

IN THE MATTER OF DAVID LAWRENCE KELLY, former solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Miss J Devonish (in the chair)

Ms A Banks

Mr M G Taylor CBE

Date of Hearing: 14th May 2007

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## **FINDINGS**

the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of The Law Society by David Elwyn Barton, solicitor advocate, of 5 Romney Place, Maidstone, Kent, ME15 6LE on 12<sup>th</sup> September 2006 that David Lawrence Kelly, former solicitor, of Helsby, Cheshire, 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 on 13<sup>th</sup> January 2004 he was convicted at Preston Crown Court of conspiracy to fraud. The Applicant sought a direction prohibiting restoration of the Respondent's name to the Roll of Solicitors except by Order of the Tribunal.

The application was heard at the Court Room, 3<sup>rd</sup> Floor, Gate House, 1 Farringdon Street, London, EC4M 7NS on 14<sup>th</sup> May 2007 when David Elwyn Barton appeared as the Applicant and the Respondent did not appear and was not represented.

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

The Tribunal Orders that the Respondent, David Lawrence Kelly of Helsby, Frodsham, Cheshire, former solicitor, be prohibited from having his name restored to the Roll of Solicitors except by Order of the Tribunal and they further Order that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £558.12.

Application by the Respondent that the proceedings be dismissed on the grounds of delay  
Written Submissions of the Respondent

1. By a statement enclosed with his letter to the Tribunal of 9<sup>th</sup> May 2007 the Respondent asked the Tribunal to reject the application of David Elwyn Barton on the grounds that it was not fair or reasonable that an application of this nature should be made in view of the enormous time delay involved.
2. The Respondent said that the matters complained of and which were the subject of the criminal proceedings in January 2004 occurred nine years ago and the Respondent had not practised as a solicitor for more than eight years. His name had been removed from the Roll of Solicitors at his own request nearly six years ago.
3. He had been prosecuted and fined nearly three and half years ago.
4. The Respondent referred to the publicity at the time of the conviction which had caused upset and loss to himself and family and asserted that it was unfair that this matter be “reaped up” again when he had heard nothing for over three years.
5. The Respondent was 63 years of age and had no intention of ever practising again.

Submissions of the Applicant

6. The Applicant accepted that there had been consideration given as to whether it was appropriate to make the application but given the nature of the conviction it was considered on balance right to seek a regulatory Order.
7. Article 6 of the European Convention on Human Rights gave a right to a trial within a reasonable time although the Respondent had not used that particular terminology.
8. The conviction had been on 15<sup>th</sup> January 2004 and this was therefore the earliest date from which an application could have been made. The Law Society had received a formal set of papers from the Fraud Intelligence Unit although the Applicant did not know on which date.
9. The Applicant had been instructed in November 2005 and had advised The Law Society in December 2005. The papers had been returned to him on 30<sup>th</sup> August 2006 with the addition of the prosecution case summary, the certificate of conviction and the sentencing remarks.
10. The application had been lodged on 12<sup>th</sup> September 2006.

11. The Respondent would need to establish that there had been delay rather than simply a passage of time. Ideally the application would have been brought earlier. The Tribunal would have to consider however whether the Respondent's right to a fair trial had been infringed. This was the most straightforward of documentary cases and the Tribunal could not go behind the conviction.
12. The fact of the conviction was unarguable and the only issue to be determined was whether to make the Order. In the submission of the Applicant something needed to be in place to prevent the Respondent from making an unopposed application to be restored to the Roll in the future. The only prejudice to the Respondent by the making of the Order would be if he were to make such an application.
13. It was difficult to see any other prejudice in this regulatory Order. The passage of time could be reflected in costs.

#### The decision of the Tribunal in relation to delay

14. The Solicitors Disciplinary Tribunal is a public authority within the definition set out in Section 6(3)(a) of the Human Rights Act 1998. As such it is prohibited pursuant to Section 6(1) of the 1998 Act from acting in a manner which is incompatible with a Convention right. It must not countenance its processes to be used in a way which would infringe a person's Convention rights.
15. Article 6(1) of the European Convention on Human Rights guarantees the right to "a fair and public hearing within a reasonable time... in the determination of (a person's) civil rights and obligations...".
16. The ability of a professional person such as a solicitor to practise is a civil right and comes within Article 6(1).
17. The right to a trial within a reasonable time is an independent guarantee and does not require proof of any prejudice (Magill v Porter (2002) 2 WLR 37 at para 108).
18. The Tribunal had to determine whether having regard to all the circumstances of the case:
  - (a) the time taken to determine the Respondent's rights and obligations was unreasonable; and, if so,
  - (b) what remedy should be granted.
19. In order to establish whether there had been an unreasonable delay the Tribunal would need to identify a date upon which time started to run for the purpose of the proceedings.
20. It has been held in certain previous cases before the Tribunal that "proceedings" commenced on the day of the resolution referring a Respondent's conduct to the Tribunal. The date upon which time started to run was however a matter of fact in each case. In criminal matters it has been held in Attorney General's reference No. 2

of 2001 [2003] UKHL 628 that time begins to run as soon as a person is charged in a criminal matter.

21. In the present case the Tribunal had not been told the date at which a formal decision to refer the matter to the Tribunal had been made. The Respondent however would have been aware of the seriousness of the conviction in relation to his ability to practise as a solicitor from the time of the conviction particularly given the comments of the Learned Judge at page 6D of his Honour Judge Brown's observations in passing sentence that the Respondent would inevitably suffer expulsion from The Law Society. The Tribunal had also not been told what date the fact of the conviction had been made known to The Law Society. Clearly The Law Society had been aware of the conviction by the time of its initial seeking of advice from the Applicant and in the absence of more detailed information the Tribunal was satisfied that time would have started to run from that date at the latest.
22. The Applicant had been instructed to advise in November 2005 and had given advice in December 2005. There was no evidence of any further action on the part of The Law Society until August 2006. In the absence of any satisfactory explanation the Tribunal was satisfied that the period from December 2005 to August 2006 was an unreasonable delay. This was not a complex matter.
23. While there was no need to find prejudice in order to establish unreasonable delay the Respondent's right to a fair hearing in these proceedings had not been prejudiced. While the Respondent in correspondence had expressed his sense of grievance at the delay, on balance the interests of the public outweighed any prejudice to the Respondent. This was a case in which the fact of the conviction was not in dispute and which would proceed on documents and the delay on the part of The Law Society would therefore not prevent a fair trial.
24. The Law Society should however have taken steps to protect the public sooner and the Tribunal would consider in due course whether it was right to reflect the delay in costs. The substantive matter should proceed.

### **The Substantive Matter**

#### **The facts are set out in paragraphs 25 to 28 hereunder:**

25. The Respondent, born in 1945, was admitted as a solicitor in 1970. His name was removed from the Roll of Solicitors at his instigation on 23<sup>rd</sup> August 2001 and had not since been restored.
26. On 13<sup>th</sup> January 2004 the Respondent was convicted at Preston Crown Court of conspiracy to defraud and a copy of the Certificate of Conviction was before the Tribunal.
27. A copy of the case summary prepared by prosecuting Counsel for the use of the Judge was before the Tribunal. The summary purported to describe the Respondent's involvement in frauds perpetrated on Liverpool City Council and the Legal Aid Board between 7<sup>th</sup> December 1997 and 31<sup>st</sup> October 1999, a period when the Respondent's name was on the Roll of Solicitors.

28. The Tribunal had before it a copy of a letter dated 29<sup>th</sup> March 2007 from Messrs DLA Piper, the Respondent's solicitors in the criminal proceedings who stated that the prosecution summary had been produced at a very early stage in proceedings and did not therefore accurately reflect the case to which the Respondent entered a guilty plea. The sentencing remarks of His Honour Judge Brown, which were before the Tribunal, set out an accurate description of the agreed basis on which the Respondent had entered a guilty plea. Messrs DLA Piper said that there had been no fraud perpetrated against Liverpool City Council.

### **The Submissions of the Applicant**

29. The Applicant sought a direction prohibiting restoration of the Respondent's name to the Roll of Solicitors except by Order of the Tribunal.
30. The Respondent had been guilty of professional misconduct when his name was on the Roll of Solicitors and indeed when he was practising as a solicitor. The misconduct forming the basis of his conviction was serious and the Applicant submitted that the Tribunal could properly make the direction sought.

### **The Submissions of the Respondent**

31. The Respondent's submissions were contained in the statement enclosed with his letter of 9<sup>th</sup> May 2007. The statement largely referred to the issue of his application to dismiss the proceedings referred to above.
32. The Respondent further said however that he had not committed the offences to which he pleaded guilty. He had done so to avoid the lottery of a jury trial and the possibility of being required to pay subsequent enormous costs. He said that no-one had suffered any loss or harm and hundreds of people he had represented very successfully had benefited enormously. His principal witness who could have refuted the allegations had died before the Respondent had been charged.

### **The Findings of the Tribunal**

33. Although the Respondent had asserted his innocence he had not disputed the fact of the conviction. It was not right for the Tribunal to go behind the conviction and the Tribunal found the allegation to have been substantiated.
34. Given that the Respondent had been convicted of an offence involving dishonest conduct, it was right that in the interests of the protection of the public the Tribunal make the Order sought by the Applicant.
35. While it was right that the Respondent pay the Applicant's costs, in view of the unreasonable delay which the Tribunal had found on the part of The Law Society, the Tribunal would reduce the sum sought by the Applicant in costs by 50% and would Order the Respondent to pay only the sum of £558.12.
36. The Tribunal ordered that the Respondent, David Lawrence Kelly of Helsby, Frodsham, Cheshire, former solicitor, be prohibited from having his name restored to

the Roll of Solicitors except by Order of the Tribunal and they further ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £558.12.

Dated this 10th day of August 2007  
on behalf of the Tribunal

J Devonish  
Chairman