

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10222-2009

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

NICHOLAS HEYWOOD

Respondent

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Before:

Mr A. N. Spooner (in the chair)

Mr A. Ghosh

Mrs L. McMahon-Hathway

Date of Hearing: 16th October 2012

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**Appearances**

Jonathan Goodwin, Solicitor Advocate of 17e Telford Court, Dunkirk Lea, Chester Gates, Chester, CH1 6LT for the Applicant.

The Respondent was not present or represented.

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**JUDGMENT**

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## **Allegations**

1. The allegations pursued at this hearing against the Respondent were that contrary to all, alternatively any of Principles 1, 2 and/or 6 of the SRA Principles 2011 he was on 12<sup>th</sup> December 2011, upon his own confession, convicted of four offences set out below:-
  - 1.1 Prejudicing a money laundering investigation contrary to Section 342 of the Proceeds of Crime Act 2002;
  - 1.2 Prejudicing a money laundering investigation contrary to Section 342 of the Proceeds of Crime Act 2002;
  - 1.3 Doing an act tending and intending to pervert the course of public justice;
  - 1.4 Conceal/disguise/convert/transfer/remove criminal property, contrary to Section 327 of the Proceeds of Crime Act 2002 and was sentenced on the 11<sup>th</sup> January 2012 to 6 months imprisonment.

## **Documents**

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

Applicant:-

- Application dated 27 March 2009;
- Rule 5 Statement dated 27 March 2009;
- First Rule 7 Statement dated 11 June 2010 (“the first Rule 7 Statement”);
- Second Rule 7 Statement dated 22 June 2012 with exhibit “JRG1” (“the second Rule 7 Statement”).

Respondent:-

- Email dated 19 July 2012;
- Email from Brunskill Solicitors 5 September 2012;
- Copy Restraint Order dated 11 January 2012;
- Email from Brunskill Solicitors 5 October 2012.

## **Preliminary Matter (1) – Proceeding in the absence of the Respondent**

3. The Tribunal noted that the Respondent was not present and so had to consider whether to proceed in the absence of the Respondent.
4. The Tribunal noted the email dated 5 October 2012 from Brunskill Solicitors, who represent the Respondent in connection with other matters but are not on record in the Tribunal. This email confirmed that the Respondent would not attend the hearing on 16 October 2012. The Tribunal further noted an email from the Respondent to the

Applicant dated 19 July 2012 which referred to these proceedings and stated, inter alia, that his current financial predicament would not allow him to attend a hearing.

5. The Tribunal noted the Respondent had previously been represented in these proceedings in relation to a number of preliminary matters. There could be no doubt that he was aware of the proceedings and of the allegations against him, including the allegations in the second Rule 7 Statement. Further, it was clear that he was aware of the hearing date but was not intending to attend. In all of the circumstances, and in particular in the knowledge of the contents of the Respondent's email of 19 July 2012, the Tribunal determined that it was appropriate and just to hear the matter in the Respondent's absence.

### **Preliminary Matter (2) – Allegations**

6. The first Rule 5 Statement in this matter contained thirteen allegations, including five allegations in relation to which the Respondent had been alleged to have acted dishonestly. The first Rule 7 Statement contained a further five allegations. The matters in both of these statements were serious and complex. The Respondent had indicated at an earlier stage in the proceedings that he would contest many if not all of the allegations and would call a number of witnesses in his defence. It had at one stage been estimated that two weeks would be required for the hearing. Even if the allegations were not contested, their complexity was such that to hear the case would still require a substantial amount of Tribunal time.
7. Since the Rule 5 and first Rule 7 Statement had been made, the Respondent had been convicted of several offences, as set out in the second Rule 7 Statement. The Applicant sought the Tribunal's permission to proceed at this hearing on the second Rule 7 Statement only and to leave the Rule 5 and first Rule 7 Statement to lie on the file. The Tribunal was referred to, the long history of this case, which had included preliminary hearings to deal with a number of issues on 21 July 2009, 27 November 2009, 11 June 2010, 9 September 2010 and 28 June 2012. The Tribunal further noted the Respondent's email of 19 July 2012 to the Applicant which stated,

“I confirm in this Open Letter that the Convictions contained in the Second Supplemental Statement are sufficiently serious to justify a Striking Off Order to be made...”

8. The Tribunal determined that in all of the circumstances of the case, in particular that the Respondent had accepted that he would be subject to the Tribunal's ultimate sanction, there would be no benefit or need to hear the allegations in the Rule 5 or the first Rule 7 Statements. To do so would use the time and resources of the Tribunal when this was not properly required in the interests of justice. However, given the seriousness of the allegations contained in the earlier documents it would be appropriate for them to lie on the file rather than be withdrawn. There was no suggestion that the allegations had not been properly brought. The Tribunal would proceed to hear the case based solely on the second Rule 7 Statement and would allow the remaining allegations to lie on the file.

## **Factual Background**

9. The Respondent was born in 1966 and was admitted as a solicitor in 1990. His name remained on the Roll of Solicitors at the date of the hearing.
10. At all relevant times the Respondent had practised under the style of Betesh Partnership, 4<sup>th</sup> Floor, Cardinal House, 20 St Mary's Parsonage, Manchester M3 2LY.
11. On 12 December 2011 in the Crown Court at Warrington the Respondent was on his own confession convicted of four offences, as set out at paragraph 1 above. The Certificate of Conviction produced to the Tribunal was dated 30 January 2012. The Respondent had been sentenced to six months imprisonment on each of three counts, concurrent and six months imprisonment on the fourth count, consecutive. The Trial Judge's remarks on sentencing, dated 11 January 2012, were available to the Tribunal.

## **Witnesses**

12. None.

## **Findings of Fact and Law**

13. **Allegation 1:**

**Contrary to all, alternatively any of Principles 1, 2 and/or 6 of the SRA Principles 2011 he was on 12<sup>th</sup> December 2011, upon his own confession, convicted of four offences set out below:-**

- 1.1 **Prejudicing a money laundering investigation contrary to Section 342 of the Proceeds of Crime Act 2002;**
  - 1.2 **Prejudicing a money laundering investigation contrary to Section 342 of the Proceeds of Crime Act 2002;**
  - 1.3 **Doing an act tending and intending to pervert the course of public justice;**
  - 1.4 **Conceal/disguise/convert/transfer/remove criminal property, contrary to Section 327 of the Proceeds of Crime Act 2002 and was sentenced on the 11 January 2012 to 6 months imprisonment.**
- 13.1 The Tribunal was satisfied to the highest standard on the basis of the Certificate of Conviction that the Respondent had been convicted of the offences described, on his own confession.
  - 13.2 The Tribunal noted the particulars of the offences as follows:
  - 13.3 Between 12 May 2005 and 16 October 2008, knowing that a constable was acting in connection with a money laundering investigation (the Respondent) concealed documents relevant to that investigation, namely, the conveyancing file in respect of 46 Chester Road, Stoke on Trent;

- 13.4 Between 12 May 2005 and 14 March 2006, knowing that a constable was acting in connection with a money laundering investigation (the Respondent) concealed documents relevant to that investigation, namely the conveyancing file in respect of 12 Stellar Street, Stoke on Trent;
- 13.5 Between 12 May 2005 and 15 March 2006 did an act or series of acts which had a tendency to pervert the course of public justice in that, in his purported compliance with a Production Order made on the 12 May 2005, he produced to the Police a conveyancing file in respect of 12 Stellar Street, Stoke on Trent, from which he had removed incriminating documents demonstrating attempts to further a sale of the same and into which he had inserted a document suggesting that the sale was not going to proceed;
- 13.6 On or about 23 May 2007 (the Respondent) transferred criminal property, namely £13,750, to himself knowing or suspecting the said sum to wholly-represent, whether directly or indirectly, the proceeds of criminal conduct.
- 13.7 For a solicitor to be convicted of any offence was always potentially serious and in breach of these principles. In this instance, the offences involved money laundering, dealing with criminal property and perverting the course of justice. The trial judge had remarked that,
- “As a solicitor, on each occasion you knew what you were doing was wrong”.
- 13.8 The Tribunal was satisfied to the criminal standard that the offences were such that the Respondent was clearly in breach of Principles 1, 2 and 6 of the SRA Principles 2011. His convictions showed that he had not: upheld the rule of law and the proper administration of justice; acted with integrity; behaved in a way that maintained the trust the public places in the individual solicitor and in the provision of legal services.

### **Previous Disciplinary Matters**

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

### **Mitigation**

15. No mitigation was advanced on behalf of the Respondent.
16. The Tribunal noted the Respondent’s acknowledgement, in his email of 19 July 2012 that the convictions were sufficiently serious to justify a striking off order.

### **Sanction**

17. The Tribunal noted that the Respondent had been convicted of a number of serious offences. The trial judge’s sentencing remarks made it clear that the Respondent knew that what he was doing was wrong. The fact that an immediate custodial sentence was imposed left no doubt that the Respondent’s offences were serious. His convictions were for offences which went to the heart of the principles governing the

solicitors' profession. Even if not all of the offences necessarily involved dishonesty, they were in any event so serious and displayed such a lack of integrity that the Tribunal was justified in imposing the ultimate sanction. There was nothing exceptional in this matter which suggested that any lesser sanction might be appropriate.

18. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also 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.

### **Costs**

19. The Tribunal noted that in his email of 19 July 2012 the Respondent had referred both to the Restraint Order dated 11 January 2011 and to a bankruptcy order made against him, which was understood to have been made on 12 January 2012. He had explained that for those reasons he would not be able to pay any costs in this matter.
20. In the light of the Restraint Order and ongoing confiscation proceedings, Mr Goodwin submitted that it would be a contempt of court for the Respondent to pay costs to the SRA. It was, however, submitted, that it would be appropriate for some provision to be made for costs. Mr Goodwin did not have a schedule of costs available. He submitted that as the Rule 5 and first Rule 7 Statements were to lie on the file he would seek costs only in relation to the second Rule 7 Statement. It was noted that in the circumstances it might be appropriate for the Tribunal to make an order to provide for payment of costs not to be enforced without the further permission of the Tribunal.
21. The Tribunal considered whether to make an order for costs and, if so, in what form. Clearly, in the light of the Restraint Order, there was a risk that if the SRA sought to obtain payment of costs one or more individuals could be in contempt of court. Further, Mr Goodwin had not quantified the costs in relation to the second Rule 7 Statement and this hearing. Whilst the Tribunal could make an educated guess to set a figure for costs, in all of the circumstances this would not be desirable.
22. The Tribunal considered that the proceedings had been properly brought and in principle the Applicant should be entitled to costs. Those costs would have to be assessed if not agreed between the parties. If the SRA sought to enforce the payment of costs it would have to satisfy the Tribunal that the Restraint Order had been lifted, that there were no bars to enforcement and that there was some reasonable prospect of the Respondent being able to pay the costs.

### **Statement of Full Order**

23. The Tribunal Ordered that the Respondent, Nicholas Heywood, solicitor, be struck off the Roll of Solicitors and it further Ordered:
  1. The Rule 5 Statement dated 27 March 2009 and the first Rule 7 Statement dated 11 June 2010 shall lie on the file.

2. The Respondent do pay the SRA's costs of and incidental to the second Rule 7 Statement dated 22 June 2012, such costs to be assessed if not agreed and not to be enforced without the permission of the Tribunal.

Dated this 9<sup>th</sup> day of November 2012  
On behalf of the Tribunal

A.N. Spooner  
Chairman