SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 10351-2009

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

STEPHEN DAVID BARON Respondent

Before:

Mr J. N. Barnecutt (in the chair)
Mr R. Prigg
Mrs L. McMahon-Hathway

Date of Hearing: 17th February 2012

Appearances

Jonathan Greensmith, Solicitor, of Russell Jones & Walker Solicitors, 50-52 Chancery Lane, London WC2A 1HL for the Applicant.

David Morgan, Solicitor, of RadcliffesLeBrasseur, 5 Great College Street, Westminster, London SW1P 3SJ for the Respondent.

JUDGMENT

Allegation

1. The allegation against the Respondent was that he breached Rules 1.02 and 1.06 of the Solicitors' Code of Conduct 2007 ("SCC") in that he failed to act with integrity and behaved in a way which was likely to diminish the trust the public placed in the profession by virtue of his convictions under the Fraud Act 2006.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent, which included:

Applicant:

- Application and Rule 7 Statement dated 4 November 2010 and Exhibit "GM2";
- E-mail from Jonathan Greensmith to the Tribunal dated 31 January 2012;
- Applicant's Statement of Costs dated 16 February 2012.

Respondent:

- E-mail from David Morgan to the Tribunal dated 24 January 2012;
- Letter from Dr Anne Cremona, Consultant Psychiatrist, dated 20 January 2012;
- Respondent's Witness Statement dated 16 February 2012.

Preliminary Matter

3. By e-mail to the Tribunal dated 24 January 2012 from Mr Morgan on his behalf, the Respondent sought an adjournment of the substantive hearing. The application was supported by an unsigned letter on unheaded notepaper dated 20 January 2012 from Dr Anne Cremona, Consultant Psychiatrist, and the Respondent's unsigned Witness Statement. The application was opposed by Mr Greensmith for the Applicant on the grounds set out in his e-mail to the Tribunal dated 31 January 2012. The Chairman of the Tribunal considered the application on the papers on 3 February 2012 and directed that it should be heard as a preliminary application on the day of the substantive hearing. Mr Morgan renewed the Respondent's adjournment application supported by the same evidence, although by this point both the letter from Dr Cremona and the Respondent's Witness Statement were signed.

4. On 1 July 2010 the Respondent was convicted on indictment on five counts of conspiracy to defraud contrary to Common Law at Southwark Crown Court. On 28 July 2010 the Respondent was sentenced to a term of 18 months imprisonment to run concurrently on each count. On 13 July 2011 the Respondent unsuccessfully appealed against his conviction. The Respondent's Statement suggested that he was in the process of making an application to the Criminal Cases Review Commission ("the Commission") on the grounds that he was innocent of all charges, and that there had been a miscarriage of justice.

Submissions On Behalf Of The Respondent

5. Mr Morgan accepted that the Tribunal might not feel able to go behind the conviction. The Respondent had not attended the hearing and Mr Morgan had not seen him for several days. He had personally observed that the Respondent was "very stressed", and relied on the letter from Dr Cremona dated 20 January 2012 in support of this submission. There were deficiencies in the formatting of the Respondent's Statement. Mr Morgan had re-sent it to the Respondent with a request that the errors be corrected, but it had been returned in the same format, providing further evidence of the Respondent's stressed state. The application to adjourn had been made late because Mr Morgan had been waiting for documentary evidence to confirm the Respondent's instructions. The Respondent's position was that he was not in a fit state to attend the hearing to contest or even mitigate. Mr Morgan found himself in difficulty in attempting to do either, but had decided that he had a moral obligation to be present at the hearing. He asked the Tribunal to give due consideration to the application for an adjournment on the ground that the Respondent was unable to deal with the matter. The Respondent was in no fit state to practise as a solicitor and had instructed Mr Morgan that he had no intention of practising until all proceedings were concluded. The Respondent was willing to provide the Tribunal with an undertaking to that effect. He did not hold a practising certificate and was therefore no danger to the public. Mr Morgan accepted that many of Mr Greensmith's submissions, outlined below, were justified.

Submissions On Behalf Of The Applicant

6. Mr Greensmith opposed the application. He said it was important for the Tribunal to consider the application in the context of the chronology of the proceedings. The matter was quite old. A Rule 5 Statement was issued by the Tribunal on 16 October 2009. However in the public interest the Applicant was proceeding solely on the allegation in the Rule 7 Supplementary Statement lodged at the Tribunal on 4 November 2010. The Tribunal granted permission to the Applicant to lodge the Supplementary Statement out of time on 2 December 2010. The Respondent appealed against his conviction. It was agreed between the parties, with the Tribunal's consent, that the matter would not be listed for substantive hearing until after determination of the appeal, dismissed by the Court of Appeal on 13 July 2011. On 4 August 2011 the Tribunal gave permission to the Applicant to withdraw the allegations in the Rule 5 Statement. It was therefore clear to the Respondent from that point that the matter was to proceed solely on the allegation in the Supplementary Statement. The Tribunal also directed the Respondent to file and serve a Statement in response by 4pm on 15 September 2011, with the matter to be listed for substantive hearing on the first open date after 1 October 2011. At the end of August 2011 Mr Greensmith received a call from the Respondent stating that he intended to deny the allegation and was preparing a Statement to that effect. He was no longer represented by the solicitors who had previously acted on his behalf in the Tribunal and the criminal proceedings. On 15 September 2011 (the due date for the Respondent's Statement), Mr Morgan's firm, which had only just been instructed by the Respondent, contacted Mr Greensmith, who agreed an extension of time for provision of the Statement to the end of October 2011. The time was further extended by consent (with the Tribunal's Clerk's approval) to 12 November 2011. On 9 November 2011 the date of the substantive hearing was formally notified by the

Tribunal to the parties. Thereafter, Mr Greensmith continued to chase for the Respondent's Statement.

7. The request for an adjournment was first raised on 24 January 2012. Mr Greensmith responded to the request by e-mail dated 31 January 2012, setting out the history and grounds for the Applicant's opposition. Mr Greensmith repeated those grounds with specific reference to the Tribunal's Policy/Practice Note on Adjournments ("the Policy"). Point 3 stated that the Tribunal would be reluctant to agree to an adjournment unless the request was supported by both parties or the reasons appeared to the Tribunal to be justifiable because not to grant an adjournment would result in injustice to the person seeking the adjournment. Mr Greensmith submitted that the Tribunal had only the Respondent's word, supplemented with what Mr Morgan had picked up from him, to support his assertion that he had made an application to the Commission. It appeared from the Respondent's Statement that the grounds for his application were allegations of racism within the jury that convicted him. The facts behind the criminal conviction had been scrutinised in two sets of court proceedings, the Respondent having been convicted at the end of a trial which lasted 9 weeks and his conviction having been unsuccessfully appealed. The Respondent suggested in his Statement that the Court of Appeal had commented only on the grounds of appeal rather than the safety of the conviction. Mr Greensmith referred to the Court of Appeal Judgment and asked the Tribunal to consider paragraphs 25 and 27 to 28 (dealing with count nine on the indictment which related to a fictitious transaction). The Respondent had provided no detail or timescales in his Statement and there was no documentary evidence before the Tribunal of any actions taken by the Respondent to bring the matter before the Commission.

8. Mr Greensmith submitted that, the Tribunal proceedings having been delayed pending the outcome of the criminal proceedings and appeal, the interests of the Public and the Profession must now be satisfied. Whilst the Respondent might be unwilling to accept the fact, he stood convicted of a serious criminal offence under the Fraud Act, perpetrated, as the sentencing remarks of the Judge made clear, through abuse of his position as a solicitor. The reputation of the Profession was at risk. Point 4(a) of the Policy stated that the existence of other proceedings would not generally be regarded as providing justification for an adjournment. There was no risk of "muddying the waters of justice" if the Tribunal chose to proceed with the substantive hearing, as the criminal proceedings had been concluded. Point 4(b) of the Policy stated that lack of readiness would not generally be regarded as providing justification for an adjournment. The Respondent's application on the papers was indicative of a lack of readiness; it also appeared from his Statement that the application was based on the fact of his not being ready. He said that he intended to call witnesses of fact and character and that he did not have the means to prepare. However the Tribunal was aware that the Respondent had been able to secure legal representation and was not acting alone. Mr Greensmith also referred to Point 4(c) of the Policy, namely that ill-health would not generally be regarded as providing a justification for an adjournment unless it was supported by a reasoned opinion of an appropriate medical advisor. He submitted that the medical evidence before the Tribunal was the same evidence as had been put forward in support of the application on the papers (albeit now signed). Mr Greensmith repeated his criticisms of that evidence as follows:

8.1 The application was supported by a letter on unheaded notepaper which was described in the accompanying e-mail as a letter from the Respondent's psychiatrist;

8.2 The letter gave no details of the symptoms, treatment, prognosis, or likely time frame for recovery. Mr Greensmith submitted that this did not constitute a reasoned opinion.

9. Mr Greensmith summarised his submissions by further reference to the chronology of events since the failed appeal against conviction. Six months ago the Respondent had been directed to file a Statement in response to the allegation. Five months ago he told Mr Greensmith he was preparing that Statement. Four months ago he instructed his current legal representatives to assist him. Three months ago the substantive hearing was listed. Two weeks ago he requested an adjournment and two days ago he provided a Statement (then unsigned, now signed) in terms saying he was not ready, with no indication as to when he would be ready, for a substantive hearing. Mr Greensmith submitted that there was nothing within the Tribunal's Policy which prevented it from proceeding immediately with the substantive hearing. It was in the interests of the Public and the Profession for the substantive hearing to go ahead without further delay.

Decision On The Respondent's Application for an Adjournment

10. Where opposed, the Tribunal would be reluctant to grant an application for an adjournment unless the reasons for the request were justifiable because not to grant the adjournment would result in injustice to the party seeking the adjournment. Point 8 of the Tribunal's Policy provided that those appearing before the Tribunal should be conscious of the need to ensure that cases were heard with reasonable expedition, so that the interests of the Public as well as the Profession could be protected. The efficient and timely determination of cases would usually be in the best interests of all concerned and the Tribunal would always need to be convinced that the interests of justice would be best served by agreeing to an adjournment. The Tribunal could exercise its right to reject an application for an adjournment and proceed with the substantive hearing on the date fixed.

11. The Tribunal had given careful consideration to the documents in support of and in opposition to the application. It had taken careful note of the submissions ably made by Mr Morgan and Mr Greensmith on behalf of their respective clients. The Tribunal's Policy/Practice Note on Adjournments was unambiguous as to the circumstances in which any application, but particularly a late application, for an adjournment would be granted. Close regard had been made to that Policy when weighing up the submissions. The Tribunal had concluded that this was not an appropriate case where an adjournment of the substantive hearing should be granted. The Respondent's application was therefore refused.

12. In paragraph 4 of his Witness Statement the Respondent said that he sought an adjournment on the grounds of his "damaged health" and because he was appealing his conviction to the Commission. The Tribunal's Policy on adjournment applications on the grounds of ill-health stated that the claimed medical condition of, in this case the Respondent, must be supported by a reasoned opinion of an appropriate medical advisor. The Tribunal was not satisfied that the letter on unheaded notepaper from Dr

Anne Cremona, Consultant Psychiatrist, was the reasoned opinion of an appropriate medical advisor. In order to satisfy that requirement the Tribunal would have expected to have seen a reasoned statement of informed opinion on headed notepaper setting out a summary of the Respondent's symptoms, the date of onset of those symptoms, treatment undertaken, and prognosis including a statement as to when, in Dr Cremona's opinion, the Respondent was likely to be fit to appear before the Tribunal. In fact there was no such reasoned opinion before the Tribunal supporting the Respondent's own assertion that his health was damaged so that he was unable to attend and participate in the hearing. He had known the date of the substantive hearing for three months (and had been aware that a hearing was going to take place at some time in the future for much longer). He had had ample time to obtain the reasoned opinion of an appropriate medical advisor if he had wished to do so. The Respondent had been able to instruct Mr Morgan's firm and, on his own assertion, to pursue an application to the Commission. He had been able to participate in the proceedings at the Crown Court and his appeal to the Court of Appeal and to give instructions to his previous legal representatives. The Tribunal accepted the points made by Mr Greensmith in relation to the medical evidence. There was no evidence before the Tribunal sufficient to justify an adjournment on the ground of ill-health.

13. Turning to the Respondent's assertion that it would be unjust to proceed until the appeal process was exhausted, the Respondent had been convicted by a jury after a trial lasting 9 weeks, and his appeal to the Court of Appeal had been dismissed. The Tribunal had carefully read the sentencing remarks of the Judge at first instance and the Judgment of the Court of Appeal. In his Witness Statement the Respondent stated that his application to the Commission was based on questions of racism and anti-Semitism within the jury. He asserted that such grounds would form much of his mitigation to the Tribunal, and that if the substantive hearing proceeded that might prejudice any future hearing before the Court of Appeal because the facts that would be put before the Tribunal would be substantially the same as the appeal. He suggested that any pre-judging by the Tribunal could prejudice a hearing before the Court of Appeal. There was no documentary evidence from the Commission before the Tribunal to confirm the Respondent's assertion that an application had even been made. If there had been such evidence, it would have had no relevance to the current proceedings before the Tribunal, which were based solely on the Respondent's conviction which had not been overturned. Rule 15(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") provided that:

> "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."

In order to provide protection to respondents, Rule 21(5) SDPR provided that, where the Tribunal had made a finding based solely upon the certificate of conviction for a criminal offence which was subsequently quashed, the Tribunal could, on the application of either party to the application in respect of which the finding arose, revoke its finding. In short, if the Respondent's conviction was quashed at some time in the future, it was open to him to make an application under Rule 21(5).

14. The application by the Respondent for an adjournment of the substantive hearing was therefore refused.

Factual Background

15. The Respondent was born on 19 August 1958 and admitted as a solicitor in 1982. He did not have a practising certificate.

16. On 1 July 2010 the Respondent was convicted on indictment at Southwark Crown Court after a trial on 5 counts of conspiracy to defraud. On 28 July 2010 the Respondent was sentenced to a term of 18 months imprisonment to run concurrently on each count. He unsuccessfully appealed his conviction to the Court of Appeal on 13 July 2011.

17. His Honour Judge Goymer made certain sentencing remarks, summarised as follows:

- The Respondent had committed mortgage fraud to the value of £898,000;
- It was easy to regard mortgage fraud as being a victimless crime. The losers were the financial institutions;
- The amount of money involved was not as important as the grave breach of trust that the Respondent had been found by the jury to have committed when acting as a solicitor to the lenders;
- This was not just a lapse of professional conduct or failing to keep proper records. The Respondent had used the same day closed bridging transaction as an instrument of fraud and it must have been used to help perpetrate the frauds because when this type of fraud was committed, very often the need for a solicitor who was prepared to be involved dishonestly was all important;
- It was, when all was said and done, a very grave breach of trust;
- It was not correct to say of the Respondent that he was intermittently involved;
- The Judge remarked when sentencing a co-defendant that his [the co-defendant's] role was not such a vital one as that of a dishonest solicitor.

18. At paragraphs 27 and 28 of the Court of Appeal Judgment specific reference was made to count nine of the indictment, which related to an entirely fictitious transaction. It was apparent from the Judgment that the jury had found the Respondent to be dishonest in respect of that count also.

Witnesses

19. None.

Findings of Fact and Law

20. **Breached Rules 1.02 and 1.06 SCC, in that he failed to act with integrity and behaved in a way which was likely to diminish the trust the public placed in the profession by virtue of his convictions under the Fraud Act 2006.**

20.1 The Respondent denied the allegation.

20.2 Mr Morgan explained that he was in some difficulty in expanding upon the Respondent's grounds for denying the allegation, save that the Respondent said he was innocent of the charges made against him and of which he had been convicted and had been the subject of a miscarriage of justice. Mr Morgan said he had explained to the Respondent that the Tribunal was not in a position to look behind the criminal convictions against which the Respondent had unsuccessfully appealed. Mr Morgan did not seek to argue against the authenticity of the certificate of conviction.

20.3 Mr Greensmith relied on the decision in Shepherd v The Law Society decided in the Court of Appeal (Civil Division) on 15 November 1996. It was not for the Tribunal to go behind the decisions of the criminal court to convict or the Court of Appeal to dismiss the appeal. Notwithstanding the Respondent's protestations of innocence, he had been convicted of conspiracy to defraud, and that was sufficient for the Tribunal to find the allegation proved.

20.4 The Tribunal found that on 1 July 2010 the Respondent was convicted on indictment at Southwark Crown Court on 5 counts of conspiracy to defraud. On 28 July 2010 the Respondent was sentenced to a term of 18 months imprisonment to run concurrently on each count. He unsuccessfully appealed his conviction to the Court of Appeal on 13 July 2011. The Respondent did not dispute the authenticity of the certificate of conviction dated 3 August 2010 which was produced to the Tribunal. However he maintained that he was innocent of all charges and that there had been a "gross miscarriage of justice" in his own words taken from his Statement dated 16 February 2012. It was not for the Tribunal to go behind the certificate of conviction or the Court of Appeal's carefully reasoned decision to dismiss the Respondent's appeal against conviction by re-hearing the criminal charges. SDPR Rule 21(5) provided protection to the Respondent in the event that at some time in the future his conviction was overturned. However for the purposes of these proceedings the conviction remained in place and the Tribunal would proceed accordingly. The Tribunal therefore found the allegation, which was denied, substantiated beyond reasonable doubt.

Previous Disciplinary Matters

21. One previous disciplinary matter was recorded against the Respondent. At a hearing before a different Division of the Tribunal on 25 June 2002 the Respondent denied six allegations that he had been guilty of conduct unbefitting a solicitor. Five allegations were found to have been substantiated. The Tribunal imposed fines totalling £15,000 and ordered the Respondent to pay costs of £6000 plus VAT.

Mitigation

22. The Respondent's position was that he was innocent of all matters for which he had been convicted. Mr Morgan said that he was without instructions in relation to mitigation. He felt under a moral obligation to put the Respondent's case as well as he could so as to assist the Respondent and out of courtesy to the Tribunal. Mr Morgan asked the Tribunal to bear in mind the contents of the Respondent's Statement,

namely that he had been qualified as a solicitor for nearly 30 years and his family and personal circumstances.

Sanction

23. The Tribunal had found the allegation, which was denied by the Respondent, substantiated beyond reasonable doubt. The Tribunal considered the Respondent's Statement. He relied on his assertion that his conviction was, in his view, "a gross miscarriage of justice and that [he] was and remained innocent of all charges". He made allegations concerning the jury. Such statements did not in the view of the Tribunal go to mitigation, but were instead an attempt to undermine the credibility of the conviction which the Tribunal had already indicated it was not prepared to entertain. The Respondent had been convicted by a jury of 5 counts of conspiracy to defraud. According to His Honour Judge Goymer's sentencing remarks, the conviction followed a trial which lasted approximately 9 weeks, 2 weeks of which were taken up with the jury's retirement. The Respondent was sentenced to a term of 18 months imprisonment to run concurrently on each count. His appeal to the Court of Appeal was dismissed. The amount of money obtained from the Respondent's lender clients in relation to the transactions was £898,000. The Judge considered the Respondent's role and responsibility in the conspiracy, and referred to his position as a solicitor as being one of trust and honour. He said the Respondent's case was difficult and sad. The Judge regarded the Respondent's very grave breach of trust as important. He said that the jury was satisfied that the Respondent acted dishonestly, and that this was not just a lapse of professional conduct or failing to keep proper records. He described the Respondent's actions as having been used to help perpetrate the frauds. The Judge identified that when fraud of this type was being committed, the need for a solicitor who was prepared to be involved dishonestly was all important.

24. The Tribunal echoed the views of the sentencing Judge. When imposing sanction the Tribunal had in mind its duty to protect the Public and confidence in the reputation of the Profession, whilst also giving due consideration to the need to be proportionate. The Tribunal had considered the limited information concerning the Respondent's personal circumstances as set out at paragraph 8 of his Statement. However the Tribunal would be falling down in its duty to the Public and the Profession if it did anything other than strike the Respondent off the Roll of Solicitors. The Respondent had been convicted of serious offences of dishonesty resulting in sentences of imprisonment which had left his integrity in tatters. He was no longer fit to practise as a solicitor.

Costs

25. The Applicant applied for costs of £11,241.50. The Statement of Costs had been served but no discussion had taken place between the parties with a view to agreement of a figure. In reply to a question from Mr Morgan, Mr Greensmith confirmed that there had been no duplication of costs in relation to his own reading in to the file. He invited the Tribunal to find that the time, which had been spent solely on progressing the case, was reasonable in all the circumstances. The Rule 5 Statement had contained 13 allegations against the Respondent, which were withdrawn because the Applicant decided, following an indication from the Tribunal at the Mention hearing,

that it was in the public interest to proceed on the conviction alone, rather than escalate costs and waste further time by proceeding on all 14 allegations. Credit had also been given for a contribution to the costs agreed with the Second Respondent. Mr Greensmith referred the Tribunal to the case of Solicitors Regulation Authority v Davis and McGlinchey [2011] EWHC 232 (Admin.). He submitted that, if the Tribunal was minded to make an award on costs, the burden of proof as to ability to pay fell upon the Respondent. For the Respondent to have his means taken into consideration, the Tribunal needed to know what those means were. One would expect to see some evidence of means backed up by a statement of truth, so that there was an opportunity not only for the Tribunal but also for Mr Greensmith on behalf of the Applicant to investigate and perhaps interrogate the Respondent. Mr Greensmith confirmed that it was not the Solicitors Regulation Authority's ("SRA") practice to pursue costs where there was no prospect of recovery.

26. Mr Morgan said that he was in difficulty in dealing with the application for costs as he had no formal instructions. He was able to say that the Respondent was without income and he invited the Tribunal to take into account the Respondent's ability to pay costs. The Respondent's financial position (which Mr Morgan was not able to substantiate with documentary evidence) was parlous although he was not believed to be insolvent.

27. The Tribunal reminded the parties that responsibility for recovery of costs rested with the SRA. It seemed unlikely that the SRA would want to waste money by pursuing the impossible. It was in the interests of both parties, but in particular the Respondent, not to proceed with the allegations in the Rule 5 Statement when there was a conviction, because otherwise the preparation costs would of necessity have been that much higher. The Tribunal had been at pains to consider the costs carefully and had concluded that there were one or two areas where they might be a little high. However it was not in the interests of either party, and in particular the Respondent, for the Tribunal to order that the costs should be subject to detailed assessment which would only incur further costs. Mr Morgan had been in a difficult position through no fault of his own. He had done the best he could for the Respondent in all the circumstances. The fairest and most proportionate order that the Tribunal could make was to order costs in a fixed sum of £10,000.

Statement of Full Order

28. The Tribunal Ordered that the Respondent, Stephen David Baron c/o Radcliffes LeBrasseur, 5 Great College Street, Westminster, London SW1P 3SJ, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,000.00.

Dated this 22nd day of March 2011
On behalf of the Tribunal

Mr J. Barnecutt
Chairman