

IN THE COURT OF FACULTIES

In the matter of Vidal Eulalie Martin, a notary and

In the matter of the Notaries (Conduct and Discipline) Rules 2015 (as amended) ('the Rules')

HEARING: THURSDAY 14TH APRIL 2022

DECISION

Preliminary Matters

1. Ms Martin ('the Respondent') was represented at the hearing by Mr John Buck of Counsel. Mrs Samantha Davies was the Nominated Notary and presented the case against the Respondent.
2. At the outset with the agreement of the Court and all parties the Complaint was amended by inserting the words '*has been guilty of Notarial Misconduct within the meaning of the said rules in that*' (with '*who*' being deleted and replaced by '*she*' on line 2) after the address of the Respondent. This was to provide clarity and so as to accord with the standard format of Complaints. Mr Buck accepted no prejudice was caused to his client by such amendment.
3. The Court also clarified that the copy of the Rules provided by the parties in the agreed bundle (in section 10) had now been superseded by a more recent and updated set of the Rules. Accordingly, those up to date Rules were relied upon rather than those in the bundle during the hearing.

4. The Court was furnished by the parties with an agreed bundle of documents containing relevant evidence and in particular a document headed '*Agreed facts and Issues*' dated the 22 March 2022 to which reference is made below.

Background and Allegations

5. The complaint of Notarial Misconduct before this court is based on 2 charges of professional misconduct found against the Respondent by the Solicitors Disciplinary Tribunal ('SDT') in a written judgment dated 13 February 2020.
6. An appeal by the Respondent to the High Court in 2020 and a subsequent application to the Court of Appeal in early 2021 against the decision of the SDT were rejected.
7. It was agreed by both parties before us that, pursuant to rule 24.5 of the Rules, the written decision of the SDT (as set out in part in the judgment of the High Court [2020] EWHC 3525 (Admin)) should stand as evidence of the facts stated in that decision. We have proceeded on that basis.
8. The Respondent does not now contest any of the underlying facts alleged in the Complaint. From the outset of proceedings before this court in 2021 (in her '*Answer to Complaint*') the Respondent indicated that she did '*not contest the complaint*'. She has also accepted in the '*Agreed Facts and Issues*' (March 2022) and orally through her advocate during the hearing that the charges proved against her before the SDT amount, for present purposes, to Notarial Misconduct within the meaning of the Rules.

9. Even so, whether there has been Notarial Misconduct is a matter we still have to consider. We have carefully considered the relevant evidence before us in order to come to a conclusion as to whether the Complaint has been proved. We have been assisted in this regard by the bundle of documentary evidence agreed between the parties and provided to us as well as the oral submissions from both parties. We have considered the matter and come to our conclusions on the facts and applying the standard of proof as indicated in the Rules, namely on the balance of probabilities in accordance with rule 19.
10. Ms Martin ('the Respondent') was, as well as being a notary, a solicitor admitted to the Roll of Solicitors on 3 May 2005. On 19 November 2019, the SDT made an order striking her from the Roll of Solicitors and ordering her to pay costs (summarily assessed in the sum of £47,000 odd) incurred by the Solicitors' Regulation Authority ("the SRA") in relation to the disciplinary allegations it pursued against her.
11. In 2010 and 2011 she was working for Bright and Sons solicitors, which had offices in Witham and Maldon, and was based at the Witham office.
12. Her principal work was dealing with probate and estate administration. She left Bright and Sons in 2015, and set up in practice as a sole practitioner and notary at V Martin Legal Services in Romford. She held a practising certificate that was free from conditions.
13. There were nine allegations pursued by the SRA against Ms Martin before the Tribunal (and all but one involved allegations of dishonesty). Of the nine allegations, only two were found proved to the necessary criminal standard of proof (which was the standard applicable before the SDT), the remainder being dismissed as not proved on the facts.

14. The detailed underlying background is set out in considerable detail in the judgment of Lady Justice Simler and Mr Justice Picken in the High Court decision we have referred to above and we do not repeat it all here. We have considered them in detail before coming to our findings.

15. The two charges found proved by the SDT and relied upon in the Complaint before this Court related to 2 separate events - one in 2011 and one in 2017 - and were as follows:

“Misappropriation of client money

On or after 4 January 2011 she:

i) procured a cheque from Beneficiary SAM in the sum of £4,700, made payable to herself ("the Cheque");

ii) failed to pay the Cheque into client account;

iii) caused or allowed the Cheque to be paid into her own bank account;

iv) failed to document, justify or explain this transaction on file, adequately or at all;

v) dealt with the funds as her own;

and therefore breached all or any of:

vi) Rules 1(a), 1(b), 1(c), 1(f) and 15(1) of the Solicitors Accounts Rules 1998 ("1998 SARS");

vii) Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("the 2007 Code").

Misleading forensic investigator

On or after 15 June 2017 she made the following representations to the SRA's forensic investigation officer ("FIO") in relation to the Cheque, which were false and/or misleading:

i) that a sort code corresponding to the bank account referred to in allegation iii) above was not and never had been hers, or words to that effect;

ii) that Nationwide Building Society had informed her that the Cheque had been returned, or words to that effect;

and therefore breached all or any of Principles 2, 6 and 7 of the SRA Principles 2001."

16. We note that in relation to both allegations, the SDT found dishonesty had been proved, and that this amounted to serious misconduct before the SDT justifying the sanction applied.

17. In relation to the events in or after January 2011 the SDT found (as the High Court recorded):

“the Tribunal dealt with lack of integrity (at paragraphs 10.59 and 10.60) concluding that procuring a cheque to which she was not entitled, failing to document the transaction and spending or allowing to be spent the funds as her own was a stark example of a failure to adhere to the ethical standards of the Solicitors' profession. The Tribunal concluded that Ms Martin had acted without integrity as a consequence. So far as dishonesty is concerned, the Tribunal applied the test set out in Ivey v Genting Casinos [2017] UKSC 67 [2018] AC 391 and at paragraphs 10.61 and 10.62 the Tribunal found dishonesty proved beyond reasonable doubt in light of its earlier findings”

18. In relation to the events in 2017 the SDT found (again as recorded by the High Court):

“The Tribunal was satisfied beyond reasonable doubt that making misleading statements to Mr Esney, the SRA’s forensic investigating officer, during an investigation, was an unambiguous failure to adhere to the ethical standards of the profession and that Ms Martin had breached principle 2 in consequence. Her conduct would inevitably undermine the trust placed by the public in her and her provision of legal services. Principles 6 and 7 were also found to have been breached. Principle 7 required open cooperation with the regulator and by knowingly making misleading statements the Tribunal was satisfied beyond reasonable doubt that Ms Martin had acted in breach of this requirement.”

19. We note that in the Rules ‘Notarial Misconduct’ is defined as:

(1) Fraudulent conduct,

(2) Practising as a notary without a valid Notarial Practising Certificate or in breach of a condition or limitation imposed on a Notarial Practising Certificate, or

(3) serious misconduct which may inter alia include failure to observe the requirements of these rules or of the Notaries Practice Rules 2014 or falling seriously below the standard of service reasonably to be expected of a notary or persistent failure to provide the standard of service reasonably to be expected by a notary, or

(4) conduct unbecoming of the office of notary which may inter alia include being convicted of a criminal offence (other than a minor Road Traffic

Offence)

20. In that context, Mrs Davies submitted and Mr Buck accepted that the admitted conduct constituted '*fraudulent conduct*' as well as constituting '*serious misconduct*' in that the conduct of Ms Martin had fallen both in 2011 and 2017 seriously below the standard to be expected of a notary.
21. We agree. We would also add that such matters as found by the SDT clearly constitute '*conduct unbecoming of the office of notary*'.
22. We find that there is clear evidence of conduct which was dishonest and knowingly misleading in 2011 and 2017. We find the facts found in the SDT to be proved for the purposes of these proceedings and that the conduct of Ms Martin constitutes Notarial Misconduct as defined in the Rules. The complaint is proved.

Sanction

23. We turn to consider sanction. We heard detailed submissions from Mr Buck in this regard. He carefully took us through the extensive documentation put before us on behalf of the Respondent. In particular we have considered carefully the many character references and other documents exhibited to the evidence of Ms Martin in the agreed bundle of documents as well as her statements.
24. We also considered the evidence of financial hardship that Ms Martin has suffered already and her past unblemished record as a notary and as a solicitor. We are not without a degree of sympathy for some of the difficulties Ms Martin has encountered as set out in her detailed evidence.

25. Mr Buck accepted that given the element of dishonesty inherent in the finding of Notarial Misconduct and the serious nature of the findings of the SDT it was likely that his client would face a serious sanction. In particular he accepted that the findings in this case were relevant to matters integral to the work of a notary – in particular integrity and trust in the office of a notary.
26. He submitted that Ms Martin had not sought to challenge the facts of the complaint. We accept that Ms Martin did at an early stage not seek to contest the complaints. However we observe that whilst she '*did not contest*' the complaint in her '*Answer*' in June 2021, in a covering letter of the same date she continued to contend that the evidence underpinning the SDT findings was '*erroneous*'.
27. It is also plain that at the stage of the High Court proceedings in 2020 and before the Court of Appeal in 2021 Ms Martin still contended that the findings of fact by the SDT were erroneous. Indeed, in her statement of the 6th August 2021 she still indicated that she was '*sceptical*' of the SDT conclusions and considered their acceptance of evidence against her to be '*highly questionable*'.
28. It is clear that by the time of her statement in February 2022 Ms Martin acknowledged the '*serious breach of trust*' she had committed and that her conduct inevitably undermined the trust the public place in the legal profession generally. However this insight and acceptance only came after a substantial period during which such insight was not evident.
29. We have considered the available disciplinary sanctions as set out in paragraph 22.1 of the Rules. We considered the sanctions available starting with the least serious. We do

not consider that an admonishment or the imposition of conditions would suffice. Nor do we consider that a suspension would be a sufficient sanction.

30. The findings we have made cover 2 periods and acts of dishonesty – in 2011 and in 2017. We do not consider that it can be said the conduct in question was a one-off event. Moreover, as we explained above we do not consider that full insight was demonstrated into the seriousness of what took place until relatively recently.
31. We have considered the mitigation evidence in detail. However, in our view a finding of dishonesty strikes at the heart of the trustworthiness and personal integrity which are fundamental to the role of a notary. The conduct in issue was fraudulent and constituted very serious misconduct. We find that the public interest requires and expects notaries to be completely honest and act with the highest integrity. In those circumstances we find a suitably serious sanction is necessary.
32. The Court makes an order that the Respondent be struck off the Roll of Notaries pursuant to rule 22.1.1 of the Rules.
33. We have invited submissions as to appropriate costs order to be made to us in writing and in light of the possibility of the Respondent being required to pay costs pursuant to rule 23. To that end the Faculty Office has 7 working days to furnish the parties with relevant costs breakdowns. Thereafter the respondent has 7 working days to present any written submissions she may wish to make as to costs orders. If either party wishes to deal with any costs submissions other than in writing they may apply in writing to request a virtual or physical hearing within 7 working days of the provision of costs breakdowns by the Faculty Office.

Tom Cosgrove QC (Deputy Commissary)

Esther Ogun

Elizabeth McQuay

19th April 2022