered that the Respondent's conduct was planned. He had direct control and responsibility for the circumstances giving rise to the misconduct. He had caused harm to the reputation of the profession - a solicitor convicted of tax evasion had, by the nature of that conviction, brought the profession into disrepute. Whilst his misconduct had not involved the misappropriation of client money, his conviction involved offences of

dishonesty which, as the Respondent accepted, was amongst the most serious types of misconduct heard at the Tribunal, and the Tribunal found his misconduct to be serious. His conduct was a complete departure from the standards expected of a solicitor, and the harm caused by his misconduct was reasonably foreseeable.

23. His misconduct was aggravated as it involved criminal offences which were offences of dishonesty. The Tribunal found that the Respondent's misconduct was calculated, deliberate and had continued over a period of time. The Respondent appealed against his sentence. The appeal was allowed on the basis that having left the option to the jury of convicting on the basis of a single incident offence, it was not open to the Judge to sentence on the basis of a course of conduct offence. However, the Court of Appeal did not find that there was no course of conduct. 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. In mitigation, the Respondent had voluntarily notified the regulator and had kept it informed of the proceedings from the outset. The Respondent had no previous disciplinary matters before the Tribunal. However the Tribunal did not consider that the Respondent had shown any genuine insight. Notwithstanding the Tribunal's findings, he submitted that his conduct had caused no harm to the reputation of the profession.
24. Given the seriousness of the misconduct No Order, a Reprimand or a Fine were plainly insufficient sanctions. The misconduct had involved criminal offences of dishonesty. The Respondent's actions had caused harm to the reputation of the profession. The Tribunal considered whether a fixed term or indefinite suspension was sufficient sanction. However given the nature of the Respondent's conviction the Tribunal concluded that the seriousness of the misconduct was at the highest level and that this was an insufficient sanction. The Tribunal determined that the protection of the public and the protection of the reputation of the legal profession required the Respondent's name to be struck off the Roll of Solicitors.
25. The Tribunal considered whether there were any exceptional circumstances such that the sanction of striking the Respondent from the Roll should not be imposed. The Tribunal concluded that there were no exceptional circumstances. As the Respondent had himself accepted, there was no suggestion that the evidence resulting in his conviction was fabricated, nor was there any suggestion of entrapment. The alleged police attitude of continuous investigation until securing a conviction was not, of itself, enough to meet the exceptional circumstances test. Accordingly, having found no exceptional circumstances, the Tribunal concluded that the only appropriate sanction was for the Respondent's name to be struck off the Roll of Solicitors.

Costs

26. Mr Johal applied for costs in the sum of £5,043.50. The Respondent did not dispute the quantum or any items on the schedule of costs. As regards to his financial circumstances, he explained that he had substantial debts owed to HMRC, family and friends, the overdraft from his firm and his mortgage. There was also a charging order on his property in favour of the Legal Aid Agency. His wife was the sole breadwinner. He remained the legal owner of one of the properties the rent for which was the subject of his criminal conviction.

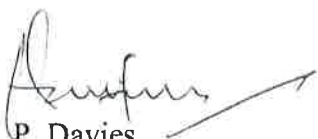
27. The Tribunal noted that the hearing had taken a full day, but costs had only been claimed for half a day. The Tribunal considered the Respondent's financial submissions. It noted that there was equity in the Respondent's property. Even were his property to be sold and the charging order redeemed in full, there would still be equity in his home. The Tribunal had not been informed of the amount of equity, if any, in the rental property still owned by the Respondent. The Tribunal considered that the Respondent ought to pay the costs of the proceedings. It was aware that the Applicant's recovery department took a realistic approach when recovering costs. The Tribunal considered that the costs claimed were reasonable and proportionate and ordered that the Respondent pay the costs in full.

Statement of Full Order

28. The Tribunal Ordered that the Respondent, AZHAR ISLAM 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 £5,043.50.

DATED this 26th day of November 2018

On behalf of the Tribunal



J. P. Davies
Chairman

Judgment filed
with the Law Society
on 26 NOV 2018