

IN THE MATTER OF SAMSON MICHAEL WALDMAN, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr D J Leverton (in the chair)
Mr K Duncan
Mr J Jackson

Date of Hearing: 8th February 2007

FINDINGS

of the Solicitors Disciplinary Tribunal
Constituted under the Solicitors Act 1974

An application was duly made on behalf of The Law Society by Margaret Eleanor Bromley, solicitor, of TLT Solicitors One Redcliffe Street, Bristol, BS1 6TP on 11th July 2006 that Sampson Michael Waldman of Geoffrey Parker Bourne, Minerva House, Spaniel Row, Nottingham, NG1 6EP might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

The allegation against the Respondent was that he had been guilty of conduct unbefitting a solicitor in that on 16th January 2006 he was convicted at the Crown Court at Southwark of making a false statement to prejudice Her Majesty The Queen and the Public Revenue with intent to defraud Her Majesty The Queen.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 8th February 2007 when Margaret Eleanor Bromley appeared as the Applicant and the Respondent was represented by Mr Timothy Ryder of Counsel.

The evidence before the Tribunal included the admissions of the Respondent. A bundle of references in support of the Respondent were handed to the Tribunal at the hearing.

At the conclusion of the hearing the Tribunal made the following Order:

The Tribunal Orders that the Respondent, Samson Michael Waldman of Geoffrey Parker Bourne, Minerva House, Spaniel Row, Nottingham, NG1 6EP, solicitor, be Struck Off the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,128.51 inclusive.

The facts are set out in paragraphs 1 to 8 hereunder:

1. The Respondent, born in 1953, was admitted as a solicitor in 1978 and his name remained on the Roll of Solicitors.
2. The Respondent practised as a sole practitioner under the style of Waldman & Co, solicitors, in Nottingham. He subsequently sold his practice and the firm became known as Geoffrey Parker Bourne. The Respondent then practised as an assistant solicitor at that firm but had since ceased to practise.
3. On 16th January 2006 the Respondent pleaded guilty to one count of defrauding the Inland Revenue. He was ordered to pay compensation of £130,535.98 to Her Majesty The Queen and the Commissioners of Inland Revenue within six months and was sentenced to a total of 18 months imprisonment suspended for two years.
4. The events giving rise to the conviction were described by His Honour, Judge Goymer in the following terms:

“Nearly 20 years ago you embarked upon a dishonest scheme whereby Court fees that were refunded to your firm were placed into an off-shore account and were not declared for tax. As a result of that, the Revenue lost £65,000 in unpaid tax. With the interest that has accumulated on that as those long years have gone by, it amounts to almost exactly double that sum by way of loss.”

His Honour made it clear throughout his sentencing remarks that this was an offence of dishonesty and that fraud on the Revenue was a serious matter.

5. In considering the appropriate sentence, His Honour took into account the fact that the Respondent’s career as a solicitor was at an end. He stated:

“You are a ruined man. You will be struck off the Roll of Solicitors. You will never again be able to practise law. That makes it difficult, indeed more difficult for you than for many others who commit tax fraud, to pick up the threads of your life and rebuild it.”
6. The conviction was reported to The Law Society on 20th January 2006 by the Respondent’s solicitors on the Respondent’s instructions.
7. By letter dated 10th February 2006 the Respondent’s solicitor made representations in relation to consideration by The Law Society of the imposition of conditions on the Respondent’s practising certificate. At that time the Respondent was an assistant solicitor in Geoffrey Parker Bourne where he remained a signatory to cheques subject

to a £5,000 limit and was responsible for the day to day supervision of staff. In the letter the Respondent's solicitor confirmed that the Respondent had diverted funds that should have been paid into his office account, into an off-shore account so that tax was not paid. The activity started in 1984 and continued for a period of over ten years. The Respondent stopped the diversion of funds in about 1996 but did not declare the income from those funds.

8. An Adjudicator decided not to impose conditions on the Respondent's practising certificate.

The Submissions of the Applicant

9. The allegation against the Respondent was at the top end of the scale in that it arose from a conviction for a criminal offence of dishonesty. The Respondent's conduct had been deliberate and calculated in that he had diverted funds for a period of over ten years and had accumulated the sum in existence for a longer period until 2005. The Respondent had paid compensation as a result of the criminal proceedings in the full amount ordered in July 2006.
10. A conviction for an offence of dishonesty almost inevitably led to a striking off Order and in the submissions of the Applicant this case was not exceptional.
11. The Tribunal was referred to the case of The Law Society -v- Claire Louise Wilson [2006] EWHC 1022 (Admin). Miss Wilson had been convicted of offences of false accounting and the sum she had gained in committing those offences was a mere £170. She had been suspended from practice for one year by the Tribunal and The Law Society had appealed that decision.
12. In its appeal The Law Society had quoted the case of Bolton -v- The Law Society [1994] 1WLR 512 and the Applicant relied on the case of Bolton which said that in a case of dishonesty it was almost inevitable that a solicitor would be struck off the Roll.
13. In the case of Wilson, Mr Justice Jack had said:

“...the Tribunal did give considerable weight to Miss Wilson's personal mitigation. The Tribunal referred to her (comparative) youth, her inexperience as a solicitor, her competence and hard work, her probity otherwise, the pressure she was under, that she had learnt her lesson, that she had had the case hanging over her for two years with consequential health problems, and that she had re-established herself in a new job while being frank about what had occurred. Miss Wilson clearly attracted the sympathy of the Tribunal and I can easily understand that. However, in a case of this nature it was the Tribunal's task to concentrate on the gravity of what Miss Wilson had done and to consider whether her criminal conduct was such that the maintenance of the reputation of the solicitor's profession as one that could be trusted required her to be struck off. If it did, the mitigation provided by her personal circumstances could carry little weight.”

The case before the Tribunal was one where whatever personal mitigation the Respondent advanced must also carry little weight. His conduct had been very serious and reflected badly on the profession. His conviction had been only some 13 months ago and he remained subject to a suspended sentence.

14. In relation to the decision of the Adjudicator not to impose conditions on the Respondent's practising certificate, the Tribunal was asked to note that The Law Society had no right of appeal against that decision.
15. The Applicant sought her costs in the agreed sum of £2,128.51.

The Submissions on behalf of the Respondent

16. The duty of the Tribunal was not to punish the Respondent but impose a proportionate disciplinary sanction with a view to upholding the reputation of the profession and maintaining public confidence in it. It would be natural for the Tribunal's first impression to be that the only way of carrying out that duty was to impose a sanction which stopped the Respondent from practising, and indeed that has been the assumption of His Honour Judge Goymer.
17. The Tribunal was invited however to stand back and consider the evidence and ask whether so condign a sanction was required or whether the Tribunal's duty could be satisfied by a lesser sanction.
18. In the case of Bolton -v- The Law Society cited in Wilson it was stated:

“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.”
19. The present case however was not one in which the Respondent was alleged to have discharged his professional duties in anything other than an honest way.
20. In Wilson, Mr Justice Jack had said

“.....in cases of proven dishonesty striking off will almost invariably be the appropriate penalty....”

The reputation of the profession therefore did not invariably require a strike off.
21. Mr Justice Jack had also cited the judgment of Lord Bingham in the case of Pope:

“While the orders of the Solicitors Disciplinary Tribunal sometimes have a punitive element, that is not in very many cases their primary purpose, which is the maintenance of the good name and public reputation of the solicitors' profession. It is for the Tribunal to make the primary judgment whether non-professional misbehaviour will adversely affect the public reputation of solicitors, and in making that judgment the Tribunal have, unlike their predecessor Committee, the benefit of a lay member whose function is to

make sure that the view of an ordinary reasonably informed member of the public is taken fully into account.”

It would be submitted that on the particular facts of the case an ordinary member of the lay public considering the Respondent’s continued membership of the profession would say that it was appropriate.

22. It was acknowledged on behalf of the Respondent that personal mitigation was not the Tribunal’s primary concern, although there had been substantial personal mitigating circumstances which had been of significance in the Crown Court.
23. The Tribunal was asked to note that no conditions had been imposed on the Respondent’s practising certificate and the Tribunal was referred to the relevant correspondence in that regard.
24. The Tribunal was referred to the references which had been before the Crown Court which included a reference from Mr Ryder and the further references provided for the Tribunal. A long term employee who had written one of the references was present to support the Respondent.
25. The Tribunal was given details of the Respondent’s professional history and his loyal client base.
26. The Bank of Ireland had been the Respondent’s bankers in the early days of his practice and employees of the bank and an employee at his firm had put to him a scheme where certain Court fees returned from the Court Fund Office to the firm would go into an off-shore account and therefore not count as profit of the firm. Tax would not be paid and the profit would be shared between the Respondent and the employee.
27. Some £20,000 per month was paid into the Court Fund Office. There were some overpayments or incorrect fees paid resulting in £1,000 per month coming back. The Respondent accepted that the latter had been diverted leading to an artificial suppression of profits.
28. There was no question of any clients’ funds being abused. The fees had been paid out of office account as the firm subsidised clients’ litigation in this way. The clients would be billed at the end of the case. They were not charged for these fees. The money transferred off-shore belonged to the Respondent, not to clients and there had never been any suggestion of inappropriate use of client funds.
29. The fault was not in the diversion of funds off-shore but in the failure to declare the money as income of the firm. There was no obligation to pay tax on the interest accrued in the off-shore account and the off-shore account was legitimately run. There was no question of any ledgers being falsified.
30. The Respondent had had the advice of the Bank of Ireland. The scheme had been sold to the Respondent by the bank as they were operating what were for UK purposes off-shore accounts. They had managed the funds.

31. In 1994 the Respondent had recognised belatedly the scheme was inappropriate and he had therefore stopped the diversion of funds some 13 years ago. His dishonest failure to account properly for tax had ceased. There had been no incorrect declaration for tax purposes since the interest was not taxable.
32. The Respondent had made a voluntary disclosure to the Inland Revenue knowing that this could lead to prosecution. Had he not made the disclosure it was unlikely that any prosecution could have taken place. This showed albeit belatedly the actions of a man of integrity. The Tribunal was asked to take this into account.
33. To his credit the Respondent had taken steps to protect his staff and clients by negotiating the sale of his practice at an undervalue, the Respondent having disclosed these matters. He had secured continuity of care for his clients and employment for his staff.
34. The Tribunal was referred to the reference from Mr Organ, the purchaser of the Respondent's practice who had written:

“Prior to my acquisition enquiries were made as to his integrity and honesty, so far as the business and its clients and staff were concerned. Particular attention was paid to client funds, the conduct of the office account, the long-standing relationship with his bank and later as to his relationship with existing clients. These enquiries were conducted by me, members of my staff and independent accountants.

The results established that Sam Waldman conducted the business with impressive integrity, honesty and service to clients and I had no hesitation in both acquiring the business and appointing him as a solicitor within it from the date of takeover.”

35. The Tribunal was also asked to note the correspondence with the Compliance Directorate and the exceptional decision which had been taken to allow the Respondent to continue to practise with no conditions. This reflected the fundamental submission made on behalf of the Respondent that there were exceptional features in this case. The Respondent was able to work as a salaried employee in the new practice. That contract had been terminated by agreement when it was known that an application would be made to the Tribunal. The Respondent had not worked in a solicitor's practice since then.
36. The Respondent had already been significantly punished. He was subject to a suspended prison sentence and had paid a £130,000 compensation. He had no assets except his home. He had suffered a loss of esteem and the loss of his practice.
37. The exceptional features in this case were as follows:
 - (i) no client funds had been involved and no client interests had been prejudiced;
 - (ii) there had been no suggestion of inappropriate handling of client funds nor of actions which might damage clients' interests;
 - (iii) there had been no abuse of trust of clients, opponents or the Courts;

- (iv) despite 30 years practice the Respondent had never been the subject of any complaint;
 - (v) no member of staff had been drawn into the scheme. The only member of staff involved was a senior employee who had suggested it;
 - (vi) the Respondent had ceased acting dishonestly 13 years ago and had made a full voluntary disclosure against his interests in a belated attempt to set the record straight;
 - (vii) his practice had been conducted with integrity and honesty.
38. The Tribunal was referred to the supportive references. The Respondent had earned and was held in a great deal of respect by those who knew him and had impressed them with his commitment to his professional duties. There were references from clients, former employees, local professional colleagues, Counsel and the Respondent's former employer. No client had left the practice or refused to deal with the Respondent although they had properly been made aware of the situation.
39. The old offence had been unconnected with the Respondent's practice as a solicitor. He had offered and would continue to offer a high level of service and would deal with clients with integrity and honesty.
40. The Respondent had belatedly done the right thing and the public could see him as a man who could make a criminal mistake in his personal affairs but had already conducted his professional affairs with integrity. Knowing the level of service he had provided the public could say that the Tribunal did not need to take a step which would prevent him from ever practising again. The Tribunal was invited in these exceptional circumstances to consider a period of suspension for at least as long as the suspended sentence. The Respondent would formally undertake in future only to practise under supervision. This would be a bold and exceptional but appropriate step for the Tribunal to take. It would meet the gravity of the offence and properly protect the reputation of the profession of which the Respondent was proud to be a member.
41. The quantum of costs was agreed but there was an issue of the Respondent's ability to pay. When the matter had first been ventilated as a disciplinary matter the Respondent had indicated that he was willing to give up his practising certificate which would have avoided the need for further costs. Nevertheless costs had been agreed on the basis put forward by the Applicant.

The Findings of the Tribunal

42. The Tribunal found the allegation to have been substantiated indeed it was not contested.
43. The Tribunal had carefully listened to the submissions of the Applicant and on behalf of the Respondent and had read the references submitted by the Respondent. The Tribunal had also looked carefully at the criteria laid down in the case of Bolton -v- The Law Society and the case of The Law Society -v- Wilson which was a recent decision from May 2006.

44. The Respondent had been convicted on his own admission of running a fraudulent scheme over a ten year period. The fraud had been on the Inland Revenue. He had been sentenced to a period of imprisonment of 18 months suspended for two years plus a Compensation Order of some £130,000.
45. It had been rightly said that the maintenance of the reputation of the solicitors' profession in the public interest was crucial and that personal mitigation on behalf of the Respondent was to some extent irrelevant. The facts of the Wilson case were illustrative of the Courts' current concern about these matters. In the Wilson case a very small sum had been the extent of the defalcation. The Administrative Court had taken great care to go through the facts of the case and to give a detailed judgment relying on the case of Bolton -v- The Law Society. Mr Justice Jack had said:

“Miss Wilson’s conduct in committing the offences which she admitted was such that she must be struck off. She intended to deceive her employer and the Legal Services Commission that she had carried out work which she had not. That put her trustworthiness seriously in question, and she should not be a member of the profession.”
46. Applying those remarks and paragraphs 20-22 of the judgment in The Law Society -v- Wilson to the present case, the trustworthiness of a solicitor who had run a fraudulent scheme for a period of ten years must be seriously brought into question.
47. It had been said that the Respondent had voluntarily revealed the scheme. It appeared from the documentation however that the trigger for the Respondent to own up had been the Inland Revenue warning of an investigation into this type of account. The Respondent had made no previous disclosure.
48. It was possible that the Inland Revenue’s decision to prosecute and not to settle had arisen from the very fact that the Respondent was a solicitor.
49. Solicitors had to be completely trustworthy and display probity and complete honesty. It was right that the Tribunal consider the case of Bolton -v- The Law Society and the requirement to maintain the reputation of the profession. The Tribunal had little difficulty in concluding that the appropriate penalty in this case should be that the Respondent be struck off the Roll of Solicitors and that he pay the Applicant’s agreed costs.
50. The Tribunal Ordered that the Respondent, Samson Michael Waldman of Geoffrey Parker Bourne, Minerva House, Spaniel Row, Nottingham, NG1 6EP, 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 £2,128.51 inclusive.

DATED this 30th day of March 2007
on behalf of the Tribunal

D J Leverton
Chairman

Typed by:
Clerk:
Date typed:
Date Amended: