

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11852-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

KEITH ALAN SHAW

Respondent

Before:

Ms T. Cullen (in the chair)

Mr P. Housego

Mrs S. Gordon

Date of Hearing: 9 October 2018

The Agreed Outcome was dealt with on the papers without the parties present, however the parties attended in relation to the Respondent's Application for No Publicity.

Appearances for the Respondent's Application for No Publicity

Andrew Bullock, barrister of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent did not attend but was represented by Stuart Sutton, solicitor of Tuckers Solicitors, 63-65 Mosley Street, Manchester, M2 3HZ who attended by telephone.

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegation against the Respondent was that:
 - 1.1 On 13 November 2017 the Respondent pleaded guilty and was convicted of one count of fraud by false misrepresentation (contrary to sections 1 and 2 of the Fraud Act 2006) and five counts of making false instruments, namely letters and emailed letters (contrary to sections 1 and 6 of the Forgery and Counterfeiting Act 1981) and thereby failed to:
 - 1.1.1 uphold the rule of law and the proper administration of justice in breach of Principle 1 of the SRA Principles 2011 (the 2011 Principles); and/or
 - 1.1.2 act with integrity in breach of Principle 2 of the 2011 Principles; and/or
 - 1.1.3 behave in a way that maintained the trust the public placed in him and 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's Rule 5 Statement dated 31 July 2018 together with attached exhibits
 - Statement of Agreed Facts and Indicated Outcome
 - Letter dated 4 October 2018 from the Respondent's solicitors to the Tribunal together with attached documents
 - Email dated 9 October 2018 from the Respondent's solicitors to the Tribunal containing a Skeleton Argument
 - Letter dated 8 October 2018 from the Applicant to the Tribunal

Preliminary Matters – Agreed Outcome Procedure

3. On 4 October 2018 the Respondent's solicitor submitted an application on behalf of both parties for the Tribunal to approve an Agreed Outcome to the proceedings. In accordance with paragraph 2.2 of the Tribunal's standard directions, the matter was listed for consideration by a division of the Tribunal, in private, on 9 October 2018. For the reasons set out below, the Tribunal was satisfied that the Agreed Outcome should be approved without requiring any further submissions from the parties. The Tribunal's decision was announced in open court, and an Order setting out the Tribunal's Order was filed with the Law Society on 9 October 2018. This Judgment sets out the circumstances of the matter and the Tribunal's reasons for its decision. The Statement of Agreed Facts and Indicated Outcome is attached to this Judgment.

Application for No Publicity of the Agreed Outcome

4. In a letter to the Tribunal dated 4 October 2018, the Respondent's representative, Mr Sutton, made an application that no part of the proceedings/Agreed Outcome be published. The application was dealt with during a private hearing and full details of that hearing were recorded in a private Memorandum dated 12 October 2018.
5. Mr Sutton had attached a copy of the Respondent's medical records and letters from the Respondent's GP. Mr Sutton stated that the effect of publication on the Respondent's health would be totally disproportionate in the circumstances, as the Respondent's health had deteriorated because of this matter.
6. On the morning of the hearing the Tribunal was provided with an email from Mr Sutton dated 9 October 2018 which contained his Skeleton Argument on the issue of publication.

The Respondent's Submissions on his Application for No Publicity

7. Mr Sutton, on behalf of the Respondent, submitted the Respondent did not argue about his removal from the Roll and had agreed in the Agreed Outcome that he should be Struck off the Roll of Solicitors. However, Mr Sutton submitted the criminal proceedings had caused huge stress to the Respondent. He referred the Tribunal to the letters from the Respondent's GP. In a letter dated 1 August 2018, the Respondent's GP had stated:

“My concern for him is that given the sudden loss of professional status and the shame that he feels at the public knowledge of the accusations against him, that further publication about this which is likely to be picked up local newspapers [sic] and legal journals as it was before, could result in him suffering a significant relapse of his [medical condition].”

In the circumstances, I wonder whether it would be possible to apply for an exception to the usual rule about publication, as I believe that any local or national news coverage of his situation could once again trigger a significant deterioration in his [medical condition].....”

8. Mr Sutton submitted that in light of the medical evidence, whilst it was agreed the Respondent should be removed from the Roll, this should not be publicised. He submitted the SRA could still inform anyone who made enquiries that the Respondent had been removed from the Roll but the background details should not be published. In his letter of 4 October 2018, Mr Sutton had suggested the SRA could put some limited wording on their website to confirm the Respondent was no longer on the Roll. Mr Sutton submitted that publication would cause the Respondent [medical condition]. He stated the Respondent's criminal record was available for all to see. Mr Sutton reminded the Tribunal that to hold oneself out as a solicitor once Struck Off was a criminal offence. He stated the Respondent was a wealthy man, as was his father, and therefore he had no reason to seek to come back onto the Roll.

9. Mr Sutton referred the Tribunal to his Skeleton Argument in which he had submitted there was no need for the SRA to publish the Agreed Outcome document (should it be approved). He reminded the Tribunal that the judiciary in the criminal proceedings had allowed the Respondent to resign and had concluded the matter within two days. He referred to an earlier case details of which were given to the Tribunal which was dealt with by the Solicitors Regulation Authority ("SRA") where no publication had taken place. Mr Sutton submitted there was no reason why the Respondent could not be treated in the same way, particularly as his failure had been to write false names at the bottom of some letters which could be considered as less serious.
10. Mr Sutton accepted the criteria that the Tribunal needed to consider in deciding whether the decision should be published included the common law principle of open justice, the importance of transparency in the Tribunal's decision-making process, the importance of providing information about disciplinary action against solicitors and the need to maintain public confidence. However Mr Sutton submitted these were not applicable to the Respondent as he was not working and had not worked for two years. Nor did he intend to work again as a solicitor in the future. Mr Sutton submitted this was not a case where clients would wish to instruct the Respondent again. He submitted that once the Respondent was removed from the Roll, a search would not reveal his name and accordingly no client would labour under the misapprehension that he was still on the Roll and therefore a solicitor.
11. Mr Sutton submitted that there was a difference between not publicising the case by way of written documents, and the SRA not being allowed to confirm the Respondent was Struck Off if asked. He submitted it was the overt publicity which caused the [medical condition].
12. Mr Sutton stated that there had been discussions with the SRA when negotiating the Agreed Outcome and whilst those discussions had been Without Prejudice, now that negotiations had concluded, he submitted all Without Prejudice correspondence should be disclosed to the Tribunal. This would allow the Tribunal to see how the matter had developed and the Agreed Outcome reached.

Applicant's Submissions on the Respondent's Application for No Publicity

13. Mr Bullock, on behalf of the Applicant, objected to the Tribunal having sight of any Without Prejudice correspondence. He submitted this had absolute privilege and should not be disclosed to the Tribunal.
14. Mr Bullock stated that whilst the Applicant supported the Respondent's application on the privacy of this hearing and the publication of the Tribunal's Judgment, the Applicant objected to the Tribunal's Order not being published. Mr Bullock submitted that if nothing was published, then there would be a situation where the public would not be permitted to know at all that a solicitor, who had been sanctioned by the Tribunal for a number of offences involving dishonesty, was no longer a member of the profession.
15. Mr Bullock submitted there were a number of risks that would arise in refusing to publish the Tribunal's Order. There would be a risk to the public if the Respondent was to hold himself out as a solicitor in the future, or supply legal services in an

unregulated capacity. Difficulties would be raised in the event that the Respondent applied for admission to another profession or applied for a position in public office. Failure to publish the Tribunal's Order impeded the SRA in exercising its statutory functions as the Solicitors Act 1974 required the regulator to publish Orders made by the Tribunal.

16. Mr Bullock referred the Tribunal to the case of The SRA v Spector [2016] EWHC 37 (Admin) in which it was clearly stated that failing to publish the Tribunal's decision put the SRA in a wholly invidious position as they were unable to reply if they received an enquiry from someone who did not know of the existing proceedings, but wished to know whether a solicitor had ever been the subject of disciplinary proceedings. The SRA could not lie, but, consistent with the anonymity direction, nor could they tell the truth. Mr Bullock submitted that this case was key to the Tribunal's decision today. He submitted that an order for privacy which prevented publication of the Judgment but allowed publication of the Tribunal's Order would be proportionate in the circumstances. This would acknowledge the Respondent had been Struck Off as a solicitor but would also respect the Respondent's privacy and take into account his medical position.
17. Mr Bullock submitted that the fact that the Respondent did not intend to practise again was irrelevant to the issue and did not deal with the position that the SRA would be placed in if there was no publication in this case.

The Tribunal's Decision on the Respondent's Application for No Publicity

18. The Tribunal considered carefully the submissions of both parties and all of the documents provided. Dealing firstly with the Agreed Outcome, this was approved by the Tribunal and full written reasons for this decision are set out below.
19. In relation to the issue of publicity, the Tribunal reminded the parties that it was an independent body which acted fairly, transparently and in the public interest. It was important that court cases should be transparent and visible to the public. This was a fundamental principle of the English legal system and the interests of an individual solicitor came second to this. The reputation of the profession required that the public could see, and were told, that dishonest solicitors were Struck Off the Roll of Solicitors unless there were exceptional reasons for some other sanction to be imposed.
20. The Tribunal noted that both parties had agreed the Tribunal's Judgment should not be publicised but there was a dispute as to whether the Tribunal's Order should be published.
21. The Tribunal considered carefully the Respondent's GP medical records which were dated from April 2016 to 22 August 2018 together with the letters from his GP.
22. The chronology in the GP medical records made reference to the Respondent's medical condition but the entries provided seemed to indicate the Respondent had not attended his GP between 11 May 2017 and 30 July 2018 as there were no entries for this period. The letters dated 28 November 2016 and 11 May 2017 from his GP contained details about his medical condition.

23. The Tribunal particularly noted that no medical evidence had been provided from a specialist Consultant. The Respondent's medical condition appeared to have affected him around June 2016 but the much publicised conviction was in November 2017. There was no medical evidence of the medical condition in November 2017 or now.
24. The Tribunal also considered carefully the documents attached to the Rule 5 Statement, and noted that the Respondent's criminal case had received a great deal of publicity at the time. Various articles had been published in the national press on 15 November 2017, shortly after his conviction which had taken place on 13 November 2017. These articles made specific reference to the Respondent's profession as a solicitor.
25. The Tribunal also took into account the comments of Mr Justice Nicol in the case of SRA v Spector who had stated:
- “19. Open justice is a fundamental principle of the common law.....there are two particular aspects to this principle. The first is that the public should be free to attend court proceedings.....
20. The second aspect of open justice is that the proceedings are freely reportable.... For the overwhelming majority of the public physical attendance at a court hearing is not a practical option. If they are to learn about what took place, it will be at second hand, often through the media, but sometimes via other sources. Once again, the authorities establish beyond dispute that this is a key component of the open justice principle.....
- ...
- 25.....the open justice principle was intended to advance the administration of justice and if, in particular circumstances, the administration of justice would be hampered rather than assisted by full openness, then the common law itself allowed a departure..... the starting point is full openness and it is only if an exception (even a limited exception, such as allowing a witness to be anonymous) is required in the interests of the administration of justice that some limitation is justified.... what was required was a judgment between these two competing demands, not the exercise of a discretion”
26. The Tribunal noted Mr Sutton had referred the Tribunal to another case where a solicitor had been fined for a sexual offence committed outside of practice and where publication had not taken place. However, the Tribunal did not consider that case could be compared to the Respondent's position as the Respondent's conduct had taken place during the course of his practise as a solicitor and was relevant to his position of trust.
27. In relation to Without Prejudice correspondence that had passed between the parties, the Tribunal did not consider it was necessary for this to be disclosed. It was privileged communication and, in any event, was unlikely to add anything to the primary documents that had already been provided to the Tribunal.

28. Whilst the Tribunal accepted that the Respondent had suffered from a medical condition as a consequence of his wrongdoing, this was not a reason not to publish the Tribunal's decision. The Tribunal had carefully considered the content of the Agreed Outcome and noted in particular that it contained no reference to the Respondent's health or medical history. The information contained within that document referred principally to the conviction and other information which was already in the public domain. There was therefore no real reason within that document as to why the content could not be made public.
29. The Tribunal concluded that it was quite proper that the public should be informed of the professional consequences of a criminal conviction which had already received much publicity. Failure to do so would give the impression that a solicitor who had been convicted of a serious offence had not been disciplined for that conviction by his regulatory body. Whilst publication may cause some distress to the Respondent, the key issue for the Tribunal was maintaining confidence in the reputation of the profession.
30. The Tribunal was satisfied that there should be publication in this case, not only of the Tribunal's Order, but also of the Tribunal's Judgment as it was in the public interest and in the interests of the reputation of the profession, that the nature and consequences of the Respondent's conviction on his position as a solicitor were made clear. By only publicising the Tribunal's Order without publishing the Tribunal's Judgment, the public, and indeed members of the profession, would not know the reasons why the Respondent had been Struck Off the Roll. Accordingly, the Tribunal refused the Respondent's application that there should be no publicity in this case.
31. The Tribunal would, however, allow a period of 14 days before the publication of the Tribunal's Order and the Tribunal's Judgment, in order to enable the Respondent to seek such support as he may require in preparation for that publication.

Agreed Factual Background

32. The Respondent, born in 1980, was admitted to the Roll of Solicitors on 15 September 2006. At the time of the hearing he did not hold a practising certificate.

Findings of Fact and Law

33. The Tribunal had carefully considered all the documents provided. 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 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.
34. The Tribunal was satisfied that the Respondent's admissions were properly made. On the basis of those admissions and the agreed facts presented the Tribunal was satisfied that the allegations had all been proved to the requisite standard.
35. The Tribunal considered the Guidance Note on Sanction (December 2016). In doing so, the Tribunal assessed the culpability and harm identified together with the

aggravating and mitigating factors that existed. The Tribunal was satisfied, having regard to the Respondent's convictions, that one of those convictions explicitly required a finding of dishonesty. The Tribunal agreed with the factors set out in the Statement of Agreed Facts and Indicated Outcome and concluded that there were no exceptional circumstances in this case such that Striking Off would be disproportionate. The Tribunal was satisfied that the appropriate sanction in this case was that the Respondent should be Struck Off the Roll of Solicitors.

36. The Tribunal determined that the case could be concluded on the basis of the Agreed Facts and Indicated Outcome. The Tribunal Ordered the Respondent be Struck Off the Roll of solicitors.

Costs

37. As part of the proposed Agreed Outcome, it was further proposed that the Respondent should pay £1,800 towards the Applicant's costs.
38. Based on the agreement between the parties, the Tribunal was satisfied that the agreed costs in the sum of £1,800 were reasonable and proportionate, particularly as a full trial had not been necessary in this case. Accordingly the Tribunal Ordered the Respondent to pay the Applicant's costs in the agreed sum of £1,800.

Statement of Full Order

39. The Tribunal ORDERED that the Respondent, KEITH ALAN SHAW, 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 £1,800.00.

Dated this 26th day of November 2018
On behalf of the Tribunal


T. Cullen
Chair

Judgment filed
with the Law Society
on 28 NOV 2018

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY

Applicant

KEITH ALAN SHAW

Respondent

STATEMENT OF AGREED FACTS AND INDICATED OUTCOME

1. By its application dated 31 July 2018, and the statement made pursuant to Rule 5(2) Solicitors (Disciplinary Proceedings) Rules 2007 which accompanied that application ("the statement"), the Solicitors Regulation Authority ("SRA") brought proceedings before the Solicitors Disciplinary Tribunal concerning the conduct of Keith Alan Shaw.

The allegations

2. The allegations made against Mr Shaw within the statement were that: by virtue of his conviction on 13 November 2017 for one offence of fraud by false misrepresentation (contrary to sections 1 and 2 of the Fraud Act 2006) and five offences of making false instruments, namely letters and emailed letters (contrary to sections 1 and 6 of the Forgery and Counterfeiting Act 1981), he had failed to:
 - 2.1 uphold the rule of law and the proper administration of justice in breach of Principle 1 of the SRA Principles 2011 ("the 2011 Principles")
 - 2.2 act with integrity in breach of Principle 2 of the 2011 Principles.
 - 2.3 behave in a way that maintains the trust the public places in him and the provision of legal services, in breach of Principle 6 of the 2011 Principles.

Admissions

3. Mr Shaw admits all the allegations made against him in the statement and as set out in paragraph 2 above.

Agreed Facts

4. The following facts and matters are agreed between the SRA and Mr Shaw:

4.1 Mr Shaw was born 1980 and was admitted to the Roll of Solicitors on 15 September 2006. At the date of this statement, Mr Shaw remains upon the Roll of Solicitors but does not hold a current practising certificate.

4.2 Mr Shaw is not currently working for an SRA regulated entity.

4.3 Mr Shaw pleaded guilty at Westminster Magistrates' Court on 13 November 2017 to six offences and was thereby convicted of:

- i) 1 count of fraud by false misrepresentation;
- ii) 5 counts of making false instruments, namely letters of emailed letters, intending another to accept them as genuine to their own or another person's prejudice.

4.5 The Court Memorandum states that the fraud by false misrepresentation took place between 25/06/12 and 27/06/12 and the various forgery offences took place between 18/12/14 and 25/06/15.

4.6 Mr Shaw was sentenced on 13 November 2017 to 20 weeks imprisonment, suspended for 2 years, and to carry out 200 hours of unpaid work within 12 months. Mr Shaw was also ordered to pay compensation of £2,747.00 (relating to the fraud offence), costs of £7,285.75 and a surcharge to fund victim services. Sentencing reasons set out in the hearing notes subsequently provided by the Court to the SRA included that the offences were serious, took place over a sustained period and involved substantial / persistent planning.

4.7 The Fraud Act offence (fraud by false misrepresentation), was an offence involving dishonestly making a false representation, regarding the repayment of a surveyors fee. Mr Shaw did not repay the money obtained (£2,347.00) prior to his Magistrates' Court appearance.

4.8 The forgery offences required an intention to use the false documents to induce another to accept them as genuine. The false instruments were forged letters or submissions sent to the Local Authority by Mr Shaw, in the name of third parties, intending them to show 'independent' support for his own application for planning permission.

4.9 Mr Shaw's conviction was publicised in both the local and national press, with the reports noting his position as a solicitor and, prior to his conviction, as a Deputy District Judge.

Non-Agreed Mitigation

5. The following mitigation has been put forward on behalf of Mr Shaw:

5.1 This is the first occasion on which he has appeared before the Solicitors Disciplinary Tribunal and he has cooperated with the SRA investigation in respect of this matter.

5.2 Through his solicitors he has made admissions to the SRA at all stages of these proceedings, as well as indicating through his solicitors that he was "*realistic enough to know that his career as a solicitor is over*", as a consequence of pleading guilty in the Court proceedings.

6. However, Mr. Shaw acknowledges that he has been convicted of multiple offences of fraud (involving dishonesty) and forgery, and does not contend that the mitigation set out above amounts to exceptional circumstances which would justify the Tribunal in making any order other than that his name should be struck off the Roll of Solicitors.

Proposed penalty

7. Mr Shaw and the SRA agree that the seriousness of Mr Shaw's misconduct is such that the Tribunal should order that he be Struck off the Roll of Solicitors, with any lesser sanction being inappropriate.
8. With respect to costs, Mr Shaw agrees to pay the SRA's costs of the application fixed in the sum of £1,800.

Explanation as to why such an order would be in accordance with the Tribunal's sanctions guidance

9. Having considered the Solicitors Disciplinary Tribunal's Guidance Note on Sanctions, Mr Shaw accepts that the level of culpability and harm from his misconduct are high.
10. Mr Shaw has been convicted of offences of fraud and forgery. In relation to culpability, his conviction arose from matters over which the Respondent had direct control and which took place over a period of time. The underlying matters also related to his personal financial / business interests.
11. Prior to his conviction, harm was directly caused to the company that paid Mr Shaw money to which he was not entitled, with significant wider harm to the reputation of the profession arising from the Respondent's conviction for serious offences of fraud and forgery
12. The following aggravating factors apply to Mr Shaw's misconduct:
 - i) it involves the commission of serious criminal offences, which led to a suspended custodial sentence;
 - ii) the offence of fraud by false misrepresentation involves a finding that he dishonestly made a false representation
 - iii) the breaches of the law took place over a period of time, with the Court notes stating that they involved persistent / substantial planning.
 - iv) it is misconduct that he knew or ought reasonably to have known was in material breach of obligations to protect the public and the reputation of the legal profession
13. A conviction for serious offences was made against Mr Shaw, with one explicitly requiring a dishonesty finding under the same test and standard of proof as currently required before the Tribunal. Although the SRA's allegations are based on the fact of the conviction, with no additional allegation of dishonesty regarding the underlying conduct, Mr Shaw agrees that his circumstances do not fall into those that would exceptionally mean that striking off would be disproportionate (*as discussed in Sharma [2010] EWHC 2022 (Admin)*).
14. Accordingly, having regard to Mr Shaw's convictions and admissions to the misconduct charges, the SRA and Mr Shaw invite the Tribunal to make an Order that Keith Alan Shaw be Struck off the Roll of Solicitors and pay costs of the SRA's application fixed in the agreed sum of £1,800.

Dated this day of 2018

.....

On behalf of the SRA

Stuart Sutton, Solicitor, Tuckers Solicitors, 63-65 Mosley Street,
Manchester, M2 3HZ
on behalf of Keith Alan Shaw