SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11883-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MICHELLE LAURA DAVIS Respondent

Before:

Mr J. A. Astle (in the chair)
Mr W. Ellerton
Mrs S. Gordon

Date of Hearing: 7 March 2019

Appearances

Simon Griffiths, Solicitor employed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

THIS IS A REDACTED VERSION OF THE JUDGMENT

NB: The Tribunal directed that the judgment contain no sensitive information relating to the Respondent and that her address be redacted from the recording of the hearing. The Tribunal also directed that except in so far as the Tribunal referred to them in the written judgment the Respondent's submissions were deemed to be heard in private.

Part of this hearing was held in private

Allegations

1. The allegations against the Respondent, Michelle Laura Davis, made by the SRA were that:-

1.1 By virtue of her conviction on 15 March 2018 at Preston Crown Court upon indictment of permitting the production/attempted production on premises of a class B controlled drug (cannabis), the Respondent breached all or alternatively any of Principles 2 and 6 of the SRA Principles 2011.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 25 October 2018 with exhibit SG1 and Appendix 1
- Additional documents numbered 68-84 relating to the application to proceed in absence
- Extract from the judgment in the case of R v Hayward, Jones and Purvis [2001] EWCA Crim 168
- Extract from the judgment in the case of GMC v Adeogba and Visvardis [2016] EWCA Civ 162
- Applicant's Schedule of Costs as at 25 October 2018
- Applicant's Schedule of Costs as at 27 February 2019

Respondent

- Answer dated 3 December 2018
- Personal Financial Statement with attachments dated 1 March 2019

Preliminary and Other Issues

3. Private hearing of an application for an application to proceed in absence to be heard in private

3.1 [Redacted]

3.2 [Redacted]

3.3 [Redacted]

4. Application to redact from a document (heard in private)

4.1 [Redacted

5. Application to proceed in absence (heard in private)

5.1 [Redacted]

5.2 [Redacted]

5.3 [Redacted]

5.4 [Redacted]

5.5 [Redacted]

5.6 [Redacted]

5.7 [Redacted]

5.8 [Redacted]

Hearing in public– determination of the Tribunal upon the Applicant's application to proceed in the absence of the Respondent

5.9 Having considered all the circumstances, the documentation giving details of the Respondent's views and Mr Griffiths' submissions and taking into account the guidance given in the Jones and Adeogba cases, (the latter case applied the principles in Jones to disciplinary proceedings, the Tribunal determined that it would be appropriate to hear the case in the absence of the Respondent and without her being represented, exercising its discretion under Rule 16(2) of the SDPR with the appropriate degree of caution.

Background

6. The Respondent was born in 1982 and was admitted to the Roll as a solicitor on 3 January 2012. At the date of the Rule 5 Statement the Respondent held a practising certificate for the 2017 to 2018 practice year. The Respondent's practising certificate was free from conditions. The Respondent was subject to Regulation 3.1(p) of the SRA Practising Regulations 2011, having been convicted of the indictable offence referred to in paragraph 1.1 above.

7. The Respondent was, from 20 January 2015 to around October 2017, a consultant solicitor at Adnan Hanif Solicitors "the firm" of Nelson, Lancashire.

8. On 9 April 2017, the police attended the Respondent's then home address. They attended to carry out a welfare check on the Respondent's children at her invitation. In one of the bedrooms the police found what His Honour Judge Parry described during sentencing as "a well set up, albeit modest in scale, cannabis farm". Judge Parry went on to describe the set up as having twenty cannabis plants. Each plant was about 30 centimetres. The plants were not very far off harvesting. The plants were subsequently estimated to have a potential yield of 800 grams with a potential sale value of between £11,000 and £16,000. It was accepted by Judge Parry that the plants were not being grown for sale.

9. The Respondent was charged on 30 August 2017 with two offences, one of which was production of a controlled drug of Class B (cannabis) contrary to sections 4(1), 4(2)(a) and Schedule 4 of the Misuse of Drugs Act 1971.

10. The Respondent has provided a photograph of the postal requisition sent to the Respondent, and issued on 26 August 2017. The Respondent pleaded not guilty. She initially elected for a trial at the Magistrate's Court. She subsequently amended this to a trial at the Crown Court.

11. On 15 March 2018, the date of the trial, the Respondent was also charged with permitting the production/attempted production on premises of a class B controlled drug (cannabis).

12. On 15 March 2018, the Respondent pleaded guilty to the charge of permitting the production/attempted production on premises of a class B controlled drug (cannabis).

13. At the sentencing hearing on 27 March 2018, the prosecution offered no evidence in relation to the other charges and the Respondent was found not guilty.

14. The Respondent was sentenced and made subject to orders as follows:

- a Community Order with a requirement that she undertake Rehabilitation Activity for up to 25 days
- pay £340.00 towards the prosecution costs
- pay a Statutory Surcharge of £85.00

The Court also made an order under section 27 of the Misuse of Drugs Act 1971 for the forfeiture/destruction/disposal of the drugs and equipment seized. The Respondent's Certificate of Conviction was dated 6 April 2018 and her Community Order was dated 27 March 2018.

The Applicant's Investigation

15. The Applicant sent an Explanation With Warning ("EWW") letter to the Respondent dated 14 June 2018.

16. On 20 June 2018 the Respondent provided a copy of an email, dated 10 April 2018, from the Online Learning Admissions Advisor at a named University. The Respondent provided an undated Response to the EWW, following agreed extensions, by letter dated 9 July 2018.

17. In the Response the Respondent:

- provided a history of the personal events that preceded the production of cannabis at her property.
- provided a description of the period when her husband started to grow cannabis at her property.
- noted that she:

"played no part in the setting up, cultivating, producing or growing of the cannabis. The first time I saw that it was cannabis and the amount was during interview. I had never even stepped into the room"..."

- stated:

"I admit in not [telling the Respondent to clear the room immediately] I had allowed my premises to be used and subsequently pleaded guilty to this at the first opportunity that it was offered to me, by this stage I felt totally drained. The 'deal' offered by the prosecution was that if I would accept that I allowed my premises to be used they would drop all other charges against me. I accepted my guilt..."

- provided a description of the period following the discovery of the cannabis and her conviction.

- stated:

"I would love to be able to be given the chance to continue to practice as a Solicitor. I accept fully my wrong-doing. This would never happen again. I understand that I have let people down including myself but I live in hope that the people reading this may understand a little regarding the pressures and broken life that I was leading.

I accept fully any punishment awarded to me. I apologise wholeheartedly for the shame and embarrassment I have caused. I am working hard to try and put that right and I live in hope that you may consider an alternative to 'striking' me off the Solicitors Roll"

- In her email dated 20 June 2018, the Respondent stated that she had disclosed her conviction to a named University which had decided to allow her to commence the course that she had applied for.

- The Applicant had also been provided with a letter from Women's Centres, dated 19 June 2018, and the Pre-Sentence Report from the National Probation Service, dated 27 March 2018.

- On 22 August 2018 an Authorised Officer of the Applicant decided to refer the conduct of the Respondent to the Tribunal.

Findings of Fact and Law

18. 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 their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

19. **Allegation 1.1 - By virtue of her conviction on 15 March 2018 at Preston Crown Court upon indictment of permitting the production/attempted production on premises of a class B controlled drug (cannabis), the Respondent breached all or alternatively any of Principles 2 and 6 of the SRA Principles 2011.**

19.1 SRA Principles 2011

Principle 2

> "You must:
> act with integrity."

Principle 6

> "You must:
> behave in a way that maintains the trust the public places in you and in the provision of legal services."

19.2 Mr Griffiths submitted that the statutory notices had been served on the Respondent under the SDPR and the Tribunal could treat the documents in the application as authentic and true. He relied on Rule 15(2) of the SDPR which provided:

> "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."

19.3 Mr Griffiths submitted that at the time of the offence the Respondent had been qualified for five years and was a consultant in the firm. Mr Griffiths relied on the facts set out in the Factual Background section of this judgment and referred to the Judge's sentencing remarks referred to in the Rule 5 Statement:

- The Judge made several references in his sentencing remarks to the cannabis being grown at the Respondent's home address where their children were living.

- The Judge noted that the Respondent pleaded guilty as soon as the offence of permitting the production of cannabis was added to the charges. As a result he gave "a significant degree of credit for pleading guilty to it when it was offered".

- The Judge accepted the Respondent's barrister's submissions that:

> "...although you plainly did allow the premises to be used for the growing of this cannabis they were not at the forefront of your mind because just days before you called the police to your address".

The Judge went on to say that the Respondent and her husband:

"are both responsible in your own ways for what the police seized on 9th April"

- The Judge noted that the Respondent:

"had, potentially anyway, a stellar career ahead of you as a solicitor. You are not yet struck off but as a result of this conviction no doubt you will be"

The Judge went on to note the comments of the Respondent's barrister that:

"you were very proud, and rightly so, of achieving that level of qualification. It is a pity that it has come to nothing and no doubt underscored that it is coming to nothing sadly as a result of this drugs conviction"

- The Judge considered it to be a Category 2 offence, however he took on board:

"all of [the Respondent's] powerful mitigating features"

19.4 As to the seriousness of the offence, Mr Griffiths also pointed out that despite the Judge's comments about the cannabis not being for re-sale and despite the mitigation, the Judge held both defendants responsible for what was seized and regarded their offence as serious. He said:

"That is the sort of depth you have both got yourself into by growing this cannabis inside of your own home address…you, Michelle Davis, are to be sentenced for permitting premises - your premises – to be used for the production of cannabis."

He commented that the premises were the Respondent's and children were present in the property. In fairness to the Respondent, the Judge made a distinction between the defendants; he referred to her husband having previous convictions (but not for drugs). However the Respondent's counsel made representations that the Respondent's offence fell within the sentencing guideline category 3 but the Judge felt it came within category 2 – that is a higher level.

19.5 Mr Griffiths asked the Tribunal to note the very detailed background provided by the Respondent in her Response document about how she ended up before a criminal court. It was not alleged that she sought to hide the criminal proceedings. In her Answer she admitted the breaches of Principle 2 and Principle 6. Mr Griffiths also pointed out that the Respondent had submitted photographs (illustrating her adverse personal circumstances) with her Response; it had not been possible to print them out. He had requested further copies but these had not been provided. However there were photographs attached to her earlier application for more time to file her Answer; he could not say if these were the intended photographs but they were on the same subject.

19.6 In respect of the breaches of Principles 2 and 6 alleged, Mr Griffiths submitted that the Applicant's position was that the Respondent had pleaded guilty at the Crown Court to an offence which could have attracted a 14 year sentence although he noted comments made by the Tribunal that the non-custodial sentence imposed on the Respondent did not come out at the highest level of non-custodial sentences available to the Judge which the Tribunal felt had to be a reflection of the relative levels of seriousness which

the Judge attached to the offence of each defendant. Mr Griffiths submitted that the offence did relate to the production of a Class B controlled drug. Principles 2 and 6 applied outside a solicitor's practice. In respect of Principle 6, Mr Griffiths referred the Tribunal to the judgment in the case of SRA v Wingate and another, Malins v SRA [2018] EWCA Civ 366:

> "95. Let me now turn to integrity. As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty. In this regard, I agree with the observations of the Divisional Court in Williams and I disagree with the observations of Mostyn J in Malins.
>
> 96. Integrity is a more nebulous concept than honesty. Hence it is less easy to define, as a number of judges have noted.
>
> 97. In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. See the judgment of Sir Brian Leveson P in Williams at [130]. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.

Mr Griffiths submitted that a solicitor of integrity, acting in accordance with the higher standards which society expected from professional persons and which the professions expect from their own members, was careful to abide by the law. Such a solicitor did not therefore engage in behaviour which involved the commission by them of a criminal offence. In failing to abide by the law and being convicted of a serious criminal offence in a Crown Court, the Respondent necessarily failed to abide by the standards required of a solicitor and she admitted a breach of Principle 2. Furthermore, the trust and confidence which the public placed in the Respondent and in the provision of legal services would inevitably be seriously undermined by reason of the fact that she had been convicted of an offence of permitting the production of cannabis; and given a Rehabilitation Activity Requirement for that offence. The public would not expect a solicitor and an officer of the Court to be convicted of such an offence. The Judge specifically referred to the Respondent being a solicitor. Although the Tribunal would make its own independent decision about sanction, the Judge's reference to strike off went to the seriousness with which the Judge regarded the Respondent's conduct by reference to her being a solicitor. The Respondent also admitted breach of Principle 6.

19.7 The Tribunal had regard to the evidence, the submissions for the Applicant, to the Respondent's Response to the EWW letter and her Answer to the Rule 5 Statement. The Tribunal found the fact of the Respondent's criminal conviction proved in accordance with Rule 15(2) of the SDPR. In respect of Principle 2, the Respondent had been convicted of a relatively serious criminal offence and the Judge recognised it as such for the reasons he set out in his sentencing remarks. What the Respondent had done did not accord with the higher standards of behaviour which society expected of a solicitor; the Respondent should not have let her home be used in this way. As to Principle 6, the fact she did so constituted a failure to maintain public trust. The Respondent admitted both breaches and the Tribunal found them proved so that it found allegation 1.1 proved on the evidence to the required standard.

Previous Disciplinary Matters before the Tribunal

20. None.

Mitigation

21. The Respondent was not present but had offered personal mitigation in her detailed Response to the EWW letter.

Sanction

22. The Tribunal had regard to its Guidance Note on Sanctions (December 2018). The Tribunal assessed the seriousness of the Respondent's misconduct. As to culpability, the Respondent was not an instigator of the criminal activity but she displayed ongoing acquiescence in what was happening, whether or not she knew of its extent. Her versions of her knowledge were contradictory; in her Response, she said she never stepped into the room where the plants were grown but in the pre-sentencing report it was said that she had been told there were one or two plants. This was supported by the Judge's reference to her plainly allowing the premises to be used for the growing of cannabis but it not being at the forefront of her mind as she called the police to her home for an unrelated purpose. There was no deliberate planning. As to her level of responsibility, the Judge had found that each defendant was responsible in their own ways. The Judge had found the offence to be within category 2 which was serious but had regard to "powerful, mitigating features" and awarded a community order when the sentence guideline indicated a range of sentence of up to 26 weeks custody. The Respondent was five years' qualified at the time of the offence; so not a complete novice as a solicitor. She did not deliberately mislead the Applicant; she admitted the allegation. The main harm caused by the Respondent's conviction was to the reputation of the profession and the trust of the public in it. No client was adversely affected. It was reasonably foreseeable that this harm would occur. The Tribunal considered the Respondent's departure from the "complete integrity, probity and trustworthiness" expected of a solicitor to be moderately serious but it did not involve dishonesty. As to aggravating factors, the misconduct involved the commission of a criminal offence over a period of time. The Respondent ought reasonably to have known that the conviction and the conduct leading up to it was in material breach of her obligations to protect the reputation of the profession. As to mitigating factors, the Respondent's situation resulted from her acquiescence in criminal activity by a third party. She had pleaded guilty at the first opportunity to the charge of which she was convicted. She notified the Applicant when she was charged as well as the partner of the firm to which she was a consultant. This was a one-off episode and the Respondent had not appeared before the Tribunal before. The Tribunal found her insight and remorse to be genuine. The Tribunal determined that the misconduct was too serious for no order or a reprimand. Failure to act with integrity had been admitted and found proved as had a criminal offence. This made it too serious for a fine. The imposition of restrictions was inappropriate as the offence did not relate to the Respondent's practice as a solicitor. The maintenance of the reputation of the profession required a suspension to be imposed. The Respondent had been sentenced in March 2018 and would be subject to the community order until 26 March 2019. The Respondent had also offered a significant amount of personal mitigation which the Tribunal found convincing. The Tribunal determined that a suspension for a fixed period of six months would be

reasonable and proportionate and give the Respondent the opportunity to reflect upon what she had done.

Costs

23. Mr Griffiths applied for costs in the amount of £2,861.30 subject to a reduction of half an hour for a shorter than estimated hearing. The Tribunal considered the costs claimed to be reasonable and proportionate subject to the reduction indicated by Mr Griffiths and assessed costs at £2,796.30. Mr Griffiths informed the Tribunal that the Schedule of the Applicant's costs as at date of issue of the proceedings and at the date of hearing had been provided to the Respondent by email on 27 February 2019 and her attention had been drawn to the case of SRA v Davies v McGlinchey [2011] EWHC 232 (Admin) and that if she wished to contend she was impecunious then it was for her to provide the Tribunal with sufficient information to demonstrate it. The Respondent had not actively contended that the costs were unreasonable but focused more on her means to pay. She offered to pay cost at £40 per month. Mr Griffiths submitted that the Applicant took a pragmatic approach; recognising that there was a difference between an award and enforcement; tailoring the latter to the circumstances of the individual where possible. The Respondent's Personal Financial Statement and supporting documentation showed that she had credit commitments just short of £125,000 and a £74,000 car loan. The Judge in the criminal proceedings had referred to the defendants owning 10 rental properties but acknowledged that the Respondent had said they were "in debt up to your eyeballs". The credit report submitted by the Respondent referred to several properties. The Tribunal determined that the Respondent should be able to pay a costs order by instalments which was a matter for the Applicant to work out with her.

Statement of Full Order

24. The Tribunal Ordered that the Respondent, MICHELLE LAURA DAVIS, solicitor, be suspended from practice as a solicitor for the period of 6 months to commence on the 7th day of March 2019 and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,796.30.

Dated this 4th day of April 2019
On behalf of the Tribunal

J. A. Astle

J. A. Astle
Chairman

Judgment filed
with the Law Society
on 09 APR 2019