

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11810-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ABOSEDE AKINLEYE (AKA PANAMA AND ADAMS)

Respondent

Before:

Mr J. P. Davies (in the chair)

Mr J. A. Astle

Mrs L. McMahon-Hathway

Date of Hearing: 2 October 2018

Appearances

Shaun Moran, solicitor of Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant

The Respondent attended the hearing and represented herself.

JUDGMENT

Allegations

The allegations made by the Applicant against the Respondent were set out in a Rule 5 Statement dated 3 April 2018. The allegations were that:

1. By virtue of her conviction for Fraud by False Representation under Section 2 of the Fraud Act 2006, a criminal offence of dishonestly making false representation to make gain for herself/another or cause loss to other/expose other to risk she:
 - 1.1.1 failed to uphold the rule of law and the proper administration of justice and therefore breached Principle 1 of the SRA Principles 2011 (“the Principles”);
 - 1.1.2 failed to act with integrity and therefore breached Principle 2 of the Principles; and
 - 1.1.3 failed to behave in a way which maintained the trust the public placed in her and in the provision of legal services and therefore breached Principle 6 of the Principles.

Documents

2. The Tribunal considered all the documents in the case which included:

Applicant

- Application and Rule 5(2) Statement dated 3 April 2018 with exhibit “JD1”
- Certified Copy of Certificate of Conviction dated 12 July 2016
- Email from the Applicant to the Respondent dated 21 June 2018 in response to the Respondent’s Answer
- The Applicant’s Schedule of Costs dated 3 April 2018 and 25 September 2018

Respondent

- The Respondent’s Answer to the Rule 5 Statement as set out in an email dated 31 May 2018
- The Respondent’s Statement of Earnings dated 20 September 2018 and covering email dated 28 September 2018
- Post Office Card Account Statement dated 21 September 2018 in the name of Ms Abosede Panama
- Letter from Job Centre Plus dated 27 September 2018 in the name of Ms Abosede Adams

Preliminary Issues

Application to hear certain matters in private The Respondent’s Application

3. The Respondent applied to the Tribunal for her mitigation to be considered in private. She explained that her mitigation related to family members and her financial situation. She did not want certain information as to her housing situation to be in the public

domain as it was embarrassing to her. She also wanted the Tribunal to consider matters relating to the DWP and the housing investigation by the council in private.

4. The Respondent's housing situation had caused her considerable stress and harm and was relevant to the background to the conviction. If the information was in the public domain it would cause the Respondent prejudice going forward. The Respondent had not set out her circumstances in the Crown Court as she did not want to be seen as a victim.

The Applicant's Position

5. Mr Moran did not oppose the application in relation to matters relating to family members but opposed the application for privacy in relation to the DWP, housing and the investigation.
6. Under Rule 12(4) of the Solicitors (Disciplinary Proceedings) Rules 2007:

“(4) Any party to an application and any person who claims to be affected by it may seek an order from the Tribunal that the hearing or part of it be conducted in private on the grounds of—

 - (a) exceptional hardship; or
 - (b) exceptional prejudice,

to a party, a witness or any person affected by the application.”
7. Exceptional hardship and prejudice were different to any embarrassment.

The Tribunal's Decision

8. The Tribunal decided that it would hear the Respondent's mitigation in private in order that she could tell the Tribunal everything that she wanted it to hear. The Respondent was representing herself and it was important that she felt able to say everything she wanted to say.
9. Whilst the Tribunal accepted that Rule 12(4) was engaged in relation to information relating to family members the Tribunal did not accept that exceptional hardship and prejudice would be caused to the Respondent by reference to matters relating to her housing, the DWP and the investigation being included in the Judgment. Accordingly if the Respondent told the Tribunal about such matters they would be referred to in the Judgment. Any matters relating to personal information in respect of family members would not be referred to in any detail so as to avoid identifying that family member.

Factual Background

10. The Respondent was born in September 1959 and was admitted to the Roll of Solicitors on 15 August 2001. At the date of the Rule 5 statement, the Respondent remained on the Roll of Solicitors but did not hold a practising certificate. At the times relevant to the allegations, the Respondent was not employed as a solicitor and sat occasionally as a lay member of the Employment Tribunal.

11. On 23 February 2017 the Respondent self-reported her conviction to the Applicant. An SRA Supervisor called the Respondent on 12 June 2017, requesting background information about the offence. Following further investigations, the SRA wrote formally to the Respondent on 17 July 2017 asking her for an explanation. Following an exchange of emails the Respondent spoke to an SRA supervisor to discuss the allegations on 18 July 2017.
12. The Respondent replied to the SRA's letter, by emails dated 11 August 2017 at 10.56am, 12.23pm and 3.45pm. She denied the allegations and stated "I reject the assertion that I acted or intended to act dishonestly and that my actions were certainly not dishonest". The Respondent also stated she wished to appeal the conviction. Her application for leave to appeal was dismissed on 14 November 2017.
13. On 9 February 2018, the SRA sent a further letter to the Respondent, asking for additional comments. Further representations were received from the Respondent in relation to the allegations generally by email dated 27 February 2018.

Witnesses

14. The Tribunal did not hear any oral evidence. However, the Respondent made submissions on her own behalf which the Tribunal carefully considered and took those into account as part of her mitigation.
15. The written evidence 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. 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

16. 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 her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
17. **Allegation 1.1 - By virtue of her conviction for Fraud by False Representation under Section 2 of the Fraud Act 2006, a criminal offence of dishonestly making false representation to make gain for herself/another or cause loss to other/expose other to risk she:**
 - 1.1.1 **failed to uphold the rule of law and the proper administration of justice and therefore breached Principle 1 of the Principles;**
 - 1.1.2 **failed to act with integrity and therefore breached Principle 2 of the Principles; and**

1.1.3 failed to behave in a way which maintained the trust the public placed in her and in the provision of legal services and therefore breached Principle 6 of the Principles.

The Applicant's Case

- 17.1 On 12 July 2016 at Isleworth Crown Court the Respondent was tried and convicted of Fraud by False Representation (under Section 2 of the Fraud Act 2006). She was convicted of dishonestly making false representation to make gain for herself/another or cause loss to other/expose other to risk. The Respondent was tried under her maiden name, Abosede Panama.
- 17.2 The Respondent made a false representation in an application to the Royal Borough of Kensington and Chelsea for a discretionary housing payment. On 12 July 2016 the Respondent was sentenced to a community order for a period of 12 months, to perform 200 hours of unpaid work for the community.
- 17.3 The Judge's Sentencing Remarks included the following comments:
- “You signed a declaration that the information that you had provided was a true record of your financial and personal situation. In fact, as the jury have found, you dishonestly and deliberately concealed a post office account in which there was a balance of nearly £3,000...”
- “By your deliberately dishonest application, you gained a payment of £5,130...In sentencing you, I make it plain that there is no question of this having been an omission based on carelessness. It is all too clear from the jury's verdict that they were sure that you had deliberately set out to deceive”.
- 17.4 The Judge took account of the Respondent's previous good character and the fact she was a qualified solicitor but stated:
- “By this conviction for dishonesty, you will never again be regarded as fit to sit in any Tribunal and your prospects of ever again practising as a solicitor are bleak”.
- 17.5 The matter was reported in the local press. The press coverage referred to fact that the Respondent was a “former solicitor”.
- 17.6 The Mens Rea of the above offence is dishonesty. In his sentencing remarks, the Judge made clear that the Respondent had been found to have been dishonest in her application, and in the evidence given at trial. He stated: “I assess your evidence on oath to have been both dishonest and manipulative”. He also stated that the Respondent's explanation, “has been exposed as the lie that it was”.
- 17.7 By acting in such a manner, and by being convicted for a criminal offence involving dishonesty, the Respondent has clearly undermined the rule of law and the proper administration of justice, in breach of Principle 1. She lacked integrity because no solicitor of integrity would commit such an offence, and has therefore breached

Principle 2, and was a risk to the public trust in the provision of legal services, placing her in breach of Principle 6.

- 17.8 The Applicant relied on the Certificate of Conviction and said that it was not open to the Respondent to seek to go behind the conviction. There was no separate allegation of dishonesty.

The Respondent's Case

- 17.9 The Respondent accepted that there was nothing that she could do about the fact of the conviction. The Certificate of Conviction was factual. On that basis the Respondent admitted the allegation however she denied dishonesty.

The Tribunal's Findings

- 17.10 There was no allegation of dishonesty before the Tribunal. The Tribunal had to consider whether due to her conviction the Respondent had breached Principles 1, 2 and 6.

- 17.11 Rule 15 of the SDPR states:

“15.—(1) In any proceedings before the Tribunal which relate to the decision of another court or tribunal, the following rules shall apply if it is proved that the decision relates to the relevant party to the application.

(2) 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.”

- 17.12 The Tribunal had before it the Certificate of Conviction showing that the Respondent had been tried and convicted of dishonesty making false representation to make gain for self/another or cause loss to the other/expose other to risk.
- 17.13 The Tribunal found allegation 1.1.1 proved beyond reasonable doubt. The very fact of the conviction meant that the Respondent had failed to uphold the rule of law and the proper administration of justice and had breached Principle 1.
- 17.14 The Tribunal found that the Respondent had failed to act with integrity and therefore breached Principle 2. She had not adhered to the ethical standards of her own profession. No solicitor of integrity would be convicted of an offence of fraud. Allegation 1.1.2 was proved beyond reasonable doubt.
- 17.15 The Tribunal found that the Respondent had failed to behave in a way which maintained the trust the public placed in her and in the provision of legal services and breached Principle 6. The public were not going to trust a solicitor who had been convicted of fraud. Allegation 1.1.3 was proved beyond reasonable doubt.

- 17.16 In reaching these findings the Tribunal particularly took into account the Certificate of Conviction and the Judge's Sentencing Remarks. He had said that in his judgement, that the Respondent had made a deliberately dishonest application and that he assessed her evidence on oath to have been both dishonest and manipulative.
- 17.17 This was not how the public expected a solicitor to behave and clearly had not maintained the trust that the public placed in the Respondent and the provision of legal services.

Previous Disciplinary Matters

18. There were no previous findings of the Tribunal.

Mitigation

19. The Respondent had submitted an email dated 31 May 2018 by way of her Answer to the allegations. The allegations had arisen at a time when she was homeless and living in temporary accommodation which was very expensive and not affordable, as a result of which she needed to make a claim for housing benefit.
20. At the same time whilst facing the threat of eviction, there was a traumatic event in relation to a family member which had had long term consequences.
21. The Respondent accepted that she had made a serious error of judgement but categorically denied that she had been dishonest in not disclosing her Post Office account. She said that this was not a normal account like a day to day account where bank statements were received regularly or where it was used for other transactions. It was a benefit account, no other monies could enter the account. The monies in the account were DWP payments; hence it was not capital but accrued monies for all her benefits, paid for family members and the bulk of the money was a benefit for a family member which she received because they were under eighteen at the time and which she continued to receive as their appointee.
22. The Respondent had left the section of the form blank where she should have put the account balance. She had not put a figure but in previous forms she had disclosed the existence of the account. The information had been in the Council's database since 2008. The account was given to her family member for their use for three years prior to her application. She had intentionally left it blank because she had no idea how much was in the account and did not want to hazard a guess.
23. Another very serious charge had been withdrawn by the prosecution in the criminal proceedings. The fact of this other charge which was not proceeded with had caused the Respondent trauma and distress. The Respondent had been facing the threat of eviction and was unemployed or had gone through a long period of unemployment. She was experiencing hardship and during a difficult time made an application for Discretionary housing payments. Her error was that she had £3000 in an account which she was not aware she had in the account. In any event, the Respondent did not believe the money was truly hers as she considered that it was held by her as a nominee/trustee for her family member.

24. The local authority had always been aware of the Respondent's employment, including details of her hours and income and the address of her employer throughout the duration of her employment and service. They were sent all her payslips and P60 for all four years. The housing benefit office department recalculated the benefit calculation outcome ten times and on each of these occasions there was a different outcome. Due to an error the Respondent's tax file wrongly showed that she worked for two organisations at the same time.
25. The Respondent had been charged with benefit fraud. She had made a claim for what people generally understood as housing benefit which was means tested and usually paid on a weekly basis to low income families. This was because her employment was sessional and sporadic. She did not make a claim for unemployment benefit for those periods. DHP was different from housing benefit - it was the special payment paid by government to help families facing eviction and the risk of losing their home. The Respondent was entitled to the award and eligible for the scheme at the time. She was also eligible for housing benefit.
26. The Respondent accepted that her failure to disclose her account was an error of judgement for which she apologised. The Respondent accepted that she was wrong in not disclosing the account. The Respondent was ashamed and profusely apologised to the Applicant and members of her profession. She simply could not find enough words to say how sorry and remorseful she was but vehemently denied the assertion that she was dishonest.
27. The Respondent told the Tribunal about her family and their circumstances. She had not been able to take up employment she had secured due to the conviction. She had offered to pay back the monies if this meant she could work.
28. The Respondent had provided a personal financial statement to the Tribunal. The Respondent had not completed the personal financial statement in full. She told the Tribunal that she had been receiving Enterprise Allowance of £65 per week as she had been self-employed but now she was claiming universal credit. She had a loan but she was not making repayments so had not included information in respect of the loan.
29. The card account statement for the Post Office account showed a balance of £4381.91 as at 21 September 2018. There had been six withdrawals of £600 each since 6 September 2018 and the Respondent told the Tribunal that she had given this money to her mother to look after. The Respondent said the money in the account was her family member's benefit not her money.
30. The Respondent explained that her maiden name was Panama-Adams and this is why the letter from Job Centre Plus was in the name of Adams.

Sanction

31. The Tribunal referred to its Guidance Note on Sanctions (Fifth Edition) when considering sanction.

32. The Tribunal assessed the seriousness of the misconduct in order to determine which sanction to impose. The Respondent's culpability was high. The Respondent's motivation for the misconduct was personal gain. There was a finding of the Crown Court to that effect. She did not fill in the form correctly. The Tribunal considered that this was a breach of a position of trust as a solicitor should be able to be trusted to the ends of the earth. The misconduct was planned in that the Respondent decided not to complete the section of the form. The Respondent had direct control of or responsibility for the circumstances giving rise to the misconduct. At the time she had a considerable level of experience as a solicitor having qualified in 2001. Harm had been caused by the misconduct. However, the Respondent had not deliberately misled the regulator.
33. The Tribunal assessed the impact of the Respondent's misconduct upon those directly or indirectly affected by the misconduct, the public, and the reputation of the legal profession. No client had suffered loss but the public purse had suffered loss and the reputation of the profession had been harmed by her misconduct. The Respondent's misconduct was a total and utter departure from the complete integrity, probity and trustworthiness expected of a solicitor. The harm might reasonably have been foreseen to be caused by the Respondent's misconduct.
34. Aggravating factors included the fact that the misconduct involved the commission of a criminal offence namely an offence of fraud. The misconduct had been a one-off but it had been deliberate. The Respondent knew or ought reasonably to have known that the conduct complained of was in material breach of her obligations to protect the public and the reputation of the legal profession. In terms of mitigating factors the Respondent had voluntarily notified the Regulator and the misconduct was a single episode in a previously unblemished career. However, the Tribunal did not consider that the Respondent had shown any genuine insight. The misconduct was very serious.
35. Having determined the seriousness of the misconduct, the Tribunal assessed which sanction to impose. The Tribunal started from No Order. Given the seriousness of the misconduct No Order, a Reprimand or a Fine were clearly insufficient sanctions. The misconduct had involved a criminal offence. 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 insufficient sanction.
36. The Tribunal concluded 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. Before finalising sanction the Tribunal considered whether there were any exceptional circumstances and whether the Respondent's personal mitigation meant that this sanction should be reduced. The Tribunal concluded that there were no exceptional circumstances. In respect of personal mitigation, whilst the Tribunal was sympathetic to the difficulties that the Respondent had experienced the Tribunal concluded, having regard to the overall facts of the misconduct, that allowing the Respondent's name to remain on the Roll would have a significantly detrimental effect on the public's confidence in the reputation of the legal profession. The only appropriate sanction was for the Respondent's name to be struck-off the Roll of Solicitors.

Costs

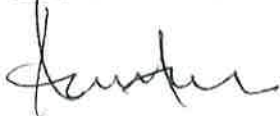
37. The Applicant applied for its costs in the sum of £4,458.54. Although there had not been a forensic investigation report in this case Mr Moran submitted that there had been a considerable amount of work undertaken because of the Respondent's denials. It had been necessary to obtain and consider the transcript of the criminal hearing. In preparing for the hearing Mr Moran, who was not the case handler, had had to consider approximately 400 pages. Mr Moran assured the Tribunal that costs had not been duplicated in the costs schedule.
38. The Respondent submitted that she could not afford to pay costs. She was in receipt of benefits, she had not been able to find a job and was experiencing financial hardship. She had wanted an Agreed Outcome but had not been able to reach agreement with the Applicant.
39. The Tribunal decided that the Applicant should pay the costs of the proceedings. It proceeded to summarily assess the costs. The Tribunal reduced the time claimed for preparation of the documents and preparation for hearing. The time for advocacy was also reduced to reflect the length of hearing. Having made these adjustments the Tribunal assessed costs in the sum of £3,300.00.
40. The Tribunal had before it the Respondent's personal financial statement and had heard her mitigation in respect of her means. There was very little evidence before the Tribunal to substantiate what the Respondent had said in respect of her finances. The Tribunal noted the balance on the Post Office account and the significant withdrawals that had recently been made. In the circumstances enforcement of the costs order should be left to the discretion of the Applicant and an order that costs should not be enforced without leave of the Tribunal was not appropriate.
41. The Tribunal ordered that the Respondent do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,300.00.

Statement of Full Order

42. The Tribunal Ordered that the Respondent, ABOSEDE AKINLEYE (also known as ABOSEDE PANAMA and ABOSEDE ADAMS), solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,300.00.

Dated this 29th day of October 2018

On behalf of the Tribunal



J. P. Davies
Chairman

Judgment filed
with the Law Society
on 30 OCT 2018