SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11178-2013

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ANDREW ROGER TIDD Respondent

Before:

Mrs J. Martineau (in the chair)
Miss N. Lucking
Mr M. Palayiwa

Date of Hearing: 17 December 2013

Appearances

Ms Devi Nadarajah, solicitor, of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham B1 1RN, for the Applicant.

The Respondent, Mr Andrew Roger Tidd, appeared and represented himself.

JUDGMENT

Allegation

1. The allegation against the Respondent (as amended) was that, contrary to all, alternatively any of Principles 1 and/or 6 of the SRA Principles 2011 ("the Principles") he failed to uphold the rule of law and the proper administration of justice, he failed to act with integrity and behaved in a way that was likely to diminish the trust the public placed in him or the profession by virtue of his conviction upon indictment of 5 counts of failing to report under Section 333 POCA 2002 Money Laundering Regulations at Burnley Crown Court on 6 February 2012 as follows:

   Failing to make a required disclosure between 31 July 2004 and 1 March 2008 at Liverpool, in the course of business in the regulated sector, having reasonable grounds for knowing or suspecting that another person was engaged in money laundering failed to make the required disclosure to a nominated officer for an authorised person as soon as was practicable.

Documents

2. The Tribunal reviewed all of the documents submitted by the parties, which included:

Applicant:

- Application dated 13 August 2013
- Rule 5 Statement, with exhibit "DN1", dated 13 August 2013
- Extract from Proceeds of Crime Act 2002 (section 330)
- Copy Bolton v Law Society [1994] 2 All ER 486
- Schedule of costs dated 4 December 2013

Respondent:

- Bundle of documents (21 pages) including correspondence and records concerning the subject matter of the conviction
- Schedule of financial circumstances and supporting documents

Preliminary Matter – Amendment/withdrawal of allegation

3. It was noted that the allegation in the Rule 5 Statement referred to the Respondent being convicted on 5 December 2012. However, the Certificate of Conviction produced in the Rule 5 Statement referred to the conviction being on 6 February 2012. It was confirmed that the conviction was on 6 February 2012 and sentencing had taken place on 5 December 2012. For the sake of clarity, the allegation was amended to plead the correct date. There had been no prejudice to the Respondent caused by the error in the original pleading. The Proceeds of Crime Act 2002 was referred to in the allegation and is generally referred to hereafter as the POCA 2002.

4. Ms Nadarajah told the Tribunal that, in the light of an email from the Respondent on Friday 13 December, she had reviewed the allegations. As a result of that review she had concluded that there was no evidence to prove beyond reasonable doubt that the

Respondent's failure to disclose information arose from any lack of integrity on his part. Ms Nadarajah sought the Tribunal's permission to withdraw the allegation which had been made that the Respondent had been in breach of Principle 2 of the Principles. The Tribunal was informed that the Respondent consented to this application. The Tribunal determined that in the light of the provisions of s330 POCA and the Applicant's confirmation that there was insufficient evidence on which to proceed, the allegation of lack of integrity should be withdrawn.

Factual Background

5. The Respondent was born in 1960 and was admitted as a solicitor in 1985. His name remained on the Roll of Solicitors but he did not hold a current Practising Certificate, his last Certificate (for the year 2010/11) having been terminated on 29 August 2012.

6. On 6 February 2012 the Respondent pleaded guilty and was convicted at Burnley Crown Court of 5 counts of failing to report under s330 POCA 2002 Money Laundering Regulations. The Certificate of Conviction was produced to the Tribunal. On 5 December 2012 the Respondent was sentenced to 4 months imprisonment suspended for 12 months concurrent for each of the 5 counts.

7. The convictions arose from matters conducted by the Respondent whilst he was a solicitor at Yaffe Jackson Ostrin ("YJO") in Liverpool in the period 31 July 2004 to 1 March 2008. The Respondent's client in the relevant matters was a Mr K. YJO had ceased to trade in about May 2012, for reasons unconnected with this matter.

8. In sentencing the Respondent, the trial judge HHJ Woolman, made remarks which were produced in full to the Tribunal and which included the following, referred to specifically by the Applicant:

> "It is important to observe that the basis for the pleas of guilty was not that the defendant knew of suspected that (Mr K) was engaged in money laundering, but that he had reasonable grounds to suspect and that is the lowest level of criminal responsibility under the Scheme of the 2002 Act".
>
> "...certainly from 13 January 2005 this defendant became aware that (Mr K) was involved in criminal proceedings..."
>
> "... the Court of Appeal observed that in cases of money laundering a clear message has to be sent out that the courts take a serious view of activity by anybody, including solicitors, as it was in this case."
>
> "The obligation upon solicitors and other professionals to act as gatekeepers in the system is important because they are the people through whom the money needs to be laundered and despite the careful submissions of Mr Ford on behalf of the defendant, I have come to the conclusion that this case does cross the custody threshold, although as I have previously indicated there are extremely powerful reasons why the sentence in this case should be suspended and so that in the end my judgment is and the sentence of the Court is that on all counts concurrently there will be sentences of four months' imprisonment suspended for 12 months.

> I hope that although the Solicitors Regulation Authority will look at the matter they will not choose to punish the defendant further. It may be that there will be matters of regulation of which they are properly seized, but so far as this Court is concerned it seems to me that all the punishment has been carried out both by the passage of the two years since the investigation started and all the troubles it has caused and indeed by the sentence of this Court itself..."

9. On 26 February 2013 the Applicant wrote to the Respondent asking him for an explanation for his conduct. The Respondent replied by letter of 5 March 2013. His response set out explanations for each of the indictments he had faced. The Respondent went on to state that it had always been his intention to fight all of the charges against him but that, three days before the trial, the prosecution offered a deal requiring him to plead guilty to the five charges of failing to report and, in return, the charges of fraud and money laundering would be dropped; the Respondent was also informed that a custodial sentence would not be sought. The Respondent's letter stated that a number of factors determined his eventual decision to agree to the deal proposed and that those factors included the effect on his family, the prosecution's acceptance that there had been no dishonesty, the preservation of his professional integrity and the risks of trial.

10. On 24 April 2013 an Authorised Officer of the SRA made a decision to refer the Respondent's conduct to the Tribunal.

Witnesses

11. None.

Findings of Fact and Law

12. The Applicant was required to prove the allegation 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.

13. **Allegation 1 - The allegation against the Respondent (as amended) was that, contrary to all, alternatively any of Principles 1 and/or 6 of the SRA Principles 2011 ("the Principles") he failed to uphold the rule of law and the proper administration of justice, he failed to act with integrity and behaved in a way that was likely to diminish the trust the public placed in him or the profession by virtue of his conviction upon indictment of 5 counts of failing to report under Section 333 POCA 2002 Money Laundering Regulations at Burnley Crown Court on 6 February 2012 as follows:**

Failing to make a required disclosure between 31 July 2004 and 1 March 2008 at Liverpool, in the course of business in the regulated sector, having reasonable grounds for knowing or suspecting that another person was engaged in money laundering failed to make the required disclosure to a nominated officer for an authorised person as soon as was practicable.

13.1 The Respondent admitted that he had been convicted of the offences described and that, by reason of his conviction, he had breached Principles 1 and 6 of the Principles.

13.2 The Tribunal noted that any conviction of a solicitor was a serious matter and would have the effect of diminishing the trust the public would place in the profession. Further, such conviction meant that a solicitor had failed to uphold the rule of law.

13.3 The Tribunal noted the terms of s330 of the POCA 2002 and the trial judge's sentencing remarks. It was clear that the Respondent had not known or, indeed suspected that Mr K was involved in money laundering. Rather, the Respondent had had information which he received in the course of his legal practice which gave reasonable grounds for knowing or suspecting that Mr K was involved in money laundering but he had not made the required disclosure.

13.4 The Tribunal was satisfied to the required standard on the facts and on the admission that the allegation had been proved.

Previous Disciplinary Matters

14. There were no previous matters in which findings had been made against the Respondent.

Mitigation

15. The Respondent was invited to present his mitigation. The Tribunal took into account the documents submitted, in particular the Respondent's letter to the Applicant dated 5 March 2013, the trial judge's sentencing remarks and the Respondent's oral submissions.

16. The Respondent did not seek to go behind the conviction but submitted that the offences for which he had been convicted were regulatory in nature. He had not known or suspected that Mr K was involved in money laundering but, objectively, he had had reasonable grounds for knowing or suspecting money laundering. The trial judge had noted that this basis for the conviction was the lowest in terms of culpability. The trial judge and prosecutors had accepted that there was no dishonesty and no actual suspicion that Mr K was involved in money laundering in any way.

17. The Respondent told the Tribunal that he had initially been charged with more serious offences, including money laundering. The Respondent had always intended to deny all of the charges, and had been outraged that he had been arrested and charged with such offences. The criminal proceedings were in train for a long time, the Respondent having first provided information to the police about Mr K in about April 2009. Shortly before the trial was due to start the prosecution informed the Respondent and his legal team that, if he pleaded guilty to the charges of failing to report, the other charges would be withdrawn. The Respondent told the Tribunal that his initial reaction was to reject the offer; his counsel had advised that the Respondent could either continue to trial or accept the deal which was offered, and left the decision to the Respondent. The Respondent told the Tribunal that the condition precedent to his acceptance of the deal was that the prosecution would drop any allegations which questioned the Respondent's honesty and integrity. Further, the Respondent was

concerned about his wife's ill-health and the damage which a trial (estimated to last 2 weeks) could do to her. The vagaries of the jury system meant that the Respondent had no guarantees that he would be acquitted of the more serious charges, although he was adamant that he was not guilty; even a small prospect of conviction was too great a risk to accept in the circumstances. The Respondent's decision also took into account the trial judge's formal direction that he would not consider imposing an immediate custodial sentence if the Respondent pleaded guilty to the regulatory breaches under s330 POCA 2002. The Respondent still wondered from time to time if he had made the right decision.

18. The Respondent told the Tribunal that he had co-operated fully with the Applicant. He had arranged for one of his partners to notify the SRA when the Respondent had been charged and he had been open and honest in his responses to enquiries by the Applicant. The Respondent told the Tribunal that he had been open and honest with the police. In about April 2009 the police had attended his office with a production order for files relating to Mr K. These had been provided intact and in their entirety. In discussion with a police officer, the Respondent had told the officer that he was aware that Mr K had been in custody at one time.

19. The Respondent told the Tribunal that the offences arose from an error of judgement on his part. The Respondent did not think he had been reckless in his exercise of that judgement but he accepted that he had got it wrong. The case against him had been put on the basis that as the Respondent knew that a) Mr K had been in custody and b) wanted to transfer some property and so had reasonable grounds to suspect money laundering.

20. The Respondent told the Tribunal that there were a number of factors which had suggested there were no suspicious circumstances:

20.1 Mr K had been introduced to the Respondent as a client by Mr K's brother, for whom the Respondent had acted for a number of years. The brother was a proper and upstanding businessman. Although the police had taken some files relating to him, no action had been taken.

20.2 Mr K had met with the Respondent, provided ID and explained that he had fast food businesses, which provided an explicable source of funds.

20.3 In June 2004 the Respondent had received a reference for Mr K from a high street bank, in connection with a proposed transaction, which stated that he had been a customer of the bank for 2-5 years; this appeared to provide evidence that the client was a bona fide businessman.

20.4 The Respondent received a number of trade references relating to Mr K from businesses which had dealt with him for a number of years.

20.5 The Respondent was aware of a Lease, prepared by the firm of Hill Dickinson, on which Mr K had been accepted as a guarantor (in 2002) which suggested he had satisfied that firm that he was bona fide.

20.6 Apart from on two occasions – set out below – all funds received from or on behalf of Mr K had come from high street banks by cheque or bank draft, drawn on accounts in the client's name.

20.7 Mr K had not asked for or been given a special treatment; he had been charged the usual fees and was in all respects regarded as a normal client.

21. On one occasion cash of £250 had been received by the Respondent's firm. The Respondent explained that in a lease transaction the landlord had increased its fees at short notice. The client provided the modest amount of £250 in cash to conclude matters in the transaction.

22. The Respondent told the Tribunal that the prosecution case had been that a sum of about £56,000 was being laundered by or on behalf of Mr K. However, the Respondent and his legal team had calculated that the correct sum was about £27,000. The Respondent accepted that the scale of the operation did not make his failure to report any less serious. The Respondent told the Tribunal that, although he was aware from about early January 2005 that the Respondent was in custody, information given to him by Mr K's wife led the Respondent to understand that Mr K was in custody in connection with alleged misappropriation of partnership funds. This was in relation to a dispute with a former business partner about a business, the EP, about which the Respondent had some knowledge because of previous instructions from Mr K. The Respondent had been instructed in relation to the proposed sale of the EP but the partners had fallen out and a conflict of interest had arisen, so he had not acted further but understood there was a dispute. The Respondent told the Tribunal that he was unaware until 2010, when he was questioned by the police, that Mr K had been in custody in connection with drugs offences. Another firm had been instructed by Mr K in relation to the criminal matters. At one point that firm had asked for a copy of the file relating to the EP matter. Further, the criminal solicitor had been prepared to witness Mr K's signature on a transfer document and had not raised any concerns with the Respondent about that transaction. The Respondent accepted that he had not asked why Mr K was in custody; had he done so, none of the events leading to his conviction would have happened.

23. The Respondent told the Tribunal that although he had been convicted on 5 counts, all flowed from one error of judgement, which he made in the first instance. Two of the transactions in question had occurred whilst Mr K had been in custody and a further three related to events after Mr K's release. In all instances, the Respondent had not suspected that Mr K had any involvement in drugs or that the transactions were in any way tainted. The Tribunal noted the detailed summary of each transaction in which the Respondent had acted for Mr K.

24. The Respondent told the Tribunal that he had acted for Mr K in relation to the purchase of a residential property in Lancashire. The purchase of that property, from a lender in possession, completed in February 2008 which was about a year after Mr K had been released from custody. In that matter, the Respondent's firm had received £7,500 directly into its account. The Respondent had sought an explanation and was told that the sum had been provided by Mr K's father-in-law who had provided the balance needed to complete. The Respondent had informed the seller's solicitors about this receipt and that it was being queried; completion was delayed

until the Respondent was satisfied of the source of the funds by way of a written explanation.

25. The Respondent accepted that the fact of his conviction would have a harmful effect on the public perception of the profession; he did not shy away from that. He was very sorry for what had happened and it was a source of deep personal and professional regret. He had made an honest error of judgement, but his integrity and probity were not in question. No harm had been intended. The Respondent had had no actual suspicion, let alone knowledge, that Mr K might be involved in money laundering. He had not concealed what had happened and had fully co-operated with the police investigation. There had been deception by his client, Mr K, and the Respondent had not appreciated that he was in breach of any professional obligations. Since the police investigation began the Respondent had had time to reflect and he had genuine insight into his conduct.

26. The Respondent told the Tribunal that he was mortified by what had happened. He had been in practice for 25 years, with no previous disciplinary matters against him. There was no risk that any breach of this kind would occur again, as the trial judge had commented in his sentencing remarks, and the Respondent would be more alert and suspicious in future.

27. The Respondent understood that the purpose of sanction in the Tribunal, as set out in the Bolton case, was not just punishment but the maintenance of the reputation of the profession. The Respondent submitted that the public, if informed of all of the circumstances, would understand that this case did not warrant a severe sanction.

28. The Respondent submitted that a fine, whether or not in combination with another sanction, would not be appropriate as a fine would be a punishment (in the light of the Respondent's financial position) and the trial judge's view had been that the Respondent had been punished enough. The Respondent acknowledged that the Tribunal was not bound by the trial judge's comments and that the full range of sanctions was available, but the Tribunal should consider whether a sanction would be a punishment. The Respondent submitted that a restriction order may not be appropriate given that the breaches occurred as a result of one misjudgement and would not happen again; there was no need to make such an order to protect the public. The Respondent submitted that suspension from practice was not proportionate. He had not worked since May 2012 when his firm had ceased to trade. The Respondent's partners and colleagues had supported him when he was charged. The Respondent had had the prospect of work as he was well known in the Liverpool business community but had declined offers as he was facing sentencing and did not want any adverse publicity to attach to any new employer. In effect, he had suspended himself from practice for over 18 months. The Respondent submitted that striking off was not appropriate. His criminal conviction had been in an exceptional case, for which the trial judge had not been able to find any precedents on the question of sentencing. The trial judge had expressed sympathy for the Respondent's position but had concluded that a conditional discharge was not within his powers. The trial judge had imposed the minimum sentence, with the shortest possible period of suspension and had expressed the hope that the Respondent would be able to move on with his life. Whilst the Tribunal was not bound by the trial judge's views, the trial judge had been in possession of all of the facts surrounding the conviction.

29. The Respondent referred to a letter from the solicitor who had represented him in the criminal proceedings, written to the SRA on 18 January 2013, in which the solicitor had stated he had found the Respondent to be a man of great decency, honesty and integrity. The Respondent told the Tribunal that he had chosen not to obtain lots of testimonials, which he could have done, as the letter from the criminal solicitor was of value; the solicitor must have been certain in his view in order to write the letter.

30. The Respondent told the Tribunal that his love of the profession had not been diminished and whilst he appreciated the difficulty of his situation he wanted to return to the profession. The Tribunal was invited to consider imposing a severe reprimand which, it was submitted, would give the right message to the public and profession. The Tribunal should also consider that the Respondent had been voluntarily suspended for 18 months.

Sanction

31. The Tribunal considered carefully all of the circumstances of the case and took into account its Guidance Note on Sanction (September 2013). It was clear from this, and in particular from the judgment in the Bolton case that the fundamental purpose of sanction in the Tribunal was the maintenance of the reputation of the profession as one in which every member could be trusted to the ends of the earth.

32. The conviction of a solicitor for any offence linked to money laundering had to be regarded as serious, as it would have an impact on the reputation of the individual and the profession. There had clearly been breaches of two of the core Principles of the profession, being Principles 1 and 6. However, in this instance there had been no finding of any lack of integrity, either in relation to the criminal convictions or in this Tribunal. The basis on which the Respondent had pleaded guilty was that he had information, in the course of his practice, which gave reasonable grounds for suspecting that Mr K had been engaged in money laundering; this showed a degree of culpability considerably below that of a person who had actually suspected money laundering. The offences were ones of failing to report, not of involvement in money laundering.

33. The Respondent should have been on notice that there were circumstances which required further enquiry and/or the making of a money laundering report, but all of the circumstances had given him comfort. The transactions on which he had been instructed by Mr K were entirely normal for a businessman engaged, as Mr K said he was, in the fast food business. Indeed, the Tribunal noted from the Respondent's letter of 5 March 2013 that the first matter in which he had acted for Mr K, in 2004, related to the purchase of a takeaway business, he had obtained references in relation to that matter but it had not proceeded. The Respondent had been instructed in relation to the purchase of another fast food business in 2004, which completed in the usual manner and later in 2004 dealt with the purchase of a further fast food business. All of this was before Mr K was taken into custody. Whilst the Respondent should have been alert to the reasons for Mr K's detention the Tribunal accepted that he had accepted the explanation given by Mr K's wife, which in turn tied in with other information held by the Respondent. The Respondent may have been naïve, but he had not acted with any malice. He had not received any gain; his firm had received a normal level of fees for the transactions in which the Respondent had acted for Mr K.

The Tribunal further noted that the Respondent had been given some comfort by the fact that the solicitor who acted for Mr K in the criminal matters had witnessed the transfer document in the transfer of a property at M Street. Further, in relation to the purchase of a property in Lancashire, in 2008, Mr K had had the benefit of a mortgage from a mainstream mortgage lender and the transaction had proceeded normally, albeit with some urgency. He had been misled by the fact that in all but two comparatively minor matters, for which explanations were given, the monies involved came from high street banks and lenders.

34. The Tribunal accepted that the convictions warranted a sanction which was sufficient to reflect the fact that the Respondent had failed to uphold the rule of law and that his actions would damage the reputation of the profession. However, the degree of personal culpability on the part of the Respondent in this particular case was minimal; he had misjudged his client and the situation and had not intended any harm but a reprimand would not be sufficient to reflect the seriousness of the matter. The Respondent had not displayed a lack of integrity. The Tribunal was satisfied that he would not repeat the misconduct and that there was no need to interfere with his ability to practice in order either to protect the public or protect the reputation of the profession. A fine was the proportionate and fair sanction in all of the circumstances.

35. In considering the amount of the fine, the Tribunal determined that to reflect the seriousness of the matter a fine of £5,000 would be appropriate. However, the Tribunal was required to take into account the Respondent's means in assessing the level of fine. In this instance, the Respondent's financial circumstances were such that whilst a fine of £5,000 would be justified the Respondent would be ordered to pay £2,500.

Costs

36. Ms Nadarajah made an application for the Respondent to pay the Applicant's costs of the proceedings and submitted a schedule of costs in the total sum of £1,881.

37. The Respondent told the Tribunal that in principle he agreed to pay the costs as the proceedings had been properly brought and the costs claimed were calculated reasonably. However, his financial circumstances were such that it would be very difficult for him to pay any costs order. The Respondent told the Tribunal that he had been declared bankrupt following the closure of YJO (in or about May 2012). The bankruptcy had now been discharged but the Respondent was not employed and had a very poor credit rating. The Respondent's wife had an income and the family received Working Tax Credit, Child Tax Credit and Child Benefit, but as a family there was no spare disposable income after taking into account essential outgoings. The Respondent told the Tribunal that the schedule of financial circumstances he had submitted had omitted gas and electricity bills which were around £400 per quarter. The Respondent was realistic about his prospects of gaining employment as a solicitor and asked the Tribunal either to make no order for costs or to provide for costs only to be enforced with the further permission of the Tribunal.

38. The Tribunal determined that the Respondent should be ordered to pay the Applicant's costs of the proceedings, which had been properly brought. The costs claimed were reasonable in amount. The Tribunal considered whether it should order

that the costs could only be enforced with the Tribunal's further permission. The Tribunal noted that the Respondent had stated that he had no assets and that he had no income. It was to be hoped that he would be able to secure some employment now that these proceedings had been concluded, but for the moment there was no prospect of him being able to pay the costs. In the circumstances, the Tribunal determined that it was fair and proportionate to order the costs of £1881 should not be enforced without permission; such permission could be sought if and when the Respondent secured employment or any assets.

Statement of Full Order

39. The Tribunal ORDERED that the Respondent, ANDREW ROGER TIDD, solicitor, do pay a fine of £2,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,881.00, such costs order not to be enforced without permission of the Tribunal.

DATED this 4th day of February 2014
On behalf of the Tribunal

Jane Martineau

J. Martineau
Chairman