

**The Respondent's Appeal against the Tribunal's decision lodged with the High Court (Administrative Court) was discontinued.**

No. 10379-2009

SOLICITORS DISCIPLINARY TRIBUNAL

SOLICITORS ACT 1974

IN THE MATTER OF ANDREW HERBERT WETTERN, solicitor (The Respondent)

Upon the application of Geoffrey Williams QC  
on behalf of the Solicitors Regulation Authority

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Mrs J. Martineau (in the chair)  
Mr M. Sibley  
Mr D. Gilbertson

Date of Hearing: 4th November 2010

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**FINDINGS & DECISION**

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**Appearances**

Geoffrey Williams QC of The Mews, 38 Cathedral Road, Cardiff, CF11 9LL appeared on behalf of the Solicitors Regulation Authority ("SRA").

The Respondent appeared and was represented by Mr Timothy Evans of Counsel, instructed by DLH Piper UK LLP of 3 Noble Street, London, EC2V 7EE.

The proceedings against the Respondent by the Applicant were commenced by way of an Application and supporting statement dated 12 November 2009 pursuant to Rule 5 of the Solicitors (Disciplinary Proceedings) Rules 2007..

**Allegations**

In the Applicant's original statement, five allegations (referred to as allegations a-e) were made against the Respondent. Following agreement between the parties, summarised in the Applicant's letter to the Tribunal dated 22 October 2010, the Applicant indicated that he intended to proceed with only three of the five allegations, subject to the Tribunal's permission. The Applicant and Respondent confirmed their agreement subject to the Tribunal's approval at the hearing and the Tribunal agreed that allegations (c) and (d) could be withdrawn.

Accordingly, the allegations against the Respondent which the Tribunal considered at the hearing were that he:

- (a) acted improperly in conflict of interest situations contrary to Rule 1(a) and (d) Solicitors Practice Rules 1990 (as amended) (“SPR”);
- (b) failed to disclose to his firm personal payments he had received from clients contrary to Rule 1(a) SPR;
- (c) [withdrawn];
- (d) [withdrawn];
- (e) caused false documentation to be placed upon his firm’s file contrary to Rule 1(a) and (d) SPR.

In relation to allegation (e), it was alleged that the Respondent had been dishonest.

### **Factual background**

1. The Respondent, born in 1957, was admitted as a Solicitor on 1 April 1981. At the material times, the Respondent was a partner in the firm of Watson Farley & Williams Solicitors of 15 Appold Street, London EC2A. He resigned from the firm on 15 July 2005 and has not practised as a Solicitor since that date.
2. Allegations (a) and (b) arose as a result of the Respondent accepting two personal payments from a senior representative of a client company. The person in question, YP, was a Russian national and an employee and Director of Fiona Maritime Agencies Limited (latterly known as Sovcomflot (UK) Limited) (“the Company”). The Company is a wholly owned subsidiary of OAO Sovcomflot, believed to be the largest commercial ship operating company in Russia. The Company was incorporated in England to act as the London commercial agent for companies within the OAO Sovcomflot group.
3. The Respondent acted for the Company in arranging loans to re-finance earlier loans made by the German State Export Agency. In the transactions, the Respondent also acted for the lenders. The Respondent’s firm issued a fee note for its work and was paid.
4. YP told the Respondent that the Company was very pleased with the work that he had done and wished to show him some personal appreciation over and above the professional fees. The Respondent said that he declined payment but YP persisted. To cement the client relationship, the Respondent later agreed to accept the offered payment. In consequence, on 17 October 2000 the Respondent received a payment of £13,301.57 into his personal bank account. This payment was repaid on the Respondent’s instructions in November 2005.
5. In 2001, the Respondent acted for the Company with respect to the purchase of six shipbuilding contracts. Again, YP was pleased with the Respondent’s work and, without prior consultation, he made a personal payment into the Respondent’s bank

account on 15 January 2002 in the sum of £10,000.00. This sum was repaid by the Respondent, with interest, when YP left the Company in 2005.

6. These two payments were made in situations of conflict of interest between the Respondent and the payers, who were not advised to take independent legal advice before making gifts to the Respondent, as they should have been. In both instances, the Respondent allowed considerable periods of time to elapse before making repayments. On neither occasion did the Respondent declare the payments to his firm. He claims to have accepted them so as not to upset the payers and to cement the solicitor/client relationship. He was worried that if he declined the payments then the clients would be lost to other solicitors.
7. Allegation (e) arose from the Respondent's drafting of a supplemental agreement regarding the termination of security arrangements and the release of share certificates in relation to ship building contracts. The agreement was between Standard Maritime Holding ("Standard") and Fiona Trust & Holding Corporation ("Fiona"), a Liberian corporation ultimately owned by OAO Sovcomflot.
8. YP had indicated his wish to leave the Company and to work for YN, a Russian businessman and an associate of DS (who was the Director General of OAO Sovcomflot and various subsidiary companies until he was dismissed on 7 October 2004). YN had an interest in Standard, a company incorporated for him in the British Virgin Islands which was a holding company for a number of further companies in which YN had an interest.
9. On 4 January 2005, the Respondent sent an email to YN dealing with YP's contract of employment and resignation. Specific reference was made to share dealing and the need for something to be put in place for Fiona to replace certain share pledge deposits - otherwise there would be no sense in the release and it would look, in the Respondent's own words, "really smelly." Essentially, a formal agreement would be necessary.
10. Thereafter, the Respondent went on to prepare this supplemental agreement. Subsequently, documentation was generated to give the impression that the agreement had been executed prior to January 2005. Towards the end of January 2005, the Respondent found out that Ince & Co Solicitors had been instructed to investigate all dealings between Fiona and Standard with a view to having them set aside. The Respondent felt that he might have been misled by his clients and was worried that he might be accused of fraud.
11. The Respondent contacted YP who suggested that the Respondent might assist himself and YN by inserting some documents in his firm's file to give the impression that the supplemental agreement had been drafted in the summer of 2004 rather than in 2005. The Respondent agreed, saying that he was in a state of "confusion, panic and stupidity".
12. YN agreed for his bankers, Wegelin, to send the Respondent a letter dated 8 July 2004 purporting to enclose a copy of the supplemental agreement. This date was false. The letter was despatched in 2005.

13. The Respondent endorsed the letter from Wegelin with a note that the original supplemental agreement had been sent to YP for signature by DS on 12 July (2004). This was untrue. The letter had neither been received by the Respondent nor had it been forwarded to him at that time.
14. YP provided the Respondent with a compliment slip purporting to be dated 3 September 2004 and attached the supplemental agreement signed by DS. The Respondent knew that this document was false. Nevertheless he placed it on his firm's file representing it to be genuine. This false documentation attempted to show that DS had committed Fiona to the Agreement prior to his departure. This was not correct.

### **Submissions**

15. In relation to the personal payments, Mr Williams confirmed that the Respondent reported himself to the Office for the Supervision of Solicitors. There is no suggestion that the payments should be treated as bribes. However, he did have obligations towards his client to advise him to seek independent legal advice and should not have accepted the payments in these circumstances. Furthermore, he failed in his duty to his partners by not notifying them of the payments.
16. With regard to the supplemental agreement, Mr Williams submitted that the creation of the false paper trail involved dishonest conduct on the part of the Respondent. This was accepted by the Respondent. Mr Williams said that this was dishonesty in aggravated circumstances, because the Respondent knew that there was an investigation into the dealings between Fiona and Standard. Such behaviour is at the top end of the scale of misconduct and causes immense damage to the profession.
17. On behalf of the Respondent, Mr Evans said that the proceedings had been hanging over him for a number of years. He was anxious to cooperate with the regulator to the best of his ability but would not admit allegations, which were misconceived. This is why he maintained his denial of certain allegations, which were withdrawn at the beginning of the hearing. He had always admitted those matters which are not in dispute today.
18. The Respondent freely admits his errors and accepts them as serious mistakes. He should have advised YP to seek independent legal advice before accepting the gifts, even though YP, as a rich and experienced businessman, might well have said the suggestion was absurd. Nevertheless, it would have been sensible for his own protection for the Respondent to have done so. If the Respondent had been working in a highly functional partnership with good communication, he would have reported the payments to his partners. However, the Respondent was working to a very large extent on his own and was not well supported by the rest of the firm. He did not trust the partners to deal with the matter sensibly.
19. The Respondent accepted that he had acted dishonestly in relation to allegation (e). This was a mistake of serious proportions but it was totally out of character and was the product of panic in the most unusual of circumstances. The Respondent had a real and sudden apprehension that he had been involved in a very substantial fraud. Ultimately, his attempt at deception was hopeless and ill-thought out. It was never

likely to succeed and the Respondent himself admitted his actions at an early stage before any harm was caused.

20. The consequences for the Respondent have been very grave. He has, in effect, voluntarily suspended himself from practice since the middle of 2005. He has suffered from severe depression since that time. He has been taking anti-depressants since May 2005.
21. The Respondent recognised that the reputation of the profession is important. He has always accepted that what he did falls below the standards expected of the profession. But he did put matters right and no harm came to another person or company. He has suffered greatly as a result. Mr Evans submitted that the protection of the public does not require the Respondent to be struck off. Clearly a sanction of severity was inevitable, but it was open to the profession to recognise that that it is possible for mistakes of this nature to be made in a moment of panic. It would not be in the interests of the profession to lose the services of a solicitor of the Respondent's ability and experience.
22. In addition to the oral submissions made at the hearing, the Tribunal reviewed all the documents submitted, which included:
  - (i) the Application dated 12 November 2009 together with the supporting statement and documentation;
  - (ii) a bundle of character references prepared on behalf of the Respondent (most of which had already been incorporated into the documentation submitted by the Applicant) together with medical reports from Dr Pereira; and
  - (iii) the Applicant's letter to the Tribunal dated 22 October 2010 in which he confirmed the agreement reached between the parties regarding the allegations.

### **Findings as to Fact and Law**

23. The Tribunal noted that the Respondent admitted allegations (a), (b) and (e). The Tribunal found that the evidence substantiated those allegations.
24. With regard to the personal payments, the Tribunal considered the circumstances in which the payments were made, but noted that the Respondent did not at any stage seek advice from an accountant or The Law Society about how to proceed. Those avenues would have been open to him if he did not want to raise the issue with his own partners.
25. Applying the Twinsectra Ltd v Yardley and Others [2002] UKHL 12 test, the Tribunal also found that the Respondent had acted dishonestly in relation to creating the false paper trail to disguise the circumstances under which the supplemental agreement had been created.

### **Application for Costs**

26. Mr Williams produced a Schedule of Costs in the sum of £26,465.42. Mr Evans accepted that the Respondent should pay an appropriate amount of the costs.

### **Sanction and Reasons**

27. The Tribunal considered very carefully the submissions made on behalf of the Respondent by Mr Evans. The Tribunal also took into account the character references that had been provided.
28. This was a very sad case. The Respondent was an experienced, able and well respected solicitor. He had made a number of serious errors of judgement since 2000, one of them involving dishonesty. Whilst the Tribunal acknowledged the Respondent's current health problems, which had manifested themselves since these matters came to light, it was clear that the Respondent was not suffering from any depressive illness or mental incapacity at the time of the various incidents now before the Tribunal. This was confirmed by Mr Evans. The Respondent was mentally completely stable at the material times and there was no suggestion that his errors of judgement were attributable to some underlying physiological or psychological illness or condition.
29. The conduct of the Respondent was so serious that the only proper sanction open to the Tribunal was to order that the Respondent be struck off the Roll of Solicitors. This was necessary to reflect the seriousness of his conduct and to protect the public.

### **Decision as to Costs**

30. The Tribunal considered that the proceedings were properly brought and that it was appropriate for the Respondent to pay the Applicant's costs. Having considered the Applicant's Schedule of Costs, the Tribunal decided to fix the amount of costs to be paid by the Respondent in the sum of £20,000.00.

### **Order**

The Tribunal Ordered that the Respondent, Andrew Herbert Wettern of c/o Ms J Rickards, Peters & Peters Solicitors, 15 Fetter Lane, London, EC4A 1BW, 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 £20,000.00.

DATED this 3<sup>rd</sup> day of March 2011  
on behalf of the Tribunal

Mrs J. Martineau  
Chairman