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Judgment: approved by the Court for handing down | *Delivered:* **19/03/2014**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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IN THE MATTER OF A SOLICITOR

IN THE MATTER OF THE SOLICITORS (NORTHERN IRELAND) ORDER 1976

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MORGAN LCJ

[1] This is an appeal pursuant to Article 53(2)(a) of the Solicitors (Northern Ireland) Order 1976 ("the 1976 Order") by a solicitor from a decision of a Solicitors' Disciplinary Tribunal made on 27 September 2013 and served on him on 28 November 2013 ordering him to be restricted from practising on his own account and permitting him to work in partnership only with a solicitor of at least seven years post-qualification experience. The restriction was postponed until 3 January 2014 to allow the appellant to put his affairs in order. Mr Orr QC appeared for the appellant and Mr Stevenson for the Law Society. I am grateful to both counsel for their helpful oral and written submissions.

Background

[2] On 8 June 2012 the Law Society's accountant, Ms McMahon, undertook an inspection of the appellant's accounts. The visit was prompted by the fact that the Society had become aware that a bankruptcy petition for unpaid rates had been issued against the appellant. She discovered that the books of account had only been posted to 29 February 2012 in breach of the Solicitors' Accounts Regulations 1998 ("the 1998 Regulations") and that there was an unreconciled deficit of £364.43 in the client accounts. The office ledger balances at 29 February 2012 showed three credit balances totalling £560. An examination of the office bank reconciliation at the same date revealed six office account payments uncashed older than six months totalling £1798.37. That was also an unreconciled difference on the office bank reconciliation on the same date of £1627.12. The appellant was asked to rectify the breaches by 14 June 2012 and bring the books of account up-to-date. He indicated that because of staffing difficulties he was unlikely to be able to able to bring the books up-to-date

within the timescale. The appellant then wrote on 11 June 2012 to indicate that his bookkeeper left in March 2012 on maternity leave but he had now arranged to see a new bookkeeper to bring the accounts up to date. The matters identified by Ms McMahon were rectified by lodgements totalling £5840.86 made between 18 and 20 June 2012.

[3] A compliance visit on 27 June 2012 indicated that the books of account had still not been written up so Ms McMahon attended again at the appellant's premises on 26 July 2012 to meet his new bookkeeper. At that meeting the bookkeeper confirmed that the books of account had been written up to the middle of June 2012 but he was unsure how to deal with the lodgments made by way of rectification. Ms McMahon had provided him with a breakdown of how they should be posted to the system. It was arranged that she should carry out a further inspection on 3 August 2012 but she received a telephone call the previous day from the book keeper claiming that he did not have sufficient contact with the appellant to enable him to bring the books completely up-to-date. The appellant disputed any suggestion that he had not given the new bookkeeper complete and adequate cooperation and in substance his position was that the new bookkeeper turned out to be incapable of carrying out the work.

[4] Ms McMahon attended again to meet with the new bookkeeper on 10 September 2012. The month-end reconciliation to June 2012 had not been prepared and the new bookkeeper informed her that not all transactions for the relevant period had been posted onto the system. She also noted that the rectifying lodgments had not been posted onto the system. The appellant suggested that the reason the books of account were not completely up-to-date was because the bookkeeper had been on holidays for two weeks in August. Ms McMahon indicated that the books of account should be brought completely up-to-date by 2 PM on 12 September 2012. At the request of the appellant this was extended to 21 September 2012 with an indication that Ms McMahon would carry out a full inspection on 24 September 2012.

[5] At the inspection on 24 September 2012 the bookkeeper informed Ms McMahon that he had worked all weekend posting transactions onto the system up to 21 September 2012. He accepted, however, that not all client and office transactions had been posted because he claimed that he had not received sufficient information to enable him to do so. The amounts lodged by way of rectification in June 2012 had still not been posted onto the system. The last available reconciliation was for the month-end February 2012 and there was insufficient information to enable Ms McMahon to prepare a reconciliation herself. She was able to identify one file in which £540 had not been paid for doctors reports and £250 was due back to the client. The money had been transferred into the office account. The appellant indicated that these errors were due to the books of account not being maintained.

[6] Ms McMahon returned to carry out a full inspection on 2 October 2012. By letter received the previous day by the Society it was indicated that the appellant would not be available as he had to attend court. Ms McMahon identified a deficit per the client reconciliation on 21 September 2012 of £1808.40. At the same date she noted office credit balances in the sum of £2761.13. She also noted client related office account cheques uncashed for more than six months at that date in the sum of £1706. That left a total deficit of £6275.53. The appellant indicated to her that he had no access to funds to repay the shortfall and had no proposals for repayment. He also indicated that the VAT return had not been submitted since quarter ended January 2012 and he had no idea what the outstanding liability was.

[7] On 5 October 2012 solicitors acting for the appellant wrote to the Society indicating that it was his intention to retire from private practice at the end of October 2013. The correspondence indicated that the appellant was willing not totake on any further work. The new bookkeeper had indicated that the true deficit was probably about £2500. The appellant's solicitor indicated that the appellant was definitive about leaving private practice and wished to complete an orderly withdrawal. A statement from the new bookkeeper supporting the appellant's position was enclosed. The appellant lodged £5716.89 to the client account on 10 October 2012 to rectify the discrepancies.

[8] On 15 and 16 October 2012 Ms McMahon attended the practice with Bernadette Bell, a bookkeeper. They spent two days bringing the books up-to-date and preparing the necessary reconciliations and reports. The examination revealed seven office credit balances totalling £380.06 but nothing else of significance. The appellant makes the case that with the benefit of an experienced bookkeeper these difficulties were capable of resolution within two days. That supported his contention that the new bookkeeper had simply been unable to carry out the task allocated to him. On 25 October 2012 the Professional Ethics and Guidance Committee of the Law Society resolved to refer the conduct of the appellant to the Disciplinary Tribunal.

[9] At the hearing before the Disciplinary Tribunal the appellant explained that he had only employed 2 bookkeepers during 26 years of sole practice. He had not managed to get a replacement when his previous bookkeeper left in March 2012. The new bookkeeper had proved not to be up to the task. He had lodged £1000 more than was necessary in relation to the most recent shortfall. He had been a solicitor for 30 years and although that it had been his intention to cease practice there had been an upturn in his business and he now intended to continue.

[10] This was not the first occasion on which the appellant had come before the Solicitors' Disciplinary Tribunal in relation to similar matters. As a result of the complaint made on 2 March 2012 he was admonished at a hearing on 31 August 2012. On that occasion as a result of an inspection on 18 January 2011 Ms McMahon established that there was a deficit of £5471.01 in the client ledger balances at 31

December 2010. In addition there were 10 office ledgers with credit balances totalling £1826.81 and eight office account cheques outstanding for more than six months totalling £1869.67. The appellant accepted that the books of account had not been kept up-to-date in recent months and that quarterly reconciliations were missed. He confirmed that the books of account were up-to-date in January 2011 and would remain so.

[11] That matter was referred to the Tribunal. In his affidavit the appellant indicated that the practice suffered in 2010 with the loss of two senior members of staff including a senior secretary. This placed a greater onus on the appellant and he was left with a part-time secretary whose duties had to be diverted in order to cover the work formerly carried out by the absent secretary. She also had to take on responsibility for bookkeeping.

[12] The Tribunal had regard to the fact that the appellant was a solicitor of 30 years standing and it had no references in respect of his practice in the past. There was no suggestion of any dishonesty on his part and he rectified the deficits identified by the accountant at the earliest opportunity. It noted, however, that this was a serious case and that any breach of the Regulations was a matter of great concern to the profession, the wider public and the Tribunal. It decided, however, that it should not interfere with the practising certificate on that occasion.

[13] On this occasion the Tribunal viewed the breach of the Regulations very seriously particularly in light of the previous problems. It concluded that it was clear that the appellant had recurring financial issues within his practice. It was his responsibility to ensure that he employed adequate bookkeeping staff. The Tribunal was concerned about the appellant's apparent inability to fully recognise and accept his responsibilities in relation to the financial administration of his office practice. Despite the fact that he was a solicitor of long-standing the Tribunal felt compelled to impose a sanction that would mark the seriousness of the numerous offences.

The submissions of the parties

[14] The appellant submitted that the approach which the court should take in an appeal of this kind was that set out by Carswell LCJ in Re A Solicitor [2001] NIQB 52. In Re CH [2000] NI 62 he had indicated that he should give substantial weight to the considered conclusions of the Law Society but somewhat modified his approach in the later case, not starting with any presumption that the Society's views were correct but recognising as a matter of common sense that they were founded on the collective experience of practitioners and constituted evidence to which he may have regard to determine the issue for himself.

[15] It was submitted that Lord Carswell paid particular attention to the necessity to have due regard to the interests of the public, the interest of the profession, the interests of the clients of the solicitor in question and the interests of the solicitor

himself in reaching a conclusion on whether a solicitor should be entitled to practice. He also relied on the decision of Kingsmill Moore J in Re Crowley [1964] IR 106 in which there was particular emphasis placed on the fact that a restraint upon a solicitor's right to practice should be related to some continuing state of affairs which rendered his practising undesirable.

[16] In this case it was contended that there was no continuing state of affairs as a bookkeeper had now been appointed. There had been no complaint or concern from any client and no loss to any client. The sums involved in the discrepancies were modest and the appellant had cooperated with the accountant. The problems which had arisen had been connected to personal difficulties including medical problems within the appellant's family and at a time of severe recession within the profession as a whole. The Tribunal's emphasis on numerous offences was not warranted having regard to the facts.

[17] The Society submitted that Re A Solicitor was not the relevant authority in cases of this kind. That was a case where the solicitor was refused a practising certificate by the Registrar, he appealed to the Council of the Law Society who granted him a restricted certificate and then appealed to the Lord Chief Justice under Article 17A(2) of the 1976 Order seeking the removal of the restriction. It was contended that the criteria appropriate for the regulatory body were not those appropriate for the Tribunal. The correct approach was that set out in Bolton v Law Society [1994] 2 All ER 486 where Lord Bingham said that it would require a very strong case to interfere in sentence appeals from the Tribunal because the disciplinary committee are the best possible people for weighing the seriousness of the professional misconduct.

[18] In Law Society v Salsbury [2008] EWCA 1285 Bolton was qualified by Jackson LJ who considered that the Tribunal comprised an expert and informed body which was particularly well placed in any case to assess what measures were required to deal with defaulting solicitors and to protect the public interest. The court should pay considerable respect to the sentencing decisions of the Tribunal but will interfere where it is satisfied that the sentencing decision was clearly inappropriate.

[19] The inspection by Ms McMahon in June 2012 showed that there was a shortfall on the client account, the accounts had not been kept up-to-date and quarterly reconciliations had not been made. This was against a background where the appellant was up against his overdraft limit at all times and apparently unable to satisfy some of his creditors. The hearing before the Tribunal should have made it plain how seriously such breaches were treated. Some of these breaches post-dated the decision of the first Tribunal. It was the responsibility of the solicitor to ensure that he retained suitably qualified people to satisfy his obligation under the Regulations. Despite the previous proceedings the same failings continued. In those circumstances the appellant's standing in the profession over the last 30 years could not prevent an appropriate restriction on his practice.

Consideration

[20] I accept that the task upon which the court is engaged in cases where the appeal is from a refusal to issue a practising certificate is different from the determination of an appeal from the Tribunal. In the first case the power to refuse the practising certificate is purely protective (see In re Crowley [1964] IR 106). The factors to be taken into account are the interests of the public, the interests of the profession, the interests of the clients of the solicitor in question and the interests of the solicitor himself. The Society accepts that Re A Solicitor is authority for the proposition that in such a case there is no presumption that the Society's view was correct. The court should, of course, as a matter of common sense recognise the weight to be given to the collective experience of the practitioners involved in making the decision.

[21] In an appeal from the Tribunal issues of protection remain relevant considerations. To these must be added the punishment of misconduct and the deterrence of repetition by others. Although a specialist tribunal is entitled to have respect paid to its views I do not accept that there is any greater respect to be paid to the views of the Tribunal in respect of punishment and deterrence than there is in respect of protection. Such issues are commonly issues which a court is well placed to determine. I consider, therefore, that I should adopt the position expressed by Carswell LCJ in Re A Solicitor when giving weight to the Tribunal's decision.

[22] There was much to be said in favour of the appellant. Until 2010 he had been in practice for nearly 30 years without any difficulties and he held a good reputation among his colleagues. There was no question of dishonesty and no loss to any client. No-one had complained about his conduct. His breaches of the Regulations started at the end of 2010. He indicated that he would bring the books up to date and that they would remain so. The complaint in respect of that breach was laid in March 2012.

[23] He could not have failed to recognise the seriousness of his situation once the complaint was laid. The 1998 Regulations are an important protection for the solicitor, the client and the Society in the management of clients' funds. It transpired, however, that instead of keeping his books up to date no work was done on them in the period from the end of February 2012 until the inspection in June 2012. He made the case that this was because of the departure of the bookkeeper in March 2012 but he also accepted that she was due to go on maternity leave three weeks later. It was his responsibility to secure the services of another bookkeeper. The failure to secure the services of an appropriate person between March 2012 and June 2012 when he was already charged with contraventions of the 1998 Regulations indicates a lack of appreciation of the importance of adherence to proper control of the financial aspects of his business.

[24] I accept that he had personal and family issues which distracted him in the summer of 2012 but it was his responsibility to regularise the position especially after 31 August 2012 when he got a clear warning from the Tribunal about the seriousness of the breaches in the 2010/2011 period. I am left with the clear impression that it was only because the accountant brought in a bookkeeper and helped to conduct the accounting exercise that the books were brought into line.

[25] I consider that the events from late 2010 until the autumn of 2012 constituted a course of conduct which raised real concerns about the commitment of the appellant to adhere to the 1998 Regulations. At a late stage in the proceedings the Society introduced a report on an inspection by the accountant on 24 September 2013. The report had not been seen by the appellant and I gave him time to reply by affidavit. I do not intend to resolve the issues of dispute arising from that inspection but note that there is no dispute that no work on the books of account was carried out between May 2013 and September 2013, the quarterly reconciliation for quarter ended 31 July 2013 was not carried out until 21 September 2013 and a transfer of £2187 to the client account was necessary in respect of uncashed cheques more than 6 months old. That does not indicate the type of rigorous adherence to the 1998 Regulations that one might have expected in this situation.

Conclusion

[26] Despite the unblemished long history of practice by the appellant until 2010 and the absence of any loss to clients I consider that the Tribunal's conclusion was correct in light of the persistent failure of the appellant to successfully address the bookkeeping issues. The appeal is dismissed.