

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11332-2015

## BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

VICTORIA BARBARA WADSWORTH

Respondent

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Before:

Miss T. Cullen (in the chair)

Mr M. Millin

Mrs V. Murray-Chandra

Date of Hearing: 7 December 2016

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## Appearances

David Barton, solicitor of Solicitor Advocate of Flagstones, High Halden Road, Biddenden, Ashford, Kent, TN27 8JG, for the Applicant.

The Respondent did not attend and was not represented.

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## JUDGMENT

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## **Allegations**

1. There were five allegations made against the Respondent in a Rule 5(2) Statement dated 13 January 2015. Four of those allegations were put as ones of dishonesty although it was not necessary to establish dishonesty to substantiate all or any of them. In a Rule 7(1) Supplementary Statement dated 4 October 2016 there was a further allegation against the Respondent that on 8 July 2016 at Manchester Crown Court she was convicted of fraud, sentenced to a term of imprisonment of three years, and thereby breached all or any of Principles 1, 2 and 6 of the SRA Principles 2011 (“the Principles”).

## **Documents**

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

### Applicant

- Application and Rule 5(2) Statement with exhibit DEB1 dated 13 January 2015.
- Rule 7(1) Supplementary Statement with exhibit DEB2 dated 4 October 2016.
- Certificate of Conviction dated 26 July 2016.
- Cost Schedules dated 13 January 2015 and 2 December 2016.

### Respondent

- Email from Mr Turner to the Tribunal’s Listing Office dated 21 October 2016.
- One of two pages from a draft Statement of Mark Stewart of the Legal Aid Agency dated 31 July 2014.
- Consolidated advice and application for leave to appeal against sentence from Barry Kogan, Carmelite Chambers dated 3 August 2016.

## **Preliminary Matter One – Application to Proceed in the Respondent’s Absence**

3. The Respondent was currently in prison. She had received advice and assistance from Forbes Solicitors who had confirmed that she was aware of the hearing date and would be unable to attend as a result of her detention and that they would not be representing her at the hearing. The Applicant applied to proceed in the absence of the Respondent.
4. Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 (“SDPR”) stated that “If the Tribunal is satisfied that notice of the hearing was served on the respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing.”
5. The Tribunal was satisfied that the Respondent was aware of the hearing and that it was appropriate to proceed in her absence.

### **Preliminary Matter Two – Application for the Rule 5(2) Allegations to Lie on File**

6. The SRA applied for the Rule 5(2) allegations to lie on file. The Rule 5(2) Statement, which commenced these proceedings, was dated 13 January 2015. Sometime after the commencement of the proceedings the police charged the Respondent and a criminal prosecution followed. The Respondent entered a guilty plea and upon the Respondent's own confession she was convicted on indictment of fraud on 25 May 2016 and sentenced on 8 July 2016 to three years' imprisonment which was reduced to two years imprisonment on appeal. A Rule 7(1) Supplementary Statement had been produced with a further allegation related to the conviction. The application was pragmatic. To prove the Rule 5(2) allegations would require the attendance of witnesses. It was not economical to pursue the Rule 5(2) allegations when they had been wholly superseded by the fact of the Respondent's conviction. The Applicant did not wish to withdraw the allegations as should the Respondent ever seek to return to the Tribunal the allegations could be restored then.
7. The Tribunal had read the Rule 5(2) Statement. The allegations contained therein were serious and included dishonesty. The further allegation in the Rule 7(1) Statement related to a conviction for fraud. In the circumstances the Tribunal agreed that the Rule 5(2) allegations should lie on file.

### **Factual Background**

8. The Respondent was born in June 1966 and was admitted as a solicitor in 2004. She had trained as a solicitor after a previous career as a nurse. At the time of the Rule 5(2) Statement her name remained on the Roll of Solicitors. At all material times she practised as a salaried partner at Roebucks Solicitors, Blackburn ("the Firm"). On 9 May 2012 the Respondent was dismissed by the Firm for gross misconduct.
9. On 25 May 2016 the Respondent was convicted of fraud. On 8 July 2016 she was sentenced to a term of imprisonment of three years. This had been reduced to two years on appeal.

### **Witnesses**

10. None.

### **Findings of Fact and Law**

11. 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 her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
12. **Rule 7(1) Allegation - The Respondent on 8 July 2016 at Manchester Crown Court was convicted of fraud, sentenced to a term of imprisonment of three years, and thereby breached all or any of Principles 1, 2 and 6 of the Principles.**

### The Applicant's Case

- 12.1 Having joined the Firm in 2004 the Respondent was promoted and ran the mental health department by 2007. A routine file review of one of her files in April 2012 resulted in concerns by the partners of the Firm about the Respondent's administration skills. Further investigation revealed that payments had been made for supposed medical reports to a firm, called Healthy Minds, which the Respondent had invented to pretend to prepare medical reports for use by the Firm in client cases. The Respondent paid Healthy Minds for these non-existent reports. The Firm then claimed the cost of the supposed reports from the then Legal Services Commission ("the LSC").
- 12.2 The Respondent had faced six counts and pleaded not guilty to these six counts. By agreement with the prosecution count seven was added. In essence, the count reflected the making of false representations by the Respondent between 1 July 2007 and 1 May 2012 enabling her to gain a total sum of £25,000. The Respondent pleaded guilty to this one count.
- 12.3 The Firm had suffered for over four years. It and its staff had been caused anxiety and stress. The viability of the Firm itself had been threatened. As well as repaying the LSC, the Firm had incurred other expenditure and the Respondent's actions had damaged the reputation of the Firm and the solicitor's profession. The Respondent had stolen from her employers. This was a gross breach of trust. She had made a statement in the criminal proceedings making unpleasant allegations against one of the partners in the Firm. When she plead guilty at a late stage these allegations fell away. The Respondent's conduct was dishonest conduct of a particular severe kind and the impact on the reputation of the profession and the trust the public places in the provision of legal services was severe.
- 12.4 The Respondent had received and retained money paid by the LSC purportedly in respect of professional disbursements to which she was not entitled. The Respondent had submitted false documents and false claims to the LSC. When the fraud was discovered money had to be refunded to the LSC by the Firm under their mental health contract. The sum repaid to the LSC, was according to the Firm, just under £182,000 although the Respondent only admitted taking £25,000.

### The Respondent's Case

- 12.5 The Respondent had not filed an Answer in these proceedings. Mr Barton explained to the Tribunal that he had spoken to Forbes Solicitors on 6 December 2016. Mr Turner had been away from the office and a colleague of his was dealing with the matter. The colleague had only belatedly seen the Applicant's Civil Evidence Act Notice dated 23 October 2016 on 6 December 2016. The Respondent did not accept the contents of the Impact Statement appended to the Rule 7(1) Supplementary Statement. The Respondent had successfully appealed against sentence and her sentence had been reduced from three to two years. On 7 December 2016 the advice from counsel (in respect of appealing sentence) and the page of the witness statement was emailed to Mr Barton who drew the documents to the Tribunal's attention. The Legal Aid Agency statement referred to a value exceeding £134,000 being repaid by

the Firm to the LSC which was lower than the £181,887.72 stated in the Victim Impact Statement.

### The Tribunal's Findings

- 12.6 The Tribunal treated the allegation as denied.
- 12.7 The Respondent had pleaded guilty to an offence of fraud and was convicted on 25 May 2016 and sentenced on 8 July 2016. Under Rule 15(2) of the SDPR "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." The Respondent had appealed sentence but not her conviction. She had pleaded guilty. The Certificate of Conviction was before the Tribunal.
- 12.8 Principle 1 required a solicitor to uphold the rule of law and the proper administration of justice. Principle 2 required a solicitor to act with integrity and Principle 6 required a solicitor to behave in a way that maintained the trust the public placed in them and in the provision of legal services. The Respondent had been convicted of fraud. She had deceived the LSC for personal financial gain. These were not the actions of a solicitor who was upholding the rule of law and the proper administration of justice. Want of integrity was capable of being identified as present or not as the case may be by reference to the facts of a particular case. The Respondent had clearly lacked integrity on the facts of the case. The public would not expect a solicitor to behave as the Respondent had behaved and her actions would not have maintained the trust that the public placed in her and the provision of legal services. The public would not expect a solicitor to commit a criminal offence of any kind let alone to commit fraud.
- 12.9 The Tribunal found the Rule 7(1) allegation proved beyond reasonable doubt. In reaching its findings the Tribunal did not consider the contents of the disputed Impact Statement as this was not necessary.

### **Previous Disciplinary Matters**

13. None.

### **Mitigation**

14. Mr Turner's email dated 21 October 2016 set out that the Respondent was facing Proceeds of Crime Act 2002 proceedings that would absorb virtually all her potential capital and her only viable capital was an equitable interest in a property occupied by a third party who maintained that there were unable to fund that which it was claimed they owned. The Respondent had a debt to her bank of over £2,000.00 and the bank had recently sought repayment of this sum. The Respondent had no income other than allowances paid by the prison. The Respondent had had caring responsibilities for her severely disabled adult son and remained nominally his carer. The Respondent's incarceration had caused huge problems because of lack of contact which the prison was trying to address.

## Sanction

15. The Tribunal referred to its Guidance Note on Sanctions (4<sup>th</sup> Edition) when considering sanction.
16. The Respondent's motivation for the misconduct was not known. The misconduct was clearly planned as the Respondent had set up the company to which the payments were made. The Respondent had acted in breach of a position of trust and had direct control and responsibility for the circumstances giving rise to the misconduct. The Respondent had qualified as a solicitor in 2004, she had had a previous career and was now aged 50. A solicitor did not need to be experienced to know that it was wrong to make claims for payment for non-existent reports and to set up a company to receive payment for reports that had not been produced. By doing these things harm was inevitably caused. The Respondent's culpability was high.
17. The Respondent's actions had caused a lot of harm. The harm to the Firm was detailed in the Impact Statement (which the Respondent disputed) and the Firm's reputation had to have been damaged by what happened. The impact of the Respondent's misconduct upon the public and the reputation of the legal profession was substantial.
18. The Respondent had pleaded guilty to fraud, this was a criminal offence involving dishonesty. Her misconduct had been deliberate, calculated and repeated. It had continued over a period of time. The Respondent had concealed her wrong doing and had only pleaded guilty at a late state. The Respondent must have known 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. These were all aggravating factors. The only mitigating factor was that the Respondent had shown some insight, albeit at quite a late stage, when she had entered a guilty plea.
19. The Tribunal considered the range of sanctions available to it starting with No Order. Given the seriousness of the misconduct alleged and found proved the Tribunal moved swiftly through the range of sanctions until it reached suspension. The Tribunal carefully considered whether a suspension would be an appropriate penalty. Although the allegation itself was not one of dishonesty, the offence of fraud was an offence involving dishonesty. Given this the Tribunal did not consider that suspension appropriately reflected the seriousness of the misconduct nor that it provided the public or the reputation of the profession with sufficient protection.
20. Unless there were exceptional circumstances the appropriate sanction was to strike the Respondent's name off the Roll of Solicitors. The Tribunal then considered whether or not there were exceptional circumstances that meant that the case fell into the very small residual category of dishonesty cases where striking off was not appropriate. The Tribunal did not identify any such circumstances. Finally, the Tribunal took into account the personal mitigation it had heard, in particular in respect of the Respondent's son. The Respondent had clearly had a difficult home situation as her son's carer albeit that he no longer lived with her prior to her imprisonment. However, the Tribunal had to consider the effect that allowing the Respondent's name to remain on the Roll would have upon the public's confidence in the reputation of the legal

profession. The appropriate sanction in all of the circumstances was for the Respondent's name to be struck off the Roll of Solicitors.

### **Costs**

21. Mr Barton had spoken to Forbes Solicitors on 6 December 2016 and had been informed that costs were agreed. Mr Barton confirmed to the Tribunal that this agreement was in respect of the costs set out in the two costs schedules he had produced, in a total sum of £21,864.10. Given the agreement as to costs the Tribunal did not assess costs and, on the basis that the application had been properly brought and the allegation proved, ordered that the Respondent pay the costs in the sum of £21,864.10. Neither the Applicant nor the Respondent had sought an order that the costs should not be enforced without leave of the Tribunal. In the circumstances, the Tribunal considered that the issue of enforcement of the costs order was a matter for the Applicant.

### **Statement of Full Order**

22. The Tribunal Ordered that the Respondent, VICTORIA BARBARA WADSWORTH, 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 agreed in the sum of £21,864.10.

Dated this 10<sup>th</sup> day of January 2017  
On behalf of the Tribunal

T. Cullen  
Chairman